

Operations and Transportation Agreement

by and between

Northeast Maryland Waste Disposal Authority

and

[COMPANY]

to Provide

**Recovered Materials Operations
and Transportation Services**

for Carroll County, Maryland

Dated as of:

[DATE]

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THIS OPERATIONS AND TRANSPORTATION AGREEMENT (this "Agreement") is made as of [DATE] between the Northeast Maryland Waste Disposal Authority (the "Authority") and [COMPANY] (the "Company").

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

ARTICLE I

DEFINITIONS AND RULES OF INTERPRETATION

Section 1.1 Definitions.

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

Section 1.2 Rules of Interpretation.

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

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

ARTICLE II

OBLIGATIONS RELATING TO OPERATIONS OF TRANSFER STATION AND TRANSPORTION OF RECOVERED MATERIALS

Section 2.1 Operations & Maintenance of Recovered Material area of Transfer Station.

- (a) The Company will be responsible for the operation and maintenance of the Recovered Material area of Transfer Station (“Transfer Station”) related to the loading and transfer of Recovered Materials delivered to the Transfer Station. Operation and maintenance of Transfer Station includes management of tipping floor operations and management of the Recovered Material loading operations.
- (b) The Company will be responsible for the loading of Recovered Materials into Company’s trailers for transfer to a processing facility identified by the Authority as the facility for final processing of Recovered Materials. The Company shall provide labor and equipment necessary to load, contain, jockey, and transport the Recovered Materials.
- (c) 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.
- (d) The Authority will direct Recovered Materials to the Transfer Station. It shall be the Company’s responsibility to load and transport the Recovered Materials to the Processing Facility. The Authority makes no representation or guarantee as to the quantity of Recovered Material delivered to the Transfer Station.
- (e) The Company shall cooperate with the Authority in identifying loads that contain excessive contamination including materials that do not meet the County’s recycling program specifications. Contaminated loads may include, but are not limited to, plastic bags and bagged materials, food waste, yard waste, construction debris, propane tanks, batteries, hoses, expanded polystyrene) delivered to the Transfer Station. If a contaminated load is identified by the Company, the Company shall record (take pictures) the name of hauling company (including truck and trailer numbers) that delivered the contaminated load and notify the County (including landfill scale house) and Authority designated representative via email and phone call within thirty minutes of material being tipped. Upon approval from the County representative, the Company shall transfer the contaminated load to the waste area of Transfer Station. A standard operating protocol for identifying heavily contaminated loads (based on visual volumetric basis) may be provided to the Company in writing prior to the Operations Date. This protocol may be modified by the Authority during the term of Agreement, including renewal terms, based on County updates to its recycling program and/or Processing Facility requirements. The Company will be responsible for the transfer and disposal costs for any heavily contaminated loads delivered

to the Processing Facility resulting from the Company's failure to follow the required protocol.

- (f) The Company is responsible for the neat and orderly appearance of the Transfer Station and surrounding areas at all times, including the clean-up of Recovered Material which are spilled or blown as a result of the tipping and reloading process. The Company shall keep the Transfer Station and surrounding areas free from accumulation of Wastes or rubbish caused by transfer operations (e.g., the jockeying of trailers to and from the Transfer Station, tarping activity, the movement of trailers to and from the Transfer Station) and shall maintain and operate its equipment so as to prevent the Transfer Station from becoming unsightly or a nuisance under Applicable Law. The Company will take measures to minimize Waste in the surrounding areas of Transfer Station. Such measures will include and not be limited to tarping all trucks when leaving the transfer station and periodic litter pick-up in and around the Transfer Station. The Company shall cooperate with the Authority to ensure that all Recovered Materials on the Transfer Station tipping floor and surrounding areas are placed in a trailer and covered prior to leaving the Transfer Station at the end of each operating day.
- (g) Notwithstanding anything to the contrary in this Agreement, the Company shall not be liable in any way for Ordinary Wear and Tear to the Transfer Station, including but not limited to all Transfer Station floor surfaces, and roadways and curbing into and out of the Transfer Station. The Company will be liable for damages caused by the Company, its subcontractor(s) and or agent(s), if the damages are not caused by Ordinary Wear and Tear. An initial documented inspection (including photo documentation) shall be performed with a Company representative and County and/or Authority representative prior to the Operations Date to record current conditions (including but not limited to tipping floor surfaces, walls, doors, siding, roofing, lights and light fixtures, bollards, drains/gutters, equipment including fire detection and protection equipment, and pest and vector control) of Transfer Station (interior and exterior) and its surrounding areas. Monthly inspections (or as requested by the County) shall be performed by the Company Representative and County and/or Authority Representative.
- (h) The Company shall finalize an Operations and Maintenance (O&M) Plan prior to Operations Date substantially in the form provided in Schedule 8. Roadway, utilities, building structures, and safety systems at the Transfer Station shall be used in a manner that helps ensure that peak operating conditions are sustained.
- (i) The Authority shall maintain the Transfer Station including, without limitation, the building, access roads, scale facilities, parking areas and related yard areas at its sole cost and expense. Such maintenance shall include, but shall not be limited to, structural maintenance, snow and ice removal, landscape maintenance, maintenance of signs and calibration of the landfill scales. The Authority's maintenance activities shall not unreasonably interfere, to the extent possible, with operation of the Transfer Station by the Company.

