

Contract # \_\_\_\_\_

**Service Agreement**

**by and between**

**Northeast Maryland Waste Disposal Authority**

**and**

**Company**

**to Provide**

**Regional Non-Recycled Municipal Solid Waste  
Acceptance, Processing, Transportation  
and Disposal Services**

**for \_\_\_\_\_ County**

**Dated as of \_\_\_\_\_, 20\_\_**

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**THIS SERVICE AGREEMENT (“AGREEMENT”)** is made as of \_\_\_\_\_, 20\_\_ between the Northeast Maryland Waste Disposal Authority ("Authority") and \_\_\_\_\_ (the “Company”).

### **RECITALS**

- A. The Authority is an instrumentality of the State of Maryland created to assist its Member Jurisdictions (“Member Jurisdiction(s)” or “Member(s)”) with the preservation, improvement and management of the quality of air, land and water resources and to promote the health and welfare of the citizens and residents of the State of Maryland by providing dependable, effective and efficient disposal of Solid Wastes, including the recovery of useable resources from such waste. Member Jurisdictions include Anne Arundel County, Baltimore City, Baltimore County, Carroll County, Frederick County, Harford County, Howard County and Montgomery County. \_\_\_\_\_ County, Maryland (the "County") has requested that the Authority provide for the Acceptance, Processing, Transfer and Disposal of certain amounts of non-recycled municipal Solid Waste (the "Services") collected or managed by, or on behalf of, the County through certain haulers (“Designated Haulers”), or Acceptable Material delivered to the [Anne Arundel County Millersville Landfill and Resource Recovery Facility (“MLFRRF”)] [Howard County Alpha Ridge Landfill (“ARL”)].
- B. The Authority and the County will enter into a Waste Disposal Agreement under which the Authority will be obligated to provide these Services and the County will be obligated to pay for these Services.
- C. The Authority intends to fulfill its obligations to the County to provide the Services by entering into and managing this Agreement.
- D. The Authority, in cooperation with the County, has selected the Company through a competitive process. The Company has demonstrated that it is qualified to provide the Services.
- E. The Company shall provide the Acceptance Facility, Disposal Facility and other Facilities (the “Facility” or “Facilities”) so as to receive and process all of the Solid Waste delivered to the Company by the County or Waste delivered on behalf of the County or other contracted tonnage, under a contract with the Designated Haulers and Acceptable Material delivered to the [MLFRRF] [ARL].
- F. The County will be a third-Party beneficiary of the Company's obligations under this Agreement.
- G. The Authority reserves the right to offer the transportation and disposal terms in the selected Proposer(s) Service Agreement(s) to other Authority Member Jurisdictions. In the event one or more favorable terms are offered to or negotiated by Anne Arundel County or Howard County, then the Company and the Authority agree that the same term or terms shall be offered to the other.

**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 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 II.

#### 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 approved amendments, modifications and supplements thereto.

#### Section 1.3 Additional Services to Other Authority Members

- (a) If the Services are expanded with respect to an additional Authority Member (a "Participating Member"), [Anne Arundel County] [Howard County] shall retain all of its rights under this Agreement, including those granted with respect to inspection and access, indemnification, insurance, Performance Bonds and Letters of Credit, limitations of liability, nondiscrimination, Minority Business Enterprise/Women Business Enterprise participation requirements, and public ethics. [Anne Arundel County] [Howard County] shall continue to be a third-Party beneficiary under this Agreement and none of its rights under this Agreement shall be compromised.
- (b) If the Company agrees to provide Services and accept Acceptable Material from an additional Participating Member, the Company shall enter into a separate service agreement (a "Participating Member Service Agreement") with the Authority relating to the Participating Member, and the Authority shall enter into a separate waste disposal agreement with the Participating Member, (a "Participating Member Waste Disposal Agreement"). If the Services under the Agreement are expanded to provide for acceptance of Acceptable Material from an additional Participating Member, the Company shall not have recourse to [Anne

Arundel County] [Howard County] or [Anne Arundel County] [Howard County] Payments for the payment of amounts due in receipt of deliveries under any Participating Member Service Agreement or Participating Member Waste Disposal Agreement or any liabilities arising under a Participating Member Service Agreement or Participating Member Waste Disposal Agreement. Likewise, the Company shall not have recourse against the Participating Member or Participating Member Payments under a Participating Member Service Agreement or Participating Member Waste Disposal Agreement for rights to payments of amounts due with respect to deliveries under the [Anne Arundel County] [Howard County] Agreement or any liabilities under the [Anne Arundel County] [Howard County] Agreement.

- (c) No Participating Member shall be liable for the obligations of another Participating Member under its individual Participating Member Service Agreement or Participating Member Waste Disposal Agreement or an Event of Default (“Default”) under this Agreement that arises from the Default by a Participating Member under its Participating Member Service Agreement or Participating Member Waste Disposal Agreement. The Company shall only exercise remedies with respect to the Services that the Authority is providing to the defaulting Member through this Agreement. For example, if Baltimore County were to Default under its Participating Member Service Agreement or Participating Member Waste Disposal Agreement, the Company would not be entitled to terminate or suspend the Service with respect to [Anne Arundel County] [Howard County] or exercise any other remedy that would affect the Service provided to [Anne Arundel County] [Howard County] or expose [Anne Arundel County] [Howard County] to any liability or additional expense.
- (d) If the Company enters into additional individual Participating Member Service Agreements, the Company hereby represents and warrants that the Services to be provided under this Agreement shall not be diminished or adversely affected in any way. Further, the Company shall not create any priority of Services, such that any Participating Member has a priority of Services over any other Participating Member.
- (e) The Company acknowledges that the Authority's ability to perform its obligations hereunder is dependent upon the performance by [Anne Arundel County] [Howard County] of its obligations under the [Anne Arundel County Waste Disposal Agreement] [Howard County Waste Disposal Agreement] (and any applicable Participating Member of its obligations under any Participating Member Waste Disposal Agreement). Accordingly, the Company agrees that any amounts payable hereunder by the Authority pursuant to Schedule I or Article V or otherwise with respect to the disposal of Acceptable Material hereunder shall be payable to the Company solely from such amounts as may be paid to the Authority by [Anne Arundel County] [Howard County][ pursuant to the [Anne Arundel County Waste Disposal Agreement] [Howard County Waste Disposal Agreement] or any Participating Member pursuant to its Participating Member Waste Disposal Agreement.
- (f) Notwithstanding any other provision of this Agreement to the contrary, the liability and obligation of the Authority for all monetary payments with respect to or arising as a result of this Agreement are limited obligations payable solely from amounts paid by [Anne Arundel County] [Howard County] under the [Anne Arundel County Waste Disposal Agreement (“Anne Arundel County Payments”)] [Howard County Waste Disposal Agreement (“Howard County Payments”)] or in the case of deliveries under a Participating Member Waste Disposal Agreement, amounts paid by the Participating Member (“Participating Member Payments”) as and to the extent such [Anne Arundel County Payments] [Howard County Payments] or



Participating Member Payments are received and available to pay such amounts under Applicable Law.

- (g) The liability of the Authority for any monetary payments to the Company with respect to, or as a result of, this Agreement are not payable from the general funds of the Authority or any amounts received by the Authority with respect to the Authority's Member fees and the incurrence or nonperformance of such obligations or payments will not constitute or create a claim against any of the assets or property of the Authority or of its income, receipts or revenues, except [Anne Arundel County Payments] [Howard County Payments] or Participating Member Payments, as the case may be, available to pay such amounts under Applicable Law.
- (h) No recourse for the payment of any amounts due by the Authority under this Agreement or upon any representation, warranty, covenant, agreement or obligation contained in this Agreement or in any document, certificate or instrument that this Agreement requires to be executed and delivered by the Authority or for any claim hereon or thereon shall be had by the Company, except from [Anne Arundel County] [Howard County] Payments or Participating Member Payments.
- (i) The execution and delivery of this Agreement by the Authority does not impose any personal liability on the Members, directors, officers, employees or agents of the Authority, [Anne Arundel County] [Howard County] or any other Participating Member. 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, [Anne Arundel County] [Howard County] or any other Participating Member in his or her individual capacity, all such liability, if any, being expressly waived by the Company by the execution of this Agreement.
- (j) The portion of this Agreement to provide for additional Services in connection with an additional Participating Member Service Agreement and Participating Member Waste Disposal Agreement shall not limit, restrict or adversely affect the Services to be provided to [Anne Arundel County] [Howard County] [(the "Anne Arundel County Services")] [(the "Howard County Services.")]]. All the Services shall consist of separate components for [Anne Arundel County] [Howard County] and each Participating Member.

## ARTICLE II

### OBLIGATIONS RELATING TO TRANSPORTATION AND DISPOSAL OF WASTE

#### Section 2.1 Acceptance, Processing, Transportation, Recycling and Disposal of Waste

- (a) Service will commence on \_\_\_\_\_, 20\_\_.
- (b) The Company has sole responsibility for the provision and operation of all Facilities, personnel, vehicles and sites necessary to provide the Service as described in Schedules I and II. The Company's Representative or its designee shall be available daily on-site 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.
- (c) Beginning on the Commencement Date and continuing throughout the term of this Agreement the Company shall provide the Service in accordance with this Agreement and all Federal, State and Local Laws ("Applicable Law" or "Law").
- (d) The Company is obligated to maintain compliance with all applicable permits, orders, enforcement actions, Federal, State and Local Law in the operation of the Facilities.
- (e) If a Natural Disaster, or other disaster, occurs, the Company and the Authority will coordinate the processing of large amounts of disaster debris which meets the definition of Acceptable Material. The Company will list the tonnage on subsequent invoices as a separate line item. The fee for the processing of disaster debris resulting from a Natural Disaster or other disaster will be the applicable Service Fee as set forth in Article III herein.
- (f) In the event that there is a casualty or emergency closure at the Facilities which has not resulted from an Uncontrollable Circumstance, the Company shall arrange in a timely manner for the Alternate Acceptance and/or Disposal Facility, as identified in Schedule II, to receive vehicles with Acceptable Material for transport to the Facilities so that there is minimal interruption of the Services. If either the Authority or the County incurs increased costs for either (i) the delivery of the Acceptable Material to the Alternate Acceptance Facility, or (ii) holding the Acceptable Material at the [MLFRRF] [ARL] until the Company arranges for transport to the Disposal Facility, then the Company shall reimburse the Authority and the County, as applicable, for the increased costs incurred. If the Company defaults under this section, then Alternate Disposal Damages may be recovered.

#### Section 2.2 Refusal of Deliveries

##### (a) Extent of Refusal Rights

The Company must accept deliveries of Acceptable Material delivered at hours established under Section 2.3. Acceptable Material rejected by the Company for any reason other than as permitted pursuant to this Section 2.2 or any other provision of this Agreement constitute Wrongfully Diverted Waste. Wrongfully Diverted Waste is subject to Alternate Disposal Damages as set forth in Section 6.8.

The Parties agree that Company shall be the only Party entitled to establish the classification of Waste delivered to a Facility, subject to the Authority's ability to object to such classification as set forth in Section 3.6.

(b) Inspection of Delivered Waste

The Company shall develop and maintain any and all reasonably appropriate screening programs at the Acceptance Facility. Any such screening programs shall include any reasonable programs and practices required by the County or the Authority. The County and the Authority will cooperate with the Company with regard to the screening programs. Neither the inclusion of programs or practices in the Waste screening programs by the Authority and/or the County nor the review or comment by the Authority and/or the County upon any Company proposal with regard to the Waste screening programs relieves the Company of any of its obligations hereunder or imposes any liability upon the Authority or the County.

The Company may inspect the contents of all vehicles delivering Waste under this Agreement to the Acceptance Facility. The County will monitor its own collection operations to reduce the collection of Recyclable Material with Waste. The Company shall institute procedures, including inspection procedures, to ensure that loads with a large percentage (greater than 50%) of source-separated Recyclable Materials are segregated at the Acceptance Facility. The Company shall segregate the load and contact the Authority as soon as possible upon the finding of the subject load, as set forth below. The Company shall make best efforts to identify the truck delivering the load (e.g., hauling firm, truck number, driver, etc.). The Authority will inspect the load and the Company shall then dispose of the Waste as Acceptable Material.

The Company will institute appropriate procedures, including inspection procedures, to ensure that Unacceptable Material is separated at the Acceptance Facility. The Company shall give immediate notice (within 30 minutes) to the Authority of deliveries of Unacceptable Material to the Company, followed by prompt written notice (within two hours) indicating the time, the source of delivery and identity of the hauling firm and truck number. The intent of this requirement is to ensure safe handling by the Company of the Waste received in compliance with Applicable Law and to ensure that County-contracted haulers are not disposing of Recyclables.

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

- (a) The Receiving Hours are defined in Schedule II.
- (b) Acceptable Material 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
Thanksgiving Day	Memorial Day
Christmas Day	Independence Day

- (c) The Company shall accept Acceptable Materials at hours other than the Receiving Hours, to the extent permitted by Applicable Law. The Out-of-Hours Delivery Charge for Company operations outside of the Receiving Hours, pursuant to this Section 2.3(c), may be charged

for each ton of Waste delivered before or after the Receiving Hours, except the Out-of-Hours Delivery Charge will not be charged for Acceptable Material delivered between the hours of 5:00 p.m. and 7:00 p.m. on the first regular collection day following a Holiday. The Out-of-Hours Delivery Charge will not apply for any hours the Acceptance Facility is open to receive Acceptable Material from sources other than the Authority. The Out-of-Hours Delivery Charge shall be 3% above the per ton price.

