

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

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

1. Company's Duties.

(a) The Company shall accept, process, and recycle all Recovered Materials transferred to the Company by the Authority's transportation contractor during the Company's Receiving Hours, as described in this Service Agreement. The Authority reserves the right under this Service Agreement to import and process through the Transfer Stations, Recovered Materials from locations outside the confines of Carroll County, Maryland (individually, or together, the "Member Jurisdiction(s)"), if approved by the Company. The Company has sole responsibility for the provision and operation of all Facilities, personnel, and sites necessary to provide the Service. 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 Member Jurisdictions' Representative, the Company shall meet with the Authority or Member Jurisdictions. Services requested under this Service Agreement shall begin on July 1, 2020 (Operations Date). There is no minimum tonnage guarantee under this Service Agreement. The Company shall provide the Authority with a MRF Outbound Tonnage Report. Such report shall be submitted to the Authority with the monthly invoice.

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. The Company shall cooperate with the Authority and the Authority's transportation contractors to ensure that the Company's acceptance of the Recovered Materials is conducted in an effective and efficient manner minimizing waiting times for the Authority's transportation contractor at the Processing Facility.

(b) The Company is obligated to accept, and process all Recovered Material transferred to the Company's Processing Facility by the Authority. Provisions for Hazardous Waste, if any, and Unacceptable Waste, if any, are set forth in Section 2 below.

(c) The Company shall be an independent contractor and not an employee of the Authority and the Company's employees who are assigned to provide services to the Authority under this Service Agreement shall be employees of the Company and not the Authority. The Company shall be responsible for the reporting and remittance of all state and federal taxes, compensable workers' compensation claims, and coverage of unemployment claims filed by its employees. The Company's Services will be provided with due care and in accordance with all applicable standards and Applicable Law. The Company shall perform the Services for the Member Jurisdictions as directed by the Authority.

## 2. Service Fees

From and after the Operations Date, the Company may charge and collect from the Authority a Service Fee for each ton of Recovered Material accepted by the Company from the Authority, for processing and recycling hereunder. The selection of a market-based proposal generating a market-based service fee (Market-Based Service Fee) or a fixed fee proposal generating a fixed-base service fee (Fixed-Base Service Fee) will be at the Authority's discretion for each Member Jurisdiction and will be applied for the term of the Service Agreement (including renewal periods).

(a) The Market-Based Service Fee for single stream material shall be each Member Jurisdiction's revenue share minus a Processing Fee. The Member Jurisdiction's revenue share is 75% of the applicable Member Jurisdiction blended commodity value based on the Member Jurisdiction's commodity composition and the applicable commodity market indices.

A blended commodity value shall be computed by adding the first monthly published index values for the single stream material. The published index values to be used in computing the MPI are to be the following:

- (i) For Cardboard, the index shall be the median Northeast region (New York) index for OCC (11) as published in PPI Pulp and Paper Week
- (ii) For residential Mixed Paper, the index shall be the median Northeast region (New York) index for Mixed Paper (54) as published in PPI Pulp and Paper Week
- (iii) For aluminum cans, steel cans, PET, Natural HDPE, Colored HDPE, Plastics (3-7), and Glass 3 Mix the indices shall be the median Northeast region index as published in RecyclingMarkets.net, Secondary Materials Pricing
- (iv) The value for rigid plastics and scrap metal shall be a fixed rate of \$0.00 per ton
- (v) The value of residue in the single stream shall be a fixed rate of [INSERT RESIDUE PRICE PROPOSAL] per ton

Below are examples for calculating the Market-Based Service Fees. The commodity compositions presented in the examples (items i and ii below) shall be used for the term of the Service Agreement or until a Recycling Sort is performed. Each party has the right to request the performance of one (1) Recycling Sort for each Member Jurisdiction at the Processing Facility per Schedule III during the term of this Service Agreement.

The Authority may also deliver source separated cardboard to the Processing Facility, [if proposed in Company's proposal and accepted by the Authority]. The Market-Based Service Fee for source separated cardboard shall be 75% of the median Northeast region index for OCC (11) minus a Cardboard Processing Fee ([Insert Cardboard Processing Fee]).