- (j) The Authority shall be responsible for providing, at its sole cost and expense, all necessary utilities for the operation of the Transfer Station including, without limitation, heating, cooling, electricity, water, sewer, and sanitary facilities. All utility charges incurred in the operation of the facility shall be invoiced from the utilities directly to the Authority and shall be timely paid directly by the Authority. The Company shall have no responsibility for any such utility charges, unless such charges reflect a repair or a burden as the result of the Company's negligent act.
- (k) The Authority and the County shall have the right to perform a complete inspection of the general mechanical safety condition of all vehicles and Transfer Station equipment at reasonable times during the term of the Agreement. Should any vehicle or equipment, when inspected, not comply with the requirements of the applicable local and state inspection regulations, the Authority may require such vehicle or equipment to meet these standards before it is placed back in service. The Company shall provide backup equipment as needed for Company supplied equipment. In case of breakdown of a major piece of Company supplied equipment critical to operation, the Company shall provide a backup within 24 hours.
- (l) The County owns and has available an office trailer with cooling system for Company use. This trailer shall be shared by employees of Company and employees of company responsible for waste area of Transfer Station. The Company will be liable for any damages it causes to the interior or exterior of trailer.
- (m) If the Company fails to maintain the Transfer Station as required under this Agreement, and any other applicable federal, state, or local regulations, upon 48 hours prior notice to the Company, the Authority may take corrective measures (including making any necessary repairs for which the Company may be responsible) and the Authority may recover its costs from the Company as a deduction from amounts owed to the Company.
- (n) Payment of penalties or fines assessed by the Maryland Department of the Environment or other regulatory agency or body, for Company operations not in compliance with Federal, State, or local permits or requirements, is the sole responsibility of the Company.
- (o) If applicable, the Company shall maintain all County trailers used in the performance of the Agreement. The Company shall be liable for any damage to the County trailers beyond Ordinary Wear and Tear.
- (p) The Company shall minimize odors associated with Recovered Materials. The Company shall respond promptly to all odor complaints.
- (q) The Company shall reasonably minimize noise from Transfer Station equipment by maintaining such equipment properly and complying with all federal, state and local laws, regulations, rules, ordinances and orders concerning noise control.

- (r) Protection of buildings, structures, equipment and the site from fires shall be accomplished through cooperative efforts by the County and the Company through coordination of qualified fire prevention programs. The Company shall be responsible for fire safety procedure training to its employees operating the Transfer Station. The Company shall provide fire extinguishers at the Recovered Material area of Transfer Station. In addition, the Company shall provide appropriate fire extinguishers to all its equipment and vehicles and ensure their operability.
- (s) The Company is responsible for maintaining and repairing all Company supplied equipment and fire suppression systems on equipment that it uses to perform services under this Agreement.
- (t) The Company shall establish an accident prevention and safety policy which shall be incorporated in the Operations and Maintenance Manual for its Service. Such policy shall emphasize the following goals:
- To furnish a workplace free from recognized hazards, which, could cause death, injury or illness.
 - To comply fully with Applicable Law, Federal, State and County, regarding employee safety and health.
 - To provide a professional staff to support safety and health factors even when such factors compete with economic factors.
 - To hold each employee accountable for the safe performance of his activity and regularly measure his achievement in controlling accidents and losses.
 - To train employees in safety procedures and required compliance with safety regulations and procedures.
 - To develop and use better methods for reducing human and economic costs of accidents and other losses.
 - To monitor progress towards a safer and healthier work environment basis.
- (u) All employees of the Company (including any subcontractors) shall behave in a courteous and professional manner; be helpful and promptly respond to questions from County staff, haulers, and County citizens; be properly dressed with appropriate Personal Protective Equipment (PPE) per County direction. The applicable Company Representative shall promptly notify the County's Representative of any user complaints concerning operations and safety protocols at the Transfer Station

- (v) The Company shall establish a plan for the identification handling and disposal of Hazardous Waste discovered at the Transfer Station which shall be incorporated in the Operations and Maintenance Manual. The Company shall segregate and isolate all Hazardous Waste discovered at the Transfer Station in accordance with Applicable Law. The Authority shall be solely responsible for all costs associated with the preparation, loading, and disposal of hazardous waste identified at the Transfer Station.
- (w) A copy of the Operations and Maintenance Plan shall be kept on site at the Transfer Station at all times.
- (x) The Company may provide a compactor for loading of Recovered Material into Company trailers. The Company will be responsible for the safety and maintenance of compactor through term of Agreement.
- (y) The Company shall cooperate with the Authority if there is a benefit to the County for the Company to load and transfer certain recovered material (i.e. cardboard) delivered separately from the single stream Recovered Material at the Transfer Station. The Authority will notify the Company in writing if there is a benefit to the County to keep certain recovered material separate from the single stream. The Company will not be required to sort through any single stream Recovered Material.

Section 2.2 Transportation of Recovered Materials.

- (a) The Company shall provide transportation services of Recovered Materials from the Transfer Station to the Processing Facility identified by the Authority as the facility for final processing of Recovered Material. The Authority shall notify the Company, in writing, of the location of the Processing Facility to be used under this Agreement. Any Processing Facility to be used in connection with the Services shall be located less than 100 miles from the Transfer Station.
- (b) The Company shall provide labor and equipment necessary to transport Recovered Materials to the designated Processing Facility
- (c) The Authority will provide the weighing of all Company transfer trailers. The Transfer Station has an area for the spotting of trailers (full or empty) overnight to ensure continuity of service for waste and recycling transfer. The Company shall not stage more than five (full or empty) trailers overnight. Loaded trailers must be covered and may be stored at a staging area a maximum of one (1) business day.
- (d) For any renewal period, the Authority may, at its sole discretion, elect to renew only the services for the transportation of Recovered Materials under this Agreement. The Authority will provide ninety (90) days prior written notice to the Company if the Authority elects to exercise its renewal options. In such an event, all applicable provisions of this

Agreement remain in full force and effect.

