

Sludge Disposal Agreement

Between the

Northeast Maryland Waste Disposal Authority

and

City of Baltimore, Maryland

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THIS SLUDGE DISPOSAL AGREEMENT is made as of _____ between the Northeast Maryland Waste Disposal Authority ("Authority") and City of Baltimore, Maryland ("City").

RECITALS

- A. The Authority is an instrumentality of the State of Maryland created to assist 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 of the State by providing dependable, effective and efficient disposal of solid wastes, including the recovery of useable resources from such waste.

- B. The Authority is party to an agreement with _____ (the "Company") dated _____ (the "Service Agreement"), under which the Company provides services to Baltimore City ("City"), an Authority member, for the composting of sludge from the City's Back River Waste Water Treatment Plant ("BRWWTP") at a facility or facilities controlled by the Company ("Facility"). The Service Agreement is referenced throughout this Agreement and is attached as Schedule 1.

- C. By executing this Waste Disposal Agreement, the City agrees to and accepts the terms of the Service Agreement. The City will have the right to approve any subsequent Service Agreement.

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

ARTICLE I

DEFINITIONS AND RULES OF INTERPRETATION

Section 1.1 Definitions.

“Accepted Biosolids” or “Acceptable Material” means Specification Biosolids which have been collected by the Company from the BRWWTP and subsequently processed in the Acceptance Facility.

“Agreement” means this Sludge Disposal Agreement (also referred to as the “Waste Disposal Agreement”) including all Schedules hereto.

“Applicable Law” means any law, regulation, permit, approval requirement or order of any federal, state or local agency, court or other body applicable from time to time to the acceptance, transportation, processing and marketing of Biosolids under this Agreement, the ownership, construction, operation and maintenance of the Facility, or the performance of any obligations under this Agreement or any other agreement entered into in connection herewith.

“Authority” has the meaning specified in the introduction to this Agreement and includes its successors and permitted assigns hereunder.

“Authority Fee” means the scheduled fee that the Company will include in the invoice to the City and remit to the Authority on a monthly basis. A schedule of the Authority Fee is included in Schedule 3.

“Authority Representative” means the Person so designated as provided in Article 11.

“Beneficial Use” and “Beneficially Used” means Biosolids that are either: (i) packaged (bag, box or other container) in individual packages and sold as a final product; (ii) sold in bulk load to persons who (A) use the material in the course of doing business or (B) further process the material for sale, or (iii) utilized as fertilizer, soil amendment, or soil substitute in agricultural, reclamation, landscaping or horticulture application.

“Biosolids” means digested biosolids originating at the BRWWTP.

“Business Day” means a calendar day excluding Saturdays, Sundays and any Holiday. In the event that an obligation to be performed under this Agreement falls due on a Saturday, Sunday or a Holiday, the obligation shall be deemed due on the next Business Day thereafter.

“BRWWTP” has the meaning specified in the RECITALS hereto.

“Class A Biosolids” means sewage sludge processed by the Company at the Facility and which meets 40 C.F.R. Parts 503.32 and 503.33 criteria for Class A pathogen reduction and vector attraction reduction and applicable requirements of the State of Maryland.

“Class B Biosolids” means sewage sludge processed by the Company at the Facility and which meets 40 C.F.R. Parts 503.32 and 503.33 criteria for Class B pathogen reduction and vector attraction reduction and applicable requirements of the State of Maryland.

“Company” has the meaning specified in the RECITALS hereto and includes its successors and permitted assigns hereunder.

“Confidential Information” means information delivered to a Party (the “Receiving Party”) by the other Party (the “Delivering Party”) or on the Delivering Party’s behalf in connection with the transactions contemplated by or otherwise pursuant to this Agreement that is proprietary in nature and that was clearly marked or labeled or otherwise adequately identified when received by the Receiving Party as being confidential information of the Delivering Party, provided that such term does not include information that (a) was publicly known or otherwise known to the Receiving Party prior to the time of such disclosure, (b) subsequently becomes publicly known through no act or omission by the Receiving Party or any person acting on the Receiving Party’s behalf or (c) otherwise becomes known to the Receiving Party other than through disclosure by the Delivering Party.