(i.) Carroll County Single Stream Commodity Composition

<b>Commodity</b>	<b>Commodity Market Index Value</b>	<b>Commodity Composition</b>	<b>Adjusted Value</b>
OCC (11)	\$27.50	25.15%	\$6.92
Mixed Paper (54)	-\$2.50	29.58%	-\$0.74
Mixed Glass	-\$25.00	19.38%	-\$4.85
Aluminum Cans	\$400.00	1.05%	\$4.20
Steel Cans	\$5.00	2.74%	\$0.14
PET	\$200	3.19%	\$6.38
Natural HDPE	\$1,255	0.87%	\$10.92
Colored HDPE	\$220	0.82%	\$1.80
Plastics (3-7)	\$30.00	5.30%	\$1.59
Scrap Metal	\$0.00	0.0%	\$0.00
Rigid Plastics	\$0.00	1.34%	\$0.00
Residue (See Cost Proposal)	-\$55.00	10.58%	-\$5.82
<b>Total</b>		<b>100%</b>	<b>\$20.54</b>

Blended Commodity Value (Market Price Index)	\$20.54 per ton
Carroll County Revenue Share (%)	75%
Carroll County Revenue Share (\$/ton)	$\$20.54 * .75 = \$15.41$ per ton
Processing Fee (Cost Proposal)	\$65.00 per ton
Service Fee (or Tip Fee)	$\$65.00 - \$15.41 = \$49.59$ per ton

(ii.) Frederick County Single Stream Commodity Composition

<b>Commodity</b>	<b>Commodity Market Index Value</b>	<b>Commodity Composition</b>	<b>Adjusted Value</b>
OCC (11)	\$27.50	22.13%	\$6.09
Mixed Paper (54)	-\$2.50	35.03%	-\$0.88
Mixed Glass	-\$25.00	16.53%	-\$4.13
Aluminum Cans	\$400.00	1.38%	\$5.52
Steel Cans	\$5.00	2.44%	\$0.12
PET	\$200	3.85%	\$7.70
Natural HDPE	\$1,255	1.18%	\$14.81
Colored HDPE	\$220	1.37%	\$3.01
Plastics (3-7)	\$30.00	5.25%	\$1.58
Scrap Metal	\$0.00	0.45%	\$0.00
Rigid Plastics	\$0.00	0.32%	\$0.00
Residue (See Cost Proposal)	-\$55.00	10.07%	-\$5.54
<b>Total</b>		<b>100%</b>	<b>\$28.28</b>

Blended Commodity Value (Market Price Index)	\$28.28 per ton
Frederick County Revenue Share (%)	75%
Frederick County Revenue Share (\$/ton)	.75 * \$28.28 = \$21.21 per ton
Processing Fee (See Cost Proposal)	\$65.00 per ton
Service Fee (or Tip Fee)	\$65.00 - \$21.21 = \$43.79 per ton

(iii.) Source Separated Cardboard (if applicable)

	OCC Market Index Value	Member Jurisdictions' Revenue Share (%)	Adjusted Value
OCC (11)	\$27.50	75%	\$20.63 per ton
Cardboard Processing Fee (Cost Proposal)			\$21.00 per ton
Service Fee (or Tip Fee)			\$0.37 per ton

(b) The Fixed-Base Service Fee is [Insert Company Tip Fee Proposal] \$/ton.

The Service Fees (Market-Based Service Fees or Fixed-Base Service Fees, as applicable) shall be full and complete payment to the Company for the services provided under this Service Agreement.

The Processing Facility's designated scale (if such scale is certified for commercial transactions by the applicable State where the Processing Facility is located or other regulatory authority records), shall be the basis for payment. The Company's record shall include the following: gross weight, tare weight, date, time of arrival, time of departure, and vehicle identification (truck or permit number). The Company at its expense, shall obtain approval of, inspect and test the vehicle scales as required by Applicable Law. The Company, at the written request of the Authority, in the presence of an Authority representative, shall make additional tests of all vehicle scales. The cost of the additional tests shall be borne by the Authority if the scales meet the accuracy requirements of Applicable Law. If any test shows that a scale registers farther above or below the correct reading than permitted by Applicable Law, the charges and calculations based on scale readings made within thirty (30) days preceding the test shall be corrected by the percentage of inaccuracy found. If a test of the scales has been performed during the preceding thirty (30) days, only the readings and related charges and calculations made after that test shall be corrected on the basis of the subsequent test.

The Company shall provide the Authority access to the daily transfer vehicle scale records or email such records to the Authority upon the Authority's request.

The Member Jurisdiction shall track the outbound tonnage of Recovered Materials each month and furnish the Authority a compilation of such information for each month, within ten days after the end of the month.