Section 2.3 **[DELETED]**

Section 2.4 **Receiving Hours and Waiting Time.**

- (a) The Receiving Hours are defined in Schedule 2.
- (b) Recovered Materials will not be delivered by the Authority on the following holidays. The Authority shall designate the dates on which holidays are to be observed.

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

Section 2.5 **Scales and Weighing Records.**

The Authority shall operate the main landfill scales and shall submit to Company on a weekly basis weight tickets or other appropriate documentation sufficient to reliably determine the tonnage of Recovered Material delivered to and transferred from the Transfer Station. The Authority shall be responsible for collecting fees from haulers who deliver Recovered Material to the Transfer Station. The Authority shall weigh all Company vehicles arriving at the Transfer Station on the County's owned and operated in-bound scale and departing from the Transfer Station on the County's owned and operated out-bound scale. The Authority's record shall include the following: gross weight, tare weight, date, time of arrival, time of departure, and vehicle identification (truck or permit number).

The 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 Transfer Station are not working properly or are being tested, the County may use portable scales at the Transfer Station. If portable scales or other alternate weighing facilities and equipment meeting the requirements of Applicable Law are not available, a "scale outage" will occur. In the case of a "scale outage", the Company and the Authority shall use the scales records from the designated Processing Facility.

The Authority, at its expense, shall obtain approval of, inspect and test the vehicle scales at the Transfer Station. At the written request of the Company, the Authority, in the presence of the Company Representative, shall make additional tests of all vehicle scales. The cost of these additional tests shall be borne by the Company if the scales meet the accuracy requirements of Applicable Law.

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

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

The Authority shall keep electronic records of weight tickets for at least three years, which shall be available for inspection by the Company upon request.

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

The Company shall comply with the rules and regulations for the Transfer Station that are provided by the Authority, which include regulations regarding vehicular movement on the Transfer Station site and the County roads leading to and from the Transfer Station and operations of Transfer Station. These regulations also include the observance of posted speed limits on all roads used for the Service.

Section 2.7 **Subcontractors; Performance Security.**

- (a) The Company shall not enter into or maintain any contract 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.
- (b) No contract or subcontract between the Company and any other person or entity will affect the Company's obligation under this Agreement.
- (c) Prior to the Operations Date the Company shall provide a Performance Bond or Letter of Credit (LOC) from a surety, insurance company, or financial institution acceptable to the Authority, covering the performance obligations of the Company under this Agreement. The Performance Bond or LOC shall be equal to the value of one year of services and name the Authority and Carroll County, Maryland as beneficiaries. The Performance Bond or LOC shall be in the form set forth in Schedule 5. The Company shall provide the Performance Bond or LOC until released by the Authority. The Authority shall release the Performance Bond or LOC upon termination of this Agreement as long as the Company is not in default and the Performance Bond or LOC is not being drawn upon by the Authority.
- (d) All contracts with subcontractors will be made available for review by the Authority upon request.

Section 2.8 **Authority and County Access.**

The Authority and the County, and their respective agents, licensees and invitees may inspect the operation during normal business hours, without notice, during the term of this Agreement.

Section 2.9 **Regulatory Requirements.**

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

Section 2.10 **Equipment.**

The equipment used to operate the Transfer Station and transport Recovered Material shall be provided by the Company. The Authority will not provide material loading or transport equipment. The Company's equipment must be suitable for the proposed transport method and must be rigid, durable, corrosion resistant, nonabsorbent, easily cleanable and suitable for handling with no sharp edges or other hazardous conditions. The Company's equipment must be capable of withstanding the hard use typically associated with handling Recovered Material, and must be designed, engineered and rated to perform satisfactorily and safely at all times in accordance with generally accepted waste industry procedures. Loading equipment must be operated in a safe and efficient manner that does not cause damage to the Transfer Station tipping floor and building structure. All loading equipment used at the Transfer Station must have rubber cutting edges and rubber tracks, unless approved, in writing, by the Authority in writing.

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

The Company shall accept Recovered Material at the Transfer Station, deliver empty trailers, and may store empty and loaded trailers outside of the Transfer Station. The Company shall not stage more than five (full or empty) trailers overnight. Loaded trailers must be covered and may be stored at a staging area a maximum of one (1) business day.

Section 2.11 **[DELETED]**

Section 2.12 **Hazardous Waste.**

- (a) The Company shall provide during all operational hours, a trained spotter for the primary purpose of traffic control and to help prevent the delivery of Hazardous Waste or Unacceptable Waste. The Company shall inspect all material received at Recovered Material area of Transfer Station for Hazardous Waste. If the Company identifies Hazardous Waste at the Transfer Station, the Company shall notify the County and Authority designated representatives within one (1) hour of Hazardous Waste being tipped and identified as Hazardous Waste.

- (b) If Hazardous Waste is delivered to the Transfer Station by a third party, the Company shall be solely responsible to segregate and isolate the Hazardous Waste and attempt to identify the hauler and/or source of the Hazardous Waste and arrange for its immediate removal from the Transfer Station by that hauler and/or source. The Authority shall provide reasonable assistance in the identification of the hauler and/or source upon request by the Company. If the hauler and/or source of the Hazardous Waste cannot be identified by the Company, 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 Company or the Authority may have against any third party responsible for the generation or delivery of the Hazardous Waste to the Transfer Station.