“City” has the meaning specified in the RECITALS hereto, and includes its successors and assigns.

“Disposal Facility” means a landfill or other acceptance facility, which does not meet the definition of Beneficial Use herein. The Disposal Facility may not be the City’s Quarantine Road Landfill unless disposal is approved first, in writing, by the City.

“Effective Date” means the date on which all of the following conditions are met: the Authority and the Company have signed the Agreement; the Baltimore City Council has approved the Waste Disposal Agreement; and the Authority and the City have signed the Waste Disposal Agreement.

“Event of Default” has the meaning specified Article 6.

“Facility” means the Company’s Facility or the City’s Facility, as the case may be, which is used to accept and process biosolids and produce and market Class A Biosolids under this Agreement.

“Federal Bankruptcy Code” means the Federal Bankruptcy Code as in effect from time to

time.

“First Extension Period” has the meaning specified in Section 2.2 of the Service Agreement.

“Governmental Authority” means the United States of America, or any state or other political subdivision thereof, including, without limitation, any municipality, township or county, and any domestic entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, any corporation or other entity owned or controlled by any of the foregoing.

“Holiday” means any weekday that national banks located in Maryland are not open for business.

“Incremental Tonnage” means City biosolids, accepted at the Facility, above the Guaranteed Tonnage amount calculated on a monthly basis.

“Initial Service Date” has the meaning specified in Section 2.3 of the Service Agreement.

“Initial Term” has the meaning specified in Section 2.1 of the Service Agreement.

“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.

“Notice of Termination” has the meaning specified in Section 6.5.

“Parties” has the meaning set forth in the Introduction to this Agreement.

“Party” has the meaning set forth in the Introduction to this Agreement.

“Performance Bond” means the bond to be provided to the Authority and the City on behalf of the Company as provided in Article 14 of the Service Agreement.

“Performance Damages” has the meanings specified in Article 7 of the Service Agreement.

“Permits” has the meaning specified in Section 6.2 of the Service Agreement.

“Person” shall mean an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a Governmental Authority or agency or political subdivision thereof.

“**Required Insurance**” has the meaning specified in Schedule 7 of the Service Agreement.

“**Service Agreement**” has the meaning specified in the RECITALS hereto.

“**Service Fee**” has the meaning specified in Section 8.1 of the Service Agreement.

“**Specification Biosolids**” has the meaning specified in Section 6.1(a) of the Service Agreement.

“**Uncontrollable Circumstance**” has the meaning specified in Section 4.1.

“**Term**” means the period of performance for this Agreement and all extensions under Section 7.1.

Section 1.2 Rules of Interpretation.

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

- A. All reference in this instrument to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed.
- B. The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.
- C. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.
- D. The table of contents and the headings or captions used in this Agreement are for convenience of reference only and do not define, limit or describe any of the provisions hereof or the scope or intent hereof.
- E. References to agreements or contracts include all amendments, modifications and supplements thereto.
- F. Capitalized Terms have the meaning set forth in Schedule 1 of the Service Agreement or in Section 1.1 above.

Section 1.3 Conditions Precedent

The obligations of the Authority pursuant to the Service Agreement shall be subject to the satisfaction, or waiver by Authority, of the following conditions precedent, and the Service Agreement shall not be deemed effective until the same has occurred:

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(1) Execution of the Waste Disposal Agreement

If the foregoing condition precedent has not been satisfied, the Authority may terminate the Service Agreement. The Authority has no obligations to perform the Service until the Waste Disposal Agreement is executed.

ARTICLE II

OBLIGATIONS OF THE CITY

Section 2.1 Delivery of Acceptable Material.

A. Prior to Commencement Date

(1) No Waste shall be delivered or caused to be delivered by the City to the Authority.

B. After Commencement Date

(1) The Authority (through the use of its contractor, the “Company”) shall weigh all City vehicles at the designated inbound and outbound scales at the Acceptance Facility. The Acceptance Facility scale records shall be the basis for payment.

(2) The City shall deliver or cause to be delivered to the Authority Acceptable Material in accordance with Article III of the Service Agreement, which Service Agreement is incorporated herein by reference and attached hereto as Schedule 1.