If vehicle scales at the Processing Facility are not working properly, not certified as required above, or are being tested, the Transfer Stations' designated scales shall be the basis for payment.

The Authority shall be responsible for Hazardous Waste proven to have been delivered to the Processing Facility by the Authority and the actual Hazardous Waste Costs associated with removal and disposal of such Hazardous Waste.

The Authority shall be responsible for the Unacceptable Waste Disposal Costs for any Unacceptable Waste delivered to the Processing Facility by the Authority.

(c) If the Company disputes any amounts owed, parties in good faith may attempt to resolve any dispute pursuant to Section 20 of this Agreement.

(d) If the Authority exercises its option to renew this Agreement per Section 4 below, the Company may request an inflation adjustment to the Service Fees. The inflation adjustment shall be 100% of any increase in the Bureau of Labor Statistics' CPI for all urban consumers Baltimore-Columbia-Towson, MD Area. The adjustment shall compare the most recent reported CPI as of July 1, 2021 to the June 2020 CPI reference month. Thereafter the most recent CPI reported on July 1<sup>st</sup> of current year will be compared to the CPI used from previous period.

Example Calculation:

Most recent reported CPI as of July 1, 2021: 258.816

June 2020 CPI reference month: 254.354

Index Point Change:  $258.816 - 254.354 = 4.462$

Inflation Adjustment:  $4.462 / 254.354 + 1 = 1.02$  (The Inflation Adjustment will be rounded to the second decimal place.)

### 3. Monthly Payments.

(a) The Company shall provide the Authority and the applicable Member Jurisdiction with a separate 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 and the applicable Member Jurisdiction. 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, enough to allow the recipient of the invoice to verify the Company's calculations of the Service Fees and other charges for such period. The amounts payable monthly are calculated as follows:

- (i) The amount due for Service Fee payments; PLUS
- (ii) Approved Pass Through Costs.

(b) The Member Jurisdictions are designated as the Authority's billing and collection agents. All recycling revenue and payments should be directed to the applicable Member Jurisdictions detailed below. The Company shall provide the Authority and the applicable Member Jurisdiction with a statement or invoice (as set forth above) for all amounts payable as well as payments of the Service by the twenty-fifth (25<sup>th</sup>) day of the calendar month immediately succeeding the calendar month for which service was provided.

(c) All Company invoices and statements shall be emailed and/or mailed first class, postage prepaid to the applicable Member Jurisdiction with a copy to the Authority:

Carroll County Maryland  
Department of Public Works  
Bureau of Solid Waste, Recycling Operations  
225 N. Center Street  
Westminster, MD 21157

Frederick County  
Department of Solid Waste Management  
9031 Reichs Ford Road  
Frederick, MD 21704  
Attention: Recycling Program Manager  
[RCuller@FrederickCountyMD.gov](mailto:RCuller@FrederickCountyMD.gov)  
Phone: 301-600-1848

With a Copy to:  
Northeast Maryland Waste Disposal Authority  
Tower II - Suite 402  
100 South Charles Street  
Baltimore, MD 21201-2705  
Attention: Accounts Payable  
Phone: 410-333-2730 Fax: 410-333-2721  
Email: [authority@nmwda.org](mailto:authority@nmwda.org)

4. Term.

The term of this Service Agreement begins July 1, 2020 and ends June 30, 2022, with three optional 12-month periods, at the Authority's sole discretion.

5. Company Representations and Warranties.

The Company hereby represents the following:

(a) The Company is a limited liability company duly formed and validly existing under the laws of the State of [STATE] and is qualified to do business and is in good standing in the State of Maryland.

(b) The Company has the power and authority to consummate the obligations and responsibilities contemplated hereby, and has taken all necessary action to authorize the execution, delivery and performance required under this Service Agreement.

(c) The person executing this Service Agreement for the Company warrants that it is duly authorized by the Company to execute this Service Agreement on the Company's behalf.

(d) The services to be provided under this Service Agreement shall be performed competently and with due care, and in accordance with all applicable laws, codes, ordinances and regulations and licensing requirements.

(e) The Company has obtained and shall continue to maintain, at its own cost, such licenses and certifications as are necessary to provide the services rendered under this Service Agreement, and shall present such licenses to the Authority upon its request for the same.