#### **Section 2.4                      Scales and Weighing Records**

- (a) The Company shall operate and maintain inbound and outbound road vehicle scales at the Acceptance Facility which shall provide for automatic weighing and recording of all Wastes received and removed. The Company shall weigh all County vehicles delivering Waste to the Acceptance Facility on the Company's owned and operated in-bound scale. The scales shall incorporate a computer interface system and use software acceptable to the Authority and be compatible with the County data management system. The Company shall cooperate with the Authority and County to ensure that the electronic interface is compatible with future County data management systems. Data shall be transferred weekly on Mondays or the first Business Day of the week, and shall include all of the County's transactions for the prior week, or be transferred as otherwise requested by the County. The weight record shall include the following: County facility name or service area number, name of hauler, haulers' vehicle identification (truck number), County permit number, gross weight, tare weight, date, time of arrival, time of departure, and description of Waste in the vehicle. The Company shall be able to accept all County-issued manifests. All trucks are required to have a County-issued manifest prior to being allowed to dump under the County account.
- (b) The Company may require each vehicle operator to present to the scale operator a data card, permit, identification or license. The Company or Authority may require from time to time the revalidation of the tare weight of any vehicle or the reweighing of unloaded vehicles.
- (c) If the permanent vehicle scales at the Acceptance Facility are not working properly or are being repaired, maintained or tested, the Company may use portable scales at the Acceptance Facility. If portable scales or other alternate weighing Facilities and equipment meeting the requirements of Applicable Law are not available, a Scale Outage will occur. Estimates shall take the place of actual weighing records during the Scale Outage. In order to participate in the estimating of quantities of Acceptable Materials during a Scale Outage, the Authority may request that an employee or agent be present in the scale house when each vehicle arrives. The Company and the Authority Representative or their designee will collaborate on an agreement for data tracking during the Scale Outage. The Company may use tare weights during a Scale Outage.

Tare weight is the empty weight of the vehicle including its body or container. If stored tare weights are allowed for use at the Acceptance Facility, the stored tare weights must be maintained in WEIGHMASTER [for Howard County], PARADIGM (COMPUWEIGH) [for Anne Arundel County] or other weight storage computer program compatible with [WEIGHMASTER] [PARADIGM (COMPUWEIGH)], for each applicable vehicle. Stored tare weights are captured from the scale or input manually. At a minimum, stored tare weights shall be verified and updated annually to ensure accuracy, or more frequently if required by local Laws, permit or contract. Random testing of stored tare weights shall be completed on a yearly basis and findings documented and submitted to the Authority.

The Company shall use the scales to weigh each vehicle as it enters or leaves the Acceptance Facility. The tare weight for a given vehicle, once established, can only be used with the prior written approval, which shall not be unreasonably withheld, of the Authority and for as brief a duration as possible.

- (d) At least twice a year, the Company, at its expense, must obtain approval of, inspect and test the vehicle scales as required by Applicable Law. The copy of the semi-annual certification will be conspicuously posted at the Acceptance Facility scalehouse. The Company, in the presence of the Authority Representative, shall make additional tests of all vehicle scales, if such tests are requested by the County or the Authority. The cost of these additional tests shall be borne by the Authority only 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 Company will be responsible for all costs. Such costs will include charges and calculations based on scale readings made within thirty (30) days preceding the test. The Company shall be responsible for all costs required to correct the percentage of inaccuracy found. If a test of the scales has been performed during the preceding three (3) days, only the readings and related charges and calculations made after that test shall be corrected on the basis of the subsequent test. The cost of these additional tests shall be borne by the Company.

- (e) The Company shall maintain daily records of the total tonnage of Waste delivered to the Acceptance Facility, the tonnage of Waste accepted by the Company and the tonnages of Unacceptable Material. The Company shall submit monthly reports, as specified in Schedule IV in a form approved by the Authority. The Company shall cooperate with the Authority and the County to provide this information electronically. The Company shall furnish the daily scale records to the Authority and County and a compilation of such information for each month, within five (5) Business Days after the end of the month.

The Company shall keep copies of all weight tickets for at least three (3) years, which shall be available for inspection by the Authority or County upon request, at the Acceptance Facility.

The Company shall track the disposal of the Acceptable Material each month and furnish the Authority and County a compilation of such information for each month, within five (5) Business Days after the end of the month, on the form provided in Exhibit A to Schedule IV.

## **Section 2.5                    Unacceptable Material**

- (a) If Unacceptable Material is delivered to the Acceptance Facility on behalf of the Authority and the Unacceptable Material is identified and chain of custody is maintained while at the Acceptance Facility, the Authority shall be solely responsible for its removal from the Acceptance Facility. The Company shall assist the Authority to identify the origin of the Unacceptable Material taking reasonable steps to ensure chain of custody can be verified, including, but not limited to, photo-documentation with a digital camera (including a camera on a cellular phone) that records time and date on the photograph. The Company will take steps to segregate and isolate the Unacceptable Material and attempt to identify the hauler

and/or source of the Unacceptable Material. The Company shall notify the Authority as soon as possible but no later than two hours after discovery of the Unacceptable Material. The Company shall make reasonable attempts to keep the hauler/source in question on site. If the hauler/source refuses for any reason to immediately remove the Unacceptable Material, the Authority shall be solely responsible for all costs and meeting applicable Federal, State and Local Laws and requirements associated with the proper preparation, including removal, transportation, and disposal of the Unacceptable Material to a permitted facility. The Authority may elect to have the Company handle the removal of the Unacceptable Material and then reimburse the Company for documented costs.

The Authority will be responsible for the costs according to this subparagraph and shall also be solely responsible for any penalty or fine assessed by any State or Federal agency resulting from the delivery of the Unacceptable Material to the permitted disposal facility.

- (b) If Unacceptable Material is delivered to the Acceptance Facility, and the source of such Unacceptable Material or hauler delivering Unacceptable Material cannot be determined by the Parties, the Company shall separately contain, set aside, segregate, isolate and manage the Unacceptable Material as required by Applicable Law, and the Authority and the County shall be notified immediately of its location, general character and amount. The Company shall remove, or cause to be removed, such unknown sourced Unacceptable Material from the Acceptance Facility and shall transport and dispose of, or shall cause such Unacceptable Material to be transported and disposed, in accordance with Applicable Laws. The Company shall, at no expense to the County or the Authority, bear all of the costs of transportation and disposal of Unacceptable Material from a hauler that was not identified. The foregoing shall not be considered to be a waiver of any claim the Company may have against any other third-Party. The Company may make any such claim directly against the Party involved, and to the extent necessary by Law; in order for such claim to proceed, the Authority and the County must assign to the Company their respective rights to make such a claim. The Company will however be responsible for such claim that may result in any legal liability.

The Company will be responsible for the costs according to this subparagraph and shall also be solely responsible for any penalty or fine assessed by any State or Federal agency resulting from the delivery of the Unacceptable Material to the permitted Disposal Facility.

- (c) If Unacceptable Material is identified at the Disposal Site, the Parties shall proceed as follows. The Company will identify the Unacceptable Material. Once identified, the Company will comply with all Federal, State and Local Laws, regulations and requirements, and will comply with State or Federal orders on how to dispose of the Unacceptable Material. The Company will be responsible for the costs according to subparagraph (c) and shall also be solely responsible for any penalty or fine assessed by any State or Federal agency resulting from the delivery of the Unacceptable Material to the permitted Disposal Facility.

**Section 2.6                      Manner of Deliveries; Vehicle Size**

The Company shall be able to accommodate any common Waste hauling vehicle including, but not limited to, self-unloading transfer trailers, rear loading compactor trucks, roll-offs, and tractor/trailers.

**Section 2.7****Subcontractors; Performance Security**

- (a) The Parties acknowledge that the dependable operation and maintenance of the Disposal Facility and other Facilities providing the Service is in the interests of all Parties to this Agreement. The Company shall not enter into or maintain any contract or subcontract with any Person other than an Affiliate of the Company for any substantial portion of the operation, management or control of a Facility or the performance of any of the Company's obligations under this Agreement without the prior written consent of the Authority, except that the Authority's approval is not required for the subcontract transporters.
- (b) No contract or subcontract between the Company and any other Person will affect the Company's obligation under this Agreement.
- (c) Prior to the Commencement Date, the Company shall provide a Performance Bond or Letter of Credit ("LOC") from a surety or insurance company acceptable to the Authority, covering the performance obligations of the Company under Article II of this Agreement. The Performance Bond shall be equal to the value of one half (1/2) of one year of estimated Service and name the Authority and the County as beneficiary. For example, (185,000 tons/year x \$50/ton) X 0.5 = Four Million and Six Hundred and Twenty-Five Thousand Dollars (\$4,625,000.00). The Performance Bond or LOC shall be in the form set forth in Schedule V. 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 claims are not being made against the Performance Bond or the LOC is not being drawn upon by the Authority.
- (d) All contracts between the Company and the transportation subcontractors providing Service under this contract will be made available for review upon request by the Authority.

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

The Authority and the County, their respective agents, licensees and invitees may visit or inspect the operation and Facilities at any reasonable time during the term of this Agreement. The Authority Representative or its designees, or the County Representative or its designees, may inspect the operation and Facilities at any time and from time to time without notice. The Authority and the County, and their respective agents, licensees and invitees shall conduct visits to the Facilities in a manner that does not cause unreasonable interference with the Company's operations. To the extent practical, the Authority and the County shall provide the names of all invitees to the Company in advance. The Company may require any Person on a Facility site to comply with its reasonable rules and regulations and to sign a statement agreeing (i) to assume the risk of the visit but not the risk of injury due to the intentional or negligent acts or omissions of the Company or any of its subcontractors, agents or employees and (ii) not to disclose or use any Confidential Information of the Company other than for the purpose for which it was furnished or, in the case of Authority or County employees and agents, except in accordance with Section 9.11 Confidential Information, of this Agreement.

**Section 2.9**                    **Cleanup and Disposal at the Acceptance Facility**

- (a)    The Company shall keep the Acceptance Facility free from accumulation of Wastes or rubbish (except in appropriate locations) caused by transfer operations and shall maintain and operate the transfer Service so as to prevent the Acceptance Facility area from becoming unsightly or a nuisance under Applicable Law.
  
- (b)    Notwithstanding anything to the contrary in this Agreement, the Authority and the County shall not be liable in any way for ordinary wear and tear to the Acceptance Facility, including but not limited to all Acceptance Facility floor surfaces, and roadways and curbing into and out of the Acceptance Facility.

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

The Company shall perform its obligations under this Agreement and operate the Facilities in accordance with all requirements of Applicable Laws. 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. The Company will not be considered in breach of its obligations under this Section if (i) the Company is contesting the Applicable Law in good faith by appropriate proceedings conducted with due diligence and the Applicable Law allows continued operation of the Facilities pending resolution of the contest or (ii) the Company is diligently seeking to comply with such Applicable Law or to obtain or maintain any such permit or license and Applicable Law allows continued operation of the Facilities.

**Section 2.11**                    **Appropriations.**

The Authority's fiscal obligations under the Service Agreement are subject to the availability of funds appropriated under the Waste Disposal Agreement with the County Council of \_\_\_\_\_ County, Maryland.



## **ARTICLE III**

### **SERVICE FEE; DAMAGES; PAYMENTS**

#### **Section 3.1            Service Fee, Damages, Payments**

- (a) From and after the Commencement Date, the Company may charge and collect from the Authority a fixed Service Fee as shown in Schedule III for each ton of Acceptable Materials accepted by the Company from the Authority, for disposal hereunder. This Service Fee shall be full and complete payment to the Company for the Services provided under this Agreement, including any taxes, fees or surcharges applied to all Acceptable Material delivered to any disposal site provided by the Company. The Company's designated outbound scale (Acceptance Facility scale, if such scale is certified for commercial transactions by the State of Maryland or other regulatory authority) records shall be the basis for payment for Acceptable Materials transferred from the Acceptance Facility.
- (b) The Authority may retain or set-off from any amounts due the Company, Alternate Disposal Damages, Alternate Procurement Damages and Delivery Delay Damages or damages to pay for repair of the Facilities made necessary by the Company's direct misuse or negligence of the Facilities or equipment.
- (c) There is no fuel adjuster during the initial term, or any of the extension periods, of this Agreement.
- (d) The Authority and the County reserve the right to pay for the Service using a credit card, directed wire payment ("ACH") or a direct payment claim, upon reasonable written notice to the Company and subject to approval by the Company, which shall not be unreasonably withheld. Notwithstanding the foregoing, the County may make payment directly to the Company for Services rendered under this Agreement and, when the County makes direct payments to the Company, no payment shall be due to the Authority for said amount.

#### **Section 3.2            Inflation Adjustor**

[For Anne Arundel County, beginning on the Proposal Date, the Service Fee shall be adjusted according to the appropriate Annual Inflation Adjuster. All adjustments shall be made using the Bureau of Labor Statistics Consumer Price Index ("CPI") for all Urban Consumers for Baltimore-Columbia-Towson, MD - All Items (1982-84=100). The first adjustment shall compare the most recent reported CPI as of the Commencement Date [(the February 2023 published CPI, anticipated to be posted in March 2023 for Anne Arundel County)] to the reported CPI nearest to the final Proposal Date (\_\_\_\_\_, 20\_\_\_), which was published in \_\_\_\_\_ of 20\_\_\_. The Proposal Date CPI is \_\_\_\_\_. The second adjustment shall compare the most recent reported CPI as of [July 1, 2024 to the CPI used for the Commencement Date, which would be the April 2024 published CPI, anticipated to be posted in May 2024]. Thereafter the most recent CPI reported as of July 1<sup>st</sup> of the current year will be compared to the CPI used from the previous year (e.g., the April CPI, usually posted in May compared against the CPI used from the previous year).

The Annual Inflation Adjuster shall be 75 percent of any increase or decrease in the CPI. The most recent reported CPI as of July 1<sup>st</sup> of current year less the CPI used from previous year equals the index point change. Multiply the index point change by 0.75 and then divide that number by the CPI used in the previous year and add 1 to equal the Inflation Adjustor. The Inflation Adjustor shall be rounded to the second decimal place.

The maximum annual Inflation Adjustor, for each one-year period, shall not be less than 0.96 or exceed 1.04.