Section 2.2 Payments.

A. The City shall pay the Service Fee to the Authority as provided in Section 3.2 and 3.7 of this Agreement.

B. The City shall pay all Approved Pass Through Costs. To the extent that any credit is attributable to the City, the City shall receive the credit.

Section 2.3 Piggy-Backing

The City acknowledges that the Authority may, from time to time and only with the City’s written approval, offer the terms of the Service Agreement to other Members of the Authority. The City will not unreasonably withhold approval for the Authority to offer the Service to other Members

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of the Authority. The Authority will coordinate the delivery of the Acceptable Material with the City and the Company. At no time will Acceptable Material from other Authority Members (1) take priority over City Acceptable Material or (2) be allowed to be disposed of at a City facility without the consent of the City Representative.

Section 2.4 Billing Disputes.

If the City disputes any amount billed by the Authority in any Billing Statement, the City must nonetheless pay the undisputed billed amount and must provide the Authority with written objection of the disputed amount within thirty (30) days of the receipt of such Billing Statement (if the basis for the objection can be known within thirty (30) days, otherwise within thirty (30) days after actual knowledge of the basis for the objection), indicating the amount that is being disputed and providing all reasons then known to the City for its objection to or disagreement with such amount. If the City and the Authority are not able to resolve such dispute within thirty (30) days after the City's objection, either party may pursue any remedies available pursuant to Section 9.11, Dispute Resolution, of this Agreement.

Section 2.5 Tonnage Guarantee.

The City agrees to deliver a minimum of 30,600 wet tons to a maximum of 55,500 wet tons; based on a % solids scale of 18% to >24% on an annual basis.

Section 2.6 Appropriations.

The City's fiscal obligations under the Waste Disposal Agreement are subject to the availability of funds appropriated therefor by the City.

ARTICLE III

OBLIGATIONS OF THE AUTHORITY

Section 3.1 Disposal of Acceptable Material and Invoices.

- A. The Authority shall be a party to the Service Agreement that will provide for the acceptance and disposal of the City's Acceptable Material.
- B. The Authority shall cause the Company to provide the City with a summary of tonnages and scale records by the 5th day after the end of each month.
- C. The Authority shall issue an invoice for all amounts payable under the Service Agreement by the tenth (10th) day of the calendar month immediately succeeding the calendar month for which such amounts are payable. Amounts invoiced are due twenty-five (25) days after receipt of the summary of tonnages by the City. The Authority will continue to act as the billing agent for the project as long as the City is a Member in good standing of the Authority. In the event that the City terminates its membership in the Authority, the City may (1) request that the Service Agreement is assigned to the City or (2) pay a to-be-determined management fee to the Authority for the services herein.
- D. Waste tonnage amendments and other adjustments received in the following month during which the tonnage was delivered shall be used to adjust the Authority's invoice for the month during which the tonnage was delivered. The City shall pay the Authority the adjusted invoice amount.

All Authority invoices and statements shall be e-mailed and mailed first class, postage prepaid, submitted to:

NAME, TITLE
City of Baltimore, DPW
ADDRESS 1
ADDRESS 2
E-mail: _____

Section 3.2 Billing and Approved Pass Through Costs.

The City agrees to review each invoice, notify the Authority if there are any corrections, settle any difference and send payment of the Service Fee and any late fees directly to the Company. Amounts invoiced are due twenty-five (25) days after receipt of the invoice by the City.

Section 3.3 **Late Payment.**

Any amounts payable under this Agreement by the City or the Authority 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 3.4 **Disputes as to Service Fee or Other Charges.**

If the City disputes any amount owed as the Service Fee (as defined in Section 3.7 of this Agreement) the classification of Waste made by the Authority, or the amount of any Damages claimed by the Authority, the dispute shall be resolved pursuant to Section 9.11 herein. Immediately after the resolution of a disagreement about a Service Fee, the classification of Waste, or the amount of Damages, the party whose position does not prevail shall reimburse the other party for the aggregate amount of any underpayment or overpayment, plus interest at the Late Payment Rate.