## 6. Termination.

(a) Termination for Convenience: The Authority may terminate this Service Agreement for convenience, in whole or in part, whenever the Authority determines that such termination is in the best interest of the Authority, without showing cause, upon giving at least 30 days written notice to the Company. The Authority shall pay all reasonable costs incurred by the Company up to the date of termination. The Company shall not be reimbursed for any profits which may have been anticipated but which have not been earned up to the date of termination.

(b) Termination for Default: When the Company has not performed or has unsatisfactorily performed one or more material terms of the Service Agreement and therefore is in default, the Authority may terminate the Service Agreement for default. Upon termination for Default, payment may be withheld at the discretion of the Authority. Failure on the part of the Company to fulfill the contractual obligations shall be considered just cause for termination of the Service Agreement. If the damages exceed the undisbursed sums available for compensation, the Authority shall not be obligated to make any further disbursements hereunder. The Company will be paid for work satisfactorily performed prior to termination less any excess costs incurred by the Authority in procuring and completing the work.

## 7. Remedies for Default.

(a) The Authority shall have the right upon the happening of any Default, without providing notice to the Company, in addition to other rights and remedies available, to suspend the Company's authority to receive any undisbursed funds and/or to proceed at any time or from time to time to protect and enforce all rights and remedies available to the Authority, by suit or any other appropriate proceedings, whether for specific performance of any covenant, term, or condition set forth in this Service Agreement, or for damages or other relief, or proceed to take any action authorized or permitted under applicable law or regulations.

(b) Upon termination of this Service Agreement for Default, the Authority may elect to pay the Company for services provided up to the date of termination, less the amount of damages caused by the Default. If the damages exceed the undisbursed sums available for compensation, the Authority shall not be obligated to make any further disbursements hereunder.

(c) No remedy herein conferred upon or reserved to the Authority is intended to be exclusive of any other remedies provided for in this Service Agreement, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or under this Service Agreement, or now or hereafter existing at law or in equity or by statute. Every right, power and remedy given to the Authority shall be concurrent and may be pursued separately, successively or together against the Company, and every right, power and remedy given to the Authority may be exercised from time to time as often as may be deemed expedient by the Authority.

#### 8. Insurance.

(a) 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 II 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 and Schedule II is "Required Insurance" for all purposes of this Service Agreement.

(b) 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 and additional insured endorsements (see below) for Required Insurance pursuant to the Notice Provision in Section 18 of this Service Agreement upon ten business days after receipt by the Company. If deemed necessary by the Authority, the Authority may request, and the Company shall provide any applicable declaration and forms list with respect to the Required Insurance. Except for Worker's Compensation Insurance, each policy shall include the Authority and the applicable Member Jurisdiction as additional insured and require the insurer to provide the Authority sixty (60) days' prior written notice of termination or cancellation. The Company shall provide the Authority sixty (60) days' prior written notice of any material change in coverage or deductibles under each such Policy.

(c) 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.



(d) 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.

(e) 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 upon reasonable notice.

9. Assignment.

Neither the Company nor the Authority shall assign or transfer its interest or obligations under this Service Agreement to any third party, without the written consent of the other party, except that the Authority may assign this Service Agreement to the Member Jurisdictions without the consent of the Company. Nothing herein shall be construed to create any personal or individual liability upon any employee, officer, director, Member or elected official of the Authority or the Member Jurisdictions, nor shall this Service Agreement be construed to create any rights hereunder in any person or entity other than the parties of this Service Agreement, except that the parties acknowledge that the Member Jurisdictions are third-party beneficiaries of this Service Agreement as set forth in Section 10 below. The Company shall not delegate the Company's duties under this Service Agreement without the prior written consent of the Authority.

10. Member Jurisdictions as Third-Party Beneficiaries.

The Member Jurisdictions are third-party beneficiaries of all the obligations of the Company under this Service Agreement. The Member Jurisdictions have the right, but not the obligation, to enforce rights, remedies, powers and privileges of the Authority under this Service Agreement if the applicable Member Jurisdiction provides ten days' prior written notice to the Authority and the Company. Unless such prior notice is given by a Member Jurisdiction, 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 Member Jurisdictions' rights herein and the Company shall have the right to rely on such direction.