Example of Annual Inflation Adjustor Calculation:

Commencement Date adjustor:

CPI for Commencement Date: (the February 2023 published CPI, anticipated to be posted in March 2023 to the reported CPI nearest to the final Proposal Date (\_\_\_\_ 20\_\_ ), which was posted in (\_\_\_\_ 20\_\_ ).

Use the actual CPI nearest to the final Proposal Date of 144.327 [example used as a placeholder].

Use the actual Proposal Date CPI (144.327 [example used as a placeholder]) and [an example] Commencement Date CPI of 147.201:

Index Point Change:  $147.201 - 144.327 = 2.874$

Inflation Adjustor:  $(2.874 * .75) / 144.327 + 1 = \mathbf{1.01}$  (rounded to second decimal place).

Thereafter the most recent CPI reported as of July 1<sup>st</sup> of the current year will be compared to the CPI used from the previous year (e.g., the April CPI, usually posted in May compared against the CPI used from the previous year)].

[For Howard County, beginning on the first option year renewal date, the Service Fee shall be adjusted according to the appropriate Annual Inflation Adjustor. All adjustments shall be made using the Bureau of Labor Statistics Consumer Price Index (“CPI”) for all Urban Consumers for Baltimore-Columbia-Towson, MD - All Items (1982-84=100). The first adjustment shall compare the most recently reported CPI as of July 1, 2023 (the April 2023 published CPI, anticipated to be posted in May 2023) to the reported CPI nearest to the Commencement Date (the April 2022 published CPI, anticipated to be posted in May 2022). Thereafter the most recent CPI reported as of July 1<sup>st</sup> of the current year will be compared to the CPI used from the previous year (e.g., the April CPI, usually posted in May compared against the CPI used from the previous year).

The Annual Inflation Adjuster shall be 75 percent of any increase or decrease in the CPI. The most recently reported CPI as of July 1<sup>st</sup> of current year less the CPI used from previous year equals the index point change. Multiply the index point change by 0.75 and then divide that number by the CPI used in the previous year and add 1 to equal the Inflation Adjustor. The Inflation Adjustor shall be rounded to the second decimal place.

The maximum Annual Inflation Adjustor, for each one-year period, shall not be less than 0.96 or exceed 1.04.

### Example of Annual Inflation Adjustor Calculation:

The first adjustment shall compare the most recently reported CPI to the first option year renewal date of July 1, 2023, (the April 2023 published CPI, anticipated to be posted in May 2023), to the reported CPI nearest to the Commencement Date (the April 2022 published CPI, anticipated to be posted in May 2022).

Use the example reported CPI nearest to the Commencement Date of July 1, 2022 (the April 2022 published CPI, anticipated to be posted in May 2022): CPI of 144.327.

Use the example most recently reported CPI to the first option year renewal date of July 1, 2023, (the April 2023 published CPI, anticipated to be posted in May 2023): CPI of 147.201.

Index Point Change:  $147.201 - 144.327 = 2.874$

Inflation Adjustor:  $(2.874 * .75) / 144.327 + 1 = \mathbf{1.01}$  (rounded to second decimal place).

Thereafter the most recent CPI reported as of July 1<sup>st</sup> of the current year will be compared to the CPI used from the previous year (e.g., the April CPI, usually posted in May compared against the CPI used from the previous year)].

### **Section 3.3**                      **Monthly Payments**

- (a) The Company shall provide the Authority and the County with a statement or invoice for all amounts payable hereunder by the fifth (5th) day of the calendar month immediately succeeding the calendar month for which such amounts are payable. Amounts invoiced are due forty-five (45) days after receipt of the invoice by the Authority. Each invoice shall set forth the amount of the Service Fee and other charges payable to the Company for the applicable period, together with supporting documentation, **including scale records**, sufficient to allow the recipient of the invoice to verify the Company's calculations of the Service Fee and other charges for such period. The amounts payable monthly, in accordance with Sections 3.1 and 3.2, are calculated as follows:
  - (i) The amount due for Service Fee payments shall be the product of the Service Fee multiplied by the aggregate number of tons of Acceptable Materials delivered by the Authority for the County, during the month, and adjusted based upon the appropriate threshold level; plus
  - (ii) Any Out-of-Hours Delivery Charges; minus
  - (iii) The amount of Alternate Disposal Damages, Alternate Procurement Damages and Delivery Delay Damages if any, plus
  - (iv) Approved pass through costs, if any.

**The Authority shall have no obligation to make payment for any amount of Acceptable Material delivered to the Acceptance Facility by any Person other than the County or the Authority or their Designated Hauler.**

All Company invoices and statements shall be delivered by e-mail to:

**Northeast Maryland Waste Disposal Authority**  
**Attention: Accounts Payable**  
**Phone: 410-333-2730**  
**Email: [tbaker@nmwda.org](mailto:tbaker@nmwda.org)**

With a copy to:

**[Deputy Director**  
**Anne Arundel County, DPW**  
**Bureau of Waste Management Services**  
**2662 Riva Road, 4th Fl., MS 7406**  
**Annapolis, MD 21401**

**[Bureau of Environmental Services**  
**Howard County, Maryland**  
**6751 Columbia Gateway Drive, Suite 514**  
**Columbia, MD 21046**  
**Attention: Budget Analyst**  
**Phone: 410-313-6444      Fax: 410-313-6490**  
**Email: \_\_\_\_\_]**

**Section 3.4                    Recycled Paper Requirement**

All documents related to this project must be printed on minimum 50% recycled contents paper. Each page must have “Recycled Paper” footer.

**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 and/or the County disputes any amount owed as the Service Fee, Out-of-Hours Delivery Charge pursuant to the Dispute Resolution section of this Agreement, Section 9.15, the classification of Waste made by the Company, or the amount of damages claimed by the Authority under Section 3.3(iii) or elsewhere herein, the disputed portion of such adjustment is not effective until resolution of a dispute, pursuant to Section 9.15. Immediately after the resolution of a disagreement about a Service Fee or Out-of-Hours Delivery Charge, classification of Waste or amount of damages, the Party whose position does not prevail shall reimburse the other Party for the aggregate amount of any underpayment or overpayment, plus interest at a Late Payment Rate pursuant to this Section.

**Section 3.7**                    **Books and Records, Audits and Reports**

- (a)     The Company shall maintain all books, records and accounts necessary to record all matters affecting the Service Fee, Out-of-Hours Delivery Charge, applicable damages or other amounts payable by or to the Authority or the Company under this Agreement or other agreements, including, but not limited to, policies for Required Insurance, policy amendments and all other related insurance documents. The Company shall maintain all such books, records and accounts in accordance with Generally Accepted Accounting Principles (“GAAP”) and for a period no less than seven (7) years after the termination of the Service Agreement. 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 and the County within five (5) Business Days of a written request by the Authority or County.
  
- (b)     The Company shall provide the Authority with the reports and information set forth in Schedule IV, Reporting Requirements, at the times required therein. The report format can be modified, with prior written approval of the Authority, to reflect the Facilities used by the Company to provide the Service.
  
- (c)     The Company certifies that all information the Company has provided, or will provide, to the Authority is true and correct and can be relied upon by the Authority in awarding, modifying, making payments, or taking any other action with respect to this Agreement. Any knowingly false material or misleading information is grounds for the Authority to terminate this Agreement, without opportunity to cure, and to pursue any other appropriate remedy.

**Section 3.8**                    **Accounting**

Beginning July 1, 2023, within sixty (60) days following the end of each of the Authority’s Fiscal Years, the Company shall provide an accounting to the Authority of all payments made by the Authority for the Fiscal Year and all amounts payable by the Authority for such Fiscal Year.

**Section 3.9**                    **County as Billing Agent**

At the option of the Authority, the County may be designated as the billing agent for the Authority with respect to invoices and payment attributed to the County Service. As the billing agent, the County shall receive all reports, invoices and related statements and compilations, based on the scale tickets and manifests, provided for under this Agreement and the County shall have all related review, approval and dispute rights. The data must be transferred electronically to the County, on or before the invoice date, by software compatible with the County’s data system.

## ARTICLE IV

### UNCONTROLLABLE CIRCUMSTANCES

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

(a) Effect of Uncontrollable Circumstances

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

(b) Changes Necessitated by Uncontrollable Circumstances

- (i) As soon as possible after an Uncontrollable Circumstance occurring on or after the Commencement Date, the Company shall give the Authority Representative a statement describing the Uncontrollable Circumstance and its cause (to the extent known to the Company), and a description of the conditions preventing the performance of the Company's obligations.
- (ii) If a Facility is not operational due to an Uncontrollable Circumstance, the Company must diligently pursue finding an alternate Facility. Alternate Disposal Facilities must be approved by the Authority. The Facilities presented in the Company's Proposal, as referenced in Schedule I herein, are deemed approved by the Authority. The Company may seek pre-approval of an Alternate Acceptance or Disposal Facility.
- (iii) The Company shall answer any inquiries of the Authority Representative regarding the conditions caused by the Uncontrollable Circumstance and shall provide them with such information as they reasonably request. Upon the request of the Authority Representative, a consulting engineer, at the Authority's expense, may review the Company's estimate of the time schedule and expenditures for repairing a Facility or the alleged causes of the Uncontrollable Circumstance.
- (iv) In the event of weather not typical of the region that may impact operations, the Authority and the Company shall cooperate to ensure continuation of the Service. This may include the Authority waiving the right to assess a Delivery Delay Damage during impaired operations.

## **Section 4.2 Change of Law**

(a) Change of Law

If there occurs an increase or decrease in a fee to transport or dispose of Acceptable Material imposed by any State or Local government, which the Company is obligated to pay, this shall be considered a (“Change of Law”).

(b) Notice of Change of Law.

Within 90 days of the adoption or promulgation of an asserted Change of Law, the Company or the Authority shall notify the other Party to this Agreement of such asserted change. Failure to provide such notification shall entitle the receiving Party to reject the Change of Law claim.

(c) The Company may pass through such an increase as an adjustment to the Service Fee if the Change of Law is promulgated by the County, for which the Services are provided, and the Change of Law relates to the Acceptance Facility. If the adjusted Service Fee exceeds 110% of the current Service Fee prior to the adjustment, the Authority may, at its sole discretion, elect to (1) terminate its Agreement with the Company or (2) reduce total deliveries of Acceptable Waste to the Company. If this Agreement is so terminated or Acceptable Waste deliveries are reduced, then neither Party shall be liable to the other Party for any amounts otherwise due hereunder, except for the Service Fee amounts due for Acceptable Material actually delivered prior to the effective date of the termination or reduction of deliveries.

(d) Grace Period.

To accommodate the Authority’s needs to do budget planning, including being able to rely upon budget projections, no Service Fee increase attributable to a Change of Law which occurs on or after the Commencement Date shall be paid by the Authority until (a) 60 days following the Company’s notification, or (b) the effective date of such Change of Law, whichever event is later. At that time, as part of the next monthly invoice submitted by the Company, the Authority shall pay the Company for any increased Service Fees resulting from the Change of Law that were incurred by the Company during the Grace Period.

## ARTICLE V

### INSURANCE AND INDEMNIFICATION

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

The Company shall obtain and maintain, and cause all subcontractors to obtain and maintain, 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 is required to be obtained by the Company pursuant to this Section 5.1 is ("Required Insurance") for all purposes of this Agreement. It will be an Event of Default pursuant to Section 6.1.9 if the Company fails to provide and maintain in full force and effect the Required Insurance policies required in this Agreement.

#### **Section 5.2**                    **Delivery of Evidence of Insurance; Certain Required Provisions**

- (a) Within ten (10) Business Days of execution of this Agreement by the Authority, and at any time thereafter, the Company shall deliver to the Authority copies of all certificates of insurance for Required Insurance and any policy amendments and policy renewals upon ten (10) Business Days after receipt by the Company. Except for Worker's Compensation Insurance, each policy shall name the Authority as certificate holder and the County as co-insured and require the insurer to provide the Authority sixty (60) days' prior written Notice of Termination or cancellation. The Company shall provide the Authority sixty (60) days' prior written notice of any change in coverage or deductibles under such policy.
- (b) The Company shall use only responsible insurance companies of recognized standing which are authorized to do business in Maryland as providers of all Required Insurance. The Company shall carry all Required Insurance with insurance companies rated at least "A-" or its equivalent by Best's Key Rating or another national rating organization. The Company may affect Required Insurance by endorsement of blanket insurance policies.
- (c) The Company shall not take out separate insurance concurrent in form or contribution in the event of loss with Required Insurance if the existence of such insurance reduces amounts payable under Required Insurance. The Company shall immediately notify the Authority whenever it applies for any separate insurance and shall promptly deliver the policy or policies evidencing the separate insurance to the Authority.
- (d) The Company shall submit to the appropriate insurer timely notices and claims of all losses insured under any Required Insurance policy, 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 policies for Required Insurance, policy amendments and other related insurance documents available for inspection and photocopying by the Authority on reasonable notice.



**Section 5.3****Indemnification**

The Company agrees to indemnify, hold harmless and defend the Authority, the State of Maryland and the County and their respective members, 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 out as a result of 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 directors, officers, employees or agents, or by the management of Unacceptable Material of unknown origin delivered to any Facility. This indemnification is not to be deemed as a waiver of any immunity, which may exist in any action against the Authority.

The Company shall also indemnify, defend, hold harmless and hereby waive any claim for contribution against the Authority, the State of Maryland, the County, or their respective members, directors, officers, agents and employees, for any Environmental Claim arising from the performance of the Company or its directors, 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.

