

Memorandum of Understanding
By and Among
Carroll County, Maryland,
Frederick County, Maryland
and
Northeast Maryland Waste Disposal Authority
for the Development of a Regional Energy Recovery Facility

Whereas, Carroll County, Maryland and Frederick County, Maryland (collectively, the “Counties”) are members of the Northeast Maryland Waste Disposal Authority (the “NEA”) and each have a representative on the Authority’s Board of Members; and

Whereas, the NEA has procured, financed, owns and operates two energy recovery facilities (“ERF”) which generate steam and/or electricity, and has experience in developing such projects; and

Whereas, according to the Director of the Maryland Energy Administration, “Maryland continues to consume far more electricity than we generate. Not only does this cause high prices, but we now face the possibility of summertime shortages (of electricity) as early as 2011”⁽¹⁾ and it is in the best interest of the Counties’ residents that adequate supplies of electricity are available for public purposes; and

Whereas, the Counties desire that non-recycled solid waste be converted into energy in a modern, renewable energy facility, because the alternate method, long hauling of waste to out of state landfills is expensive and not sustainable; and

Whereas, Frederick County desires to have an optional disposal method for sewage sludge; and

Whereas, the Counties hereby evidence their intent to cooperate in the development of a new ERF (the “Facility”) because the energy produced by this type of facility is deemed by the United States Environmental Protection Agency (“US EPA”) and the European Union to be a source of renewable energy, and is preferred to long hauling and land filling trash; and

Whereas, the use of an ERF reduces net emissions of greenhouse gases; and

Whereas, the proposed Facility will re-use approximately 800,000 gallons per day of treated wastewater effluent which otherwise would be discharged into the Monocacy or Potomac Rivers; and

Whereas, the NEA has conducted a multi-step, public procurement for the design, permitting, construction and operation of the Facility; and

Whereas, with regard to the Facility, the NEA has issued a Best and Final Offer Document, has evaluated responses, assisted the Counties in the selection of the best offer, assisted with the negotiation of a Service Agreement (between the NEA and the Preferred Vendor) and Energy

Recovery Agreements between each County and the NEA for presentation to the governing bodies of each County.

Now, therefore, the NEA and the Counties hereby agree to evidence their mutual intentions with regard to the Facility as described in this Memorandum of Understanding.

Part I: Description of the Facility

- 1) The Facility will be located on a site to be provided by Frederick County through a long-term lease with the NEA.
- 2) The Facility will be owned by the NEA on behalf of the Counties.
- 3) The Facility will be a modern, state-of-the-art, energy recovery facility which meets or exceeds all of the standards set forth by Federal, State, and local law.
- 4) The Facility will accept municipal solid waste, sewage sludge and other processible waste materials allowed by permit. It will generate electricity and recycle ferrous and non-ferrous metals.
- 5) The Facility is expected to have a design capacity of 547,500 tons per year and will have a minimum processing capacity of 503,700 tons per year of waste, sewage sludge and other acceptable waste materials.

Part II: Responsibilities of the NEA

- 6) The NEA has completed a multi-step procurement which began with a Request for Qualifications, proceeded to a Request for Proposals and finished with presentation of Best and Final Offers.
- 7) The NEA and representatives of each County, with assistance from the Consulting Engineer, selected the best proposal, the "Preferred Vendor" for the design, construction and operation of the Facility.
- 8) The NEA and its legal counsel have prepared a final draft Service Agreement to be executed by and between the NEA and the selected vendor (the "Vendor"), and the terms of the Service Agreement shall be subject to the approval of the County Representatives.
- 9) The NEA has prepared for County review an Energy Recovery Agreement for each County. Each Energy Recovery Agreement describes the benefits and responsibilities of each County with regard to the Facility, the NEA and the Vendor and gives each County the right to use a share of the Facility capacity. The NEA developed a Energy Recovery Agreement utilizing the following guidelines:
 - a. Energy revenues, recovered material revenues (metals, ash and any other future product) and any other revenue that varies in accordance with waste deliveries

will be credited against Facility costs and expenses on a pro-rated basis according to the actual waste tonnage deliveries of the Counties.