11. Indemnification.

(a) The Company shall indemnify and hold harmless the Authority and the Member Jurisdictions, their respective employees, agents, members, directors and officials from any and all claims, suits, or demands including reasonable attorney fees which may be made against the Authority or the Member Jurisdictions, their respective employees, agents, members, directors or officials resulting from any act or omission committed in the performance of the duties imposed by and performed under the terms of this Service Agreement by the Company or anyone

under agreement with the Company to perform duties under agreement with the Company to perform duties under this Service Agreement. The Company shall not be responsible for acts of negligence or willful misconduct committed by the Authority, its employees, agents and officials.

(b) Any property or work to be provided by the Company under this Service Agreement will remain at the Company's risk until written acceptance by the Authority; and the Company will replace, at the Company's expense, all property or work damaged or destroyed by any cause whatsoever.

12. Integration and Modification.

This Service Agreement sets forth the entire agreement between the parties relative to the subject matter hereof. No representation promise or condition, whether oral or written, not incorporated herein shall be binding upon either party to this Service Agreement. No waiver, modification or amendment of the terms of this Service Agreement shall be effective unless made in writing and signed by an authorized representative(s) of all parties to this Agreement.

13. Governing Law.

This Service Agreement shall be governed by and construed in accordance with the laws of the State of Maryland without regard to any choice of law principles that would dictate the laws of any other jurisdiction. The parties agree that the exclusive venue for any and all actions related hereto shall be the appropriate Federal or State court located within the State of Maryland.

14. Change of Law.

(a) If there occurs an increase or decrease in a fee to transport or dispose of acceptable material imposed by Applicable Law, which the Company is obligated to pay, this shall be considered a "Change of Law."

(b) Notice of Change of Law. Within 90 days of the adoption or promulgation of an asserted Change of Law, the Company or the Authority shall notify the other party such asserted change. Failure to provide such-notification shall entitle the receiving party to reject the Change of Law claim.

(c) The Company may pass through such an increase as an adjustment to the Service Fees. If the adjusted service fee exceeds 110% of the current Service Fee prior to the adjustment, the Authority may elect to (1) terminate this Service Agreement, or (2) reduce total deliveries of acceptable material to the Company. If this Agreement is terminated or acceptable material deliveries are reduced, then neither party shall be liable to the other party for any amounts otherwise due hereunder, except for the Service Fee amounts due for acceptable material delivered prior to the effective date of the termination or reduction of deliveries.

15. Severability.

If any of the provisions in this Service Agreement are declared by a court or other lawful authority to be unenforceable or invalid for any reason the remaining provisions hereof shall not be affected thereby and shall remain enforceable to the full extent permitted by law.

16. Time is of the Essence; Uncontrollable Circumstance.

(a) Time is of the essence with respect to performance of the terms and conditions of this Service Agreement excepting the event of an Uncontrollable Circumstance (as defined) which prevents either party from performing timely.

(b) A party to this Service Agreement shall not be in default or liable to the other party for its failure to perform obligations, if such failure results from an Uncontrollable Circumstance. Notwithstanding the foregoing, the Company shall diligently overcome or remove such Uncontrollable Circumstance as soon as possible. As a good faith effort to avoid Uncontrollable Circumstances, the Company shall put into place preventative measures for forecasted weather events. The Company must adequately address any inquiries of the Authority about conditions caused by the Uncontrollable Circumstance, as well as preventative measures put into place by the Company.

17. Funding.

The contractual obligation of the Authority under this Service Agreement is contingent upon the availability of funds appropriated by the applicable Member Jurisdiction from which payment for the Services can be made.

18. Notice.

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

If to the Authority:

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

With a copy to:

Carroll County Maryland Department of Public Works  
Bureau of Solid Waste, Recycling Operations  
225 N. Center Street  
Westminster, MD 21157

With a copy to:

Frederick County  
Department of Solid Waste Management  
9031 Reichs Ford Road  
Frederick, MD 21704  
Attention: Recycling Program Manager  
[RCuller@FrederickCountyMD.gov](mailto:RCuller@FrederickCountyMD.gov)  
Phone: 301-600-1848

With a copy to:

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

If to the Company:

With a copy to:

With a copy to:

19. No Waiver, Etc.

No failure or delay by the Authority to insist upon the strict performance of any term, condition or covenant of this Service Agreement, or to exercise any right, power, or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, condition, or covenant or of any such breach, or preclude the Authority from exercising any such right, power, or remedy at any later time or times.

