
ENERGY RECOVERY AGREEMENT

Between

CARROLL COUNTY, MARYLAND

and

NORTHEAST MARYLAND WASTE DISPOSAL AUTHORITY

Dated July 30, 2009

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EXHIBIT A: Definitions and Interpretation.....A-1

ENERGY RECOVERY AGREEMENT

THIS ENERGY RECOVERY AGREEMENT (this “Agreement”) dated as of July 30, 2009 is between Carroll County, Maryland (the “County”) and Northeast Maryland Waste Disposal Authority (the “NEA” and together with the County, each a “Party” and collectively, the “Parties”).

RECITALS

1. The County operates the County Disposal System for solid waste generated in the County as reflected in the County’s Comprehensive Solid Waste Management Plan.

2. The County requires that all waste haulers doing business in the County provide curbside residential collection of recyclables. The haulers deliver the recyclables to the County’s transfer station, where the County provides for the re-loading, transportation and processing at a privately owned materials recycling facility

3. The County has determined to provide for the conversion into energy of solid waste that is not recycled using capacity at a regional resource recovery facility (the “Facility”). Nothing in this Agreement restricts any County recycling programs or requires the delivery by the County to the Facility of solid waste that the County elects to include in a recycling program.

4. The Facility will be developed, owned and operated by the NEA. The Facility will accept solid waste designated by the County and Frederick County, Maryland.

5. The NEA is empowered to assist the participating members to effectuate waste disposal and energy recovery programs on a regional basis. The NEA will enter into a long-term energy recovery agreement with Frederick County that is substantially similar to this agreement.

6. The Facility will generate substantial amounts of electricity from the waste delivered by the County. If the County so elects, the NEA will sell a proportionate amount of such electricity to the County or its designated aggregator, for use at County facilities. If not, the NEA will provide for the sale of such electricity to third parties. In all cases, all revenues from sales of electricity will reduce the County’s disposal costs under this Agreement.

7. All of the Residue generated at the Facility will be screened, and ferrous and non-ferrous metals removed and recycled. If there is no market for the remaining Residue, each Participating County will accept its proportionate share of Residue. The County has elected to recycle its share of Residue as daily cover at the County’s landfill. The County is not obligated to accept any Residue which does not meet environmental standards.

8. Frederick County will provide for a site located in Frederick County for the Facility and lease such site to the NEA, pursuant to a long-term Facility Site Lease, (the “Facility Site Lease”) for the expected useful life of the Facility. Frederick County will elect to (1) recover its purchase price for the Facility site from the NEA bond proceeds, or (2) amortize the

purchase price as a Facility Site Lease rental to be included as a component of the Fixed Operating Cost of the Facility.

9. The Facility will be constructed and operated for the NEA by a qualified, full-service vendor (the “Company”) under a long-term construction and operation agreement (the “Service Agreement”).

10. The NEA will finance the costs of the Facility from the proceeds of its revenue bonds. The bonds of the NEA shall not be a debt of the County nor shall the bonds of the NEA constitute a full faith and credit pledge of the taxing powers of the County.

Now therefore, in consideration of the premises' and of the mutual obligations undertaken herein, the Parties hereby agree as follows:

**ARTICLE I
DEFINITIONS AND RIGHTS OF COUNTY**

Section 1.1 Definitions. Capitalized terms used herein shall have the meanings given to such terms in Annex A hereof.

Section 1.2 County’s Rights. Pursuant to this Agreement, the NEA and the County will cooperate in developing and operating the NEA Component. The NEA will not enter into the Facility Site Lease, the Service Agreement, the Bond Documents, or any other NEA Component Agreement that affects the County’s Energy Recovery Fee without first receiving the approval of the County Representative, and where required, the Board of County Commissioners.

Section 1.3 Participation by Frederick County. The NEA will enter into a long-term energy recovery agreement with Frederick County, Maryland that provides for (i) the use of 60% of the capacity of the Facility, and (ii) the payment by Frederick County of its share of the NEA’s net cost of operation of the Facility. Nothing in this Agreement shall require the County to increase the amounts due hereunder due to a default by Frederick County under its long-term agreement or to pay to the NEA of any amounts due under the Frederick County Agreement.

Section 1.4 Facility Site. Frederick County owns property located at the McKinney Industrial Park near the Ballenger Creek Wastewater Treatment Plant and will provide a portion thereof of approximately 10 acres to the NEA under the Facility Site Lease. Frederick County will enter into the Facility Site Lease provided that the County’ obligations thereunder shall be subject to the consummation of the County’s acquisition of the Facility Site from the current owner and the satisfaction of conditions precedent contained in the Agreement.

Section 1.5 Sludge and Wastewater Effluent.

(a) The Facility is being designed to dispose of sludge from County waste water facilities and under the Service Agreement, the Company is obligated to accept and process such sludge. The County will not pay for the construction or operation cost of the sludge handling equipment.

(b) The Facility is designed to beneficially reuse effluent from Frederick County’s wastewater treatment plant and the NEA shall provide the transmission pipe to deliver provision of such effluent from Frederick County’s main conduit to the Facility. This cost in included in the Construction Price.

Section 1.6 Renewable Energy Dividend. From and after the Commercial Operations Date, the NEA shall pay Frederick County a share of the revenues actually received from the sale of electricity, capacity, ancillary services and renewable energy credits (together the “Energy Revenues”) which shall constitute, the “Renewable Energy Dividend.” The Renewable Energy Dividend shall either be applied by the NEA as a credit against the Energy Recovery Fee to reduce the net cost of disposal for Frederick County, or at the direction of the Frederick County Representative, may be distributed to the Solid Waste Fund. The amount of the Renewable Energy Dividend shall equal the following percentages of the Energy Revenues recovered by the NEA during each Operating Year.

Operating Year	Percentage of Net Energy Revenues
1	1%
2	2%
3	3%
4	4%
5 and thereafter	5%

The estimated amount of the Renewable Energy Dividend in the first twelve months of operations is \$300,000 in FY 2009 Dollars assuming full plant operations.

**ARTICLE II
CONSTRUCTION OF AND OPERATION OF THE FACILITY**

Section 2.1 Delivery of Waste to Facility. The County hereby designates the Facility as the central solid waste acceptance facility for the County for the disposal of non-recycled Acceptable Waste generated in the County (up to the amounts which the NEA is required to accept pursuant to this Agreement). Nothing in this Agreement requires the County to deliver to the NEA for disposal under this Agreement any solid waste that such County recycles under any County program (which may include private recycling in accordance with the Comprehensive Solid Waste Management Plan) or to require any Person to deliver recyclable materials to any place other than a County or County-approved recycling facility under such program

Section 2.2 Construction of NEA Component.

(a) Facility. After the Financial Closing, the NEA shall, (i) cause the Company to design, construct on the Facility Site pursuant to the Facility Site Lease, install, equip, complete, start-up and test the Facility, so as to pass certain acceptance tests and permit

requirements, and (ii) apply the Bond proceeds to pay the Capital Costs thereof and any other costs as provided in the Trust Indenture.

(b) Notice. The NEA shall promptly notify the County Representatives of the existence or occurrence of any circumstance of which the NEA has actual knowledge which would, in the reasonable opinion of the NEA Representative, adversely affect the ability of the Company to design, construct, install, equip and complete the Facility in accordance with the Service Agreement.

(c) Construction Information. The NEA shall provide the County with monthly construction reports and shall make available all information regarding the construction of the Facility that is in the NEA's control that are requested by the County Representative. The County Representative may attend monthly construction status meetings held with the Company.

Section 2.3 Operation and Maintenance of Facility Following the Commencement Date, the NEA shall operate and maintain the Facility in accordance with Applicable Law and Prudent Solid Waste Management Practices. The NEA and the County acknowledge that a substantial objective of the County is to secure solid waste disposal services for the County in an environmentally sound manner and accordingly the NEA agrees that it shall cause the Company in accordance with the Service Agreement to meet its obligations with respect to the cleanliness of the Facility, compliance with environmental and other Applicable Law and, should any such nuisance condition or violation of Applicable Law occur, to expeditiously remedy the condition or violation. In addition, the NEA shall cause the Company in accordance with the Service Agreement to repair, maintain and replace the Facility's pollution control equipment in accordance with sound engineering practice so that the equipment meets the performance levels required by the Service Agreement.

Section 2.4 The Company As The NEA's Provider Of Waste Disposal and Energy Recovery Services Under This Agreement. The County acknowledges and agrees that:

(1) The NEA has entered into the Service Agreement with the Company to obtain the services of the Company to fulfill substantially all of the NEA's obligations to the County under this Agreement other than the obligations of the NEA hereunder to administer and enforce the Service Agreement and any other obligation hereunder which is not dependent or expressly conditioned upon performance by the Company under the Service Agreement. Prior to the termination of the Service Agreement, the Company's performance of its obligations under the Service Agreement constitutes performance of all of the NEA's obligations under this Agreement other than the Obligations of the NEA hereunder to administer and enforce the Service Agreement and any other obligation hereunder which is not dependent or expressly conditioned upon performance by the Company under the Service Agreement.

(2) Before the termination of the Service Agreement and pursuant to the Service Agreement, the Company has agreed, in the name, on behalf and in the place and stead of the NEA, to perform certain obligations of the NEA under this Agreement, the Facility Site Lease, and certain other NEA Component Agreements.

(3) The performance by the Company on behalf of the NEA of the NEA's obligations under this Agreement constitutes performance of such obligations by the NEA for all purposes hereof. The NEA shall not be in default of any obligation under this Agreement to cause the Company to take any action despite the failure of the Company to take such action if the NEA is diligently enforcing the provisions of the Service Agreement in accordance with this Agreement.

Section 2.5 NEA Component Constitutes a Part of the System; No Responsibility of County with Respect to Facility.

(a) The County acknowledges the NEA Component is necessary and desirable for the efficient operation of the County Disposal System and for the provision of County Disposal Services by the County and is in compliance with its Comprehensive Solid Waste Management Plan.

(b) The County is not responsible, by reason of the execution and delivery of this Agreement or any other reason whatsoever, and has not undertaken any responsibility for, the design, construction, installation, equipping, start-up, testing or operation of the Facility and related structures or the ownership, operation or maintenance of the Facility, or the acquisition, construction, operation or maintenance of any Alternate Disposal Facility (other than County owned or operated Alternate Disposal Facilities) and the County shall not in any way be deemed to have incurred any liability to the NEA, the Company, the Trustee, any Bondholders or any other Person whatsoever, with respect to any matters referred to above relating thereto; except that the County's responsibilities with respect to the Designated Landfill shall be set forth and governed by the Landfill Agreement. The Parties acknowledge that the primary interest of the County in the Facility and in any Alternate Disposal Facility is in assuring the ability of the NEA to render the service to the County of providing the capacity for the acceptance, processing and disposal of all Acceptable Waste delivered to the Facility in accordance with the Service Agreement and, in the event and to the extent the Facility is not available to accept, process or dispose of such waste, providing for the acceptance and disposal of such waste at an Alternate Disposal Facility. The provisions of this Section shall in no way limit the obligations of the County to pay the Energy Recovery Fee and all other amounts due under this Agreement or any other Project Agreement to which the County is a party to the extent required under Article II of this Agreement and otherwise meets its obligations under this Agreement.

ARTICLE III
DELIVERY OF WASTE AND PROVISION OF DISPOSAL SERVICE

Section 3.1 Delivery of Waste.

(a) Designated Haulers. The County shall compile and provide the NEA with the following information about all of its Designated Haulers delivering Waste to the Facility: name and address; identification number; county; and any other information required pursuant to any NEA Component Agreement. The NEA shall accept waste for the account of the County only from the County's Designated Haulers and within any limitations as to quantity, type of waste or hours of delivery that the County may set forth in its notice to the

NEA regarding its Designated Haulers. The NEA shall not accept waste from the account of the County for any Person other than a Designated Hauler or County employee. The County may change the information about its Designated Haulers from time to time by delivering written notice to the NEA.

(b) Delivery Schedules and Procedures. The County Representative and the NEA Representative agree to cooperate with the other Participating County Representative in the development of an annual operating plan pursuant to the Service Agreement. Deliveries of Acceptable Waste to the NEA Component hereunder shall be consistent with the Service Agreement and substantially in accordance with written procedures established by mutual consent of the Parties. These delivery procedures shall reflect the waste transportation and disposal practices within the Participating Counties and the design and operating requirements of the Facility or the Alternate Disposal Facility, as in effect at the time of delivery, and may not unreasonably either impede the ability of the County to deliver or to cause the efficient delivery of, all Acceptable Waste which the NEA is obligated to receive from the County hereunder or impair the ability of the NEA to receive and dispose of, or arrange for the disposal of, such Acceptable Waste in accordance with this Agreement and the Service Agreement.

(c) Representatives. The County and the NEA each shall designate in writing within sixty days of the execution of this Agreement an individual to transmit instructions, receive information and otherwise coordinate service matters arising pursuant to this Agreement (respectively, the "County Representative" and the "NEA Representative"). Either Party may designate a successor or substitute Representative at any time by notice to the other Party. The NEA Representative shall also notify the County in writing within 30 days of its receipt of Frederick County's designation of an individual to transmit instructions, receive information and otherwise coordinate service matters arising pursuant to the Frederick County Agreement (together with the County Representative, each a "Participating County Representative" and together the "Participating Counties Representatives"), or a successor or substitute therefor.