## ARTICLE VI

### DEFAULT AND TERMINATION UPON DEFAULT

#### Section 6.1 The Company Events of Default

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

- 6.1.1 If the Company (or any guarantor of Company's obligation hereunder) 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 any guarantor of the Company's obligation hereunder) or of a major part of its property; or
- 6.1.2 If, by order of a court of competent jurisdiction, a receiver or liquidator or custodian or trustee of the Company (or any guarantor of the Company's obligation hereunder) or of a major part of its property is appointed and is not discharged within sixty (60) days, or if, by decree of such a court, the Company (or any guarantor of the Company's obligation hereunder) is adjudicated insolvent, or a major part of its property is sequestered, and such decree has continued undischarged and unstayed for sixty (60) days after the entry of such decree, or if a petition to reorganize the Company (or any guarantor of the Company's obligation hereunder) pursuant to the Federal Bankruptcy Code (11 U.S.C.) or any other similar statute applicable to the Company (or any guarantor of the Company's obligation hereunder), as now or hereinafter in effect, is filed against the Company (or any guarantor of the Company's obligation hereunder) and is not dismissed within sixty (60) days after such filing, or if the Company (or any guarantor of the Company's obligation hereunder) is adjudicated bankrupt or files a petition in voluntary bankruptcy under any provision of any Bankruptcy Law or consents to the filing of any bankruptcy or reorganization petition against the Company (or any guarantor of the Company's obligation hereunder) under any such Law, or (without limitation of the generality of the foregoing) files a petition to reorganize the Company (or any guarantor of the Company's obligation hereunder) pursuant to the Federal Bankruptcy Code (11 U.S.C.) or any other similar statute applicable to the Company (or any guarantor of the Company's obligation hereunder), as now or hereafter in effect; or
- 6.1.3 The Company assigns its rights or obligations under this Agreement or any part thereof to any person, company, partnership, corporation or other entity except as otherwise permitted hereunder; or
- 6.1.4 The Company disregards Federal, State and Local Laws or the lawful requirements of any competent authority or the instructions of the Authority consistent with this Agreement except to the extent such failure results from Default by the Authority in its obligations to make payment under; or
- 6.1.5 The Company fails or refuses to (A) design, engineer, procure, construct, operate, maintain, or repair a Facility in accordance with this Agreement or (B) to substantially fulfill any of its material obligations to the Authority in accordance with this Agreement, notwithstanding the

payment by the Company of any damages or other amounts provided for under this Agreement, unless such failure or refusal is excused or justified pursuant to this Agreement,

- 6.1.6 Any representation or warranty made by the Company herein or in any payment, invoice or related documentation submitted hereunder that is false or misleading in any material respect when made; or
- 6.1.7 The Company abandons or suspends progress of the Service for five (5) Business Days due to any reason other than an Authority Event of Default or Uncontrollable Circumstance that prevents the performance of certain elements of Service;
- 6.1.8 The Company fails to provide and maintain in full force and effect the Letter of Credit or Performance Bonds, as applicable, as required pursuant to this Agreement;
- 6.1.9 The Company fails to provide and maintain in full force and effect the insurance policies required pursuant to this Agreement;
- 6.1.10 The Company fails to achieve the agreed to milestones by the scheduled date in the Milestone Schedule; or
- 6.1.11 The Company fails to perform any obligation under this Agreement other than as specified above in this Section 6.1; No failure or refusal on the part of the Company described in Sections 6.1, except 6.1.10 constitute an Event of Default unless and until: (A) the Authority has given notice to the Company specifying with particularity the existence of such Default; and (B) the Company has failed to cure such Default within thirty (30) days after receipt of such notice.

## **Section 6.2 Authority Remedies**

In the case of one (1) or more Events of Default on the part of the Company pursuant to Section 6.1, the Authority shall have the following rights and remedies, in addition to those rights and remedies that may be available to the Authority at law or in equity, and the Company shall have the following obligations:

- 6.2.1 The Authority, without prejudice to any of its other rights or remedies, may upon five (5) Business Days' notice to the Company (A) suspend payment and/or (B) terminate the part of this Agreement that pertains to all or part of the Services on the date specified in a written Notice of Termination to the Company. For avoidance of doubt, the Authority may terminate the [Anne Arundel County Services] [Howard County Services] without terminating the Services relating to any other Participating Member and vice versa. If the Authority terminates the Services for some Participating Members, but not for all Participating Members, the Company shall continue to provide the unterminated Services in accordance with this Agreement.
- 6.2.2 Upon termination of this Agreement for all or part of the Services by the Authority for cause in accordance with Section 6.2.1 or for convenience in accordance with Section 6.6, the Company shall reasonably cooperate with the Authority, [Anne Arundel County] [Howard County] and/or the Participating Member and their designees to effect an orderly transition of the terminated Services and shall, (A) provide the Authority with detailed information

regarding the current status of the terminated Services, including, without limitation, the status of subcontracts, purchase orders, Facility permits and other agreements related to the terminated Services, and (B) enter into no further subcontracts, purchase orders or other agreements related to the terminated Services other than as requested by the Authority. The Authority shall not be responsible or liable for any of the Company's outstanding obligations and/or agreements for the terminated Services. The Authority may employ any other Person, company, partnership, corporation or other entity (hereinafter, a "Replacement Company") to perform the terminated Services.

- 6.2.3 If this Agreement is terminated by the Authority in accordance with Section 6.2 with respect to all or part of the Services for cause as a result of an Event of Default by the Company under Section 6.1 hereof, the Company shall be liable to reimburse the Authority for all costs and expenses incurred by the Authority in connection with terminating this Agreement and engaging a Replacement Company for the terminated Services. The Authority shall use its reasonable commercial efforts to mitigate such penalties, costs, expenses and damages. The Authority shall be entitled to withhold payments the Company determines are due to it prior to the date of termination until determination by the Authority that the Company is entitled to such payments. The Authority may in its discretion employ such other Person, company, partnership, corporation or other entity to perform the terminated Services by whatever method or means as the Authority in its sole discretion may deem expeditious.

### **Section 6.3 Authority Events of Default**

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

- 6.3.1 If the Authority makes an assignment for the benefit of creditors, or admits in writing an inability to pay debts generally as they become due, or consents to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of either the Authority or of a major part of the property; or
- 6.3.2 If, by order of a court of competent jurisdiction, a receiver or liquidator or custodian or trustee of the Authority or of a major part of its property is appointed and is not discharged within sixty (60) days, or if, by decree of such a court, the Authority is adjudicated insolvent, or a major part of its property is sequestered, and such decree has continued undischarged and unstayed for sixty (60) days after the entry of such decree, or if a petition to reorganize the Authority pursuant to the Federal Bankruptcy Code (11 U.S.C.) or any other similar statute applicable to the Authority, as now or hereinafter in effect, is filed against the Authority and is not dismissed within sixty (60) days after such filing, or if the Authority is adjudicated bankrupt or files a petition in voluntary bankruptcy under any provision of any Bankruptcy Law or consents to the filing of any bankruptcy or reorganization petition against the Authority under any such Law, or (without limitation of the generality of the foregoing) files a petition to reorganize the Authority pursuant to the Federal Bankruptcy Code (11 U.S.C.) or any other similar statute applicable to the Authority, as now or hereafter in effect; or
- 6.3.3 The failure by the Authority to pay any amount in excess of two (2) months of the Service Fee that the Authority is required to pay to the Company under this Agreement or to establish an escrow account if there is an ongoing dispute within sixty (60) days after receipt by the

Authority of written demand from the Company accompanied by notice stating that unless such amount is paid within sixty (60) days after such demand the failure shall constitute an Event of Default.

- 6.3.4 Authority fails to substantially fulfill any of its material obligations to the Company in accordance with this Agreement.

No failure or refusal on the part of the Authority described in Section 6.3 shall constitute an Event of Default unless and until: (A) The Company has given notice to the Authority and the County specifying with particularity the existence of such Default; and (B) the Authority or County has neither corrected such Default nor initiated actions reasonably likely to cure such Default within thirty (30) days after receipt of such notice; except for 6.3.3 where in the cure period is sixty (60) days.

If an Event of Default of the Authority arises and relates only to a Default by one of the Participating Members and not to the other Participating Members, the Company may exercise remedies only with respect to Services to be provided for that Participating Member.

#### **Section 6.4                    The Company Remedies**

The Company may elect to suspend the performance of the Services to [Anne Arundel County] [Howard County] for cause as a result of an Event of Default by the Authority under Section 6.3 that arises due to the failure of [Anne Arundel County] [Howard County] to pay amounts due in respect of only the Services provided in respect of deliveries by [Anne Arundel County] [Howard County] or if the Authority's failure to perform obligations as described in Section 6.3.4 arises solely from the failure of [Anne Arundel County] [Howard County] to perform obligations under the Waste Disposal Agreement, upon delivery of a notice of such suspension or termination to the Authority. Likewise, the Company may elect to suspend the performance of only the Services to another Participating Member for cause as a result of an Event of Default by the Authority under Section 6.3 that arises due to the failure of that Participating Member to pay amounts due with respect to the Services provided for deliveries by that Participating Member, upon delivery of a notice of such suspension or termination to the Authority.

- 6.4.1 If the Company suspends the performance of the Services pursuant to this Section 6.4, then such suspension shall terminate upon cure of the Event of Default by the Authority, at which time the Company shall immediately recommence performance of the suspended Services.
- 6.4.2 If the Company terminates this Agreement regarding Services to [Anne Arundel County] [Howard County] pursuant to this Section 6.4, then the Company shall have the right to compensation for Services actually performed up to the date of termination. The Company's right to such payment shall constitute the Company's sole remedy for such termination of this Agreement with respect to all or part of the Services. The Company further agrees that in the event that Section 6.4 is exercised, that the Company shall work in good faith with the impacted jurisdictions to offer direct contractual solutions to minimize operational impact to the County should the County or Counties impacted consider it appropriate.

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

If, as a result of the occurrence of one or more Uncontrollable Circumstances, the Acceptance Facility is closed for five (5) or more consecutive days, then the Authority shall have the option to partially terminate this Agreement only as to those performance conditions and obligations related to [Anne Arundel County] [Howard County] upon notice to the Company. If this Agreement is partially terminated for a certain Uncontrollable Circumstance, then neither Party shall owe or be liable to the other Party for any amounts otherwise due hereunder, except for (i) Service Fee amounts due for Waste actually delivered related to [Anne Arundel County] [Howard County] prior to the effective date of the termination and (ii) amounts due in accordance with Section 5.3 "Indemnification."

**Section 6.6**                    **Termination for Convenience**

Notwithstanding, any other provision of this Agreement to the contrary and subject to State Law, the Authority may partially terminate or fully terminate this Agreement and its obligations to the Company as it solely pertains to the Services for [Anne Arundel County] [Howard County] under this Agreement at any time by giving the Company thirty (30) days' notice of such partial termination. More specifically, the Service Agreement may be terminated without cause at the Authority's sole discretion pursuant to COMAR 21.07.01.12A (2). Under COMAR 21.07.01.12A (2) the Authority has the ability to terminate an Agreement without cause if such termination is in the best interest of the Authority (and County). Termination procedures and costs are further described in COMAR 21.07.01.12 and in Schedule VII herein. Any exercise of a termination for convenience with respect to Services for another Participating Member shall not affect the rights under this Section.

**Section 6.7**                    **Survival of Certain Rights and Obligations**

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

**Section 6.8**                    **Alternate Disposal Damages**

If the Company refuses or fails to accept, transport and dispose of Acceptable Material delivered to the Acceptance Facility, Disposal Facility or other Facility, damages of \$100 per ton and 100% of all costs for Unacceptable Material, adjusted for inflation starting on the Proposal Date, as defined in Schedule II, will be assessed. These damages will be withheld from the monthly payment as set forth in Section 3.3.

**Section 6.9**                    **Delivery Delay Damages**

The Authority is entitled to assess Delivery Delay Damages in an amount equal to fifty percent (50%) of the applicable Service Fee for every ton of Acceptable Material delivered by any vehicle delivering Waste at the Acceptance Facility for which the waiting time exceeds thirty (30) minutes due solely to the Company's failure to accept Acceptable Material at the Acceptance Facility or other causes solely within Company's control. The waiting time shall be measured as presented in the definition of Delivery Delay Damages found in Schedule II herein.

**Section 6.10**                    **Expectations of Communications**

In the event that the Acceptance Facility or another Facility cannot accept Acceptable Material, or expects a reduction in Service, or experiences a Scale Outage, the Company shall immediately contact the Authority and the County and advise each Party as to the current operations and the schedule for the resumption of normal operations.

Within ten (10) days of execution of the Agreement the Authority and the County will provide contact information to the Company. The Company shall prepare and distribute to the County and Authority Representatives an emergency contact list for the Service. The Company shall be responsible for all costs associated with this endeavor. The Company shall update this list periodically, but no less than annually or when personnel changes in the Company warrant an update.

**Section 6.11**                    **Performance Guarantee**

Guarantor has guaranteed the performance of the Company's obligations under this Agreement, including all obligations during the extension period and otherwise. The performance guarantee form is listed in Schedule V. The Performance Bond or Letter of Credit amount covers the initial Agreement term. The Company shall cause the Performance Bond or Letter of Credit to remain in effect during each option year and deliver evidence to the Authority and County on an annual basis that the same is still in effect, by July 1 of each renewal period.

## ARTICLE VII

### TERM; OPTIONS TO RENEW

#### **Section 7.1**            **Term**

The initial term begins on the Commencement Date and ends [(For Anne Arundel County) June 30, 2024, with nine additional twelve-month options to renew at the Authority's sole discretion, with the last possible term running until the end of the day (11:59 PM) on June 30, 2033] [(For Howard County) June 30, 2023, with ten additional twelve-month options to renew at the Authority's sole discretion, with the last possible term running until the end of the day (11:59 PM) on June 30, 2033], at the rates set forth in Schedule III of the Service Agreement. All times referenced in this Agreement refer to local time.

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

The Authority shall give the Company one hundred and twenty (120) days' notice of its intent to renew the Service Agreement for each option year.

During any option year all terms of this Agreement shall remain in full force and effect. The maximum number of tons per year received at the Acceptance Facility, as stated on the Proposal Forms, can be increased at any time upon mutual written agreement by the Company, Authority and Counties in an amendment to the Service Agreement. The revised maximum tonnage can apply to a specific year, or remaining term, as determined by the mutual written amendment to the Service Agreement. The maximum per ton price as set forth in the Proposal Forms shall apply to any increased maximum tonnage.