ARTICLE III

PAYMENT PROVISIONS

Section 3.1 Service Fees

- (a) From and after the Operations Date, the Company may charge and collect from the Authority Service Fees for each ton of Recovered Material accepted by the Company from the Authority for Transfer Station operations and the transfer of Recovered Material hereunder. The Service Fees are outlined in Schedule 3 below.

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

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

Section 3.2 Inflation Adjustor and Fuel Adjustment.

- (a) Beginning on July 1, 2021 and each July 1 thereafter through the end of the Agreement, the "Inflation Index" shall adjust the Service Fees set forth in Schedule 3 on an annual basis. The Inflation Index shall be 100% of any increases in the Bureau of Labor Statistics' CPI for all urban consumers Baltimore- Columbia-Towson, MD Area., using the most recently reported index before each adjustment date. The first adjustment shall compare July 1, 2021 to the Operations Date. The second adjustment shall compare July 1, 2022 to July 1, 2021. Thereafter, the adjustment shall be calculated by the latest index as of July 1 to the same index from twelve (12) months prior. The final adjustment calculation shall be rounded to the nearest tenth of a percentage point.

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

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

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

Example Timeline:

Operations Date, July 1, 2020 (April CPI reference month)
First CPI Adjustment, July 1, 2021
Second CPI Adjustment, July 1, 2022
Etc.

Example Calculation:

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

Index Point Change = $120.8 - 117.2 = 3.6$
Inflation Adjustor = $3.6 / 117.2 + 1 = 1.03$

- (b) The fuel adjustment for the Agreement will be as follows:
- i. The threshold fuel price for the Agreement will be \$4.20 per gallon.
 - ii. 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).
 - iii. In calculating the fuel surcharge, the Authority will assume a transfer trailer load of 15 tons and transfer trailer fuel mileage of 4.5 miles per gallon.
 - iv. The Fuel Surcharge per ton will be the product of the Excess Cost above the threshold fuel price as outlined in chart (e) below and the fuel usage (gallons) per ton transferred. The distance (miles) from the Northern Landfill to the Material Recovery 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 15 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 (e) below to derive the additional cost per ton.

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

Example, Showing the Fuel Surcharge Calculation:

If a load is taken to ABC Material Recovery Facility and the Fuel Cost is \$4.35 per gallon the calculation is as follows:

Calculation for X (gallons per ton)

ABC Material Recovery Facility: 43 miles; $(43/4.5)/15$ tons = .637 gallons per ton

New Fuel Price – Base Fuel (Threshold fuel price) = $\$4.35 - \$4.20 = \$0.15$ or an excess of \$.15

$\$0.10 * X = \$0.10 * .637 = \$0.064$ per ton charge

Section 3.3 Monthly Payments.

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

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

Carroll County Maryland Department of Public Works
Bureau of Solid Waste
225 N. Center Street
Westminster, MD 21157-5194

With a Copy to:

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

Section 3.4 **Pass Through Costs.**

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

Section 3.5 **Late Payment.**

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

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

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

- (a) The Company shall maintain all books, records and accounts necessary to record all matters affecting the Service Fee, applicable damages or other amounts payable by or to the Authority or the Company under this Agreement, including, but not limited to, Certificates of Insurance for Required Insurance. The Company shall maintain all such books, records and accounts in accordance with GAAP. The Company's books, records and accounts shall accurately, fairly and in reasonable detail reflect all the Company's dealings and transactions under this Agreement and other agreements and shall contain sufficient data

to enable those dealings and transactions to be audited in accordance with generally accepted auditing standards. The Company shall make all such books, records and accounts available for inspection and photocopying by the Authority within five (5) business days of a written request by the Authority.

- (b) The Company 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, 2021 and the end of each succeeding Fiscal Year, the Company shall provide an accounting to the County and the Authority of all payments made by the Authority for the Fiscal Year and all amounts payable to the Authority for such Fiscal Year.

ARTICLE IV

PROCESSING CAPACITY REDUCTIONS AND UNCONTROLLABLE CIRCUMSTANCES

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

(a) Effect of Uncontrollable Circumstances.

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

(b) Changes Necessitated by Uncontrollable Circumstances.

(i) As soon as possible after an Uncontrollable Circumstance occurring on or after the Operations Date, the Company shall give the Authority Representative a statement describing the Uncontrollable Circumstance and its cause (to the extent known to the Company), and a description of the conditions preventing the performance of the Company's obligations.

(ii) The Company shall answer any inquiries of the Authority Representative regarding the conditions caused by the Uncontrollable Circumstance and shall provide them with such information as they reasonably request. Upon the request of the Authority Representative, a consulting engineer, at the Authority's expense, may review the Company's estimate of the time schedule for repairing a facility or the alleged causes of the Uncontrollable Circumstance.

Section 4.2 Change of Law.

(a) Notwithstanding anything to the contrary set forth herein or otherwise, in the event of a change in Applicable Law that increases the cost of the Company's services provided to the Authority hereunder, the Company shall provide notice of such to the Authority, along with the Company's proposed adjustment to the prices charged the Authority for the services performed hereunder.

(b) A change in the tip fee at the Northern Landfill does not constitute a change in law. No Service Fee adjustment shall be made until the parties have agreed, in writing, to the adjusted Service Fee. If the adjusted Service Fee exceeds 110% of the current Service Fee prior to the adjustment, the Authority may elect not to pay the adjustment, and may terminate this Agreement within ninety days of the notice supplied by the Company.

ARTICLE V

INSURANCE AND INDEMNIFICATION

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

The Company shall obtain and maintain, or cause to be obtained and maintained, the Required Insurance in the forms approved by the Authority. The 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 and the additional insured endorsement 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 of any Required Insurance. The Company shall provide to the Authority sixty days' prior written notice of any material change in coverage or deductibles with respect to the Required Insurance.
- (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, as well as the declaration and forms list, available for inspection and photocopying by the Authority upon reasonable notice.