Section 3.5 **Reserved.**

Section 3.6 **Reserved.**

Section 3.7 **Service Fee and Approved Pass Through Costs**

- A. The Service Fee is the sum of:
1. The amount due for Service Fee payments in accordance with Section 8.1 of the Service Agreement; plus
 2. Approved Pass Through Costs.

The Authority may issue a separate invoice for any Approved Pass Through Costs under this Agreement.

Section 3.8 **Books, Records and Reports.**

- A. The Authority shall maintain, or cause to be maintained, all books, records and accounts necessary to record all matters affecting the Service Fee, Out-of-Hours Delivery Charge, policy amendments and all other related insurance documents. The Authority shall maintain, or cause to be maintained all such books, records and accounts in accordance with generally accepted accounting procedures. The Authority's and the Company's books, records and accounts shall accurately, fairly and in reasonable detail reflect all the

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Authority's and the Company's dealings and transactions under this Agreement, the Service Agreement, and other agreements or obligations and shall contain sufficient data to enable those dealings and transactions to be audited in accordance with generally accepted auditing standards. The Authority shall make all such books, records and accounts available for inspection and photocopying by the City within five (5) business days of a written request by the City.

- B. The Authority shall provide, or cause the Company to provide, the City with the reports and information at the times required in the Service Agreement. The report format can be modified with approval of the City to reflect the facilities used by the Authority to provide the Service.
- C. The Authority certifies that all information the Authority has provided, or will provide to the City is true and correct and can be relied upon by the City and in awarding, modifying, making payments, or taking any other action with respect to this Agreement. Any materially false or misleading information is a ground for the City to terminate this Agreement for cause, without opportunity to cure, and to pursue any other appropriate remedy.

Section 3.9 **Proceeds from Damages, Insurance.**

Any proceeds from Damages or insurance received by the Authority from the Company or the Company's agents, representatives, or insurance carrier, pursuant to the terms of the Service Agreement, shall be credited or otherwise distributed to the City by the Authority.

ARTICLE IV

PROCESSING CAPACITY REDUCTIONS AND UNCONTROLLABLE CIRCUMSTANCES AND CHANGE OF LAW

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

A. Effect of Uncontrollable Circumstances.

Uncontrollable Circumstance is defined in Article 9 of the Service Agreement. 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 Authority and the City shall diligently overcome or remove such Uncontrollable Circumstance as soon as possible.

B. Changes Necessitated by Uncontrollable Circumstances.

- i) As soon as possible after an Uncontrollable Circumstance occurring on or after the Commencement Date, the Authority shall give the City Representative a statement describing the Uncontrollable Circumstance and its cause (to the extent known to the Authority), and a description of the conditions preventing the performance of the Authority's obligations.
- ii) If a Facility is unavailable due to an Uncontrollable Circumstance, the Authority must diligently pursue finding an Alternate Disposal Facility. Alternate Disposal Facilities must be approved by the City. The facilities presented in the Company's proposal as referenced in the Service Agreement as Alternate Disposal Facilities as are deemed approved by the City. The Authority may seek pre-approval of additional Alternate Disposal Facilities.
- iii) The Authority shall answer any inquiries of the City Representative regarding the conditions caused by the Uncontrollable Circumstance and shall provide the City Representative with such information as reasonably requested. Upon the request of the City Representative, a consulting engineer, at the Authority's expense, may review the Authority's estimate of the time schedule for repairing a Facility or the alleged causes of the Uncontrollable Circumstance.
- iv) Pursuant to Section 6.1 of the Service Agreement, the City shall cooperate with the Authority to ensure continuation of the Service. Clause 6.1 of the Service Agreement shall not be construed as guarantee that the City will extend obligations beyond current permit limits.

Section 4.2 **Change of Law and Notice of Change of Law.**

The City shall be liable for any and all additional costs incurred by the Authority due to a change of law, as defined in Section 9.1 of the Service Agreement under Uncontrollable Circumstances.

ARTICLE V

REQUIRED INSURANCE AND INDEMNIFICATION

Section 5.1 Required Insurance

The Authority will provide evidence of appropriate insurance as detailed in Schedule 7 of the Service Agreement.