(d) Measuring and Acceptance of Waste at Facility. The NEA will build a new scale house at the Facility. Frederick County will operate and maintain road vehicle scales at the Facility after the Commencement Date. If at any time, Frederick County elects not to operate and maintain road vehicle scales at the Facility, the NEA will operate and maintain the road vehicle scales. Operation and maintenance of the road vehicles scales shall include (i) weighing all road vehicles (1) removing waste, Residue or Recovered Materials from the Facility or (2) delivering waste to the Facility (whether or not the NEA accepts the waste so delivered), (ii) completing a weight record with regard thereto, containing gross weight, tare weight, date and time, county of origin, and road vehicle identification, and (iii) giving each road vehicle operator written confirmation of such information at the time the road vehicle is weighed. The County may have employees or agents in the scale house at any time to observe scale operations or review weigh records.

The operator may require each road vehicle operator delivering waste to present to the scale operator a card, permit, identification, or license. The NEA Representative, the Participating County Representatives or the Company Representative may reasonably require

from time to time the revalidation of the tare weight of any road vehicle or the reweighing of unloaded road vehicles.

If the permanent road vehicle scales at the Facility are not working properly or are being tested, a “scale outage” will occur, and the other participating Counties Representatives, the NEA Representative and the Company Representative shall reasonably estimate the quantity of waste delivered from each Participating County on the basis of truck volumes and historical information about the NEA, the Participating Counties, and the Designated Haulers. These estimates take the place of actual weighing records during the scale outage. In order to participate in the estimating of quantities of waste during a scale outage, the County shall have an employee or agent present in the scale house when each road vehicle arrives. If they do not, the estimate of the NEA and Frederick County shall be used. Any estimate made under this Section is final.

The NEA shall inspect and test the road vehicle scales as required by Applicable Law, and shall treat the costs of such inspection and testing as a NEA Administrative Cost hereunder. Upon the written request of either of the Participating County Representatives, the NEA shall make or cause to be made additional tests of all road vehicle scales. The cost of these additional tests shall be paid by the Participating Counties, according to their Proportionate Shares.

If any test shows that a scale registers farther above or below the correct reading than permitted by Applicable Law, the charges and calculations based on inaccurate readings made within thirty (30) days preceding the test shall be corrected by the percentage of inaccuracy found. If a test of the scales has been performed during the preceding thirty (30) days, only the readings and related charges and calculations made after that test shall be corrected on the basis of the subsequent test.

The NEA shall maintain daily records of the total tonnage of waste delivered to the Facility for acceptance and shall keep copies of all weight tickets for at least two years. The NEA shall furnish the County with information for each month, within ten days after the end of the month. The Participating Counties, the NEA, and the Company shall establish procedures for the maintenance and distribution of any and all other scale records agreed upon by such parties to be kept by the NEA.

The County may establish and collect tipping and disposal fees from all Persons delivering waste to the Facility by or on behalf of the County. The NEA Representative and Participating County Representatives shall enter into a protocol on or before the Commencement Date providing for the collection of tipping or disposal fees from suppliers of waste to the NEA Component other than by or on behalf of the Participating Counties as provided in Section 3.5.

Section 3.2 Provision of Disposal Service by NEA.

(a) Service Covenant. After the Commencement Date, subject to the NEA’s rejection rights under Section 3.3, the NEA shall provide or cause the provision of the service of disposing of all non-recycled Acceptable Waste that is generated in the County and delivered by or on behalf of the County pursuant to this Agreement to the Facility, excluding the disposal of Residue from the processing of Acceptable Waste at the Facility. The NEA

shall do and perform all acts and things which may be necessary or desirable in connection with its obligation under this Section 3.2(a), including without limitation all planning, development, administration, implementation, construction, operation, maintenance, management and contract work related thereto or undertaken in connection therewith. Notwithstanding the foregoing, the NEA shall not be obligated to accept Acceptable Waste from the County in an amount greater than 40% of the Annual Facility Throughput Guarantee, as such term is defined in the Service Agreement, in any Fiscal Year and, before the Service Agreement Termination Date, the County's Proportionate Share of any additional amount that the Company shall accept pursuant to the Service Agreement. The obligations of the NEA pursuant to this Section constitute its "Service Covenant".

(b) Alternate Means of Disposal. The NEA may carry out its Service Covenant through the Service Agreement or through the use of any other agreements with such Persons (including, but not limited to, the Participating Counties) or the use of any such facilities, using such technologies and upon such terms and conditions as are consistent with Applicable Law and with Prudent Solid Waste Management Practices. To the extent the Facility is not available at any time or for any reason (including failure by the Company to perform its obligations pursuant to the Service Agreement) for the receipt and processing of Acceptable Waste that the NEA is required to accept from the County under this Agreement, the NEA shall cause the Company to provide for alternate disposal (if the Company is obligated to provide such alternate disposal pursuant to the Service Agreement) or the NEA shall use Alternate Disposal Methods available for the disposal of such Acceptable Waste delivered by or on behalf of the County hereunder. The NEA shall designate and may change from time to time the Alternate Disposal Facility, and shall deliver written notice to the County Representatives of such designation or change. The NEA shall exercise its commercially reasonable efforts to minimize the costs incurred in complying with the Service Covenant consistent with its responsibilities hereunder and under the Service Agreement (including the enforcement thereof), other NEA Component Agreements and the Bond Documents, Applicable Law and Prudent Solid Waste Management Practices. The provision of service by the NEA in meeting the Service Covenant by means other than the processing of waste at the Facility shall constitute "Alternate Disposal Methods."

(c) County Disapproval of Alternate Disposal Methods. Subject to the provisions of Section 6.4, the NEA shall comply with any direction of the County Representative with respect to the Alternate Disposal Method for Acceptable Waste delivered hereunder, including the use of an Alternate Disposal Method or Alternate Disposal Facility other than that proposed by the NEA, if the direction is in accordance with the NEA Component Agreements, the Bond Documents and Applicable Law.

Section 3.3 NEA Refusal Rights. The NEA may reject deliveries of (1) Hazardous Waste, (2) Unacceptable Waste, (3) waste that is delivered in violation of reasonable rules and regulations of the NEA adopted in accordance with this Agreement, (4) waste delivered outside of Receiving Hours and (5) any waste in excess of the County's Proportionate Share of the daily, weekly, monthly and annual processing capacity of the Facility, which shall be, prior to the Service Agreement Termination Date, the amounts set forth therein as rejection rights of the Company.

Section 3.4 Recycling Of County Acceptable Waste. The NEA shall cooperate with the County in the County's establishment of programs and facilities for the recycling of Acceptable Waste in compliance with Applicable Law. These programs and facilities shall be conducted and implemented by the County, however, at the direction of the County, the NEA shall provide a materials recycling facility or other recycling facilities or recycling services, on terms and conditions mutually agreed by the Parties, as a Pass Through Cost.

Section 3.5 Receipt of NEA Sponsored Waste. The NEA shall not accept at the Facility any waste that is not delivered pursuant to this Agreement or the Frederick County Agreement; provided that if the Facility has available capacity to accept additional waste due to seasonal and annual fluctuations in the delivery of Acceptable Waste by or on behalf of the County hereunder or by or on behalf of Frederick County under the Frederick County Agreement. The NEA may notify the Participating Counties and only if directed to do so in writing by both Participating Counties, the NEA may accept such quantities of Acceptable Waste as may be explicitly permitted by such written directions. Revenues from the acceptance of such waste shall be the NEA Component Revenues which shall be applied to reducing the Counties' net cost of disposal. The associated electricity generation shall be available to the Counties, or if directed by the County Representatives, shall be sold to third parties and the revenues applied to reducing the Counties' cost of disposal.

Section 3.6 County Acceptable Waste. The NEA shall accept Acceptable Waste for the account of the County only from the County's Designated Haulers including employees of the County. The County shall be responsible for waste delivered by its Designated Haulers as if such waste were delivered by County employees.

Section 3.7 Waste Delivered to the Facility.

(a) Screening and Removal of Unacceptable Waste. The County shall not knowingly deliver, and shall use all legal means reasonably available to prevent the delivery for its account hereunder of Unacceptable Waste to the NEA Component by its Designated Haulers or any other Person. The NEA shall not knowingly receive, and shall cooperate with the County to prevent the receipt of, Unacceptable Waste at the Facility. The County and the NEA shall cooperate in establishing and enforcing procedures required to assure the safe and proper conduct of Designated Haulers of the County and drivers of delivery vehicles in the manner contemplated by this Agreement and the Service Agreement. The NEA may inspect all vehicles delivering waste to the Facility, and all waste delivered, before or after unloading, for the presence of Unacceptable Waste or Hazardous Waste.

(b) Hazardous Waste. The Parties acknowledge that the Facility has not been designed and is not intended to be used in any manner or to any extent as facilities for the handling, transportation, storage or disposal of Hazardous Waste. Neither the County nor the NEA shall countenance or knowingly permit the delivery of Hazardous Waste to the NEA Component. The NEA shall cause the Company to diligently comply with the waste screening practices and procedures set forth in the Service Agreement. The NEA and the County shall diligently cooperate in enforcing all Applicable Laws and establishing administrative procedures prohibiting the delivery of Hazardous Waste to the NEA Component.

(c) Disposal Responsibility and Costs. The NEA shall, in accordance with the Service Agreement, remove and dispose of, or cause the removal and disposal of, all Unacceptable Waste and Hazardous Waste delivered to, and inadvertently accepted at, the NEA Component. All costs associated with the handling or disposal of Hazardous Waste incurred by the NEA are deemed to be costs and expenses incurred in providing Waste Disposal and Energy Recovery Services under this Agreement, and constitute Variable Costs, to be allocated in full to the Participating County who, directly or through one or more Designated Haulers or other Persons, delivered such Hazardous Waste. If the source cannot be determined, the cost shall be a variable cost attributed to the Participating Counties pursuant to Section 4.1(c)(ii).

Section 3.8 Recycling or Disposal of Residue. Each of the Participating Counties shall be responsible, at its expense, for the recycling or disposal of its Proportionate Share of the Residue generated from the NEA Component, which shall be calculated pursuant to Section 4.1(c)(ii). Each Participating County shall notify the NEA of its Designated Landfill at least thirty (30) Business Days prior to the Commencement Date, and shall arrange to make any payments required by such Designated Landfill directly. A Participating County may change its Designated Landfill upon ten (10) Business Days notice, in writing, to the NEA and the Company. The NEA shall be responsible for the transportation of Residue to the Designated Landfill and the cost of such transportation shall constitute a Variable Cost so that each Participating County shall bear the cost of transporting its Proportionate Share of Residue from the Facility to its Designated Landfill.

Section 3.9 County Covenant for Benefit of NEA. The County agrees and covenants that so long as the NEA is in compliance with this Agreement, the NEA is entitled to operate each NEA Component without undue interference or interruption and accordingly hereby agrees (1) not to take any action (or fail to take any action) which would adversely affect the NEA's ability to enjoy the rights and benefits conferred upon the NEA, or to undertake obligations in connection with any NEA Component (including the Facility, the Facility Site, or any construction or operation activities thereon), and (2) to cooperate with the NEA with respect to all matters affecting such enjoyment; provided, however, that this Section shall not be construed to (1) exempt the NEA from any provision of this Agreement requiring compliance with Applicable Law or (2) preclude the County from enforcing its Applicable Law. The passage by the County of any ordinance, local law or similar enactment having the force of law or enforcement of any existing law, ordinance or enactment which is (1) discriminatory in nature and adverse to the construction or operation of any NEA Component by the NEA or to the performance by the NEA of its obligations under this Agreement, (2) not a necessary or appropriate exercise of the police power sufficient to override and impair such County agreement and covenant for the benefit of the NEA and (3) not in respect and furtherance of the proviso of the sentence immediately preceding, shall be deemed to be a breach of this Section 3.9.

Section 3.10 County Pledge. In consideration of and as an inducement to the sale of the Bonds by the NEA upon favorable terms and at favorable interest rates, the County, to the extent permitted by Applicable Law, hereby pledges to and agrees with the Bondholders that the County will not limit or impair the rights hereby vested in the NEA to purchase, construct, maintain, operate, repair, improve, reconstruct, renovate, rehabilitate or dispose of the NEA Components, or any part or parts thereof, for which Bonds of the NEA shall have been issued, to

fulfill the terms of the Bond Documents or any agreements made with the Bondholders or with any Person with reference to the NEA Components or part thereof, or in any way impair the rights and remedies of the Bondholders, until the Bonds, together with interest thereon, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceeding by or on behalf of the Bondholders, are fully met and discharged and authorize the NEA to include such pledge and agreement in the contract with the Bondholders.

ARTICLE IV RECOVERY FEE AND PAYMENTS

Section 4.1 Energy Recovery Fee.