- b. Interest earnings and any other revenue that are fixed or are not related to waste deliveries will be credited to the Counties on a pro-rated basis according to the allocated design capacity.
 - c. Facility expenses that are fixed or not tonnage related, including debt service and the base operations and maintenance costs will be paid by the Counties on a pro-rated basis according to the allocated design capacity of each County; and costs that vary in accordance with tonnage deliveries will be allocated to the Counties in accordance with actual waste tonnage deliveries of the Counties.
 - d. All uncontrollable circumstance costs will be shared by the Counties pro-rated based upon their allocated design capacity.
- 10) After each Energy Recovery Agreement is approved by the governing bodies of each County, the NEA will issue a notice to proceed to the Vendor. The Vendor will prepare all Facility permit applications for review and approval by the NEA and Counties. After approval by the NEA and the Counties, the Vendor will submit the permit applications to the appropriate permitting agencies. All permit applications will be in the NEA's name.
- 11) After the signing of both of the Energy Recovery Agreements, the Authority will invoice the Counties on a once monthly basis in accordance with the terms of the Energy Recovery Agreements for project development costs, subject to approval of a budget by both Counties. The Authority will provide supporting documentation for all invoices in reasonable detail and in form and content reasonably acceptable to the Counties. At no time will the Counties pay for NEA staff time. Certain out of pocket expenses and all third party consultant and advisor expenses are reimbursable expenses, and there is no mark-up by the NEA. Bills will include all invoices and bills received by the Authority on or before the 25th day of the preceding month.
- 12) Once all of the Facility permits are received by the NEA, the NEA will develop all required financing documents (the "Financing Documents"), including bond documents, the trust indenture, and other required documents.
- 13) Certain design, engineering and equipment specification work must be done prior to submitting permit applications to the Maryland Department of the Environment and other regulatory agencies. Should both Counties elect not to go forward with the Project prior to financing, the NEA will stop work on the Project, and the Counties will reimburse the NEA for actual design, engineering and permitting work performed by the NEA but each County's obligation will not exceed \$1.5 million or combined \$3.0 million. Should Frederick County elect not to go forward with the Project, before Carroll County elects not to go forward with the Project, Frederick County will be responsible for reimbursing the project costs. If Carroll County elects not to go forward, and Frederick County cannot find a substitute equity partner, Carroll County shall pay the project costs. In such

an event NEA will work diligently to find a substitute equity partner, which Frederick County can consider as a replacement for Carroll County. However, the final approval of a substitute equity partner shall be solely Frederick County's decision. The maximum obligation under this reimbursement requirement for either County is \$1.5 million, unless the County is required to reimburse all project costs under the terms of Section 13, in the event the maximum obligation shall \$3 million.

- 14) If the financing is approved by both Counties, the NEA shall sell Revenue Bonds to finance the Facility, including but not limited to fixed construction cost, construction management costs, capitalized interest during construction, debt service reserve funds and other costs related to the Facility. Both Counties must approve the Revenue Bonds sources and uses of funds prior to issuance.
- 15) The NEA will provide each County with proposed terms of the Revenue Bonds and the related sources and uses of funds and will not proceed with issuance of the Revenue Bonds if either County objects to the issuance of the Revenue Bonds; the Counties shall have 45 days after receiving the proposed terms of the Revenue Bonds to object to them and not authorize the issuance of the Revenue Bonds for the project.
- 16) The NEA shall monitor the design, construction, and invoicing by the Vendor, approve payment requisitions, manage the retainage and approve the acceptance tests in accordance with the Service Agreement. Both Counties have the right to participate in all of these activities.
- 17) During the operations period, beginning with the acceptance of waste at the Facility and extending through the terms of each of the Energy Recovery Agreements, the NEA shall among other things, enforce the provisions of the Service Agreement, invoice each County for its share of costs, keep books and records, provide an annual audit of the Facility expenses, staff monthly project review meetings, maintain an inventory of all equipment, and approve withdrawals from the Facility Operation & Maintenance reserve fund.
- 18) Prior to submission of permit applications, the NEA shall execute a site lease with Frederick County for the property necessary to construct and operate the Facility during its expected useful life. The terms and conditions of the site lease will be provided to Carroll County by the NEA for its comment and review prior to the execution of the site lease.
- 19) Prior to Facility construction, the NEA will execute a Public Works Utility Agreement with Frederick County for the development, operation and maintenance of a pump station and force main to supply non-potable utility water from the Ballenger Creek Waste Water Treatment Plant discharge pipe or alternate Frederick County non-potable water system.
- 20) The NEA will, at the direction of Frederick County, modify the County's transfer station in order to allow the transfer station to operate as a materials recovery facility (MRF) or

develop a new MRF. The costs for the MRF will be borne by Frederick County, which may recover the costs from MRF participants.