## 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 with good standing under the Laws of the state of its incorporation or organization, with full legal right, power and authority to enter into and perform its obligations under this 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) The Company has duly authorized the execution and delivery of this Agreement and this Agreement has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

- (c) Neither the execution or delivery by the Company of this Agreement, nor the performance by the Company of its obligations in connection with the transactions contemplated hereby, or the fulfillment by the Company of the terms or conditions of this Agreement (i) conflicts with, violates or results in a breach of any Applicable Law, or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the Company is a party or by which the Company or any of its properties or assets are bound, or constitutes a default thereunder or (iii) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Company.
- (d) No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Authority is required for the valid execution and delivery of this Agreement by the Company, except such as have been duly obtained or made.
- (e) Except as disclosed to the Authority, in writing, there is no action, suit or proceeding, at Law or in equity, before or by any court or Governmental Authority, pending or, to the best of the Company's knowledge, threatened, against the Company, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Company of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the Authority in connection with the transactions contemplated hereby.

## ARTICLE IX

### MISCELLANEOUS

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

- (a) The Authority Representative is the Executive Director of the Authority or his/her designee.
- (b) The County Representative is the [(for Anne Arundel County) Deputy Director of the Department of Public Works, Bureau of Waste Management Services for the County or his/her designee] [(for Howard County) Chief of the Bureau of Environmental Services for the County or his/her designee].
- (c) The Company Representative is the President of the Company or any Person of the Company who the Company designates as the Company Representative and who is authorized to contractually bind the Company.
- (d) Any Party may change its authorized representative upon five (5) Business Days written notice to the other Parties. Only the Authority Representative or the Company Representative may make the approvals, requests and notices by a Party to the other Party under this Agreement. Only the Authority Representative or Company Representative may amend or modify this Agreement and issue a change of work order (“Change Order”).

#### **Section 9.2**            **Assignment and Authority Member Jurisdiction Ride-on**

The Company may not assign this Agreement or part of this Agreement without the prior written consent of the Authority. The Authority may partially assign this Agreement to [Anne Arundel County] [Howard County], Maryland with respect to those matters related to [Anne Arundel County] [Howard County] without the written consent of the Company.

The Authority intends to allow other Authority Member Jurisdictions, or other municipalities, to “piggy-back” on the Service being procured by the Authority, subject to the approval of both the County and the Company. If the County and Company approve those Services provided to other Authority Members or other municipalities, may be addressed in an amendment to this Agreement or in a separate Participating Member Service Agreement.

Entities other than Authority Members and municipalities may piggy-back on the Service provided under this Agreement only with both the County and Company’s express written consent. [In the event other Authority Members, municipalities or entities use the Agreement and/or Waste Disposal Agreement, the tiered pricing will be determined by the sum of all tonnages brought in under this Agreement. The tiered pricing will be applicable to all Acceptable Material directed to the Company under the Agreement].

#### **Section 9.3**            **Notices**

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

delivered by hand or mailed by first class registered or certified mail, return receipt requested, postage prepaid, and in any case shall be addressed as follows:

If to the Authority:

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

With a copy to:

**[Deputy Director**  
**Anne Arundel County, DPW, Bureau of Waste Management Services**  
**2662 Riva Road, 4th Fl., MS 7406**  
**Annapolis, MD 21401**  
**410.222.7425**  
**Fax: 410.222.4484]**

**[Chief, Bureau of Environmental Service**  
**Howard County, Maryland**  
**9801 Broken Land Parkway**  
**Columbia, MD 21046**  
**Phone: 410-313-6444**  
**Fax: 410-313-6490]**

If to the Company:

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

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

**Section 9.4                    Entire and Complete Agreement**

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

**In the event of a conflict among these contract documents, the Service Agreement shall prevail over the RFP and Addenda. The RFP and Addenda shall prevail over the Company's Proposals. All price and payment obligations and rights thereof for the Services are described in Article III 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**

Federal Law, Laws of the State of Maryland and Local ordinances of [Anne Arundel County] [Howard County] will govern the validity, interpretation, construction and performance of this Agreement.

**Section 9.8            Counterparts**

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

**Section 9.9            Amendment or Waiver**

Neither the Authority nor the Company may change, modify, amend or waive this Agreement or any provision of this Agreement except by a written instrument signed by authorized representative of the Party against whom enforcement of such change, modification, amendment or waiver is sought.

**Section 9.10          Relationship of the Parties**

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

**Section 9.11          Confidential Information**

The rights and obligations of the Parties set forth herein with respect to Confidential Information are subject to Applicable Law, including Title 10, Subtitle 6 of the State Government Article of the Annotated Code of Maryland, as amended, and Title 4 of the General Provisions Article of the Annotated Code of Maryland, as amended.

To the extent permitted by Applicable Law, the Authority shall hold Confidential Information in strict confidence and take all reasonable precautions to prevent disclosure to third-Parties. The Authority shall promptly notify the Company of the identity of any Person who requests a disclosure of Confidential Information. The Authority in its sole discretion shall determine the response to any request for disclosure of Confidential Information and is not required to withhold disclosure of Confidential Information upon a lawful request for information. The Authority shall consider any information or legal arguments presented by the Company before the disclosure of the requested information. The Authority will not be liable for any legal issue associated with the Company's position.

The Company should specifically identify Confidential Information by marking the applicable pages "CONFIDENTIAL." However, the Company understands that the Authority in its sole discretion may determine that disclosure of some information is required under the Maryland Public Information Act and the Company agrees to hold the Authority HARMLESS with respect to any such disclosure. The Authority will give notice to the Company of any requests for disclosure of information identified as Confidential Information.

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

#### **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 or County of any obligation under this Agreement, is the Authority or County 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 Contract, if not resolved by the Parties, shall be resolved by courts of competent jurisdiction in the State of Maryland, venue is [Anne Arundel County] [Howard County], and in accordance with the Laws of the State of Maryland, without regard to any choice of law principles. Pending resolution of any dispute, the Company is obligated to continue performance of the contract.

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

- (a) Notwithstanding any other provision of this Agreement to the contrary, the obligations of the Authority to the Company under this Agreement are limited to the obligations of the Authority under the Waste Disposal Agreement (the "WDA") to the extent such obligations are satisfied. Neither the Authority nor the County will be liable to the Company for consequential damages of any type. The Authority represents that payments to be received from the County under the Waste Disposal Agreement are or will be sufficient to make monetary payments to the Company.
- (b) Notwithstanding any other provision of this Agreement to the contrary, the liability and obligation of the Authority for all monetary payments with respect to this Agreement are limited obligations payable solely from WDA revenues as and to the extent such WDA revenues are received and available to pay such amounts under Applicable Law. The Authority represents that revenues to be received from the County are or will be sufficient to make monetary payments to the Company. The liability of the Authority for any such monetary payments with respect to this Agreement are not payable from the general funds of the Authority and the incurrence or nonperformance of such obligations or payments shall not constitute or create a legal or equitable pledge of, or lien or encumbrance upon, or claim against, any of the assets or property of the Authority or of its income, receipts or revenues. Notwithstanding any provision of this Agreement to the contrary, the Company may bring legal action against the Authority if WDA revenues received from the County are not sufficient to make monetary payments to the Company.
- (c) No recourse for the payment of any amounts due by the Authority under this Agreement or upon any representation, warranty, covenant, agreement or obligation contained in this Agreement or in any document, certificate or instrument that this Agreement requires to be executed and delivered by the Authority or for any claim herein or therein shall be had by the Company, except from WDA revenues.
- (d) The execution and delivery of this Agreement by the Authority shall not impose any personal liability on the Members, officers, directors, employees or agents of the Authority. No recourse shall be had by the Company for any claims based on this Agreement against any Member, officer, director, 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.

- (e) Unless specifically excused by this Agreement, the Company shall not assert impossibility or impracticability of performance, the existence, nonexistence, occurrence or nonoccurrence of a foreseen or unforeseen fact, event or contingency that may be a basic assumption of the Company, or commercial frustration of purpose as a defense against any claim by the Authority against the Company.

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

The County is a third-Party beneficiary of all of the obligations of the Company under this Agreement for the life of the Waste Disposal Agreement. The County has the right, but not the obligation, to enforce rights, remedies, powers and privileges of the Authority under this Agreement if the County provides ten (10) days' prior written notice to the Authority and the Company. Unless such prior notice is given by the County, it is understood by all Parties that the Authority Representative shall have the authority to direct the Company with respect to the Authority's and County's rights herein and the Company shall have the right to rely on such direction.

**Section 9.18                    Nondiscrimination**

The Company shall not discriminate or permit discrimination against a Person because of race, creed, color, religion, national origin, religion, ancestry, sex, age, or disability or any other basis that would be a violation of Federal, State or local Law. This provision prohibiting discrimination is a material term of this Agreement.

**Section 9.19                    Minority Business Enterprise/Women Business Enterprise Participation Requirements**

It is the policy of the County to ensure equal employment opportunities for all Persons, and to ensure that MBE and WBE, minority and women-owned business enterprises, have the maximum opportunity to participate in the performance of all County contracts for supplies and services.

**Section 9.20                    Public Ethics**

- (a) The Authority may terminate the right of the Company to proceed under this Agreement if it is found by the Authority that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Company, or any agent or representative of the Company, to any officer or employee of the Authority with a view toward securing this Agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of this Agreement; the facts upon which the Authority makes such findings may be reviewed in any competent court.
- (b) In the event this Agreement is terminated as provided in paragraph (a), above, the Authority shall be entitled (i) to pursue the same remedies against the Company as it could pursue in the event of a breach of the Agreement by the Company, and (ii) in addition to any other damages to which it may be entitled by Law, to exemplary damages in an amount (as determined by the Authority) which shall be not less than three (3) nor more than ten (10) 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 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:** \_\_\_\_\_  
**Print Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**IN WITNESS WHEREOF**, [COMPANY] has caused this Service Agreement to be executed, intending that it should be under seal, in its name by its authorized representative and has caused its corporate seal to be attached to this Service Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**WITNESS:**

**[COMPANY]**

\_\_\_\_\_

**By:** \_\_\_\_\_  
**[Company Representative]**  
**Print Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

## **SCHEDULE I**

### **TO SERVICE AGREEMENT**

#### **DESCRIPTION OF THE SERVICE**

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

1. The Request for Proposals (“RFP”) issued on July 1, 2021.
2. Addenda and clarifications to the RFP issued as follows:
3. The Company’s final Technical and Price Proposals submitted\_\_\_\_\_.

Pursuant to Section 9.4 of this Agreement, the Agreement shall prevail over the RFP and Addenda. The RFP and Addenda shall prevail over the Company’s Proposals. All price and payment obligations and rights for the Services are described in Article III of this Agreement.

**SCHEDULE II**  
**TO SERVICE AGREEMENT**

**DEFINITIONS**

**“Acceptable Material”** means all Waste which is not Unacceptable Material and typically includes:

- A. Garbage, trash, rubbish and refuse of the kinds normally generated by residential housing units and commercial establishments, including, without limitation:
  - 1. large items such as beds, mattresses, sofas, bicycles, baby carriages, automobile parts, tires and roofing Wastes of the types that are generally collected by the municipal and private haulers from residential housing units, or which are delivered to citizen drop-off locations; and
  - 2. brush, branches, leaves, twigs, grass and plant cuttings or other organic material such as food scraps, which are not separately collected, unless allowed to be accepted under the Acceptance Facility permit(s) in effect.
- B. Commercial Waste normally generated by governmental, commercial and manufacturing establishments.
- C. Construction and demolition debris.
- D. Residue from a materials resource recovery facility (including, but not limited to Wastes or residues generated during or after the processing of Recyclables), a composting facility (including, but not limited to non-organic screenings) or a Waste-to-energy facility (including, but not limited to material that is not Unacceptable Material such as (a) bottom ash, fly ash, grate siftings, scrubber residue, unspent lime and other material which remains after combustion of Waste and recovery of metals).
- E. Mined landfill Waste.
- F. Disaster debris, which is not Hazardous Waste and is the type of Waste allowed to be accepted under the Acceptance Facility’s permit(s) in effect.

**“Acceptance Facility”** means the Company’s primary Facility, located at:  
\_\_\_\_\_ that will accept vehicles with Acceptable Material.

**“Addenda” or “Addendum”** means any amendment(s) made and issued by the Authority during the course of the RFP process to modify or clarify terms, items and intent in the RFP and its attached Service Agreement. These Addenda are to describe changes, interpretations, or clarifications considered necessary by the Counties in response to Proposer's written questions. Only answers issued by formal written Addenda will be binding on the Authority. Oral and other interpretations or clarifications will be without legal effect.

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

**“Agreement” or “Service Agreement”** means this contract between the Authority and the Company (including Schedules I through VII to this Agreement).

**“Agreement Date”** means the last date this contract is signed by the Parties.

**“Alternate Acceptance Facility” or “Alternate Acceptance Facilities”** means the Solid Waste Acceptance Facility identified by the Company as the Facility for acceptance of Acceptable Material delivered by the Authority under the Agreement, if the primary Acceptance Facilities are not available. Pursuant to Section 2.10 herein, the Acceptance Facility must comply with all Federal, State and Local regulations.

**“Alternate Disposal Damages”** are damages incurred by the Authority or the County as a result of the failure of the Company to fulfill its obligations under this Agreement. These damages are the sum of the actual disposal rate incurred per ton of Acceptable Material, and 100% of all costs associated with Unacceptable Material plus reasonable administrative fees (as applicable) and subject to the Annual Inflation Adjuster. These damages include the Company’s failure to accept Acceptable Material at the Acceptance Facility.

**“Alternate Disposal Facility” or “Alternate Disposal Facilities”** means the Solid Waste Disposal Facility identified by the Company as the Facility for final disposal of Acceptable Material delivered by the Authority under the Agreement, if the primary Disposal Facilities are not available. Pursuant to Section 2.10 herein, the Disposal Facility must comply with all Federal, State and Local regulations. If the Acceptable Material is delivered to a Waste-to-energy Facility, or other processing Facility the Company must provide a Disposal Facility for all residues, non-processible and bypass Waste.