(a) Payment of Energy Recovery Fee. In consideration for the NEA's obligations under the Service Covenant and all other services being rendered and obligations assumed by or on behalf of the NEA to the County hereunder, commencing on the Commencement Date and throughout the term of this Agreement the County shall pay to the NEA the Energy Recovery Fee. If the County disputes any portion of the Energy Recovery Fee billed by the NEA it shall nonetheless pay the entire amount of the Energy Recovery Fee so billed when due and subsequently resolve such dispute in accordance with Section 8.6 hereof.

(b) Calculation of Energy Recovery Fee. The Energy Recovery Fee shall be determined in accordance with the following formula:

$$RF = DS + FF + DC + OC + AC + VC - PR$$

Where

RF = Energy Recovery Fee.

DS = The County's Proportionate Share of Debt Service.

FF = The County's Proportionate Share of the Facility Fee.

DC = The County's Proportionate Share of the Alternate Disposal Costs.

OC = The County's Proportionate Share of Operating Costs.

AC = The County's Proportionate Share of NEA Administrative Costs.

VC = The County's Proportionate Share of the Variable Costs.

PR = The County's Proportionate Share of NEA Component Revenues.

Each component of the Energy Recovery Fee shall be computed in accordance with this Section and may be adjusted from time to time as provided in this Agreement. Although calculated by components, the Energy Recovery Fee is and shall be considered to be a single annual fee.

(c) Proportionate Share. The County's Proportionate Share of costs or revenues shall be as follows:

(i) With respect to costs or revenues received or incurred by the NEA, the amount of which is not variable based on the amount of Acceptable Waste processed or electricity produced by the Facility and which is not otherwise a Variable Cost allocated solely to one Participating County, the Proportionate Share shall be 40% of such revenue or cost for the County, and 60% of such revenue or cost for Frederick County.

(ii) With respect to Variable Costs or NEA Component Revenues which vary directly with the amount of waste processed at the Facility, the Proportionate Share for each Participating County shall be a ratio (the "Actual Delivery Ratio") equal to (a) the amount of Acceptable Waste received from such Participating County's Designated Haulers during the applicable Billing Period, divided by (b) the total amount of Acceptable Waste received at the Facility during the applicable Billing Period.

(iii) The County's Proportionate Share of the following items shall be 100%: (1) Services requested by the County in writing that are performed for the benefit of the County and not Frederick County, such as requests for additional receiving hours and (2) Discriminatory County Taxes.

(d) Debt Service. Debt Service is an amount equal to (i) the amount of any principal of and premium, if any, and interest on the Bonds plus (ii) any amount required to be deposited into reserves, debt service funds or other funds established under the Trust Indenture or other Bond Documents, plus (iii) fees and expenses (including expenses of counsel) of the NEA, the Trustee, and any remarketing agent, letter of credit bank or other credit facility provider, and tender agent, if any, for the Bonds and administrative fees and expenses of the NEA under any Bond Documents, plus (iv) any amounts payable under credit support facilities including reimbursement obligations.

(e) Facility Fee. The Facility Fee is an amount equal to all amounts required to be paid by the NEA to the Company under the Service Agreement, including, but not limited to, the service fee thereunder, any termination damages and other amounts payable thereunder; provided that Variable Costs shall be excluded from the Facility Fee.

(f) Alternate Disposal Costs. Alternate Disposal Costs is an amount equal to all costs and expenses, other than Variable Costs, incurred by the NEA (other than such costs which are payable through the Facility Fee component) in connection with the handling, transportation, storage, treatment and disposal by Alternate Disposal Methods of Acceptable Wastes.

(g) NEA Administrative Costs. NEA Administrative Costs is an amount equal to all reasonable administrative costs of the NEA, other than Variable Costs, attributable to the administration and enforcement by the NEA of its obligations under this Agreement,

including, but not limited to, the following: accounting, legal, engineering and other professional fees, including the fees of the Consulting Engineer required to be retained by the NEA pursuant to the Service Agreement or this Agreement, the Independent Public Accountant, the Insurance Consultant; any fees, expenses or liabilities required to be paid by the NEA to any trustee, paying agent or fiduciary for the Bonds; and expenses related to the issuance of the Bonds.

(h) Operating Costs. Operating Costs is an amount equal to all amounts payable by the NEA pursuant to any NEA Component Agreement, and any other costs of the NEA incurred in connection with the provision by the NEA of the operation and performance of its services required under this Agreement including insurance premiums, Taxes on the NEA Component or its activities hereunder, Facility Site Lease payments, and utilities; provided that Variable Costs shall be excluded from Operating Costs.

(i) Variable Costs. Variable Costs is an amount equal to the sum of costs paid or incurred by the NEA with respect to the NEA Component, to the extent that the amount or value of which is based on the amount of Acceptable Waste processed at the Facility, or which are incurred at the request of, or for the sole benefit of, one Participating County, or that are otherwise allocated to the County hereunder, or to Frederick County under the Frederick County Agreement. Variable Costs include (i) the cost of the transportation of the County's Proportionate Share of Residue from the Facility to the Designated Landfill, (ii) if the County fails to provide a site for its Proportionate Share of Residue, the cost of transportation and disposal of such Residue and (iii) costs of consumable materials at the Facility that are based directly on waste processing levels.

(j) NEA Component Revenues. NEA Component Revenues is an amount equal to all revenues and other amounts received by the NEA, derived from the NEA Component, including without limitation material or energy sales revenue sales (including amounts paid pursuant to any energy sales agreement), sales of environmental attributes including but not limited to renewable energy credits (RECs), revenues from Recovered Materials, investment income, fines and penalties, grant proceeds, indemnification and surety payments, insurance and condemnation proceeds otherwise unencumbered under the Bond Documents and any other amounts paid to the NEA pursuant to any NEA Component Agreement (including damages paid thereunder); provided, however, that NEA Component Revenues shall not include (i) the Energy Recovery Fee or any other amount payable by a Participating County under its Participating County Agreement or any NEA Component Agreement (other than a County Electricity Sales Agreement), (ii) Bond proceeds or (iii) amounts required to be rebated by the NEA pursuant to the Internal Revenue Code to preserve the tax-exempt status of any Bonds.

(k) Adjustments to Components of Energy Recovery Fee. During any Processing Capacity Reduction the components of the Energy Recovery Fee shall be increased or decreased, as applicable, to reflect (1) the NEA's reduced expenses of operation and maintenance, and (2) the amount of any increased or additional expenses of operation and maintenance of the NEA Component and providing the services rendered hereunder caused by such Processing Capacity Reduction. During a Processing Capacity Reduction, the NEA shall

use reasonable efforts to minimize the expenses of operating and maintaining the NEA Component and providing the services rendered hereunder.

Section 4.2 Billing of the Energy Recovery Fee.

(a) County Statements. For each Billing Period, the NEA shall render a statement (a "Billing Statement") to the County setting forth the County's Energy Recovery Fee and any other amounts due under this Agreement for the Billing Period. For purposes of the Billing Statement, the County's Proportionate Share of all costs shall be deemed to be forty percent (40%), which shall be recalculated pursuant to Section 4.1(c) for the Annual Settlement Statement, as described more fully in Section 4.3. The NEA shall render such Billing Statement by the 25th day of the Billing Period following the Billing Period to which the Billing Statement applies, for all components of the Energy Recovery Fee. During the first Billing Period, the NEA will issue a Billing Statement pursuant to which the Energy Recovery Fee is equal to the Debt Service for the first Billing Period, and each following Billing Statement shall contain the Debt Service amount for the Billing Period following the Billing Period for which the Billing Statement is issued, so that the Debt Service for each Billing Period is paid in advance. The County shall pay the Energy Recovery Fee amount listed on the Billing Statement and any other payment balance due to the NEA within fifteen (15) days of its receipt of the Billing Statement. Upon the written request of either the NEA or the County, the Billing Statement shall be prepared by the certified public accountant that prepares the NEA's financial statement or another accountant mutually agreeable to the parties. The cost of such preparation is a Variable Cost allocated 100% to the County.

(b) Estimates and Adjustments. To the extent that the actual value of any item in any Billing Statement cannot be accurately determined at least five (5) days prior to the date on which the NEA renders the Billing Statement, such item shall be billed on an estimated basis and an adjustment shall be made to reflect the difference between such estimated amount and the actual amount of such item on the Billing Statement rendered next following the fifth day after the date on which the NEA learns the exact amount of such item. Notwithstanding the foregoing, the component of the Energy Recovery Fee constituting NEA Component Revenues shall not be estimated, but shall be equal to the NEA Component Revenues actually received by the NEA (or by the Trustee on behalf of the NEA) on the fifth Business Day prior to the date on which the Billing Statement is rendered.

(c) Annual Estimates. At least one hundred twenty (120) days prior to the end of each Fiscal Year, the NEA shall provide the County a written statement setting forth its reasonable estimate of the County's Energy Recovery Fee for the next Fiscal Year, which statement shall not be binding on the NEA. The estimate shall contain an itemized breakdown of each component of the Energy Recovery Fee in reasonable detail. To the extent practicable, the NEA shall update the estimate of each Energy Recovery Fee as the amount thereof can be more accurately determined.

(d) Late Payments. Any payment due to the NEA under this Agreement shall be deemed late if not received by the payment date set forth in Section 4.2(a). Late payments shall accrue interest at a rate equal to the Prime Rate in effect at such time, plus two percent (2%), from the date the applicable Billing Statement is received up to and including

the date on which such payment is made. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

Section 4.3 Annual Settlement. Within 100 days after the end of each Fiscal Year, the NEA shall deliver to the County an annual settlement statement (the “Annual Settlement Statement”) setting forth the County’s actual Energy Recovery Fee payable with respect to such Fiscal Year and a reconciliation of such amount with the amounts actually paid by the County pursuant to the Billing Statements with respect to such Fiscal Year. If any amount is then in dispute, the Annual Settlement Statement shall set forth the NEA’s estimate of such amount and a final reconciliation of such amount shall be made in the Billing Statement for the Billing Period immediately following the resolution of such dispute.

Section 4.4 County’s Payment Obligations.

(a) Payment Irrespective of Waste Deliveries. As long as the NEA is in compliance with its Service Covenant hereunder, the County must pay the NEA the Energy Recovery Fee as provided hereunder during the term of this Agreement, whether or not the County delivers or cause to be delivered any waste to the NEA for disposal either at the Facility or by Alternate Disposal Methods.

(b) County’s Obligation to Pay the Energy Recovery Fee. Subject to Section 4.4(c) hereof, from the Commencement Date to the date of expiration or termination of this Agreement, the obligation of the County to pay the Energy Recovery Fee pursuant to Section 4.1(a) is absolute and unconditional and is not to be subject to delay or diminution by reason of set-off, abatement, counterclaim, existence of a dispute or otherwise and the County shall take all such action as may be necessary to provide for the timely payment of the Energy Recovery Fee and all other amounts due hereunder. The County hereby acknowledges that the services to be provided by the NEA pursuant to this Agreement are of a valuable and unique nature to the County and that the Energy Recovery Fee and all other amounts to be paid by the County to or for the account of the NEA constitutes fair consideration therefor.

(c) Disputes. If the County disputes any amount billed by the NEA in any Billing Statement, the County shall nonetheless pay the billed amount and shall provide the NEA with written objection 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 County for its objection to or disagreement with such amount. If the County and the NEA are not able to resolve such dispute within thirty (30) days after the County’s objection, either Party may pursue dispute resolution pursuant to Section 8.6 hereof.

ARTICLE V
PROCESSING CAPACITY REDUCTIONS

Section 5.1 Notice. The NEA shall immediately advise the County Representative by telephone, as soon as possible after becoming aware of such condition, of any Processing

Capacity Reduction, its effect on the NEA's ability to perform its obligations hereunder and under any energy sales agreement and the other NEA Component Agreements, and the NEA's best estimate of its probable duration and impact on the Energy Recovery Fee. The NEA shall confirm such advice in writing within 24 hours. The NEA shall use the Designated Landfill or Alternate Disposal Methods and Alternate Disposal Facilities to the extent necessary to perform its obligation to accept and dispose of Acceptable Waste under this Agreement and shall use best efforts to resume normal operation of the NEA Component as soon as possible. Following any Processing Capacity Reduction, the NEA shall, upon the request of the County Representative, provide the Consulting Engineer with such information as is necessary for the Consulting Engineer to determine the cause of the Processing Capacity Reduction and to make its estimate of when the Processing Capacity Reduction will end.

Section 5.2 NEA Operations During a Processing Capacity Reduction. NEA Obligations to Accept Waste. During a Processing Capacity Reduction the NEA shall continue to accept and dispose of waste delivered hereunder and shall Process as much of the Acceptable Waste delivered as possible. The components of the Energy Recovery Fee shall be adjusted pursuant to Section 4.1(b) as applicable to account for the impact of any Processing Capacity Reduction. During a Processing Capacity Reduction the NEA shall use reasonable efforts to minimize the expenses of operating and maintaining the NEA Component and providing the services rendered hereunder.

Section 5.3 Changes Necessitated by Uncontrollable Circumstances.