Section 5.3 Indemnification.

Company agrees to indemnify, hold harmless and defend the Authority, the County and their respective directors, officers, employees and agents, from and against any and all liabilities, claims, penalties, forfeitures, suits and the costs and expenses incident thereof (including costs of defense, settlement and reasonable attorneys' fees), which they, individually or collectively, may incur, become responsible for or pay to the extent resulting from the death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, to the extent caused, in whole or in part, by a breach of any term, provision, representation or warranty of this 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 directors, officers, 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 against the Company to the extent arising (a) pursuant to, or in connection with, an actual or alleged violation of, any Environmental Law, (b) in connection with any Hazardous Waste or actual or alleged Hazardous Waste Activity, (c) from any abatement, removal, remedial, corrective, or other response action in connection with a Hazardous Waste, Environmental Law or other order of a Governmental Authority or (d) from any actual or alleged damage, injury, threat, or harm to health, safety, natural resources, or the environment.

"Environmental Law" shall mean any current or future Legal Requirement pertaining to (a) the protection of health, safety and the indoor or outdoor environment, (b) the conservation, management, or use of natural resources and wildlife, (c) the protection or use of surface water or groundwater, (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, Release, threatened Release, abatement, removal, remediation or handling of, or exposure to, any Hazardous Waste or (e) pollution (including any release to air, land, surface water and groundwater), and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq., Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq.,

Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251, et seq., Clean Air Act, as amended, 42 U.S.C. 7401 et seq., Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2601 et seq., Hazardous Wastes Transportation Act, 49 U.S.C. App. §§ 1801 et seq., Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq., Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 et seq., Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq., National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq., Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300(f) et seq., any similar, implementing or successor law, including, without limitation, laws enacted by the State of Maryland or any other State, and any amendment, rule, regulation, order, or directive issued thereunder.

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

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

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

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

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

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

ARTICLE VI

DEFAULT AND TERMINATION

Section 6.1 **Remedies for Default.**

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

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

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

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

Section 6.2(a)), provided that if the Company or the Guarantor has commenced to take reasonable steps to correct such default within such reasonable period of time, the default shall not constitute an Event of Default for as long as the Company or the Guarantor, as the case may be, is continuing to take reasonable steps to correct it and is maintaining progress in actually correcting it; or

- (b) If, by the order of a court of competent jurisdiction, a receiver, liquidator, custodian or trustee of either the Company or the Guarantor or of a major part of either of their property is appointed and is not discharged within sixty days, or if, by decree of such a court, the Company or the Guarantor is adjudicated insolvent or a major part of either of their property is sequestered and such decree has continued undischarged and unstayed for sixty days after the entry of such decree, or if a petition to reorganize the Company or the Guarantor pursuant to the Federal Bankruptcy Code or any other similar statute applicable to the Company or the Guarantor, as now or hereinafter in effect, is filed against the Company or the Guarantor and is not dismissed within sixty days after such filing; or
- (c) If either the Company or the Guarantor is adjudicated bankrupt or files a petition in voluntary bankruptcy under any provision of any bankruptcy law or consents to the filing of any bankruptcy or reorganization petition against either the Company or the Guarantor under any such law, or (without limitation of the generality of the foregoing) files a petition to reorganize the Company or the Guarantor pursuant to the Federal Bankruptcy Code or any other similar statute applicable to the Company or the Guarantor, as now or hereafter in effect; or
- (d) If either the Company or the Guarantor makes an assignment for the benefit of creditors, or admits, in writing, an inability to pay debts generally as they become due, or consents to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of either the Company or the Guarantor or of a major part of either of their property; or
- (e) If the Company provides or has provided materially false or misleading information to the Authority; or
- (f) The failure of the Company or other Facility operators to comply with Applicable Law in any material fashion; or
- (g) The failure of the Company to provide a fully operational Service by the Operations Date.

Section 6.3 Events of Default by the Authority.

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

- (a) The failure by the Authority to pay any amount in excess of \$75,000 that the Authority is required to pay to the Company under this Agreement within sixty days after receipt by the Authority of written demand from the Company accompanied by notice stating that unless such amount is paid within sixty days after such demand the failure shall constitute an Event of Default; or
- (b) The failure or refusal by the Authority substantially to fulfill any of its material obligations to the 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 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.

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

Section 6.4 Termination on Default.

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

Section 6.5 **DELETE**

Section 6.6 **Termination for Convenience.**

Notwithstanding any other provision of this Agreement to the contrary and subject to State law, the Authority may terminate this Agreement and its obligations to the Company under this Agreement at any time by giving the Company ninety days' notice of such termination. Termination procedures and costs are those described in COMAR 21.07.01.12, set forth in Schedule 6.

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

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

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

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

Section 6.9 **Alternate Recycling Damages.**

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

Section 6.10 **Delivery Delay Damages.**

The Authority is entitled to assess Delivery Delay Damages in an amount equal to fifty percent (50%) of the applicable Single Stream Operations Fee and the Cardboard Operations Fee for every ton of Recovered Material delivered by any vehicle delivering Recovered Materials at the Transfer Station for which the waiting time exceeds forty minutes due to the Company's failure to provide a trailer at the transfer station. The waiting time shall be measured by taking the difference between the time recorded on the scale ticket on arrival at the Transfer Station, and the time recorded on the scale ticket at the outbound scale of the Transfer Station. The Company will not be assessed damages if the delay is the result of an unrelated third-party hauler delivering

Recovered Materials to the Transfer Station. The Company will only be liable for Delay Delivery Damages if the Company's actions cause the delay.