Section 5.2 Indemnification

The Authority agrees to indemnify, save harmless and defend the City of Baltimore and its respective 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 Authority, or its officers, employees, subcontractors, or agents, or by the management of unacceptable waste 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 Authority shall also indemnify, defend, hold harmless, and hereby waives any claim for contribution against City of Baltimore, or its respective officers, agents and employees, for any Environmental Claim arising from the performance of the Authority or its officers, employees, agents, or subcontractors, under this Agreement, irrespective of whether such performance is negligent or willful or breaches any term or provision of this Agreement.

ARTICLE VI

DEFAULT AND TERMINATION

Section 6.1 City Events of Default.

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

- A. If the City 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 City or of a major part of the property; or
- B. If, by order of a court of competent jurisdiction, a receiver or liquidator or custodian or trustee of the City 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 City 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 City pursuant to the Federal Bankruptcy Code (11 U.S.C.) or any other similar statute applicable to the City, as now or hereinafter in effect, is filed against the City and is not dismissed within sixty (60) days after such filing, or if the City 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 City under any such Law, or (without limitation of the generality of the foregoing) files a petition to reorganize the City pursuant to the Federal Bankruptcy Code (11 U.S.C.) or any other similar statute applicable to the City, as now or hereinafter in effect; or
- C. The failure by the City to pay any amount in excess of two (2) months of the Service Fee that the City is required to pay to the Authority under this Agreement or to establish an escrow account if there is an ongoing dispute within sixty (60) days after receipt by the City of written demand from the Authority 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.
- D. City fails to substantially fulfill any of its material obligations to the Authority in accordance with this Agreement,

No failure or refusal on the part of the City described in Section 6.1 shall constitute an Event of Default unless and until: (i) The Authority has given Notice to the City specifying with particularity the existence of such default; and (ii) the City has neither corrected such default nor initiated actions reasonably likely to cure such default within

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thirty (30) days after receipt of such Notice; except for 6 (C) where in the cure period is sixty (60) days.

Section 6.2 The Authority Remedies.

The Authority may elect to suspend the performance of the Service, as defined in the Service Agreement, or to terminate this Agreement for cause as a result of an Event of Default by the City under Section 6.1, upon delivery of a Notice of such suspension or termination to the Authority.

- A. If the Authority suspends the performance of the Service pursuant to this Section 6.2, then such suspension shall terminate upon cure of the Event of Default by the City, at which time the Authority shall immediately recommence performance of the Service.

- B. If the Authority terminates this Agreement pursuant to this Section 6.2, then the Authority shall be entitled to receive payment for Service actually performed up to the date of termination and recovery of damages available under Applicable Law. The Authority's right to such payment shall constitute the Authority's sole remedy for such termination of this Agreement.

Section 6.3 The 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 City to perform its obligations hereunder:

- A. 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 its property; or

- B. If, by order of a court of competent jurisdiction, a receiver or liquidator or custodian or trustee of the Authority or of a major part of its property is appointed and is not discharged within sixty (60) days, or if, by decree of such a court, the Authority is adjudicated insolvent, or a major part of its property is sequestered, and such decree has continued undischarged and unstayed for sixty (60) days after the entry of such decree, or if a petition to reorganize the Authority pursuant to the Federal Bankruptcy Code (11 U.S.C.) or any other similar statute applicable to the Authority, as now or hereinafter in effect, is filed against the Authority and is not dismissed within sixty (60) days after such filing, or if the Authority is adjudicated bankrupt or files a petition in voluntary bankruptcy under any provision of any Bankruptcy Law or consents to the filing of any bankruptcy or reorganization petition against the Authority under any such Law, or (without limitation of the generality of the foregoing) files a petition to reorganize the Authority pursuant to the Federal Bankruptcy Code (11 U.S.C.) or any other similar statute applicable to the Authority, as now or hereinafter in effect; or

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- C. The Authority 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
- D. The Authority disregards Federal, State and Local Laws or the lawful requirements of any competent authority or the instructions of the City consistent with this Agreement except to the extent such failure results from default by the City in its obligations to make payment under; or
- E. The Authority fails or refuses to substantially fulfill any of its material obligations to the City in accordance with this Agreement, notwithstanding the payment by the Authority of any damages or other amounts provided for under this Agreement, unless such failure or refusal is excused or justified pursuant to this Agreement; or
- F. Any representation or warranty made by the Authority herein or in any payment invoice or related documentation submitted hereunder is false or misleading in any material respect when made; or