**“Alternate Procurement Damages”** means an amount equal to the reasonable and direct costs estimated to be incurred by the Authority and the County to procure another company to provide the Service. In no event may Alternate Procurement Damages exceed actual costs incurred by the Authority and County in procuring another company pursuant to Section 3.3 of this Agreement.

[**“Anne Arundel County Payments”** means the amounts paid by Anne Arundel County under the Anne Arundel County Waste Disposal Agreement as and to the extent such Anne Arundel County Payments are received and available to pay such amounts under Applicable Law.]

**“Annual Inflation Adjuster” or “Inflation Adjuster”** means the annual adjustment of the Service Fee using the Bureau of Labor Statistics Consumer Price Index (“CPI”) for all Urban Consumers for Baltimore-Columbia-Towson, MD and Washington-Arlington-Alexandria, DC-VA-MD-WV - All Items (1982-84=100). Washington-Arlington-Alexandria, DC-VA-MD-WV includes Frederick and

Montgomery Counties in Maryland while Baltimore-Columbia-Towson, MD includes Baltimore City and Anne Arundel, Baltimore, Carroll, Harford and Howard Counties in Maryland.

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

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

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

**"Board of Directors" or "Board"** means the Authority's Board of Directors who are recommended by the executive branch of each Member Jurisdiction and then appointed by the Governor of Maryland for four-year terms. The Director of the Maryland Environmental Service serves as an ex officio Member.

**"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.

**"Bypass Waste"** means Acceptable Material delivered or available for delivery to a Waste-to-energy Facility which is wrongfully refused acceptance or combustion at the Waste-to-energy Facility.

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

**"Change Order"** means a change or modification in the scope of work or other material item in the Agreement, as amended in writing by both the Authority Representative and Company Representative in a change of work order.

**"Commencement Date"** means \_\_\_\_\_, 20\_\_.

**"Company"** means \_\_\_\_\_ and its permitted successors and assigns.

**"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 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 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. The management of Confidential Information will follow procedures as proscribed in Section 9.11 herein.

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

**"County"** means, [Anne Arundel County, the Anne Arundel County Executive, the County Council of Anne Arundel County, Maryland and their successors and permitted assigns] [Howard County, the Howard County Executive, the County Council of Howard County, Maryland and their successors and permitted assigns].

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

**"Designated Hauler(s)"** means the hauler(s) that collect the non-recycled municipal Solid Waste managed by, or on behalf of, the County.

**"Delivery Delay Damages"** The Authority is entitled to assess Delivery Delay Damages in an amount equal to fifty percent (50%) of the applicable Service Fee for every ton of Acceptable Material delivered by any vehicle delivering Waste at the Acceptance Facility for which the waiting time exceeds thirty (30) minutes due to the failure of the Company to supply Acceptable Material acceptance at the Company Facility. The waiting time shall be measured by taking the difference between the time recorded on the scale ticket on arrival at the Company Facility, or the time of arrival at the Facility as recorded by the driver and the time recorded on the scale ticket at the outbound scale of the Company Facility. The Company will not be assessed damages if the delay is the result of an unrelated third-Party hauler delivering Waste to the Facility. The Company will only be liable for Delivery Delay Damages if the Company's actions cause the delay.

**"Disposal Facility"** means the Solid Waste Disposal Facility identified by the Company as the Facility for final disposal of Acceptable Material delivered by the Authority under the Agreement. Pursuant to Section 2.10 herein, the Disposal Facility must comply with all Federal, State and Local regulations. If the Acceptable Material is delivered to a Waste-to-energy Facility, or other processing Facility the Company must provide a Disposal Facility for all residues, non-processible and bypass Waste.

**"Environmental Claim"** means any investigation, notice, violation, demand, allegation, action, suit, injunction, judgment, order, consent decree, penalty, fine, lien, proceeding or claim arising (a) pursuant to, or in connection with, an actual or alleged violation of, any Environmental Law, (b) in connection with any Unacceptable Material, Hazardous Waste or actual or alleged Hazardous Waste Activity, (c) from any abatement, removal, remedial, corrective, or other response action in

connection with Unacceptable Material and 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 Unacceptable Material or 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.

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

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

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

**"Generally Accepted Accounting Principles" or "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.

**"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 Federal, State, regional, county, or Local Person or body having governmental or quasi-governmental authority or subdivision thereof.

**"Guarantor"** means [name of COMPANY, if applicable].

**"Hazardous Waste"** means:

- A. Any Waste or substance, the treatment, storage or disposal of which, because of the composition or characteristics of the Waste or substance, is unlawful to treat, store or



dispose of at the Acceptance or Disposal Facility or other Facilities to be used in providing the Service and is considered Hazardous Waste under Applicable Law, including, without limitation, Wastes that are:

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

**"Hazardous Waste Activity"** shall mean any activity, event, or occurrence involving 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.

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

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

**"Howard County Payments"** means the amounts paid by Howard County under the Howard County Waste Disposal Agreement as and to the extent such Howard County Payments are received and available to pay such amounts under Applicable Law.]

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

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

**"Legal Requirement"** means any treaty, convention, statute, Law, regulation, ordinance, Governmental Approval, injunction, judgment, order, consent decree, or other requirement of any Governmental Authority.

**“Letter of Credit”** means the Letter of Credit relating to the provision of the Service in substantially the form set forth in Schedule V.

**“Member Jurisdiction(s)” or “Member(s)”** means Anne Arundel County, Baltimore City, Baltimore County, Carroll County, Frederick County, Harford County, Howard County and Montgomery County, Maryland.

**“Milestone Schedule”** means the date(s) required in this Agreement for the Company to achieve specified milestones with respect to the performance of the Services.

**“Minority Business Enterprise” or “MBE”** means any legal entity other than a joint venture, organized to engage in commercial transactions which is at least 51 percent owned and controlled by one or more Minority Person, or a nonprofit entity organized to promote the interest of the physically or mentally disabled.

**“Minority Person”** means a member of a socially or economically disadvantaged minority group, which for purposes of this policy includes Blacks (not of Hispanic origin), Hispanics, American Indians, Alaska natives, Asians, Pacific Islanders, women, and the physically or mentally disabled.

**“Monthly Tonnages Report Form”** means the monthly report required to be submitted along with the monthly invoice by the Company, as described in Schedule IV.

**“Natural Disaster”** as defined, means a fire, flood, storm, tidal wave, earthquake or other similar public calamity resulting from natural causes, which, due to the magnitude of the occurrence, warrants the declaration of a local emergency by the governing body of the county or city in which the disaster has occurred.

**“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.

**“Non-Processible Waste”** means (a) Hazardous Material; (b) dirt, concrete and other construction material and demolition debris; (c) refrigerators, washing machines, large appliances and similar material (“White Goods”); (d) large items of machinery, equipment and mechanical parts, such as motor vehicles and major components thereof, agricultural equipment, trailers and marine vessels, or any other large item of Waste; (e) sludge, sewage, Wastewater and septic, cesspool, human, animal, offal and liquid Waste; (f) incinerator residue, ashes, foundry sands, and large concentrations of plastics disposed of as Wastes; (g) oil, paints, acids, caustics, poisons, asbestos, chemicals, highly ignitable substances, explosives and ordnance materials; and (h) any other materials the receipt and combustion of which is likely to cause damage to or otherwise materially and adversely affect the operation of the Facility, constitute a material threat to health or safety, or violate or cause the violation of any Applicable Law or any Governmental Approval.

**“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.

**“Officer”** means an official of a bank empowered to make binding agreements and statements on behalf of the bank.

**“Out-of-Hours Delivery Charge”** means the charge for tons delivered outside of the Receiving Hours. The Out-of-Hours Delivery Charge shall be 3% above the per ton price. The Out-of-Hours Delivery Charge will not be charged for Acceptable Material delivered between the hours of 5:00 p.m. and 7:00 p.m. on the first regular collection day following a Holiday. The Out-of-Hours Delivery Charge will not apply for any hours the Acceptance Facility is open to receive Acceptable Material from sources other than the Authority.

**“Participating Member”** means another Authority Member Jurisdiction that was not originally included in this procurement, such as Baltimore City, Baltimore County, Carroll County, Frederick County, Harford County and Montgomery County.

**“Participating Member Payments”** means the amounts paid by [Anne Arundel County] [Howard County] under the [Anne Arundel County Waste Disposal Agreement (“Anne Arundel County Payments”)] [Howard County Waste Disposal Agreement (“Howard County Payments”)] or the case of deliveries under a Participating Member Waste Disposal Agreement, amounts paid by the Participating Member as and to the extent such [Anne Arundel County Payments] [Howard County Payments] or Participating Member Payments are received and available to pay such amounts under Applicable Law.

**“Participating Member Service Agreement”** means another Authority Member Jurisdiction that the Authority enters into a Service Agreement on behalf of, that was not originally included in this procurement, such as Baltimore City, Baltimore County, Carroll County, Frederick County, Harford County and Montgomery County.

**“Participating Member Waste Disposal Agreement”** means another Authority Member Jurisdiction that the Authority enters into a Waste Disposal Agreement with, that was not originally included in this procurement, such as Baltimore City, Baltimore County, Carroll County, Frederick County, Harford County and Montgomery County.

**“Performance Bond”** means the Performance Bond relating to the provision of the Service in substantially the form set forth in Schedule V.

**“Parties” or “Party”** means the entities of the Authority, Company and County.

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

**“Process”** means to separate, combine, combust, compact, load or otherwise handle Waste delivered to a Facility in accordance with all Applicable Federal, Maryland and County Law and Ordinances.

**“Proposal” including “Technical Proposal” or “Price Proposal”** means the Company’s final Technical and Price Proposals submitted on \_\_\_\_\_ in response to the Authority’s RFP.

**“Proposal Date”** means \_\_\_\_\_, 20\_\_.

**“RCRA” or “Resource Conservation and Recovery Act”** means the Resource Conservation and Recovery Act, 42 U.S.C.A. §6901 *et seq.*, and applicable regulations promulgated thereunder, each as amended from time to time.

**“Receiving Hours”** means from 7 a.m. until 5 p.m. Monday through Saturday, except Holidays. On collection days after a Holiday (which may include Saturday), the Facility must remain open until 7 p.m., or such other hours as may be established in writing from time to time by the Authority Representative and the Company Representative.

**“Recyclables” or “Recyclable Material”** means paper, plastic, metal and glass that have been source-separated from the Waste. It also means yard waste, source separated from Waste or source separated paper, plastic, metal and glass.

**“Release”** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the indoor or outdoor environment (in the soil, groundwater, surface water and the air), including, without limitation, the abandonment or discarding of barrels, drums, containers, tanks or other receptacles containing or previously containing any fuel, oil, Unacceptable Material or Hazardous Waste.

**“Replacement Company”** means any other Person, company, partnership, corporation or entity, other than the Company, in an agreement with the Authority to perform the Service.

**“Request for Proposals” or “RFP”** means the Authority’s Request for Proposals, issued on July 1, 2021.

**“Required Insurance”** means the types and amounts of insurance set forth in Schedule VI.

**“Scale Outage”** means when portable scales or other alternate weighing Facilities and equipment meeting the requirements of Applicable Law are not available for use.

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

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

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

**“TPD”** means Tons Per Day.

**“TPY”** means Tons Per Year.

**“Unacceptable Material”** means:

- (A) Hazardous Waste; and
- (B) That portion of Solid Waste the disposal of which (i) may present a substantial endangerment to public health or safety, or (ii) would cause Applicable Law to be violated, or (iii) is likely to materially adversely affect the operation of a Facility; provided, however, that if such Unacceptable Material (other than Hazardous Waste)

is delivered in quantities and concentrations as determined by the Authority and as part of normal collections so as not to have the effect described in clauses (i), (ii) and (iii) above it shall constitute Acceptable Material unless otherwise directed by State or Federal regulatory authorities. The Unacceptable Material described in this paragraph (b) shall include:

- (1) Pathological and biological Waste, explosives, medical and infectious Waste, cesspool and other human Waste, sewage sludge, 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.
- (C) Does not include Acceptable Material set forth by the appropriate permits and orders contained in Section 2.10 of this Agreement.

**"Unacceptable Material Costs"** means (1) with respect to Unacceptable Material proven to have been delivered to the Acceptance Facility on behalf of the Authority. The Authority or responsible third-Party identified by the Company will be responsible for all the actual costs of the removal and disposal of such Unacceptable Material and all other costs and liabilities associated with or arising from the delivery, removal, or disposal of such Unacceptable Material, including damages, claims, demands, expenses, suits or actions, reasonable appeals, fines, penalties and attorney fees; or (2) with respect to Unacceptable Material of un-documented origin delivered to a Facility. The Company or responsible third-Party identified by the Company will be responsible for all the actual costs of the removal and disposal of such Unacceptable Material and all other costs and liabilities associated with or arising from the delivery, removal, or disposal of such Unacceptable Material, including damages, claims, demands, expenses, suits or actions, reasonable appeals, fines, penalties and attorney fees.

**"Uncontrollable Circumstance"** means, pursuant to Section 4.1 of this Agreement, an event or condition listed in this definition, whether affecting the Authority, the County or the Company, that has, or may reasonably be expected to have, a material adverse effect on the operation of a Facility, if such event or condition is beyond the reasonable control, and not the result of willful or negligent action or a lack of due diligence, of the Non-performing Party relying thereon as justification for not performing any obligation or complying with any condition required of such Party hereunder, for delaying such performance or compliance. The following events or conditions, and no others, shall constitute Uncontrollable Circumstances if they meet the requirements of the preceding sentence:

- (a) an act of God (but not including reasonably anticipated weather conditions for the geographic area of the Acceptance Facility and the Disposal Facility), hurricane, landslide, earthquake or similar occurrence, fire, explosion or other casualty, an act of the public enemy, war, insurrection, riot, pandemic, 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 any of the Company's subcontractors;

- (b) the failure of the jurisdiction in which a Facility is situated or the appropriate Federal or State agencies or public utilities having operational jurisdiction in the area or location of the Acceptance Facility to provide and maintain and assure the maintenance of all utility services (excluding sewerage and water lines) to the Acceptance Facility for operation of the Acceptance Facility, provided they are essential to the Acceptance Facility;
- (c) a non-Company or non-subcontractor Labor Action.