Section 6.11 **Performance Guarantee.**

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

ARTICLE VII

TERM; OPTIONS TO RENEW

Section 7.1 **Term.**

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

Section 7.2 **Option to Renew.**

This Agreement may be extended, at the Authority's sole option, for a maximum of six, 12-month periods, at the financial terms set forth in Article III and Schedule 3. The Authority has the option, at its sole discretion, to renew the Agreement in whole, or only the Transportation of Recovered Material service under this Agreement.

The Authority shall give the Company ninety days' notice of its intent to renew this Agreement for each option year.

During any option year, all terms of this Agreement shall remain in full force and effect, unless only the Transportation service is renewed; in which case, only the applicable terms under the Agreement shall apply.

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES

Section 8.1 Representations and Warranties of the Authority.

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

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

Section 8.2 Representations and Warranties of the Company.

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

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

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

ARTICLE IX

MISCELLANEOUS

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

- (a) The Authority Representative is the Executive Director of the Authority or the Executive Director's designee.
- (b) The County Representative is the Deputy Director of Department of Public Works for the County or the Director's designee.
- (c) The Company Representative is the President of the Company or any other employee of the Company or its affiliates whom the Company designates as the Company Representative and who is authorized to contractually bind the Company.
- (d) Any party may change its authorized representative upon five Business Days' written notice to the other parties. Only the Authority Representative or the Company Representative may make the approvals, requests and notices by a party to the other party under this Agreement unless otherwise agreed in writing by the parties.

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

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

- (c) If a local jurisdiction that is not an Authority Member (including a county, municipality, or other governmental entity) adopts this procurement as an intergovernmental cooperative purchasing agreement, or adopts this procurement under a similar local law that permits the jurisdiction to bypass a competitive procurement process, the Company agrees to provide as a credit to the Authority under this Agreement \$1.00 for each ton of Recovered Material processed under a contract or agreement with such a non-member jurisdiction. The Company agrees to inform the Authority if the Company enters into any such contracts or agreements with non-member jurisdictions, and to provide to the Authority satisfactory evidence of the amount of any such credit due to the Authority.

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:

**Carroll County Maryland Department of Public Works
Bureau of Solid Waste, Recycling Operations
225 N. Center Street
Westminster, MD 21157-5194**

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

Section 9.4 Entire and Complete Agreement.

This Agreement consists of those documents described in Schedule 1 and constitute the entire and complete agreement of the parties with respect to its subject matter and supersedes all prior or

contemporaneous understandings, arrangements, commitments and representations, all of which, whether oral or written, are merged into this Agreement. The Schedules to this Agreement are an integral part of this Agreement and shall be afforded full force and effect as though incorporated in their entirety in the Articles of this Agreement.

Section 9.5 **Binding Effect.**

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

Section 9.6 **Further Assurances and Amendments.**

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

Section 9.7 **Governing Law and Venue.**

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

Section 9.8 **Counterparts.**

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

Section 9.9 **Amendment or Waiver.**

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

Section 9.10 **Relationship of the Parties.**

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

Section 9.11 **Confidential Information.**

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

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

Section 9.12 Severability.

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

Section 9.13 Damages.

Notwithstanding the foregoing, in no event, whether based upon contract, tort or otherwise, arising out of the performance or nonperformance by the 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 the Circuit Court for Carroll County, Maryland and in accordance

with the laws of the State of Maryland. Pending resolution of any dispute, the Company is obligated to continue performance of the contract.

Section 9.16 Limitation of Liability and Defenses.

- (a) The execution and delivery of this Agreement by the Authority shall not impose any personal liability on the members, officers, directors, employees or agents of the Authority. No recourse shall be had by the Company for any claims based on this Agreement against any member, director, officer, employee or other agent of the Authority in his or her individual capacity, all such liability, if any, being expressly waived by the 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.
- (c) Continuation of this Agreement is contingent upon the subsequent appropriation of funds and encumbrance of those appropriated funds for this Agreement by the County; if funds are not appropriated and encumbered for future years of this Agreement, this Agreement will become null and void. The Company acknowledges that the County has no obligation to appropriate or encumber funds for the subsequent years of the Agreement. The Authority enters into this Agreement on behalf of Carroll County, Maryland. The Authority's sole source of funding for payment for Services in this Agreement is from appropriated funds from the County

Section 9.17 County as Third-Party Beneficiary.

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

Section 9.18 Nondiscrimination.

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

Section 9.19 **Public Ethics.**

- (a) The Authority may terminate the right of the Company to proceed under this Agreement if it is found by the Authority that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Company, or any agent or representative of the Company, to any officer or employee of the Authority or the County with a view toward securing this Agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of this Agreement; the facts upon which the Authority makes such findings may be reviewed in any competent court.

- (b) In the event this Agreement is terminated as provided in paragraph (a), above, the Authority shall be entitled (i) to pursue the same remedies against the Company as it could pursue in the event of a breach of the Agreement by the Company, and (ii) in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Authority) which shall be not less than three nor more than ten times the costs incurred by the Company in providing any such gratuities to any such officer or employee.

- (c) The rights and remedies of the Authority provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

- (d) No employee of the State of Maryland, the Authority, or the County, or any department, commission, agency or branch thereof, whose duties as such employee include matters relating to or affecting the subject matter of this Agreement, shall, while such employee, become or be an employee of the party or parties hereby contracting with the State, the Authority, or any department, commission, agency or branch thereof.