20. Disputes.

The parties shall in good faith attempt to resolve any dispute or matter in controversy under this Service Agreement. All disputes under this Service Agreement, if not resolved by the parties, shall be resolved by courts of competent jurisdiction in the State of Maryland, venue in Frederick County, Maryland or Carroll County, Maryland (as applicable) 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 Service Agreement.

21. Performance Security.

Prior to the Operations Date, the Company shall provide a Performance Bond or Letter of Credit (LOC) from a surety, insurance company, or financial institution acceptable to the Authority, covering the performance obligations of the Company under this Service Agreement. The Performance Bond or LOC shall be equal to the value of one year of services and name the Authority and the Member Jurisdictions as beneficiaries. The Performance Bond or LOC shall be in the form set forth in Schedule 4. The Company shall provide the Performance Bond or LOC until released by the Authority. The Authority shall release the Performance Bond or LOC upon termination of this Service Agreement as long as the Company is not in default and the Performance Bond or LOC is not being drawn upon by the Authority.

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

**WITNESS:**

**NORTHEAST MARYLAND WASTE  
DISPOSAL AUTHORITY**

\_\_\_\_\_

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

**Date:**

**WITNESS:**

**[COMPANY]**

\_\_\_\_\_

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

**Date:**

## **DEFINITIONS**

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

"**Agreement**" means this Service Agreement between the Authority and the Company including all Schedules attached hereto.

"**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 Member Jurisdictions' Comprehensive Solid Waste Management Plan and all permits, licenses and governmental approvals required as of the date of the Recycling Service Agreement), applicable to the performance of any obligations under the Service Agreement or any other agreement entered into in connection with the Service Agreements.

"**Approved Pass Through Costs**" means costs approved in writing, in advance of incurring the costs, by the applicable Member Jurisdiction and the Authority.

"**Authority Representative**" means the authorized representative of the Northeast Maryland Waste Disposal Authority.

"**Billing Period**" means each calendar month during the term of this Agreement except that the first Billing Period shall begin on the Operations Date and shall end on the last day of the month in which the Operations Date occurs and the last Billing Period shall end on the last day of the term of this Agreement.

"**Billing Statement**" means the monthly statement of costs including the Recovered Material Fee invoice payable by the Authority to the Company.

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

"**Commodity Share**" means the commodity proportionate share, expressed as a percentage, of an established mix of processed Recovered Material as identified herein and adjusted according to periodic Recycling Sorts.

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

"**Disposal Facility**" means an Authority approved facility for disposal of Residue and/or non-processable waste.

"**Event of Default or Default**" means an Event of Default or Default as set forth in Sections 6 and 7.

**“Facility or Facilities”** means any component of the Company’s system, which receives, processes, transports, recycles, and/or disposes of waste and any Residue or byproduct of processing solid waste.

**"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 Recycling Facility or other facilities to be used in providing the Service and is considered hazardous waste under Applicable Law, including, without limitation, Wastes that are:
  - 1. regulated as a toxic or hazardous waste as defined under either Subtitle C of the Solid Waste Disposal Act, 42 U.S.C. §§ 6921-6939a, or Section 6(e) of the Toxic Substances Control Act, 15 U.S.C. § 2605(e), as replaced, amended, expanded or supplemented, and any rules or regulations promulgated thereunder, or under the Environment Article of the Annotated Code of Maryland, Title 7, Section 7-101 et seq., as replaced, amended, expanded, or supplemented, and any rules or regulations promulgated thereunder; or
  - 2. low level nuclear Wastes, special nuclear Wastes or nuclear byproduct materials, 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 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 to a Hazardous Waste permitted facility and all other costs and liabilities associated with or arising from the removal, transportation 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;
- C. any costs or liabilities paid by any third party or insurance policy.

Hazardous Waste Costs also include the cost 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, notices of violations, 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.

The Authority shall be responsible for 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 to a Hazardous Waste permitted facility and all other costs and liabilities associated with or arising from the removal, transportation or disposal of such Hazardous Waste.

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

**"Landfill"** means the Frederick County Landfill, located at 9031 Reichs Ford Road, Frederick, MD 21704 and/or the Carroll County Northern Landfill located at 1400 Baltimore Blvd, Westminster, MD 21157.

**"Member Jurisdiction(s)"** means Carroll County, Maryland and/or Frederick County, Maryland

**"Member Jurisdiction Representative"** means the authorized representative of Frederick County or Carroll County, as applicable.

**"MRF"** means the Material Recovery Facility or Processing Facility.

**"MRF Outbound Tonnage Report"** is a report approved by the Authority outlining all material destinations including permitted disposal facilities for residue.