No other acts 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" or "Solid Waste"** means solid waste including Acceptable Material, delivered to the Acceptance Facility.

**"Waste Disposal Agreement"** means the Agreement between the Authority and the County.

**"White Goods"** means refrigerators, washing machines, large appliances and similar material.

**"Women's Business Enterprise" or "WBE"** is a business owned, operated and controlled by one or more women who have 51% ownership.

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

**SCHEDULE III**  
**TO SERVICE AGREEMENT**  
**SERVICE FEES**

(See Attached)

**FORM B-1-A**  
**SCENARIO I PRICE PROPOSAL FOR ANNE ARUNDEL COUNTY**  
**(SEPARATE PRICE PROPOSAL)**

Subject to its annual appropriation and operational requirements, Anne Arundel County will direct all County-collected curbside trash and possibly trash collected at its facilities to the Proposer's Facilities the majority of the time. There may be instances in which the County needs to direct their trash to the MLFRRF in order to achieve operational initiatives. These instances will typically be known in advance and be of short duration and the Proposer will be notified of the start and stop dates. The County may also direct any other Acceptable Material generated by any governmental or non-governmental entity within or outside the County delivered on the County's behalf. The Proposer will accept all Acceptable Material pursuant to the terms of the attached Service Agreement. The Proposer will be responsible to accept all Acceptable Material delivered or find alternative disposal options.

**The Proposer is to supply each tier of pricing and the tonnage threshold per Service Fee level to a maximum of six (6) tiers. All tons (County and piggy-back) will be cumulative in determining the tiered pricing. The completed form should reflect current dollars. The final Price Proposal will be adjusted (up or down) to bring the prices to 2023 level by applying the CPI factor.**

The maximum number of tons per year received at the Acceptance Facility, as stated on the Proposal Forms, can be increased at any time upon mutual written agreement by the Company, Authority and County in an amendment to the Service Agreement. The revised maximum tonnage can apply to a specific year, or remaining term, as determined by the mutual written amendment to the Service Agreement. The maximum per ton price shall apply to any increased maximum number of tons.

1. Proposed Price per Ton up to \_\_\_\_\_ tons per contract year  
\$ \_\_\_\_\_ per ton
2. Proposed Price per Ton for all tons over tons in one above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton
3. Proposed Price per Ton for all tons over tons in two above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton
4. Proposed Price per Ton for all tons over tons in three above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton
5. Proposed Price per Ton for all tons over tons in four above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton
6. Proposed Price per Ton for all tons over tons in five above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton

**Maximum number of tons per year allowed (if applicable) \_\_\_\_\_**



**FORM B-1-B**  
**SCENARIO I PRICE PROPOSAL FOR HOWARD COUNTY**  
**(SEPARATE PRICE PROPOSAL)**

Subject to its annual appropriation and operational requirements, Howard County will direct all County-collected curbside trash and all trash collected at its facilities to the Proposer's Facilities the majority of the time. There may be instances in which the County needs to direct their trash to the ARL in order to achieve operational initiatives. These instances will typically be known in advance and be of short duration and the Proposer will be notified of the start and stop dates. The Proposer will accept all Acceptable Material pursuant to the terms of the attached Service Agreement. The Proposer will be responsible to accept all Acceptable Material delivered or find alternative disposal options.

**The Proposer is to supply each tier of pricing and the tonnage threshold per Service Fee level to a maximum of six (6) tiers. All tons (County and piggy-back) will be cumulative in determining the tiered pricing. The completed form should reflect current dollars. The final Price Proposal will be adjusted (up or down) to bring the prices to 2022 level by applying the CPI factor.**

The maximum number of tons per year received at the Acceptance Facility, as stated on the Proposal Forms, can be increased at any time upon mutual written agreement by the Company, Authority and County in an amendment to the Service Agreement. The revised maximum tonnage can apply to a specific year, or remaining term, as determined by the mutual written amendment to the Service Agreement. The maximum per ton price shall apply to any increased maximum number of tons.

1. Proposed Price per Ton up to \_\_\_\_\_ tons per contract year  
\$ \_\_\_\_\_ per ton
2. Proposed Price per Ton for all tons over tons in one above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton
3. Proposed Price per Ton for all tons over tons in two above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton
4. Proposed Price per Ton for all tons over tons in three above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton
5. Proposed Price per Ton for all tons over tons in four above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton
6. Proposed Price per Ton for all tons over tons in five above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton

**Maximum number of tons per year allowed (if applicable) \_\_\_\_\_**

**FORM B-1-C  
SCENARIO I PRICE PROPOSAL  
FOR BOTH ANNE ARUNDEL COUNTY AND HOWARD COUNTY  
(JOINT PRICE PROPOSAL)**

Subject to annual appropriations and operational requirements, Anne Arundel County will direct all County-collected curbside trash and possibly trash collected at its facilities to the Proposer’s Facilities the majority of the time. Subject to annual appropriations and operational requirements, Howard County will direct all County-collected curbside trash and all trash collected at its facilities to the Proposer’s Facilities the majority of the time. There may be instances in which the Counties need to direct their trash to the MLFRRF or ARL in order to achieve operational initiatives. These instances will typically be known in advance and be of short duration and the Proposer will be notified of the start and stop dates. Anne Arundel County may also direct any other Acceptable Material generated by any governmental or non-governmental entity within or outside the County delivered on the County’s behalf. The Proposer will accept all Acceptable Material pursuant to the terms of the attached Service Agreement. The Proposer will be responsible to accept all Acceptable Material delivered or find alternative disposal options.

**The Proposer is to supply each tier of pricing and the tonnage threshold per Service Fee level to a maximum of six (6) tiers. All tons (County and piggy-back) will be cumulative in determining the tiered pricing. The completed form should reflect current dollars. The final Price Proposal will be adjusted (up or down) to bring the prices to 2022 and 2023 level by applying the CPI factor.**

The maximum number of tons per year received at the Acceptance Facility, as stated on the Proposal Forms, can be increased at any time upon mutual written agreement by the Company, Authority and Counties in an amendment to the Service Agreement. The revised maximum tonnage can apply to a specific year, or remaining term, as determined by the mutual written amendment to the Service Agreement. The maximum per ton price shall apply to any increased maximum number of tons.

1. Proposed Price per Ton up to \_\_\_\_\_ tons per contract year  
\$ \_\_\_\_\_ per ton
2. Proposed Price per Ton for all tons over tons in one above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton
3. Proposed Price per Ton for all tons over tons in two above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton
4. Proposed Price per Ton for all tons over tons in three above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton
5. Proposed Price per Ton for all tons over tons in four above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton
6. Proposed Price per Ton for all tons over tons in five above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton

**Maximum number of tons per year allowed (if applicable) \_\_\_\_\_**

**FORM B-2-A**  
**SCENARIO II PRICE PROPOSAL FOR ANNE ARUNDEL COUNTY**  
**(SEPARATE PRICE PROPOSAL)**

Anne Arundel County will enter into blanket (or on-call) Agreements with all qualified Proposers, as desired. There will be no guarantee of deliveries. The County will use a routing cost analysis to determine which Facilities it will use on a daily, weekly and monthly basis. The cost analysis will include, at a minimum, distance and time to the Proposer's Facility from the location that the trash was collected; cost of driver and truck for that time; cost of that driver being away from the County facilities therefore not available to perform work at the facilities; price to dispose of trash. Although not required, the County will establish routines for deliveries once the price is known for each Facility and factored into the cost analysis.

**The Proposer is to supply each tier of pricing and the tonnage threshold per Service Fee level to a maximum of six (6) tiers. All tons (County and piggy-back) will be cumulative in determining the tiered pricing. The completed form should reflect current dollars. The final Price Proposal will be adjusted (up or down) to bring the prices to 2023 level by applying the CPI factor.**

The maximum number of tons per year received at the Acceptance Facility, as stated on the Proposal Forms, can be increased at any time upon mutual written agreement by the Company, Authority and County in an amendment to the Service Agreement. The revised maximum tonnage can apply to a specific year, or remaining term, as determined by the mutual written amendment to the Service Agreement. The maximum per ton price shall apply to any increased maximum number of tons.

1. Proposed Price per Ton up to \_\_\_\_\_ tons per contract year  
\$ \_\_\_\_\_ per ton
2. Proposed Price per Ton for all tons over tons in one above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton
3. Proposed Price per Ton for all tons over tons in two above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton
4. Proposed Price per Ton for all tons over tons in three above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton
5. Proposed Price per Ton for all tons over tons in four above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton
6. Proposed Price per Ton for all tons over tons in five above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton

**Maximum number of tons per year allowed (if applicable) \_\_\_\_\_**

**FORM B-2-B**  
**SCENARIO II PRICE PROPOSAL FOR HOWARD COUNTY**  
**(SEPARATE PRICE PROPOSAL)**

Howard County will enter into blanket (or on-call) Agreements with all qualified Proposers, as desired. There will be no guarantee of deliveries. The County will use a routing cost analysis to determine which Facilities it will use on a daily, weekly and monthly basis. The cost analysis will include, at a minimum, distance and time to the Proposer's Facility from the location that the trash was collected; cost of driver and truck for that time; cost of that driver being away from the County facilities therefore not available to perform work at the facilities; price to dispose of trash. Although not required, the County will establish routines for deliveries once the price is known for each Facility and factored into the cost analysis.

**The Proposer is to supply each tier of pricing and the tonnage threshold per Service Fee level to a maximum of six (6) tiers. All tons (County and piggy-back) will be cumulative in determining the tiered pricing. The completed form should reflect current dollars. The final Price Proposal will be adjusted (up or down) to bring the prices to 2022 level by applying the CPI factor.**

The maximum number of tons per year received at the Acceptance Facility, as stated on the Proposal Forms, can be increased at any time upon mutual written agreement by the Company, Authority and County in an amendment to the Service Agreement. The revised maximum tonnage can apply to a specific year, or remaining term, as determined by the mutual written amendment to the Service Agreement. The maximum per ton price shall apply to any increased maximum number of tons.

1. Proposed Price per Ton up to \_\_\_\_\_ tons per contract year  
\$ \_\_\_\_\_ per ton
2. Proposed Price per Ton for all tons over tons in one above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton
3. Proposed Price per Ton for all tons over tons in two above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton
4. Proposed Price per Ton for all tons over tons in three above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton
5. Proposed Price per Ton for all tons over tons in four above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton
6. Proposed Price per Ton for all tons over tons in five above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton

**Maximum number of tons per year allowed (if applicable) \_\_\_\_\_**

**FORM B-2-C**  
**SCENARIO II PRICE PROPOSAL**  
**FOR BOTH ANNE ARUNDEL COUNTY AND HOWARD COUNTY**  
**(JOINT PRICE PROPOSAL)**

Anne Arundel County and Howard County will enter into blanket (or on-call) Agreements with all qualified Proposers, as desired. There will be no guarantee of deliveries. The Counties will use a routing cost analysis to determine which Facilities they will use on a daily, weekly and monthly basis. The cost analysis will include, at a minimum, distance and time to the Proposer's Facility from the location that the trash was collected; cost of driver and truck for that time; cost of that driver being away from the Counties' facilities therefore not available to perform work at the facilities; price to dispose of trash. Although not required, the Counties will establish routines for deliveries once the price is known for each Facility and factored into the cost analysis.

**The Proposer is to supply each tier of pricing and the tonnage threshold per Service Fee level to a maximum of six (6) tiers. All tons (County and piggy-back) will be cumulative in determining the tiered pricing. The completed form should reflect current dollars. The final Price Proposal will be adjusted (up or down) to bring the prices to 2022 and 2023 level by applying the CPI factor.**

The maximum number of tons per year received at the Acceptance Facility, as stated on the Proposal Forms, can be increased at any time upon mutual written agreement by the Company, Authority and Counties in an amendment to the Service Agreement. The revised maximum tonnage can apply to a specific year, or remaining term, as determined by the mutual written amendment to the Service Agreement. The maximum per ton price shall apply to any increased maximum number of tons.

1. Proposed Price per Ton up to \_\_\_\_\_ tons per contract year  
\$ \_\_\_\_\_ per ton
2. Proposed Price per Ton for all tons over tons in one above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton
3. Proposed Price per Ton for all tons over tons in two above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton
4. Proposed Price per Ton for all tons over tons in three above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton
5. Proposed Price per Ton for all tons over tons in four above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton
6. Proposed Price per Ton for all tons over tons in five above up to \_\_\_\_\_ tons per year  
\$ \_\_\_\_\_ per ton

**Maximum number of tons per year allowed (if applicable) \_\_\_\_\_**

**A. As an example, for Anne Arundel County, if the Proposer supplied the following pricing, applicable to BOTH Scenario I and Scenario II, the following Scenario would apply:**

1. Proposed Price per Ton up to 150,000 tons per year at \$35 per ton
2. Proposed Price per Ton for all tons over 150,000 up to 165,000 tons per year at \$33 per ton
3. Proposed Price per Ton for all tons over tons 165,000 above at \$31 per ton

Example 1: The contract year is April 12, 2023 through the end of the day (11:59 PM) June 30, 2024. Acceptable Material is delivered to the Proposer and at the end of the day (11:59 PM) on January 14, 2024 (contract year to date) a total of 150,000 tons, were delivered. This triggers a change in the tiered pricing. The total January 2024 delivered tons is 10,600 (5,000 tons received January 1-14 and; 5,600 tons received January 15-31).