(a) Capacity Maintenance Change. The NEA shall make or cause to be made any Changes to the NEA Component required, as a result of an Uncontrollable Circumstance, to repair or replace any damaged or destroyed portion of the NEA Component or to restore operating levels of the NEA Component to those set forth in the Performance Standards, or to enable the NEA to perform its obligations under this Agreement, the Bond Documents and the other NEA Component Agreements without resort to Alternate Disposal Methods or Alternate Disposal Facilities. The Changes described in this Section 5.3(a) constitute "Capacity Maintenance Changes."

(b) Notice. As soon as possible after becoming aware of an Uncontrollable Circumstance, the NEA shall give the County Representative and the Consulting Engineer a statement describing the Uncontrollable Circumstance and its cause (to the extent known by the NEA), a description of the conditions (1) requiring the use of Alternate Disposal Methods or Alternate Disposal Facilities or (2) delaying the performance of the NEA's obligations, and an estimate of the costs of any Capacity Maintenance Change ("Additional Capital Investment"). The amount of such Additional Capital Investment for any Capacity Maintenance Change due to an Uncontrollable Circumstance or required to enable the NEA to perform its obligations under this Agreement, the Bond Documents and the other NEA Component Agreements, without resort to Alternate Disposal Methods or Alternate Disposal Facilities, shall equal the reasonable Capital Costs and expenses for repair, restoration, modification or maintenance incurred by the NEA for the repair, replacement or restoration of, or addition to, any portion of the NEA Component necessitated by such Uncontrollable Circumstance that have not been paid from insurance proceeds or by the Participating Counties or third parties.

(c) Consultation with County. The NEA shall consult with and answer any inquiries of the County Representative and the Consulting Engineer regarding the conditions caused by the Uncontrollable Circumstance or the Standards, or to enable the NEA to perform its obligations under this Agreement, the Bond Documents and the other NEA Component Agreements without resort to Alternate Disposal Methods or Alternate Disposal Facilities.

ARTICLE VI CONTROL RIGHTS OF PARTICIPATING COUNTIES

Section 6.1 NEA Component Agreements.

(a) Approval of County Required Prior to Execution. Except as provided in Section 6.4, the NEA shall not execute or amend any NEA Component Agreements without the prior written approval of both of the Participating Counties Representatives. The NEA shall use reasonable efforts to include a provision in each NEA Component Agreement which states that the Participating Counties are third party beneficiaries of such NEA Component Agreement and, in connection with consulting agreements, to include indemnification provisions in favor of the Participating Counties.

(b) Performance by NEA. The NEA shall diligently and in a timely manner perform all of its obligations under each of the NEA Component Agreements.

(c) Enforcement by NEA. Subject to the rights of the County set forth in Section 7.3 hereof, the NEA shall diligently enforce and manage the NEA Component Agreements including enforcing the duties and obligations thereunder of Persons with which the NEA enters into such NEA Component Agreements.

Section 6.2 Changes in Design, Construction or Operation.

(a) Changes Required to be Undertaken by NEA. The NEA shall make any Change necessary to enable the NEA to (i) comply with Applicable Law, (ii) meet its obligations under this Agreement or any NEA Component Agreements or Bond Documents, or (iii) avoid a default by the NEA under any NEA Component Agreement or Bond Document.

(b) Changes at Participating Counties' Request. Upon written request duly executed by both Participating Counties Representatives, the NEA shall make any reasonable Change to the NEA Component or the NEA's operations with regard to the NEA Component that are conducted or are to be conducted on the NEA Component Sites or public roads that are permitted by the Bond Documents but only if (1) sufficient funds are available pursuant to the provisions of Section 7.4 to provide for the payment of Capital Costs and related costs of the Change, (2) both Participating Counties consent to the amendment of this Agreement or any other NEA Component Agreement or Bond Document to waive or modify any obligations of the NEA that the NEA cannot perform because of the Change or modification of the NEA's operations, (3) the Energy Recovery Fee is equitably adjusted by any increases or decreases in the costs, expenses or liabilities incurred by the NEA because of the Change or modification of the NEA's operations, activities or liabilities, (4) each Participating County pays its Proportionate Share of all penalties, rebates, liabilities increased or accelerated charges and

any other costs payable by the NEA under the NEA Component Agreements and the Bond Documents because of the effect of the Change or modification of the NEA's operations, activities or liabilities, (5) the Participating Counties provide any information in the Participating Counties' control concerning the proposed Change or modification of the NEA's operations that the NEA reasonably requests and (6) such Change is permitted pursuant to Applicable Law. Notwithstanding the foregoing sentence, prior to the Service Agreement Termination Date, the NEA is not required to make any Changes to the Facility which the Company is not obligated to make pursuant to the Service Agreement.

(c) Submission of Plans; Consultation. The NEA shall not make any material modification or addition to the NEA Component unless it has submitted the plans and specifications for the Change to the County Representative and the Consulting Engineer at least 20 days or such lesser time as is practicable in light of the circumstances requiring such Change, before the intended implementation date of the Change. The NEA shall discuss and answer any reasonable inquiries of the County Representative or the Consulting Engineer relating to the proposed Change. The County may, but is not obligated to, have the Consulting Engineer review the plans and specifications to determine whether the proposed Change impairs the ability of the NEA Component to meet the Performance Standards and Applicable Law during the remaining term of this Agreement. The NEA shall incorporate into the Change any modification requested by both County; provided that such modifications meet the requirements of Section 6.2(b).

Section 6.3 County Approval Rights Over NEA Activities And Expenses.

(a) Dispute Resolution Pursuant to NEA Component Agreements. In the event that any Person with which the NEA has entered into an NEA Component Agreement asserts any dispute pursuant to such NEA Component Agreement, the NEA shall immediately provide the Participating Counties with notice thereof (the "NEA Dispute Notice"). Such notice shall specify (1) the NEA Component Agreement pursuant to which the dispute is asserted, (2) the subject matter and/or amount in controversy with respect to the dispute, (3) the recommendation of the NEA as to the disposition of the dispute, and (4) any other information which the NEA believes would be relevant to the Participating Counties in making the determination described below. Following receipt of such NEA Dispute Notice, the Participating Counties shall, in one written notice to the NEA agreed upon by both Participating Counties, (the "County Dispute Response"), at least 3 Business Days prior to the date on which the NEA shall take action with respect to the dispute, either (1) concur in the recommendation of the NEA as stated in the NEA Dispute Notice, or (2) direct the NEA to take action other than that recommended by the NEA. If the Participating Counties direct the NEA to take action other than that recommended by the NEA, the NEA shall take such action provided for in the County Dispute Response, provided such action is consistent with Section 6.2(b). In the event the Participating Counties fail to provide the County Dispute Response within the period required, the NEA shall follow the recommendation contained in the NEA Dispute Notice.

(b) NEA Exercise of Discretionary Rights Pursuant to NEA Component Agreements. The NEA shall not exercise any Discretionary Right without the prior consent of all Participating Counties. In the event that the NEA wishes to exercise any Discretionary

Rights, the NEA shall immediately provide the Participating Counties with notice thereof (the “NEA Exercise of Rights Notice”). The NEA Exercise of Rights Notice shall specify (1) the NEA Component Agreement pursuant to which the NEA wishes to exercise such discretionary right; (2) an estimate of the effect on the Energy Recovery Fee, if any, the exercise of such right would have, (3) the date by which the NEA wishes to exercise such right and (4) any other information which the NEA believes would be relevant to the Participating Counties in making the determination described below. Following receipt of such NEA Exercise of Rights Notice, the Participating Counties shall, in one written notice to the NEA agreed upon by both Participating Counties, (the “County Exercise of Rights Response”), at least three (3) Business Days prior to the date on which the NEA intends to exercise such right either (1) consent to the exercise of such right by the NEA or (2) refuse to consent to the exercise of such right by the NEA. If the Participating Counties consent to the exercise of such right by the NEA, the NEA shall exercise such right. If the Participating Counties refuse to consent to the exercise by the NEA of such right, or do not provide a County Exercise of Rights Response with the time period described in the NEA Exercise of Rights Notice, the NEA shall not exercise such right.

(c) Exercise by NEA of Rights Other than Discretionary Rights. Prior to the Commencement Date, the Participating Counties Representatives and the NEA Representative shall develop a protocol with respect to the exercise by the NEA of rights other than Discretionary Rights. Such protocol shall describe notice requirements of the NEA, and consultation rights of the Participating Counties, as well as any other matters upon which the Participating Counties Representatives and NEA Representative mutually agree including the initial and subsequent budgetary amounts for NEA Administrative Costs and Operating and Maintenance Costs pursuant to Section 4.1 hereof.

(d) Participating Counties Direction to Exercise Rights, Including Discretionary Rights. The NEA shall exercise any rights, including Discretionary Rights, which it has under any NEA Component Agreement in accordance with written notice thereof to the NEA, duly executed by both Participating Counties Representatives, (the “County Exercise of Rights Notice”). The County Exercise of Rights Notice shall specify (1) the NEA Component Agreement pursuant to which the NEA may exercise such right, and (2) the date by which the Participating Counties wish the NEA to exercise such right (which date shall be at least three days subsequent to the date of the County Exercise of Rights Notice). Upon receipt of the County Exercise of Rights Notice, the NEA shall take the action specified in the County Exercise of Rights Notice, subject to Section 6.4 and provided such action does not create a default or violation under and is consistent with the NEA Component Agreements, the Bond Documents and Applicable Law. If the NEA exercise a right or rights pursuant to this subsection, then the Energy Recovery Fee will be adjusted by any increases or decreases in the costs, expenses or liabilities incurred by the NEA because of the exercise of rights and each Participating County will pay its Proportionate Share of all penalties, liabilities, rebates, increased or accelerated charges and any other costs payable by the NEA under the NEA Component Agreements and the Bond Documents because of the effect of the exercise of rights.

Section 6.4 NEA Right To Take Certain Actions To Avoid Default. Notwithstanding the provisions of ARTICLE VI, or Section 3.2(c) or Section 7.7, the NEA may,

without the prior written consent of the Participating Counties, take any action (or refrain from taking any action directed by the Participating Counties) which is necessary to avoid any default (or to remedy any condition, which with the passage of time or giving of notice would constitute a default) under the NEA Component Agreements or the Bond Documents, including the exercise of Discretionary Rights. To the extent practicable in light of the time period available prior to the occurrence of the default which the NEA seeks to avoid by taking the action, the NEA shall consult with the Participating Counties prior to taking such action. The NEA shall consider any alternatives proposed by the Participating Counties to avoid such default. Prior to taking any such action pursuant to this Section, the NEA shall deliver the Participating Counties Representatives a certificate of the Consulting Engineer stating that, in its opinion (1) failure to take such action will materially adversely affect the ability of the NEA to meet its obligations under this Agreement, (2) the alternatives proposed by the Participating Counties, if any, are not viable for the purpose of avoiding the material adverse effect which will result from the failure to take the proposed action, and (3) the proposed action is consistent with Prudent Solid Waste Management Practices, the NEA Component Agreement, Bond Documents and Applicable Law. If the NEA delivers the certificate, its proposed action does not require the Participating Counties' consent.

Section 6.5 Termination for Convenience of Service Agreement.

(a) Participating Counties Right to Require NEA to Terminate Service Agreement for Convenience. The Participating Counties, by written request duly executed by the Representatives of each Participating County, may require the NEA to exercise its rights under the Service Agreement to terminate the Service Agreement for convenience pursuant to the Service Agreement by providing the NEA with notice thereof and providing all funds required in connection with such termination pursuant to the Service Agreement.

(b) Abandonment of Project. In the event the Participating Counties require the NEA to terminate the Service Agreement for convenience pursuant to the terms thereof, the Participating Counties will be deemed to be exercising their rights to terminate this Agreement for convenience, and the provisions of Section 8.4 will apply. The Participating Counties shall jointly and severally indemnify the NEA for all costs and expenses arising out of the NEA Component Agreements after the termination of this Agreement, except as assumed by Participating Counties pursuant to Section 9.4.

Section 6.6 Other Termination Of Service Agreement. The Participating Counties, acting in agreement, may direct the NEA to terminate the Service Agreement pursuant to the terms thereof by providing the NEA with notice thereof and providing any funds required in connection with such termination under the Service Agreement and complying with Section 6.5.

Section 6.7 County Right To Inspect Facility.

(a) The County has the right to enter and inspect any NEA Component at any time; provided, however, that such entry and inspection shall be consistent with the provisions of the Service Agreement with respect to the NEA's right to enter and inspect the Facility and consistent with any applicable NEA Component Agreements with respect to other

portions of the NEA Component. The County shall use its reasonable efforts to provide notice to the NEA prior to exercising its rights pursuant to this Section.

(b) The County may inspect the books and records of the NEA as they relate to the matters under this Agreement at any time upon reasonable prior notice.

ARTICLE VII FINANCING

Section 7.1 Issuance of Bonds.

(a) Issuance of Bonds. The NEA shall use its best efforts to finance the estimated Capital Costs of developing, financing, constructing, acquiring, completing, testing and placing in service of the NEA Component by the issuance of one or more Series of Bonds in accordance with ARTICLE VII hereof. Bonds issued by the NEA to finance the NEA Component shall not constitute a debt of the State or the County, and neither the State nor the County shall be liable thereon, nor shall the Bonds be payable out of any funds of the NEA other than those pledged therefor. The NEA shall not (and is not required to) issue any Bonds unless the County Bond Approval is secured from both Participating Counties for purposes of clarification and without in any way limiting the foregoing, County Bond Approval from a Participating County shall not be deemed to have been secured if such Participating County has affirmatively disproved the Bonds in writing, unless such disproof is subsequently affirmatively retracted in writing.