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

WITNESS:

**NORTHEAST MARYLAND WASTE
DISPOSAL AUTHORITY**

By: _____

Date: _____

WITNESS:

[COMPANY]

By: _____

Date: _____

SCHEDULE 1

DESCRIPTION OF THE SERVICE

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

1. The Request for Proposals (“RFP”) issued
2. Addenda and Clarifications to the RFP
3. The Company’s Technical and Financial Proposals dated

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

SCHEDULE 2

DEFINITIONS

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

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

"Alternate Recycling Damages" are damages incurred by the Authority and the County as a result of the failure of the Company to fulfill its obligations under this Agreement. These damages are limited to the difference between the cost of Services under the Agreement and the cost of the alternative method of delivering and processing the Recovered Material chosen as a substitute by the Authority.

"Applicable Law" means any law, regulation, requirement or order of any Federal, State or local agency, court or other governmental body (including, without limitation, the Carroll 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 Transfer Station and the Processing Facility or any other Facility used to provide the Service 2) the Agreement; or 3) the performance of any obligations under the Agreement or any other agreement entered into in connection with the Agreement.

"Authority Members" means participating jurisdictions in the Authority.

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

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

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

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

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

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

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

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

"Delivery Delay Damages" The Authority is entitled to assess Delivery Delay Damages in an amount equal to fifty percent (50%) of the applicable Single Stream Operations Fee and Cardboard Operation Fee for every ton of Recovered Material delivered by any vehicle delivering Recovered Materials at the Transfer Station for which the waiting time exceeds forty (40) minutes due to the failure of the Company to supply empty trailers.

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

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

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

"Guarantor" means _____.

"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 Transfer Station or Processing Facility or other facilities to be used in providing the Service and is considered hazardous Waste under Applicable Law, including, without limitation, Wastes that are:
 - 1. regulated as a toxic or Hazardous Waste as defined under either Subtitle C of the Solid Waste Disposal Act, 42 U.S.C. §§ 6921-6939a, or Section 6(e) of the Toxic Substances Control Act, 15 U.S.C. § 2605(e), as replaced,

amended, expanded or supplemented, and any rules or regulations promulgated thereunder, or under the Environment Article of the Annotated Code of Maryland, Title 7, Section 7-101 et seq., as replaced, amended, expanded, or supplemented, and any rules or regulations promulgated thereunder; or

2. Low level nuclear Wastes, special nuclear Wastes or nuclear by-product Wastes, all within the meaning of the Atomic Energy Act of 1954, as replaced, amended, expanded or supplemented, and any rules, regulations or policies promulgated thereunder.

B. Any other Waste which any Governmental Body or unit having appropriate jurisdiction shall lawfully determine, from time to time, to be ineligible for disposal through facilities of the type being used to provide the Service because of the harmful, toxic, or dangerous composition or characteristics of the Waste or substance. Any such designation would, under the Agreement, be considered an Uncontrollable Circumstance as defined in the Agreement.

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

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

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

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

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

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

"Ordinary Wear and Tear" means damage that naturally and inevitably occurs during normal, everyday use when usage is done with proper care and the damage is not caused by negligence, abuse or improper treatment.

"Northern Landfill" means the Carroll County Northern Landfill, located at 1400 Baltimore Boulevard, Westminster, MD 21157.

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

"Operations Date" means July 1, 2020, the date the Company begins to transfer Recovered Material from Transfer Station.

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

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

"Process or Processing" means the preparation necessary to render Recovered Materials 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 processing facility identified by the Authority as the facility for final processing of Recovered Material.

"Receiving Hours" means from the hours the Processing can accept Recovered Material.

"Recovered Materials" means recyclable materials collected by or on behalf of Carroll County that are separated from the waste stream prior to arriving at the Transfer Station. Exhibit C of Schedule 7 lists the acceptable Recovered Materials under this contract. This list may be updated by addition or subtraction, from time to time, with mutual consent by both parties, of materials that apply to all MRF customers, including other local governments.

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

"Residue" means non-recyclable material recovered from the Company's processing technologies. No material under List of Recovered Material Accepted through the Service Agreement (Schedule 7) can be defined as residue.

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

"Specifications" means the quality and condition of the Recovered Materials as further set forth Schedule 7.

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

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

"TPD" means Tons per Day.

"TPY" means Tons per Year.

"Transfer Station" means the Recovered Material area of Transfer Station located at the Northern 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. 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 Wastes; and
 - (4) Radioactive Wastes 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 Transfer Station and the Processing Facility), hurricane, landslide, earthquake or similar occurrence, fire, explosion or other casualty, an act of the public

enemy, war, insurrection, riot, epidemic, general arrest or restraint of government and people, civil disturbance or similar occurrence, or sabotage committed at a Facility by a Person other than an employee or agent of, or visitor invited by, the 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 Transfer Station to provide and maintain and assure the maintenance of all utilities services (excluding sewerage and water lines) to the Transfer Station for operation of the Transfer Station, provided they are essential to the Transfer Station;
- (c) A non-Company or non-subcontractor Labor Action.

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

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

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

"Waste" means solid waste delivered to the Transfer Station.

SCHEDULE 3

Cost Proposals

[INSERT COST PROPOSAL]

SCHEDULE 4

PERFORMANCE AGREEMENTS

FORM OF PERFORMANCE BOND

FORM OF PERFORMANCE LETTER OF CREDIT

GUARANTEE AGREEMENT

FORM OF PERFORMANCE BONDS

PERFORMANCE BOND

Principal

Business Address of Principal

Surety

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

Obligee
Northeast Maryland Waste Disposal Authority
and
Carroll County, Maryland

Penal Sum of Bond
(express in words and figures)

Date of Contract: _____, 20__

Date Bond Executed: _____, 20__

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

Contract Number:

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

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

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

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

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

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

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

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

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

.....