**Therefore, the Proposer supplies the January invoice as follows:**

January 1 - 14 Tons: 5,000 tons times \$35 per ton = \$175,000  
January 15 – 31 Tons: 5,600 tons times \$33 per ton = \$184,800  
Total Invoice for the Month of January 2024 = \$359,800

The Company is expected to prepare a monthly spreadsheet (MS Excel 2012 compatible) using the reporting categories found in Exhibit A of Schedule IV of the attached Service Agreement to accompany the monthly invoice. The source of the tonnage (Anne Arundel County and other contracted tonnage) should be clearly delineated.

**B. As an example, for Howard County, if the Proposer supplied the following pricing, applicable to BOTH Scenario I and Scenario II, the following Scenario would apply:**

1. Proposed Price per Ton up to 150,000 tons per year at \$35 per ton
2. Proposed Price per Ton for all tons over 150,000 up to 165,000 tons per year at \$33 per ton
3. Proposed Price per Ton for all tons over tons 165,000 above at \$31 per ton

Example 1: The contract year is July 1, 2022 through the end of the day (11:59 PM) June 30, 2023. Acceptable Material is delivered to the Proposer and at the end of the day (11:59 PM) on January 14, 2023 (contract year to date) a total of 150,000 tons, were delivered. This triggers a change in the tiered pricing. The total January 2023 delivered tons is 10,600 (5,000 tons received January 1-14 and; 5,600 tons received January 15-31).

**Therefore, the Proposer supplies the January invoice as follows:**

January 1 - 14 Tons: 5,000 tons times \$35 per ton = \$175,000  
January 15 - 31 Tons: 5,600 tons times \$33 per ton = \$184,800  
Total Invoice for the Month of January 2023 = \$359,800

The Company is expected to prepare a monthly spreadsheet (MS Excel 2012 compatible) using the reporting categories found in Exhibit A of Schedule IV of the attached Service Agreement to accompany the monthly invoice. The source of the tonnage (Howard County and other contracted tonnage) should be clearly delineated.

**SCHEDULE IV**

**TO SERVICE AGREEMENT**

**REPORTING REQUIREMENTS**

The Company shall give the Authority Representative and [Anne Arundel County] [Howard County] the following reports and information at the times indicated below. If the following reports and information are submitted more than 30 days after they are due, this shall be deemed an Event of Default pursuant to Section 6.1.11.

The Company shall deliver the following information:

A. Pre-Commencement Date Documents

<b>PRE-COMMENCEMENT DATE REPORTS</b>	
<b>INFORMATION</b>	<b>DELIVERY DATE</b>
Copies of Required Insurance, Performance Bond/Letter of Credit and Parent Guaranty	Prior to Service Agreement Execution Date
Good Standing	Prior to Service Agreement Execution Date

B. Periodic Reports During Operations

<b>PERIODIC REPORTS DURING OPERATIONS</b>	
<b>REPORT</b>	<b>DELIVERY DATE</b>
Monthly Tonnages Report (see Exhibit A to this Schedule)	Accompany Monthly Invoice for payment



<b>PERIODIC REPORTS DURING OPERATIONS</b>	
<b>OTHER INFORMATION</b>	<b>DELIVERY DATE</b>
Copies of permits and permit renewals subsequent to the permits submitted as part of the Proposal submittal. Annual certification that the landfill cell in use under the Service Agreement meets Subtitle D requirements AND is in compliance with Applicable Law.	Within 5 (five) Business Days of receipt by or delivery to the Company and annual statement with copies of the Company's permits and permit renewals, signed by the Company Representative.
Copies of all compliance reports and notices submitted to or received from authorities regulating the Facilities. Any notices of violation or potential violation at the Facilities. Any notice designating the Facility as a Superfund Site or notice of potential National Priority List designation by the Environmental Protection Agency.	Within 5 (five) Business Days of receipt by or delivery to the Company and annual statement with copies of the compliance reports and notices, signed by the Company Representative.
Copies of all reports and notices submitted to or received from a host community pursuant to a host community agreement. Copies of any amendments to any host community agreement for the Disposal Facility.	Within 5 (five) Business Days of receipt by or delivery to the Company and annual statement with copies of the Company's host community agreement condition, signed by the Company Representative.
Reports or notices of environmental violations of Applicable Law or citations related to violations of Applicable Law relating to the Facilities providing the Service.	Within 5 (five) Business Days of receipt by or delivery to the Company and annual statement with copies of the Company's violations, signed by the Company Representative.
Reports of lawsuits requesting declaratory, injunctive or other equitable relief and lawsuits in excess of \$1,000,000 in which the Company, its parent Company, or Affiliates is a Party related to Facilities providing the Service. If the litigation involves any issue relating to the environment, the dispute must be reported without regard to monetary amount.	Within 5 (five) Business Days of receipt by or delivery to the Company and annual statement with copies of the Company's legal condition, signed by the Company Representative.

<p>Any material adverse change in the financial condition of the Company or Guarantor, if applicable.</p>	<p>Within 5 (five) Business Days of receipt by or delivery to the Company and annual statement with copies of the Company's financial condition, signed by the Company Representative.</p>
<p>Notice of any proposed transfer of ownership, possession, or control of the Company, Guarantor, if applicable, or Facilities must be given to the Authority. The notice must include identification of the transferee, and other information as specified in the RFP.</p>	<p>60 (sixty) days prior to effective date of action.</p>
<p>Monitoring well water quality analysis and assessment monitoring reports as required by applicable permits and licenses.</p>	<p>Annually.</p>
<p>At a minimum, stored tare weights shall be verified and updated annually to ensure accuracy, or more frequently if required by local Laws, permit or contract. Random testing of stored tare weights shall be completed on a yearly basis and findings documented and submitted to the Authority.</p>	<p>Annually</p>
<p>At least twice a year, the Company, at its expense, must obtain approval of, inspect and test the vehicle scales as required by Applicable Law. The copy of the semi-annual certification will be conspicuously posted at the Acceptance Facility scalehouse.</p>	<p>Semi-Annual testing shall be documented and submitted in the Annual statement</p>

**EXHIBIT A**  
**TO SCHEDULE IV**  
**TO SERVICE AGREEMENT**

**MONTHLY TONNAGES REPORT FORMS**

The Company must complete the Monthly Tonnages Report Form in Schedule IV and submit in an electronic form (MS Excel 2012 Compatible) to the Authority and a copy to the County with the monthly invoice for payment.

SOURCE: ([Anne Arundel County] [Howard County] or Other Contracted Tons)

1. <u>TONNAGE</u>	<u>FACILITY LOCATION</u>	<u>MONTH</u>	<u>YTD</u>
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Acceptable Material Received (tons)

Acceptable Material Processed (tons)

Acceptable Material Disposed (tons)

Unacceptable Material Received (tons) <sup>(1)</sup>

Unacceptable Material Disposed (tons) <sup>(1)</sup>

Acceptable Material recycled (if applicable)

Metal & Other (tons)

Ash as Alternate Daily Cover (tons)

Ash Beneficially Reused in Product(s)

Acceptable Material (Disaster Debris) Received (tons) <sup>(1)</sup>

Acceptable Material (Disaster Debris) Disposed (tons)

Acceptable Material (Disaster Debris) Recycled (tons)

Unacceptable Material (Disaster Debris) Received (tons) <sup>(1)</sup>

Unacceptable Material (Disaster Debris) Disposed (tons)

Unacceptable Material (Disaster Debris) Recycled (tons)

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

**SCHEDULE V**  
**TO SERVICE AGREEMENT**  
**PERFORMANCE AGREEMENTS**  
**FORM OF PERFORMANCE BOND**  
**FORM OF PERFORMANCE LETTER OF CREDIT**  
**GUARANTEE AGREEMENT**

**PERFORMANCE BOND/LETTER OF CREDIT**

**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  
\_\_\_\_\_ County, Maryland

Penal Sum of Bond  
(express in words and figures)

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

[NAME OF AGREEMENT]

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

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

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

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

This Performance Bond is for the term beginning the \_\_\_\_\_ day of \_\_\_\_\_ and ending the \_\_\_\_\_ day of \_\_\_\_\_. Provided, however, that this bond may be continued in force by Continuation Certificate, executed by the Surety. If Surety elects to not renew the bond upon the expiration of any annual term, Surety shall provide written notice to both the Obligee and the Principal of such intention at least 60 days prior to the expiration of any such annual term. Non-renewal or cancellation of the bond shall constitute a Default under the bond and be the basis or trigger for a claim. Surety's liability under this Performance Bond and all continuation certificates issued in connection therewith shall not be cumulative and shall in no event exceed the amount as set forth in this Performance Bond or in any additions, riders, or endorsements properly issued by the Surety as supplements thereto.

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

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

## FORM OF PERFORMANCE LETTER OF CREDIT

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

Ladies and Gentlemen:

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

2. The Letter of Credit is being issued in support of the performance by the Contractor of its obligation to provide \_\_\_\_\_ Services to the Authority as set forth in the “[NAME OF AGREEMENT],” 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 I (such draft accompanied by such certificate being collectively your “Draft”). The Draft shall be payable by us on-sight in accordance with paragraph 4 below. Funds under this Letter of Credit are available to you against your Draft (referring thereon to the number of this Letter of Credit) upon the occurrence of an Event of Default by the Contractor and the subsequent exercise by the Authority of its rights under the Agreement, all in accordance with the terms of such Agreement.

4. The Draft shall be dated the date of its presentation, and shall be presented to our office located at [NAME OF FINANCIAL INSTITUTION] and [ADDRESS OF FINANCIAL INSTITUTION]. If we receive your Draft at such office, in conformance with the terms and conditions hereof, on or prior to the Expiration Date, we will honor the same in accordance with the provisions hereof and your payment instructions by 5:00 p.m. on the next succeeding Business Day after presentation of your Draft. For purposes of this Letter of Credit, “Business Day” shall mean any day other than a Saturday, Sunday or public Holiday under the laws of the [STATE]. If requested by you, payment under this Letter of Credit may be made by wire transfer of immediately 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 advised by you in writing.

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

Very truly yours,  
[NAME OF FINANCIAL INSTITUTION]

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

**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], a \_\_\_\_\_ [STATE] Corporation (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 July 1, 2021.

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 Waste Disposal Facilities;

(7) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, arrangement, composition with creditors or readjustment of, or other similar proceedings against the Company or the Guarantor, or any of the property of either of them, or any allegation or contest of the validity of this Guaranty or the Service Agreement in any such proceeding (it is specifically understood, consented and agreed that, to the extent permitted by Law, this Guaranty shall remain and continue in full force and effect and shall be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted and as if no rejection, stay, termination, assumption or modification has occurred as a result thereof, it being the intent and purpose of this Guaranty that the Guarantor shall and does hereby waive all rights and benefits which might accrue to it by reason of any such proceeding);

(8) except as permitted by Sections 4.1 or 4.2 hereof, any sale or other transfer by the Guarantor or any Affiliate of any of the capital stock or other interest of the Guarantor or any Affiliate in the Company now or hereafter owned, directly or indirectly, by the Guarantor or any Affiliate, or any change in composition of the interests in the Company;

(9) any failure on the part of the Company for any reason to perform or comply with any agreement with the Guarantor;

(10) the failure on the part of the Authority to provide any notice to the Guarantor which is not required to be given to the Company as a condition to the enforcement of Obligations pursuant to the Service Agreement;

(11) any failure of any Party to the Service Agreement to mitigate damages resulting from any Default by the Company or the Guarantor under the Service Agreement;

(12) the merger or consolidation of any Party to the Service Agreement into or with any other Person, or any sale, lease, transfer, abandonment or other disposition of any or all of the property of any of the foregoing to any Person;

(13) any legal disability or incapacity of any Party to the Service Agreement; or

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

Should any money due or owing under this Guaranty not be recoverable from the Guarantor due to any of the matters specified in subparagraphs (1) through (14) above, then, in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from the Guarantor as though the Guarantor were principal obligor in place of the Company pursuant to the terms of the Service Agreement and not merely a guarantor and shall be paid by the Guarantor forthwith. Notwithstanding anything to the contrary expressed in this Guaranty,

nothing in this Guaranty shall be deemed to amend, modify, clarify, expand or reduce the Company's rights, benefits, duties or Obligations under the Service Agreement. To the extent that any of the matters specified in subparagraphs (1) through (6) and (8) through (14) would provide a defense to, release, discharge or otherwise affect the Company's Obligations, the Guarantor's Obligations under this Guaranty shall be treated the same.

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

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

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

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

If to the Authority:

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

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.

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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 VI**  
**TO SERVICE AGREEMENT**

**REQUIRED INSURANCE**

Section 1. Required Insurance.

On and after the Commencement 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 and certified copies of all insurance policies.

(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 County harmless from claims. The Company shall maintain Employers' Liability Coverage in the following amounts: \$500,000 for each accident; \$500,000 for each disease per employee; \$500,000 for bodily injury by disease policy aggregate and shall save the Authority and the 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 his operations or the operations of his Company and subcontractor 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 the Company's coverage, broad form property damage coverage, and shall name all Facility operators as additional insureds.

(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/ Liability Coverage

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

(e) Environmental Impairment Liability covering the Facilities

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

(f) Evidence of Insurance

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

(g) Casualty and Property Insurance

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) Facility Coverage

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

Section 2. General.

(a) Additional Insureds

The Authority shall be named as additional insured on the above Commercial General Liability and Environmental Impairment policies. [Anne Arundel County] [Howard County] shall be named as an additional insured entity.

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

The Company shall purchase commercial insurance for the above coverages.



(b) Claims Made Policies

All claims made policies shall provide a minimum of five (5) years' discovery period.

(c) Required Notices

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.

(d) Contractors

The Company shall assure that all subcontractors performing Services in accordance with this Agreement carry identical coverages as required above, either individually or as an additional insured on the policies of the Company.

## **SCHEDULE VII**

### **TO SERVICE AGREEMENT**

#### **TERMINATION PROCEDURES AND COSTS**

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

The performance of work under this 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 Company has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Company shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and Obligations of the Parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).