No failure or refusal on the part of the Authority described in Sections 6.3 constitute an “Event of Default” unless and until: (i) the City has given written Notice to the Authority specifying with particularity the existence of such default; and (ii) the Authority has neither corrected such default nor initiated reasonable steps to correct it within a reasonable period of time (which must in any event be not less than five days from the date of the notice given pursuant to clause (i); provided, however, that if the Authority has commenced to take reasonable steps to correct such default within such reasonable period of time, the default shall not constitute an Event of Default for as long as the Authority is continuing to take reasonable steps to correct it.

Section 6.4 City Remedies.

In the case of one (1) or more Events of Default on the part of the Authority pursuant to Section 6.3, the City shall have the following rights and remedies, in addition to those rights and remedies that may be available to the City at law or in equity, and the Authority shall have the following obligations:

- A. The City, without prejudice to any of its other rights or remedies, may upon five (5) Business Days Notice to the Authority (i) suspend payment and/or (ii) terminate this Agreement on the date specified in a written Notice of Termination to the Authority;
- B. Upon termination of this Agreement by the City for cause in accordance with Section 6.2 (A) or for convenience in accordance with Section 6.7, the Authority shall reasonably cooperate with the City, the Company, and their designees to effect an orderly transition of the Service and shall, (i) provide the City with detailed information regarding the current status of the Service, including, without limitation, the status of

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subcontracts, purchase orders, facility permits and other agreements related to the Service, and (ii) enter into no further subcontracts, purchase orders or other agreements related to the Service other than as requested by the City. The City shall not be responsible or liable for any of the Authority's outstanding obligations and/or agreements. The City may employ any other person, Company, partnership, corporation or other entity (hereinafter, a "Replacement Company") to perform the Service.

- C. If this Agreement is terminated by the City in accordance with Section 6.4 for cause as a result of an Event of Default by the Authority under Section 6.3 hereof, the Authority shall be liable to reimburse the City for all costs and expenses incurred by the City in connection with terminating this Agreement and engaging a Replacement Company. The City shall use its reasonable commercial efforts to mitigate such penalties, costs, expenses and damages. The City shall be entitled to withhold payments the Authority determines are due to it prior to the date of termination until determination by the City that the Authority is entitled to such payments. The City may in its discretion employ such other person, company, partnership, corporation or other entity to perform the Service by whatever method or means as the City in its sole discretion may deem expeditious. The City shall also be entitled to recovery of any other damages available under Applicable Law.

Section 6.5 Termination on Default.

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

Section 6.6 Termination for Certain Uncontrollable Circumstances

The City may elect to terminate this Agreement for certain Uncontrollable Circumstances in accordance with Article 9 of the Service Agreement. In the event the City so elects termination, neither party shall owe or be liable to the other party for any amounts otherwise due hereunder.

Section 6.7 Termination for Convenience

In the event the City decides to terminate the Waste Disposal Agreement for convenience as described in COMAR 21.07.01.12; and pursuant to Section 6.6 and Schedule 7 of the Service Agreement, the City shall give the Authority sixty (60) days' notice of such intention. The notice shall be in writing to the Authority with a copy to the Company Representative.

Section 6.8 **Reserved**

Section 6.9 **Default Termination Damages Payable to the City.**

Notwithstanding any other provision of this Agreement, if this Agreement is terminated by the City for cause as a result of an Event of Default by the Authority, the Authority shall pay, without duplication, to the City Performance Damages as set forth in Section 7.1 of the Service Agreement.

Section 6.10 **Survival of Certain Rights and Obligations.**

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

Section 6.11 **Performance Bond.**

The Authority has caused the Company to provide a Performance Bond which is Schedule 5 of the Service Agreement. The Performance Bond amount covers the initial agreement. The Performance Bond shall remain in effect during each option year.

ARTICLE VII

TERM; RENEWAL

Section 7.1 Term.