Section 7.2 Bondholder Benefit Provisions.

The County and the NEA acknowledge that the holders of any Bonds issued by the NEA pursuant to this Agreement are third party beneficiaries of this Agreement; provided, however, any consent by the NEA to an amendment or modification of this Agreement shall be deemed consent of the holders of any such Bonds. Notwithstanding any other provisions hereof, in the event of termination by the Participating Counties of this Agreement pursuant to the default provisions hereof, the Participating Counties shall assume the obligations of the NEA under the NEA Component Agreements and the Bond Documents. In such event, the NEA shall assign the NEA Component Agreements and the Bond Documents to the Participating Counties, as tenants in common according to their Proportionate Shares.

Section 7.3 Financing And Offering Materials.

(a) Consent of County Generally Required for Financing. The NEA shall not finance or refinance any Capital Costs by the issuance of Bonds or otherwise without notifying the County and giving them reasonable opportunity to review and comment on any official statement, prospectus or other disclosure documents distributed in connection with the offering of debt or equity to finance or refinance such costs. Except as provided under Section 7.4, the NEA shall not create any obligation that increases Debt Service without the prior written consent of the County.

(b) Refinancing at Direction of Participating Counties. Upon the written direction of the Participating Counties, duly executed by both Participating Counties Representatives, and to the extent permitted by Applicable Law and the Bond Documents, the NEA shall use reasonable efforts to refinance any outstanding Bonds that are taken into account in the determination of Debt Service using the method of refinancing suggested in writing by the Participating Counties, if (1) the related financing agreements do not impose operating restrictions or financial or other covenants or restrictions on the NEA that are more burdensome than those contained in the Bond Documents, (2) the refinancing does not violate the provisions of the Bond Documents, the NEA Component Agreements or Applicable Law, and (3) the Participating Counties reimburse the NEA, pursuant to each Participating County's Proportionate Share, for its expenses incurred in connection with the refinancing that are not paid from the proceeds of the refinancing. The inability of the NEA to effect any financing or refinancing shall not constitute a default or Event of Default under this Agreement. The amount financed or refinanced may include reasonable issuance costs, reserve funds and other customary financing costs.

Section 7.4 Additional Financing.

(a) Unless the NEA Representative and both of the Participating Counties Representatives otherwise agree, (1) any increase in the cost of construction to be paid by the NEA, pursuant to the Service Agreement, (2) any Additional Capital Investment in connection with any Capacity Maintenance Change to the NEA Component undertaken pursuant to Section 6.3(a) and (3) any Capital Costs necessary for the NEA to undertake its obligations under this Agreement shall be paid for as follows:

First, to the extent permitted by Applicable Law and the Bond Documents, from the proceeds of any available insurance, payments by third parties and any condemnation proceeds of awards available therefor;

Second, to the extent permitted by Applicable Law and the Bond Documents, from any applicable reserves for contingencies established pursuant to the Bond Documents or other available funds under the Bond Documents; and

Third, from the proceeds of additional Bonds or other additional financing pursuant to subsection (B).

Fourth, from moneys or capital made available by the Participating Counties under written agreements duly executed by both Participating Counties.

(b) If additional financing for any Capital Cost of the NEA is required by this Agreement, the Bond Documents, the NEA Component Agreements or the Participating Counties, the NEA shall use best efforts, to the extent permitted by Applicable Law and the Bond Documents, to cause to be issued and sold additional Bonds in an amount sufficient to pay the amount of such Capital Cost, together with any other costs associated with the issuance of such Bonds, less any moneys made available by the Participating Counties, if any, with respect to such cost upon and subject to terms and conditions contained in the Bond Documents. The term of such additional Bonds shall not be greater than the shorter of (i) the

useful life of the assets acquired with the proceeds of such Bonds or (ii) the then remaining useful life of the NEA Component, as improved, or (iii) the remaining term of this Agreement as such term may be extended at the request of both Participating Counties. In no event will the NEA's inability to issue, or cause such additional Bonds to be issued, constitute a default or Event of Default under this Agreement. Notwithstanding the foregoing, the NEA may not issue any additional Bonds for any reason without the prior written consent of the Participating Counties, acting in agreement.

(c) If the NEA is unable to issue or cause to be issued additional Bonds to finance any Capital Cost referred to in subsection (A) above, or the Participating Counties do not consent to the issuance of additional Bonds pursuant to subsection (B) above, the Participating Counties, in accordance with their Proportionate Shares, shall provide or cause to be provided moneys, letters of credit or other assurances satisfactory to the NEA sufficient to pay or provide for the payment of the full amount of such Capital Costs. If the Participating Counties fail to provide such moneys, letters of credit or other assurances satisfactory to the NEA, the Participating Counties will be deemed to consent to the issuance of additional Bonds pursuant to subsection (B).

(d) After the financing for any Capital Cost described in Section 7.4(a) or Section 7.4(b), the Debt Service component of the Energy Recovery Fee will increase to include the debt service to be paid during each Fiscal Year with respect to any additional Bonds issued by the NEA to finance such Capital Costs and related costs, including cost of issuance, cost reserve funds, costs of credit enhancement and administrative costs. As an accommodation but not as a precondition to the County's obligation to pay the Energy Recovery Fee, the NEA shall deliver a notice describing the basis for any such adjustment to the County Representative at least 30 days before the proposed adjustment is to take effect.

Section 7.5 Cooperation with Financing. The County shall cooperate with the NEA in the financing or refinancing of the NEA Component or any Change to the NEA Component and provide the NEA with any information that it may reasonably request in order to effect the financing of the NEA Component or any Change to the NEA Component. The County shall make available information reasonably necessary for a public offering of the Bonds. In addition the County shall make available to the NEA, its underwriters, their counsel, bond counsel, the rating agencies, independent engineers or feasibility consultants, credit facility providers and other financing institutions or parties involved in the financing process and the issuance of the Bonds, such information in the control of the County as reasonably requested. The County shall provide certification as to the accuracy and completeness of such information made available in connection with the financing of the NEA Component or any Change to the NEA Component and issuance of the Bonds. The County shall make available information reasonably requested by bond counsel, the NEA's counsel or underwriters counsel so that they can render opinions about the tax-exempt status of the Bonds and to the Consulting Engineer and feasibility consultant designated by the NEA so they can render opinions concerning the County's and NEA's ability to perform their obligations under this Agreement and with respect to the NEA Component.

Section 7.6 Compliance with Internal Revenue Code. It is the intention of the Parties that the interest on Bonds that are initially issued as tax-exempt bonds remain exempt

from Federal income taxation to the extent permitted by the Internal Revenue Code in effect on the date of issuance of such Bonds and to that end each Party covenants that it shall not take any action that would adversely affect the tax-exempt status of any such Bonds and shall use reasonable efforts to preserve the tax-exempt status of all such Bonds. The NEA agrees that the County is a third party beneficiary of all covenants, agreements, representations and warranties of the NEA made to preserve or establish the tax-exempt status of such Bonds.

Section 7.7 Insurance Proceeds; Third Party Payments. The NEA shall use reasonable efforts to effect the recovery of proceeds from insurance or any other third party for any loss or claim in respect of the NEA Component; provided, however, that the Participating Counties may direct any judicial or other proceedings initiated by the NEA in connection with the recovery of such insurance proceeds.

ARTICLE VIII BREACH, ENFORCEMENT AND TERMINATION

Section 8.1 Breach.

(a) The Parties agree that in the event any Party breaches any obligation under this Agreement or any representation made by any Party hereunder is untrue in any material respect, the other Party shall have the right to take any action at law or in equity (including actions for injunctive relief, mandamus and specific performance) it may have to enforce the payment of any amounts due or the performance of any obligations to be performed hereunder. No Party shall have the right to terminate this Agreement except as provided in Section 8.2 hereof and with respect to the County, Section 8.4 hereof.

(b) No Special, Consequential or Indirect Damages. In no event, whether based upon contract, tort or otherwise arising out of the performance or nonperformance by the NEA or the County of any obligation of the NEA or the County under this Agreement, will the NEA or the County be liable or obligated in any manner to pay special, consequential, punitive, or indirect damages except as specifically provided in this Agreement.

Section 8.2 Termination For Default.

(a) By NEA. The NEA shall have no right to terminate this Agreement for any reason whatsoever, except if one or more of the following events (each an "Event of Default") shall happen:

(i) if default shall be made in the payment of all or any portion of the Energy Recovery Fee when due pursuant to Section 4.2 and such default shall continue for a period of thirty (30) days after the NEA has given the County written notice of the payment default;

(ii) the repeated failure or refusal by the County substantially to perform or observe any covenant, agreement or condition on its part provided in this Agreement (other than a default described in clause (i) above); except that no

such failure or refusal shall give the NEA the right to terminate this Agreement for cause under subsection (i) or (ii) of this section unless:

(a) The NEA has given prior written notice to the County stating that a specified failure or refusal to perform or observe exists which will, unless corrected, constitute a material breach of this Agreement on the part of the County and which will, in its opinion, give the NEA the right to terminate this Agreement for cause under this subsection unless such breach is corrected within a reasonable period of time, and

(b) The County has neither challenged in an appropriate forum the NEA's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such breach within a reasonable period of time but not more than ninety (90) days from the date of the notice given pursuant to clause (a) of this subsection (but if the County shall have diligently taken steps to correct such breach within a reasonable period of time, the same shall not constitute a breach giving rise to the right of termination for as long as the County is continuing to take such steps to correct such breach); or

(iii) a Bankruptcy Event shall occur with respect to the County.

(b) Accounting and Examination of Records After Default. The County covenants that if an Event of Default shall have happened and shall not have been remedied, the books of records and accounts of the County and all other records relating to the Solid Waste Management Contracts, the Solid Waste Collection and Disposal Fund and the County Disposal System shall at all times be subject to the inspection and use of the NEA and of its agents and attorneys, including the Consulting Engineer. The County covenants that if an Event of Default shall happen and shall not have been remedied, the County, upon demand of the NEA, will account as if it were the trustee of an express trust, for all revenues and other moneys, securities and funds pledged or held under this Agreement for such period as shall be stated in such demand.

(c) Proceedings Brought by NEA.

(i) If an Event of Default shall happen and shall not have been remedied, then and in every such case, the NEA may proceed to protect and enforce its rights under the Agreement by a suit or suits in equity or at law, whether for the specific performance of any covenant herein contained, or in aid of the execution of any power herein granted, or for an accounting against the County as if the County were the trustee of an express trust, or in the enforcement of any other legal or equitable right as the NEA, being advised by counsel, shall deem most effectual to enforce any of its rights or to perform any of its duties under the Agreement.

(ii) Upon the occurrence of an Event of Default, by suit, action or proceedings in any court of competent jurisdiction, the NEA shall be entitled to terminate this Agreement.

(d) Remedies Not Exclusive. No remedy by the terms of this Agreement conferred upon or reserved to the NEA is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or provided at law or in equity or by statute.

(e) By County. The County shall have no right to terminate this Agreement for cause except if one or more of the following events shall have happened:

(i) the repeated failure or refusal by the NEA substantially to perform any material obligation under this Agreement (including the provision of Waste Disposal and Energy Recovery Services); except that no such failure or refusal shall give the County the right to terminate this Agreement for cause under this subsection unless:

(a) The County has given prior written notice to the NEA stating that a specified failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Agreement on the part of the NEA and which will, in its opinion, give the County the right to terminate this Agreement for cause under this subsection unless such breach is corrected within a reasonable period of time, and

(b) The NEA has neither challenged in an appropriate forum the County's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such breach within a reasonable period of time but not more than ninety (90) days from the date of the notice given pursuant to clause (a) of this subsection (but if the NEA shall have diligently taken steps to correct such breach within a reasonable period of time, the same shall not constitute a breach giving rise to the right of termination for as long as the NEA is continuing to take such steps to correct such breach); or

(ii) a Bankruptcy Event shall occur with respect to the NEA.

(f) Accounting and Examination of Records After Default. The NEA covenants that if an Event of Default shall have happened and shall not have been remedied, the books of records and accounts of the NEA and all other records relating to the NEA Component, the NEA Component Agreements and the NEA Component Revenues shall at all times be subject to the inspection and use of the Participating Counties and of their agents and attorneys, including the Consulting Engineer. The NEA covenants that if an Event of Default shall happen and shall not have been remedied, the NEA, upon demand of the Participating Counties, will account as if it were the trustee of an express trust, for all moneys, securities and funds pledged or held under any NEA Component Agreement for such period as shall be

stated in such demand, subject in all cases to the Bond Documents, the Service Agreement and Section 7.1 hereof.

(g) Proceedings Brought by County.