**"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 Service Agreement due to an Event of Default that specifies the factual basis for such termination and the date on which this Agreement will terminate as set forth in this Service Agreement.

**"Operations Date"** means the date the Authority begins to load and transfer Recovered Material from the Transfer Station. Operations will begin concurrent to the Operations Date of the Recycling Services Agreement.

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



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

**“Processing Facility”** means the Recovered Materials recycling facility identified by the Company as the facility for final processing of Recovered Material delivered by the Authority under the Agreement. The Company must provide a Disposal Facility for all Residue and non-processible waste. The Company’s Processing Facility is located at [FACILITY ADDRESS].

**“Receiving Hours”** means the Company Processing Facility Receiving Hours from 6:00 a.m. until 11:59 p.m. Monday through Saturday, or such other hours as may be established in writing from time to time by the Authority Representative and the Company Representative. In the event of an emergency condition affecting the Authority’s transportation contractor(s) access to the Processing Facility or the ability for the Company to process the Recovered Material in an effective and efficient manner, Parties agree to cooperate to ensure timely Service, including modifying Receiving Hours as needed. There are seven (7) observed holidays, as follows: Independence Day, Labor Day, Veteran’s Day, Thanksgiving Day, Christmas Day, New Year’s Day, and Memorial Day. The Facility will follow a 1-day delay schedule (slide schedule) during the week following one of these holidays.

**“Recovered Materials”** means recyclable materials that are separated from the waste stream prior to arriving at the Member Jurisdiction Transfer Station. Schedule 1 lists the acceptable Recovered Materials under this Service Agreement. This list may be updated by addition or subtraction, from time to time, with mutual consent by both parties, of materials that apply to all Processing Facility customers, including other local governments.

**“Recyclables”** means the following materials and any future materials that have useful physical or chemical properties including and not limited to those items presented in Schedule 1 and other such materials as the Authority may designate as Recyclables, or that the Authority may market. The Authority encourages the recycling of non-designated Recyclables.

**“Recycling Sort”** means a sort performed in accordance with Schedule III hereto.

**“Required Insurance”** means the types and amounts of insurance set forth in Schedule II of the Recycling Service Agreement.

**“Residue”** means non-recyclable material recovered from the Company’s processing technologies. No material under Schedule 1 of this Agreement can be defined as Residue.

**“Service”** means the acceptance, processing and recycling of Recovered Materials delivered to the Company pursuant to the Service Agreement.

**“Service Agreement”** means this Recycling Service Agreement between the Authority and the Company, dated \_\_\_\_\_.

**“Service Fee”** is defined in Section 2 of Agreement.

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

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

**"Transfer Station(s)"** means the transfer station located at the Frederick County Landfill and/or the transfer station located at the Carroll County Landfill.

**"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 Member Jurisdiction and as part of normal collections so as not to have the effect described in clauses (i), (ii) and (iii) above it shall constitute acceptable Waste or Recovered Material unless otherwise directed by State or federal regulatory authorities. The Unacceptable Wastes 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, whole tires, compressed gas tanks;
  - 3. Oil sludge or liquid wastes; and
  - 4. Radioactive materials as defined in COMAR 26.15.02.

**"Unacceptable Waste Disposal Cost"** if applicable, the Authority will reimburse the Company for the cost of disposal of Unacceptable Waste in accordance with Section 2(a) of the Service Agreement.

**"Uncontrollable Circumstance"** means an event or condition listed in this definition, whether affecting the Authority, a Member Jurisdiction or the Company, that has, or may reasonably be expected to have, a material adverse effect on performance under this Agreement, 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 (excluding reasonably anticipated weather conditions for the applicable geographic areas), 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;
- B. the failure of the jurisdiction in which a facility is situated or the appropriate federal or state agencies or public utilities having operational jurisdiction in the area or location of the facility to provide and maintain and assure the maintenance of all utilities services (excluding sewage and water lines) to the facility for operation of the facility, provided they are essential to the facility; and
- C. a non-Company or non-subcontractor Labor Action.

No other conditions of any kind shall be considered an Uncontrollable Circumstance for the purpose of this Service Agreement. In no event will Subcontractor Default or a Company Labor Action constitute an Uncontrollable Circumstance.