The initial term of this Agreement shall be from June 30, 2025, through June 30, 2029, with two (2) optional twelve (12) month terms, at the City’s sole discretion, at the rates set forth in Schedule 3 (Authority Fee) and in Section 8.1 (Company Service Fee) of the Service Agreement. This Agreement, and therefor the obligation of the Authority to perform the Service described in the Service Agreement and herein, is contingent upon and subject to appropriation and availability of any funds due under this Agreement after the City’s current fiscal year.

Section 7.2 Option to Renew.

The City shall give the Authority One Hundred fifty (150) days written notice to renew this Agreement for each option year.

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

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES

Section 8.1 Representations and Warranties of the Authority.

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

- 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 City.

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

- A. The City is a political subdivision of the State of Maryland and a body politic and corporate, duly organized and validly existing under the constitution and laws of the State of Maryland, with full legal right, power and authority to enter into and perform its obligations under this Agreement.
- B. The City has duly authorized the execution and delivery of this Agreement and this Agreement has been duly executed and delivered by the City and constitutes a legal,

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valid and binding obligation of the City, enforceable against the City in accordance with its term.

- C. Neither the execution or delivery by the City of this Agreement, nor the performance by the City of its obligations in connection with the transactions contemplated hereby or the fulfillment by the City of the terms or conditions hereof (i) conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the City, (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 City is a party or by which the City 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 City.
- 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 City, except such as have been duly obtained or made.

ARTICLE IX

MISCELLANEOUS

Section 9.1 **Change of Authority Representative or City Representative.**

Any party may change its authorized representative upon five (5) business days' written notice to the other party.

Section 9.2 **Assignment and Replacement.**

Neither the Authority nor the City may assign this Agreement without the prior written consent of the other party. The Authority shall have the right to substitute for the Company in the Event of Default by the Company under the Service Agreement. The City shall have the right to approve the substitute for the Company but shall not unreasonably withhold such approval.

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:

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

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If to the City Representative:

TITLE
BUREAU
ADDRESS 1
ADDRESS 2
PHONE: _____
FAX: _____
E-mail: _____

If to the Company:

COMPANY

With a copy to:

COMPANY Legal Department

Any party entitled to receive communications under this Agreement may change the address to which its communications are delivered by notice to the other party. 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.

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

Section 9.5 Binding Effect.

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

Section 9.6 Further Assurances and Amendments.

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

Section 9.7 Governing Law.

The laws of the State of Maryland govern the validity, interpretation, construction and performance of this Agreement.

Section 9.8 Counterparts.

The Authority and the City 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 City may change, modify, amend or waive this Agreement or any provision of this Agreement except by a written instrument signed by both parties.

Section 9.10 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 9.11 Dispute Resolution.

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

Section 9.12 Limitation of Liability and Defenses.

Notwithstanding any other provision of this Agreement to the contrary, the obligations of the Authority to the City under this Agreement are limited to the obligations of the Authority under the Service Agreement.

Section 9.13 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 the Maryland Public Information Act, Title 4 under the General Provisions Article of the Maryland Code, as amended.

To the extent permitted by Applicable Law, the City shall hold Confidential Information in strict confidence and take all reasonable precautions to prevent disclosure to third parties. The City shall promptly notify the Company of the identity of any Person who requests a disclosure of Confidential Information. The City 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 City shall consider any information or legal arguments presented by the Company before the disclosure of the requested information. The City 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 City in its sole discretion may determine that disclosure of some information is required under the public disclosure act, COMAR 21.06.01.02 (F), and the Company agrees to hold the City HARMLESS with respect to any such disclosure. The City will give notice to the Company of any requests for disclosure of information identified as confidential.

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

SIGNATURES APPEAR ON THE FOLLOWING PAGE

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

NORTHEAST MARYLAND WASTE
DISPOSAL AUTHORITY

Attest:

By: _____

By: _____

Andrew Kays
Executive Director

CITY OF BALTIMORE,
MARYLAND

Attest:

By: _____

By: _____

Date

Approved as to form and legal sufficiency,

Office of Law Date

Approved.

Director, Department of Date
Public Works

SCHEDULE 1

SERVICE AGREEMENT

(See attached)

1/27/2025 10:18 AM

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