(i) If an Event of Default shall happen and shall not have been remedied, then and in every such case, the County may proceed to protect and enforce their rights under the Agreement by a suit or suits in equity or at law, whether for the specific performance of any covenant herein contained, or in aid of the execution of any power herein granted, or for an accounting against the NEA as if the NEA were the trustee of an express trust, or in the enforcement of any other legal or equitable right as the County, being advised by counsel, shall deem most effectual to enforce any of their rights or to perform any of their duties under the Agreement.

(ii) Upon the occurrence of an Event of Default, by suit, action or proceedings in any court of competent jurisdiction, the County shall be entitled to terminate this Agreement on the same terms and conditions as termination for convenience except for payments to the NEA which are disputed, subject to resolution thereof pursuant to Section 8.6 hereof which process shall survive the termination of this Agreement for such purpose.

(h) Remedies not Exclusive. No remedy by the terms of this Agreement conferred upon or reserved to the County is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or provided at law or in equity or by statute.

Section 8.3 Waiver. Unless otherwise specifically provided by the terms of this Agreement, no delay or failure to exercise a right resulting from any breach of this Agreement will impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the Party granting such waiver. If any covenant or agreement contained in this Agreement is breached by any Party and thereafter waived by any other Party, such waiver shall be limited to the particular breach so waived and will not be deemed to waive any other breach under this Agreement.

Section 8.4 Termination for Convenience or at End of Term.

(a) After Commencement Date. Notwithstanding any other provision of this Agreement to the contrary, the Participating Counties, by written notice duly executed by both Participating Counties Representatives, may terminate their obligations to the NEA under the Participating County Agreements at any time after the Commencement Date by (i) giving the NEA 180 days' notice of such termination, and (ii) paying the Termination Costs described in Section 8.4(c).

(b) Prior to Commencement Date. Before the Commencement Date, the Participating Counties, by written notice duly executed by both Participating Counties

Representatives, may terminate their obligations under this Agreement by written notice delivered to the NEA if the Participating Counties have paid the NEA or made provision satisfactory to the NEA for the payment of (A) all expenses incurred by the NEA up to the date of termination of the NEA and (B) all amounts payable by the NEA to terminate the NEA Component Agreements approved by the Participating Counties or the Participating Counties Representatives, and any other agreements relating to the NEA Component that have been approved by the Participating Counties Representatives. The NEA shall invoice the County for all amounts payable by the County pursuant to this Section in accordance with its Proportionate Share, and shall provide any supporting documentation reasonably requested by the County. The obligation to make payments pursuant to this paragraph shall survive termination of this Agreement.

(c) Termination Costs. Upon the termination of this Agreement for convenience pursuant to this Section or at the expiration of this Agreement in accordance with its terms, (i) the County shall take any and all steps within its control that are necessary to assist the NEA in terminating the NEA's obligations, if any, under the NEA Component Agreements and the Bond Documents and (ii) the County and the NEA shall agree upon and the County shall pay to the NEA an amount equal to its Proportionate Share of the sum of the following, provided the County has not previously paid, or made arrangements satisfactory to the NEA for the payment of, such costs:

(i) The amount necessary to (a) pay or make provision satisfactory to the Trustee and the NEA for the payment of Debt Service on all outstanding Bonds or (b) fully and irrevocably defease all outstanding Bonds.

(ii) All reasonable and necessary costs and liabilities incurred by the NEA and associated with settling and paying termination claims under the NEA Component Agreements and other agreements entered into by the NEA with respect to the NEA Component and its performance by the NEA of its obligations under this Agreement.

(iii) All reasonable and necessary storage, transportation, and other costs incurred by the NEA for the preservation, protection, or disposition of NEA Component equipment, materials and facilities.

(iv) All reasonable and necessary costs incurred by the NEA for any accounting, clerical or other expenses reasonably necessary for the preparation of termination settlement documents and supporting data.

(v) All reasonable and necessary costs incurred by the NEA in terminating the operation of the NEA Component, including any severance pay and other reasonable and necessary costs incurred in terminating employees.

(vi) Any payments or other charges due and payable by the NEA under the Service Agreement, the Facility Site Lease, the NEA Component Agreements that are incurred or payable as a result of the termination of this Agreement.

(vii) Any other costs or expenses incurred or to be incurred by the NEA as a result of the termination of this Agreement. Such costs include, without limitation, any costs or expenses necessary to decommission and raze the NEA Component in accordance with Applicable Law and the NEA Component Agreements and any costs or expenses reasonably necessary to avoid a default by the NEA under any NEA Component Agreement, Bond Document or other agreement relating to the NEA Component that remains in effect, in whole or in part, after the date of the Notice of Termination.

(d) In arriving at the amount due to the NEA under this Section, there will be deducted from the County's Proportionate Share all unliquidated advance or other payments on account theretofore made to the NEA by the County that are applicable to the terminated portion of this Agreement.

Section 8.5 Survival of Certain Rights and Obligations. The rights and obligations of the Parties under this, Section 2.3, Section 11.1 (with respect to the NEA Component Site), Section 11.16, Section 3.9, Section 4.4(c), Section 8.2, Section 8.4, Section 8.6, Section 8.7, and Section 11.15 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 8.6 Dispute Resolution.

(a) The NEA and the County shall in good faith attempt to resolve any dispute or matter in controversy under this Agreement. Any disputes which the parties in good faith cannot resolve shall be resolved by a Maryland Court in Frederick County, MD.

Section 8.7 Limitation of Defenses. The County and the NEA agree that neither Party may assert as a defense against any claim by another Party for failure to perform its obligations (i) impossibility or impracticability of performance, (ii) the existence, nonexistence, occurrence or nonoccurrence of any foreseen or unforeseen fact, event or contingency that may be a basic assumption of the NEA or the County, (iii) commercial frustration of purpose, or (iv) contract of adhesion.

ARTICLE IX TERM; RENEWAL; FACILITY TRANSFER

Section 9.1 Term. This Agreement is in effect from the date of its execution or, if later, the date on which the last condition precedent pursuant to Section 9.2 is satisfied, and, unless sooner terminated in accordance with ARTICLE IX, shall continue in effect until the Maturity Date.

Section 9.2 Conditions Precedent.

(a) The obligations of NEA pursuant to this Agreement shall be subject to the satisfaction, or waiver by NEA, of each of the following conditions precedent, and this Agreement shall not be deemed effective until the same have each occurred:

- (1) Execution of the Service Agreement;
 - (2) Execution of the Frederick County Agreement;
 - (3) Execution of the Facility Site Lease and other required leases, easements, or rights of way, if any;
 - (4) Execution of all other NEA Component Agreements deemed necessary by the NEA for the completion and operation of the NEA Component.
- (b) If the foregoing conditions precedent have not been satisfied by December 31, 2012, either Party may terminate this Agreement.
- (c) If the Service Agreement is terminated pursuant to Section 4.5 of the Service Agreement prior to Financial Closing, the County shall pay the NEA 50% of the amount due to the Company thereunder.

Section 9.3 Renewal. Unless at least 180 days before the end of the initial term of this Agreement and, if applicable, the end of the first renewal period, (1) the County gives the NEA written notice stating it does not want the term of this Agreement to extend or (2) the NEA gives the County written notice stating it does not want the term of this Agreement to extend, this Agreement shall automatically extend for two additional terms of 5 years at a Energy Recovery Fee calculated and paid as provided in ARTICLE VII of this Agreement.

Section 9.4 Sale of NEA Component.

(a) Participating Counties Purchase Right. Upon the termination of the Service Agreement and the Maturity Date of the Bonds, the Participating Counties will, by means of a notice executed by both Participating Counties given within 180 days before the Maturity Date, direct the NEA as to whether to continue to operate the Facility or to sell the Facility. The Participating Counties shall have a right of first refusal in connection with any proposed sale of the Facility upon such termination subject to any lien created by the Bond Documents. Any net proceeds from sale or disposal of the Facility shall be disbursed on a pro-rata basis to the Participating Counties according to their Proportionate Shares. Prior to the Financial Closing, the Participating Counties and the NEA may enter into other arrangements (including a bargain purchase by the Participating Counties) for the Facility after the Maturity Date of the Bonds.

(b) No Other Transfers Permitted. The NEA shall not sell, lease, sublease or otherwise transfer the NEA Component or any portion of the NEA Component to any Person without the prior written consent of both of the Participating Counties; provided, however, that the NEA may sell, lease, sublease or transfer any portion of the NEA Component if the NEA provides a written certification of the Consulting Engineer that such portion is no longer necessary or desirable for the NEA to meet its obligations hereunder and that the

proceeds received therefrom represents fair market value thereof. The net proceeds of such sale shall constitute NEA Component Revenues.

(c) Requirements for Participating Counties Exercise of Purchase Option. In the event that the Participating Counties elect to purchase the NEA Component pursuant to subsection (A) above, the Participating Counties shall enter into valid and binding agreements, in form reasonably satisfactory to the NEA, whereby simultaneously with such purchase, the Participating Counties irrevocably assume all of the rights, duties, liabilities and obligations of the NEA, relating to the Facility and the performance by the NEA and/or this Agreement or the Frederick County Agreement, or all such liabilities and obligations of the NEA are terminated without cost, liability or expense to the NEA, including expenses and liabilities under (a) the NEA Component Agreements or the performance of NEA's obligations hereunder, (c) any litigation or proceeding relating to the foregoing and (d) any other contracts relating to the NEA Component. The NEA shall provide the Participating Counties Representatives with copies of any contract, Government Approvals, lawsuits or liabilities described in this subsection before the sale of the NEA Component.

ARTICLE X REPRESENTATIONS AND WARRANTIES

Section 10.1 Representations and Warranties of the NEA. The NEA 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 County:

(a) The NEA 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 NEA has duly authorized the execution and delivery of this Agreement and this Agreement has been duly executed and delivered by the NEA and constitutes a legal, valid and binding obligation of the NEA, enforceable against the NEA in accordance with its terms.

(c) Neither the execution or delivery by the NEA of this Agreement, nor the performance of the NEA's obligations in connection with the transactions contemplated hereby nor the NEA'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 NEA is a party or by which the NEA 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 NEA of this Agreement except those that have been duly obtained or made.

(e) Except as disclosed to the County 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 NEA's knowledge, threatened, against the NEA, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance of its obligations hereunder or in connection with the other transactions contemplated hereby or which, in any way, would adversely affect the validity or enforceability of this Agreement or any agreement or instrument entered into by the NEA in connection with the transactions contemplated hereby.

Section 10.2 Representations and Warranties of the County. The County hereby makes the following representations and warranties to and for the benefit of the NEA:

(a) The County 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 County has duly authorized the execution of this Agreement and this Agreement has been duly and validly executed and delivered by the County and constitutes a legal, valid and binding obligation of the County, enforceable against the County in accordance with its terms.

(c) Neither the execution or delivery by the County of this Agreement, nor the performance by the County of its obligations in connection with the transactions contemplated hereby, or the fulfillment by the County 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 County is a party or by which the County or any of its properties or assets are bound, or constitutes a default thereunder or (iii) results in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the County, except as expressly contemplated by this Agreement.

(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 County, except such as have been duly obtained or made.

(e) Except as disclosed to the NEA, 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 County's knowledge, threatened, against the County, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the County 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 NEA in connection with the transactions contemplated hereby.

**ARTICLE XI
MISCELLANEOUS**

Section 11.1 Insurance.

(a) Required Insurance. The NEA shall obtain and maintain, or cause to be obtained and maintained, insurance, in forms approved by the County Representative, covering the NEA Component, that are available on commercially reasonable terms and conditions and afford adequate protection against loss caused by damage to, destruction of, or business interruption of all or any part of the NEA Component, and liability insurance for bodily injury and damage resulting from damage to or destruction of all or any part of the NEA Component owned by the NEA (the “Required Insurance”). The NEA will satisfy the preceding sentence if (i) before the termination of the Service Agreement it maintains, or causes to be maintained, the insurance specified in Appendix 14 to the Service Agreement, or (ii) after the Service Agreement Termination Date it maintains, or causes to be maintained, insurance reasonably recommended by the Insurance Consultant. Any form of insurance submitted by the NEA to the County for approval shall be deemed approved if the County fails to take action with respect thereto within thirty (30) days after submission by the NEA. The NEA shall procure and maintain any additional insurance coverage related to the NEA Component requested by the County Representative or required by Applicable Law that is available on commercially reasonable terms.

(b) Evidence of Insurance. The NEA shall deliver to the County copies of all certificates of insurance for Required Insurance and any policy amendments and policy renewals. Each policy procured by the NEA with respect to the NEA Component shall name the County as an additional insured (with waiver of right of subrogation) and provide for at least 30 days’ prior written notice to the County of termination or cancellation or of any change in coverage or deductibles.

(c) Qualified Insurance Providers. The NEA shall carry all Required Insurance with responsible insurance companies of recognized standing. The NEA shall carry all Required Insurance with insurance companies that are rated at least “A” or its equivalent by Best’s Keys Rating or another national rating organization. The NEA may effect Required Insurance by endorsement of blanket insurance policies.

(d) NEA Insurance. The NEA shall not take out separate insurance concurrent in form or contributing in the event of loss with Required Insurance if the existence of such insurance reduces amounts payable under Required Insurance. The NEA shall immediately notify the County whenever it applies for any separate insurance relating to the NEA Component and shall promptly deliver the policy or policies evidencing the separate insurance to the County.