In Presence of: Partnership Principal
Witness

_____ (SEAL)
Name of Partnership

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

.....

Corporate Principal

Attest:

(Name of Corporation)

Corporate Secretary

President

AFFIX
CORPORATE
SEAL

.....

(Surety)

Attest:

Signature

By: _____

Title:

AFFIX
CORPORATE
SEAL

Business Address of Surety:

Bonding Agent's name:

Agent's Address:

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

FORM OF PERFORMANCE LETTER OF CREDIT

Date: _____

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 **“OPERATIONS AND TRANSPORTATION AGREEMENT BY AND BETWEEN NORTHEAST MARYLAND WASTE DISPOSAL AUTHORITY AND COMPANY TO PROVIDE OPERATIONS AND TRANSPORTATION SERVICES FOR 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 Disposal Agreement, all in accordance with the terms of such Disposal Agreement.

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

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

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

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

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

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

Very truly yours,
[NAME OF FINANCIAL INSTITUTION]

By: _____
Name: _____
Title: _____

GUARANTEE AGREEMENT

made by

COMPANY

and

THE NORTHEAST MARYLAND WASTE DISPOSAL AUTHORITY

Dated: _____



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

ARTICLE I

DEFINITIONS AND INTERPRETATION

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR

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

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

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

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

(4) No Governmental Approval Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution and delivery by the Guarantor of this Guaranty, except such as shall have been duly obtained or made.

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

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

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

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

ARTICLE III

GUARANTY COVENANTS

SECTION 3.1. GUARANTY TO THE AUTHORITY. The Guarantor hereby absolutely, presently, irrevocably and unconditionally guarantees to the Authority for the benefit of the Authority (1) the full and prompt payment when due of each and all of the payments required to be credited or made by the Company under the Service Agreement (including all amendments and supplements thereto) to, or for the account of, the Authority, and (2) the full and prompt performance and observance of each and all of the Obligations. Notwithstanding the unconditional nature of the Guarantor's obligations as set forth herein, the Guarantor shall have the right to assert the defenses provided in Section 3.4 hereof against claims made under this Guaranty. Guarantor shall have the right to perform Company's obligations through an affiliate or subsidiary that is (i) authorized to transact business in the State of Maryland, (ii) is in Good Standing with the Maryland State Department of Assessments and Taxation and (iii) meets the same standards required in the Request for Proposals dated April 22, 2015.

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

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

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

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

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

(14) the fact that entering into the Service Agreement by the Company or the Guarantor was invalid or in excess of the powers of such party.

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

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

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

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

(6) any right to require a proceeding first against any person or the security provided by or under the Service Agreement except to the extent such Service Agreement specifically requires a proceeding first against any person (except the Company) or security;

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

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

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

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

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

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

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

ARTICLE IV

GENERAL COVENANTS

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

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

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

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

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

SECTION 4.5. CONSENT TO JURISDICTION. The Guarantor irrevocably: (1) agrees that any suit, action or other legal proceeding arising out of this Guaranty shall be brought in the courts of the State of Maryland; (2) consents to the jurisdiction of such court in any such suit, action or proceeding; (3) waives any objection which it may have to the laying of the jurisdiction of any such suit, action or proceeding in any of such courts.

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

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

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

If to the Guarantor:

[COMPANY]

If to the Authority:

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

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

_____,
as Guarantor

By
Printed Name:
Title:

SEAL
(IMPRESSED ON
EXECUTION COPIES)

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

By:
Title:

SCHEDULE 5

REQUIRED INSURANCE

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

Certificate Holder needs to be "Board of County Commissioners of Carroll County, Maryland."

(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.

(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 Recovered Materials pursuant to this Agreement. Company shall purchase limits of \$1,000,000 per occurrence and \$2,000,000 annual aggregate for any release of toxics or hazardous Waste or other hazardous substance requiring monitoring, cleanup or corrective action under the Comprehensive environmental Response Compensation Liability Act (CERCLA) and the Resource Conservation Recovery Act (RCRA). A combination of primary and excess coverage is acceptable, provided that there are no pollution exclusions in either policy

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

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

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

Section 2. General

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

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

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

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

(i) Setting up a new retro date.

(ii) Exhausting any aggregate limit under any of the above policies.

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

SCHEDULE 6

TERMINATION FOR CONVENIENCE, PROCEDURES AND COSTS

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

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

SCHEDULE 7

TO SERVICE AGREEMENT

List of Recovered Materials Accepted through the Service Agreement

- Newspapers (including all inserts)
- Magazines and catalogs
- Junk mail
- Cardboard and paperboard (including cereal boxes without liners)
- Corrugate boxes
- Computer printouts
- Books (including paperbacks, textbooks and hardbacks)
- 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) carry plastic resin codes 1 through 7
- Wide-mouth containers such as peanut butter, margarine/butter tubs, yogurt, cottage cheese, yogurt, sour cream mayonnaise, whipped topping, peanut butter, and prescription bottles (please note that the lids and caps do not need to be removed)
- Rigid plastics which include plastic milk/soda crates, plastic buckets with metal handles, plastic laundry baskets, plastic lawn furniture, plastic totes, plastic drums, plastic flowerpots, 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 8
TO SERVICE AGREEMENT
OPERATIONS & MAINTENANCE PLAN

Recycled Paper