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

**SCHEDULE 1**  
**TO SERVICE AGREEMENT**  
**ACCEPTABLE MATERIALS LIST**

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

**SCHEDULE 2**  
**TO SERVICE AGREEMENT**  
**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, the Board of County Commissioners of Carroll County, Maryland, and the Authority will be identified as additional insureds on the General Liability policy.

The Certificate Holders need to be "Frederick County, Maryland, 12 East Church Street, Frederick, Maryland 21701", the "Board of County Commissioners of Carroll County, Maryland", and "Northeast Maryland Waste Disposal Authority, Tower II - Suite 402, 100 S. Charles Street, Baltimore, MD 21201-2705."

(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 the County 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 Member Jurisdictions 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 Member Jurisdictions 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 contractor's coverage, broad form property damage coverage.

(c) 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.

(d) Environmental Impairment Liability covering the Facilities

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

- (e) The Company and any subcontractors must submit evidence of required insurance prior to performance.
- (f) The 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."
- (g) 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 and the Carroll County Board of Commissioners shall also be identified as additional insured entities on these policies.
- (b) All losses under the required insurance shall be adjusted to the satisfaction of the Authority.
- (c) All claims made policies shall provide a minimum of five (5) years' discovery period or Company shall provide continuous coverage through regular policy renewals.
- (d) The Authority shall be advised promptly in writing of the following change in the insurance policies:
  - (i) Setting up a new retro date.
  - (ii) Exhausting any aggregate limit under any of the above policies.
  - (iii) Switching occurrence-based coverage to claims made coverage or vice versa.
- (e) The Company shall assure that all subcontractors performing services in accordance with this Agreement carry identical coverages as required above, either individually or as an additional insured on the policies of the Company.

### **SCHEDULE 3**

#### **TO SERVICE AGREEMENT**

##### **RECYCLING SORTS (APPLIES ONLY TO MARKET-BASED SERVICE FEES)**

The Authority and the Company may request a Recycling Sort to identify the Commodity Share percentages of recyclable components. Both parties will work together in the months prior to the sorts to schedule acceptable dates and times. The Authority reserves the right to observe the sort and to supervise how it is conducted. Each Party may request one (1) annual sort (full trailer load of Recovered Material comprised of a composite of representative samples taken over multiple days combined into one load) processed through the Processing Facility system. The Company shall provide the Authority with data results from a sort within five (5) business days following completion.

The Company shall submit a plan to the Authority and the protocol for handling recyclables and conducting the sorts at least 1 week in advance of the scheduled sort. Failure to do so will result in the sort being rescheduled to a mutually agreeable date, pending the receipt of the plan. The current Commodity Share percentages shall be used until the next recycling sort is completed. Thereafter, the Authority shall, within thirty (30) days from receipt of the data, calculate revised Commodity Share percentages. The revised percentages shall then be applied to the next monthly invoice.

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

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

**SCHEDULE 4**  
**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

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Business Address of Principal

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Surety

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

Obligees

Northeast Maryland Waste Disposal Authority, Carroll County Board of Commissioners  
and  
Frederick County, Maryland

Penal Sum of Bond

(express in words and figures)

Date of Contract: \_\_\_\_\_, 20\_\_

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

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

Contract Number:

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

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

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

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

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

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

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

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

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

.....

In Presence of: Partnership Principal  
 Witness

\_\_\_\_\_ (SEAL)  
 Name of Partnership

\_\_\_\_\_ (SEAL)

\_\_\_\_\_ (SEAL)

\_\_\_\_\_ (SEAL)

Corporate Principal

Attest:

(Name of Corporation)

\_\_\_\_\_  
Corporate Secretary

President

AFFIX  
CORPORATE  
SEAL

.....

\_\_\_\_\_  
(Surety)

Attest:

\_\_\_\_\_  
Signature

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

Title:

AFFIX  
CORPORATE  
SEAL

Business Address of Surety:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Bonding Agent's name:

\_\_\_\_\_  
Agent's Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Approved as to legal form and sufficiency this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

FORM OF PERFORMANCE LETTER OF CREDIT

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

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

Ladies and Gentlemen:

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

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

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

Name of Bidder \_\_\_\_\_

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 Agreement), except only the Draft referred to herein; and any such reference shall not (unless otherwise provided herein) be deemed to incorporate by reference any such document, instrument or agreement except for such Draft.

Very truly yours,  
[NAME OF FINANCIAL INSTITUTION]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE 5**

**[INSERT COST PROPOSAL]**