(e) Submission of Claims. The NEA shall submit, or cause to be submitted, 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 NEA shall promptly give the County Representative copies of all notices and claims of loss and any documentation or correspondence related to such

losses. The NEA shall make all policies for Required Insurance, policy amendments, and other related insurance documents available for inspection and photocopying by the County Representative on reasonable notice.

(f) Consultant Insurance. The NEA shall review its insurance coverages and insurance coverages of its consultants and subcontractors performing services under this Agreement with the County Representative. The NEA shall require its consultants to maintain the greater of their current coverages or the insurance coverages required by the consultants' or subcontractors' agreements with the NEA. The NEA shall exercise every reasonable effort to obtain from each of its consultants a certificate of insurance naming the County as an additional insured (as a third party beneficiary) and further providing that the insurance policy will not be cancelled, interrupted or otherwise modified to the potential detriment of the NEA or the County without first providing both the NEA Representative and the County Representative with 45 days advance written notice (or such other written notice as may be provided by Applicable Law) of such cancellation, interruption or modification. Upon the request of the County Representative, the NEA will use every reasonable effort to increase its insurance coverage and the insurance coverage of its consultants to levels consistent with the coverages that would be required by a private entity performing similar services, if the insurance is available on commercially reasonable terms. The NEA will also provide the County Representative with, and make every reasonable effort to obtain from its consultants, such information or certificates of insurance as either of the County Representative may request concerning the coverages maintained by the consultants or the NEA under this Agreement. The NEA may satisfy its own obligation to provide insurance coverage through its participation in the State self-insurance program.

The County shall reimburse the NEA, or any of the NEA's consultants, as the case may be, for any costs or expenses incurred by them in pursuing any indemnifications, acknowledgements, or insurance coverages referenced herein including additional premiums, costs or expenses and of obtaining additional coverages, adding the Counties as an "additional insured" or as a "third party beneficiary" or making any other changes to the terms or conditions of their insurance policies to comply with this Agreement, according to its Proportionate Share with respect to costs and expenses incurred by the NEA with respect to both Participating County Agreements.

Section 11.2 Assignment. Neither the NEA nor the County may assign this Agreement without the prior written consent of the other Party, except that the NEA may assign its rights, remedies, powers and privileges under this Agreement to the Trustee or the provider of any credit facility without the permission of the County.

Section 11.3 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

Section 11.4 Taxes. In the event the NEA is required by Applicable Law to remit or pay Taxes which are the County's responsibility hereunder, the County shall promptly reimburse the NEA for such Taxes. In the event the County is required by Applicable Law to remit or pay Taxes which are the NEA's responsibility hereunder, the NEA shall promptly

reimburse the County for such Taxes. Nothing shall obligate or cause a Party to pay or be liable to pay any Taxes for which it is exempt under Applicable Law.

Section 11.5 Notices. All notices, designations, consents, approvals, and other communications required, permitted or otherwise delivered under this Agreement shall be in writing and may be telexed, cabled or delivered by hand or mailed by first class registered or certified mail, return receipt requested, postage prepaid, or dispatched by next day delivery service and in any case shall be addressed as follows:

If to the NEA:

Northeast Maryland Waste Disposal Authority
Tower II – Suite 402
100 S. Charles Street
Baltimore, Maryland 21201
Attention: Executive Director

If to the County:

Carroll County
225 N. Center Street, Room 221
Westminster, Maryland 21157
Attention: Director, Department of Public Works

Changes in the respective addresses to which such communication may be directed may be made from time to time by any Party notice to the other Parties. Any such communications given in accordance with this Section 11.5 shall be deemed to have been given five Business Days after the date of mailing communications given by any other means shall be deemed to have been given when delivered.

Section 11.6 Entire and Complete Agreement. This Agreement (including all Schedules) 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 hereof.

Section 11.7 Binding Effect. This Agreement binds and inures to the benefit of the Parties and any successor or assignee acquiring an interest hereunder permitted by Section 11.1.

Section 11.8 Further Assurances. Each Party shall execute and deliver any instruments and perform any acts that may be necessary and reasonably requested by the other Party in order to give full effect to this Agreement.

Section 11.9 Applicable Law. The laws of the State of Maryland govern the validity, interpretation, construction and performance of this Agreement.

Section 11.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which when executed and delivered together constitute one and the same instrument.

Section 11.11 Rules of Interpretation.

(a) Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the transactions contemplated by this Agreement and, except as expressly provided otherwise herein, nothing in this Agreement is intended to confer on any Person other than the Parties and their respective permitted successors and assigns hereunder any rights or remedies under or by reason of this Agreement.

(b) Severability. If any clause, provision, subsection, Section or Article of this Agreement shall be ruled invalid by any court of jurisdiction, then the Parties shall: (1) promptly meet and negotiate a substitute for such clause, provision, section or Article which shall, to the greatest extent legally permissible, effect the intent of the Parties therein; (2) if necessary or desirable to accomplish item (1) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Agreement; and (3) negotiate such changes in, substitutions for or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above to effect the intent of the Parties in the invalid provision. The invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid portion did not exist.

(c) References. All reference to designated “Articles”, “Sections”, “Schedules” and other subdivisions are to the designated Articles, Sections, Schedules and other subdivisions of this instrument.

(d) Captions. 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 of this Agreement or the scope or intent hereof.

Section 11.12 Amendment or Waiver.

Neither this Agreement nor any provision of this Agreement may be changed, modified, amended or waived except by a written instrument signed by the Party against whom enforcement of such change, modification, amendment or waiver is sought.

Section 11.13 Relationship of the Parties. No Party has any responsibility whatsoever with respect to services provided or contractual obligations assumed by any other Party and nothing in this Agreement shall be 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 11.14 Public Disclosure. Promptly following the written request of the County Representative, the NEA shall provide the County Representative with any information

within its control which it is permitted by Applicable Law (including Title 1D, Subtitle 6 of the State Government Article of the Annotated Code of Maryland) to disclose.

Section 11.15 Limitation Of Liability. The execution and delivery of this Agreement by the NEA and the County shall not impose any personal liability on the members, officers, employees or agents of the NEA or the County. No recourse will be had by a Party for any claims based on this Agreement against any member, officer, employee or other agent of the other Party in his or her individual capacity, all such liability, if any, being expressly waived by the County and the NEA by the execution of this Agreement.

Section 11.16 Limitation of NEA Payment Obligations To Bond Proceeds And NEA Component Revenues. The liability of the NEA for any monetary payments with respect to, or as a result of, this Agreement are not payable from the general funds of the NEA or any amounts received by the NEA in respect of the Energy Recovery Fee and the incurrence or nonperformance of such obligations or payments will 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 NEA or of its income, receipts or revenues, except NEA Component Revenues and Bond proceeds available to pay such amounts under Applicable Law and the Bond Documents.

Section 11.17 General Obligation Not Subject to Appropriation.

(a) This Agreement is a general contractual obligation of the County. The County's obligations hereunder are not subject to annual appropriation by the County.

(b) If the County elects prior to the Financial Closing, the pecuniary obligations of the County may be limited to a solid waste enterprise fund, provided that the County and the NEA enter into a mutually-agreed supplement to this Agreement providing for a rate covenant and other covenants regarding the pledge of and management of the County Disposal System and the County's revenues therefrom.

IN WITNESS WHEREOF, the NEA and the County have executed and sealed this Agreement July 30, 2009.

[SEAL]

NORTHEAST MARYLAND WASTE DISPOSAL
AUTHORITY

ATTEST:

M. Catherine Coble
Director of Finance & Administration

Robin B. Davidov
Executive Director

[SEAL]

COUNTY COMMISSIONERS OF
CARROLL COUNTY, MARYLAND

ATTEST:

By: _____
Name: _____
Title: _____

Steven D. Powell
Chief of Staff

Exhibit A
DEFINITIONS AND INTERPRETATION

As used in this Agreement, the following terms shall have the meanings set forth below:

“Acceptable Waste” means that portion of waste materials or debris which can be combusted, having a composition with characteristics such as that collected and disposed of as part of normal collections of waste materials and debris in the County, such as, but not limited to: garbage, rubbish, trash, paper, cardboard, cartons, wood (except as limited below), boxes, rags, cloth, bedding, leather, grass, leaves and brush, yard trimmings, tree limbs, plastics, refuse, beds, mattresses, sofas, carpeting and combustible construction and demolition debris and other combustible waste, bicycles, tin cans, and other noncombustible residential waste, automobile tires or small vehicle tires to the extent the air emission criteria of the Facility shall not be violated as a result of incinerating such tires, as well as portions of commercial and industrial waste materials or debris which may be combusted, and lumber, logs and trees if no more than four (4) feet long and/or six (6) inches in diameter, excepting, however, Unacceptable Waste and Hazardous Waste while the Service Agreement is in effect. Acceptable Waste shall include any waste that the Company is required to accept at the Facility under the Service Agreement, including sewage sludge by or on behalf of or authorized by the Participating Counties.

“Actual Delivery Ratio” has the meaning given in Section 4.1(c)(ii).

“Additional Capital Investment” has the meaning given in Section 5.3(b).

“Administrative Budget” means the Administrative Budget of the NEA described in Section 4.1(G) hereof.

“Agreement” means this Agreement between the NEA and the County (including the Exhibits and Schedules to this Agreement), as amended or modified from time to time.

“Alternate Disposal Costs” has the meaning given in Section 4.1(f).

“Alternate Disposal Facility” means a sanitary landfill (including any Designated Landfill), within or without the County boundaries, solid waste acceptance, transportation and disposal facilities at which waste material or debris is accepted, stored or disposed of by or on behalf of the NEA other than the normal sites to be used for such activities pursuant to this Agreement.

“Alternate Disposal Methods” means any method of acceptance, transportation, storage and/or disposal of Acceptable Waste, other than operation of the normal acceptance at and processing through the Facility under the Service Agreement, by which the NEA or any Person acting for or on behalf of the NEA accepts, transports, stores or disposes of, or causes to be accepted, transported, stored or disposed of, Acceptable Waste, either through the use of the NEA Component, the NEA Component Sites, the Designated Landfill, the Alternate Disposal Facilities or otherwise.

“Annual Settlement Statement” has the meaning given in Section 4.3.

“Applicable Law” means (i) any applicable statute, common law, treaty, rule, code, ordinance, regulation, interpretation, certificate, or order of any Governmental Authority (ii) any license, permit, franchise, certificate or other authorization of, and required registration or filings with any Governmental Authority, or (iii) any judgment, decision, decree, injunction, order or the like of any Governmental Authority.

“Bankruptcy Event” means, with respect to any Person, the (i) filing of a petition or otherwise commencement, authorization or acquiescence in the commencement of a proceeding or cause of action by such Person under any bankruptcy, insolvency, reorganization or similar law, or having any such petition filed or commenced against it, (ii) making an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becoming bankrupt or insolvent (however evidenced), (iv) having a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) generally being unable to pay its debts as they fall due.

“Billing Period” means each calendar month during the term of this Agreement except that (1) the first Billing Period shall begin on the Commencement Date and shall end on the last day of the month in which the Commencement Date occurs and (2) the last Billing Period shall end on the last day of the term of this Agreement.

“Billing Statement” has the meaning given in Section 4.2(a).

“Bond” means any bonds, notes or other obligations of the NEA issued or incurred before or during the term of this Agreement to finance or refinance all or part of the Capital Costs of the NEA Component.

“Bond Documents” means the Trust Indenture, mortgage or security agreements, and any other agreements relating to the Bonds.

“Bondholder” means any Person possessing a beneficial interest in one or more Bonds.

“Business Day” means each Monday, Tuesday, Wednesday, Thursday, and Friday which is not a public holiday in the State of Maryland.

“Capacity Maintenance Change” has the meaning given in Section 5.3(a).

“Capital Costs” means any item of cost of a capital nature incurred by the NEA which cost constitutes a “cost of the project” under the NEA's enabling legislation.

“Change” means any restoration, modification, addition or alteration to the NEA Component.

“Commencement Date” means the date on which construction and start up testing of the Facility is complete and the Facility has achieved commercial operations pursuant to the Service Agreement.

“Company” has the meaning given to such term in the recitals.

“Comprehensive Solid Waste Management Plan” means the County’s comprehensive solid waste management plan of the County which is in effect and approved by the State of Maryland from time to time.

“Consulting Engineer” means an independent engineer or engineering firm or corporation of engineers, of recognized standing, having skill and experience with respect to the design, construction and operation of facilities similar to those contemplated hereunder, as may be designated by the NEA (subject to the approval of the Participating Counties, which approval cannot be unreasonably withheld) from time to time, and approved pursuant to the terms of Trust Indenture.

“County” has the meaning given in the preamble.

“County Bond Approval” with respect to a Participating County means either (i) the affirmative approval of the Board of Commissions of the County of the maximum principal amount, the maximum interest rate, and the final maturity of the Bonds (the “Key Bond Terms”) or (ii) the failure of the Board of Commissioners to disapprove the Key Bond Terms of a NEA Bond issue within 45 days after the NEA has given to the Chairman of the Board a written notice stating the Key Bond Terms and stating that it intends to issue Bonds to finance the Facility.

