

FORM OF PERFORMANCE BOND
& LETTER OF CREDIT

PERFORMANCE BOND

[COMPANY]

Principal

[COMPANY ADDRESS]

Business Address of Principal

[SURETY COMPANY]

Surety

a corporation of the State of [STATE] and authorized to do business in the State of Maryland.

Obligees

Northeast Maryland Waste Disposal Authority

and

Frederick County, Maryland

Penal Sum of Bond:

One hundred thousand

dollars (\$100,000)

Date of Contract: [DATE]

Date Bond Executed: [DATE]

Control Number: [NUMBER]

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

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

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

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

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

This Performance Bond is for the term beginning [JULY 1, 2024] and ending [JUNE 30, 2025], renewable on an annual basis until the work is completed per the Contract. 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:
Witness

Partnership Principal

_____ (SEAL)
Name of Partnership

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

Corporate Principal

Attest:

[COMPANY]

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 [MONTH], 2024.

FORM OF PERFORMANCE LETTER OF CREDIT

Date: [MONTH] ____, 2024

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

Ladies and Gentlemen:

1. We hereby establish, at the request of [COMPANY] (“the Company”), in your favor and for the account of The Northeast Maryland Waste Disposal Authority, a public body corporate and politic organized and existing under the laws of the State of Maryland (the “Authority”), our Irrevocable Letter of Credit, No. (_____) (the “Letter of Credit”), in the amount of one hundred thousand dollars (the “Letter of Credit Amount”), effective July 1, 2024 and expiring on June 30, 2025 (the “Expiration Date”).

2. The Letter of Credit is being issued in support of the performance by the Company of its obligation to provide Transfer Station Repairs and Improvements to the Authority as set forth in the Contract for Frederick County transportation services **BY AND BETWEEN NORTHEAST MARYLAND WASTE DISPOSAL AUTHORITY AND COMPANY**, dated [MONTH] ____, 2024 (the “Agreement”).

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

4. The Draft shall be dated the date of its presentation, and shall be presented to our office located at [NAME OF FINANCIAL INSTITUTION] and [ADDRESS OF FINANCIAL INSTITUTION]. If we receive your Draft at such office, in conformance with the terms and conditions hereof, on or prior to the Expiration Date, we will honor the same in accordance with the provisions hereof and your payment instructions by 5:00 p.m. on the next succeeding Business Day after presentation of your Draft. For purposes of this Letter of Credit, “Business Day” shall mean any day other than a Saturday, Sunday or public holiday under the laws of the [STATE]. If requested by you, payment under this Letter of Credit may be made by wire transfer of immediately available Federal Funds to your account in a bank on the Federal Reserve wire system or by deposit of immediately available funds into a designated account that you may establish with us. All drawings under the Letter of Credit will be paid with our own funds.

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

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

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

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

Very truly yours,
[NAME OF FINANCIAL INSTITUTION]

By: _____

Name: _____

Title: _____