“County Disposal Services” means all waste materials and debris disposal services which are required to be provided by the County pursuant to the County’s obligation to dispose of all waste materials and debris generated within its geographical boundaries, whether such services are provided through the use of the County Disposal System, by solid waste management contracts or otherwise. “County Disposal Services” includes any recycling or materials recovery activities undertaken within the County Disposal System.

“County Disposal System” means the (a) plants, structures, buildings, machinery, equipment, fixtures and other real and personal property owned or leased by the County pursuant to and for the purposes of providing solid waste management service, including but not limited to any components which are necessary or desirable for the efficient operation of the County Management System and any appurtenances which are necessary or useful and convenient therefor and (b) any rights and obligations of the County under any solid waste management contracts, as such contracts may be amended, modified or renewed. The County Disposal System includes the rights of the County to disposal services under this Agreement.

“County Exercise of Rights Notice” has the meaning given in Section 6.3(d).

“County Exercise of Rights Response” has the meaning given in Section 6.3(b).

“County Representative” means, with respect to any direction, instruction, or other action of the County in accordance with this Agreement, an individual duly authorized by a written order duly executed by the County, the current authorization of which shall be confirmed at any time at the request of the NEA prior to such direction, instruction or other action becoming effective.

“Debt Service” has the meaning given in Section 4.1(d).

“Designated Hauler” means any Person delivering waste to the NEA pursuant to this Agreement on behalf of a Participating County, including employees or agents of the County.

“Designated Landfill” means any landfill or facilities made available to the NEA by the County for disposal of Landfill Waste pursuant to a Landfill Agreement.

“Discretionary Rights” means the reserved rights described in the Service Agreement, including:

1. Right to require Changes to the Facility pursuant to Article VII of the Service Agreement.
2. Right to accept Facility at less than the Minimum Performance Standard.
3. Right to terminate for Company failure to perform or for convenience.
4. Right to waive any defaults.

In addition, the Participating Counties, by a written direction duly executed by both Participating Counties Representatives, may designate any other rights under any Service Agreement as “Discretionary Rights” by written notice to the NEA.

“Discriminatory County Taxes” means Taxes levied or imposed by the County (or any agency, public authority, special district, subdivision or other public instrumentality thereof) on the NEA, the Company, the Facility, or the activities contemplated by the NEA Component Agreements, and paid or incurred by the NEA or the Company, but not including (a) sales or excise taxes, user fees, assessments or other charges for benefits, services, utilities, licenses or permits, in each case established on a basis that does not have the effect of discriminating against waste disposal and/or energy recovery facilities and payable by a broad range of businesses and industries, (b) interest, penalties or fines, or (c) amounts payable by the NEA or the Company to the County under contractual arrangements therewith, including rentals payable under the Facility Site Lease.

“Energy Recovery Fee” means the annual fee payable to the NEA by the County pursuant to this Agreement.

“Event of Default” means an Event of Default as defined in Section 8.2.

“Facility” has the meaning given in the Recitals.

“Facility Fee” has the meaning given in Section 4.1(e).

“Facility Site” means a site upon with the Facility is to be located, subject to lease from Frederick County to the NEA.

“Facility Site Lease” means collectively (1) the agreement between Frederick County and the NEA concerning the lease to the NEA of the Facility Site and the granting of certain easements and rights to the NEA, as such agreement may be extended, revised or amended, and (2) any agreement between the NEA and Frederick County concerning use of the Facility Site, or any part thereof, by the NEA, as such agreements may be amended or modified from time to time.

“Financial Closing” means the date on which the Bonds are issued and proceeds thereof are available to pay substantially all of the costs of the NEA Component.

“Fiscal Year” means the NEA’s fiscal year for accounting purposes, lasting from the first day of July to the 30th day of June of the following calendar year.

“Frederick County” means Frederick County, Maryland.

“Frederick County Agreement” means the Energy Recovery Agreement entered into by and between the NEA and Frederick County relating to the NEA Component.

“Governmental Authority” means any court, tribunal, authority, agency, commission, official or other instrumentality of the United States, any arbitrator, any foreign country or any domestic or foreign state, county, city or other political subdivision or any Native American tribal council or similar governing entity having jurisdiction over the applicable subject matter.

"Hazardous Waste" means any waste, substance, object or material deemed hazardous under Applicable Law including, without limitation, “hazardous waste” as defined under the Solid Waste Disposal Act, 42 U.S.C. §§ 6901 et seq., as amended, or any successor legislation, and the regulations thereunder, and “hazardous substance” as defined under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., as amended, or any successor legislation, and the regulations thereunder, or any other applicable Federal, State or local law and the regulations thereunder, provided, however, that household hazardous waste shall not constitute Hazardous Material. Hazardous Material shall include radioactive materials. If any Governmental Authority now or hereafter having appropriate jurisdiction shall determine that substances which were not, as of the Commencement Date, considered harmful, toxic or dangerous, are harmful, toxic or dangerous, then such substances shall be Hazardous Waste for the purposes of this Agreement as of the effective date of any such determination.

“Independent Public Accountant” means any nationally recognized firm of public accountants designated by the NEA to perform the services required to be performed by the

Independent Public Accountant hereunder and approved by the County Representative, which approval shall not be unreasonably withheld.

“Insurance Consultant” means an independent consultant or firm of consultants with a favorable national reputation that is designated by the NEA and approved by the County Representative, which approval shall not be unreasonably withheld.

“Internal Revenue Code” means Title 26 of the United States Code, as the same may be revised, expanded, or amended.

“Landfill Agreement” means any agreement between the NEA and the County (and any agreement assigning or otherwise making available to the Company any of the NEA's rights thereunder) providing, among other things, for the disposal of Residue and bypassed waste, as such agreement may be amended or modified from time to time.

“Landfill Waste” has the meaning ascribed thereto in the Landfill Agreement.

“Maturity Date” means the earlier of (i) the final stated maturity date of the Bonds, or (ii) the date on which all of the Bonds are defeased in accordance with the terms thereof.

“NEA” means Northeast Maryland Waste Disposal Authority, and its successors and permitted assigns.

“NEA Administrative Costs” has the meaning given in Section 4.1(g).

“NEA Component” means the components of the County Management System which are to be undertaken by the NEA pursuant to this Agreement, including, collectively, the Facility, any Changes to the Facility made in accordance with this Agreement, and any Alternate Disposal Facility or Alternate Disposal Methods and any NEA Component Agreement.

“NEA Component Agreements” means the Facility Site Lease, the Service Agreement, and all energy sales agreements, landfill agreements, or agreements regarding an Alternate Disposal Facility, and this Agreement, together with any and all other agreements to which the NEA is a party necessary for the NEA to fulfill its obligations under this Agreement that are approved by the County Representative pursuant to Section 6.3 or entered into in accordance with Section 6.4, as such agreements may be amended or modified from time to time.

“NEA Component Revenues” has the meaning specified in Section 4.1(j).

“NEA Component Sites” means the Facility Site, and any Alternate Disposal Facility.

“NEA Dispute Notice” has the meaning given in Section 6.3.

“NEA Exercise of Rights Notice” has the meaning given in Section 6.3(b).

“NEA Representative” means the Executive Director, acting pursuant to a duly authorized resolution of the NEA, or any other Person designated in writing by the Executive Director, the current authorization of the designee shall be confirmed by the Executive Director at any time at the request of the County Representative prior to any direction, instruction or other action of the designee becoming effective.

“NEA Sponsored Waste” means Acceptable Waste delivered to the Facility from Persons through agreements directly with the NEA with the approval of either Participating County, Fees collected from NEA Sponsored Waste are applied to reduce the Energy Recovery Fees payable by the Participating Counties.

“Nonperforming Party” means a Party to this Agreement who fails to perform any obligation or comply with any requirement of such Party under this Agreement.

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

“Operating Costs” has the meaning given in Section 4.1(h).

“Participating County” means the County or Frederick County.

“Participating County Agreement” means either this Agreement or the Frederick County Agreement.

“Participating County Representative” means either of the County Representatives or the corresponding individual authorized by Frederick County as its representative pursuant to the Frederick County Agreement.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a governmental entity, division, agency, or official.

“Prime Rate” means the prime rate as published in *The Wall Street Journal* or a mutually agreeable alternative source of the prime rate if it is no longer published in *The Wall Street Journal* or the method of computation thereof is substantially modified.

“Priority Acceptable Waste” has the meaning given in Section 8.6(a).

“Processing Capacity Reduction” means a reduction in the amount of Acceptable Waste processed by the Facility per day, pursuant to the Service Agreement.

“Proportionate Share” has the meaning given in Section 4.1(c).

“Prudent Solid Waste Management Practices” means, as of any particular time, any of the practices, methods and acts (not limited to the optimum practice, method or act) engaged in or generally acceptable to a significant portion of the solid waste management industry at or prior to such time, or any of the practices, methods and acts, which in the exercise of reasonable judgment in light of the facts and circumstances known at the time a decision was made, could have been expected to accomplish the desired results consistent with good business practices, reliability, economy, safety and expedition.

“Receiving Hours” means the period of operation for the Facility commencing at 6:30 a.m. on each Monday through Saturday and ending at 6:00 p.m. on the same day, or another eleven and one half (11.5) hour period of operation for each Monday through Saturday which is specified in writing by the NEA.

“Recovered Materials” means ferrous and nonferrous metals recovered from Acceptable Waste or Residue at the Facility.

“Required Insurance” has the meaning given to such term in (a).

“Residue” means the material which remains after Acceptable Waste is processed in the Facility, including bottom ash and fly ash

“Service Agreement” has the meaning given in the recitals.

“Service Agreement Termination Date” means the date on which the Service Agreement will terminate pursuant to its terms.

“Service Covenant” means the covenants and agreements of the NEA set forth in Section 3.2(a).

“Solid Waste Management Contracts” means all contracts, leases and agreements with any Person to which the County is a party which bear upon or affect any obligation or responsibility of the County with respect to the disposal of waste materials and debris, including without limitation, any contract, lease or agreement providing for the design, construction, maintenance or operation, disposal service, property acquisition, sale or use, of electricity or material sales.

“State” means the State of Maryland.

“Tax” or “Taxes” means all taxes, assessments, charges, duties, fees, levies or other governmental charges, including, without limitation, all federal, state, local, foreign and other income, franchise, profits, gross receipts, capital gains, capital stock, transfer, property, sales, use, value-added, occupation, property, excise, severance, windfall profits, stamp, license, payroll, social security, withholding and other taxes, assessments, charges, duties, fees, levies or other governmental charges of any kind whatsoever (whether payable directly or by withholding and whether or not requiring the filing of a tax return), all estimated taxes, deficiency assessments, additions to tax, penalties and interest; provided that, except in the case of Discriminatory

County Taxes, the term “Tax” shall not include taxes imposed on the Company that are reimbursable under the Services Agreement.

“Trust Indenture” means the trust indenture entered into by the NEA with the Trustee in connection with the issuance of the Bonds.

“Trustee” means the trustee appointed by the NEA under the Trust Indenture to such term in the Bond Documents.

“Unacceptable Waste” means that portion of waste materials and debris that is not Acceptable Waste, and is not normally accepted at facilities similar to the Facility in accordance with Prudent Solid Waste Management Practices. Unacceptable Waste is waste that is predominantly noncombustible materials which by Applicable Law may not be combusted by the Facility, or which, in the mutual judgment of the NEA and the Company (a) may present a substantial endangerment to public health or safety, (b) may cause applicable air quality or water effluent standards to be violated by the normal operation of the Facility, or (c) will materially and adversely affect the operation of the Facility, unless such Unacceptable Waste is delivered in minimal quantities and concentrations as part of normal collections in which case such material shall constitute Acceptable Waste. Items of Unacceptable Waste will be established by reasonable regulations by the NEA, based on relevant government approvals, Applicable Laws, the Service Agreement or other NEA component Agreements. Unacceptable Waste includes all items or materials which constitute “Non-Processible Waste” pursuant to the Service Agreement.

“Uncontrollable Circumstance” means an event or circumstance which hinders or prevents one Party from performing one or more of its obligations under this Agreement, which event or circumstance was not anticipated as of the date hereof, which is not within the reasonable control of, or the result of the negligence of, such Party, and which, by the exercise of commercially reasonable efforts, such Party is unable to overcome or avoid or cause to be avoided, including, but not limited to, flood, storm, strike, earthquake, epidemic, war, riot, civil disturbance, sabotage, act of God, or any condition or situation which either party reasonably believes imminently endangers or is reasonably likely to imminently endanger life or property or any other cause beyond the control of such Party. Without in any way limiting the foregoing, with respect to the NEA, any Uncontrollable Circumstance, as defined in the Service Agreement, which releases the Company from any obligation under the Service Agreement shall be deemed an Uncontrollable Circumstance pursuant to this Agreement to the extent the Company’s nonperformance hinders or prevents the NEA from performing one or more obligations under this Agreement.

“Variable Costs” has the meaning given in Section 4.1(i).

“Waste Disposal and Energy Recovery Services” means all services which the NEA is obligated to provide the County under the Service Covenant.