Part III: Responsibilities of Frederick County and Carroll County

- 21) Frederick County and Carroll County will each sign a separate Energy Recovery Agreement with the NEA.
- 22) Under the Energy Recovery Agreement, Frederick County will be allocated 60% of the Facility design capacity and Carroll County will be allocated 40% of the Facility's design capacity.
- 23) Only Frederick County will earn a Renewable Energy Dividend which shall be a share of gross electricity revenues. The Renewable Energy Dividend shall reduce the net cost of disposal for Frederick County, or at the direction of the County Representative, may be distributed to the Solid Waste Fund once each year. Such amount shall be 1% of gross energy revenues in the first year, and shall increase to 5% of gross energy revenues over a five year period. Thereafter, the amount shall be 5% of gross energy revenues. The estimated amount of the Renewable Energy Dividend credited to Frederick County is \$300,000 the first year of operations (in FY 2009 Dollars).
- 24) In order to minimize truck traffic, Carroll County will deliver most of its waste in transfer trailers unless an emergency or other condition at its transfer station occurs, in Carroll County's reasonable discretion, which prevents such deliveries in trailers.
- 25) Carroll County agrees to use truck routes and delivery times, all of which are approved by Frederick County, which shall not be unreasonably withheld.
- 26) The net operating costs (debt service, operating & maintenance, pass through, administration costs less revenues) shall be calculated in accordance with Part II (item 9) of this Memorandum of Understanding. In no case shall either County be responsible for paying for more than its allocated capacity, unless an agreement has been reached between the Counties. Either County may request services unique to its County in which case the additional costs for such request will be paid solely by the requesting County.
- 27) If Carroll County does not need its entire allotted facility capacity it will first offer the capacity to Frederick County. If Frederick County declines the offer, Carroll County may make available unused capacity to another entity. Carroll County shall require that any entity making use of the available unused capacity must comply with all applicable provisions of this MOU as well as all regulations and contract provisions governing the use and operation of the facility.
- 28) If Frederick County does not need its entire allotted facility capacity it will first offer the capacity to Carroll County. If Carroll County declines the offer, Frederick County may make available unused capacity to another entity. Frederick County shall require that any

entity making use of the available unused capacity must comply with all applicable provisions of this MOU as well as all regulations and contract provisions governing the use and operation of the facility.

- 29) Each County will be responsible for the cost of transportation for its share of ash residue and to provide a permitted ash residue recycling location (such as a Subtitle D landfill). The amount of ash each County will be responsible shall be prorated with their tonnage delivery including marketed capacity.
- 30) Frederick County will, at its expense, provide weigh master staff for the scale house at the Facility during the daytime shift. Nighttime deliveries will be automatically weighed and recorded using radio frequency identification tags and computer system or another comparable automated system.
- 31) Both Counties acknowledge that the financing and development process and associated expenses are a necessary function of pursuing the development of the Facility, and that there is no guarantee that the Facility will be permitted or financed.
- 32) Either or both of the Counties may choose to recover its Facility development expenses in the issuance of Revenue Bonds.
- 33) Prior to the issuance of the Revenue Bonds, the Counties will develop a protocol for the terms of ownership and control of the Project upon final payment of the NEA Revenue Bonds and expiration of the Service Agreement.
- 34) Prior to the issuance of NEA Revenue Bonds, each County shall notify the NEA of its interest in purchasing the electricity, capacity, renewable energy credits and ancillary services. Frederick County will have the rights to 60% of the energy output, approximately 27 MW. Carroll County will have the rights to 40% of the energy output, approximately 18 MW. The Counties may elect to purchase the Energy from time to time, by giving notice to the NEA and entering into an energy purchase contract with the NEA. If the Counties do not elect to purchase the Energy, or any attributes derived therefrom, the NEA will sell the energy and attributes at the available market prices based on a competitive process. All proceeds from the sale of energy and attributes will be credited to the respective County, and applied to reduce the net cost of disposal.

Part IV: Responsibilities of the Vendor

- 35) The NEA shall require that the Vendor sign a Service Agreement with NEA.
- 36) The NEA shall require that the Vendor design, build and operate the Facility for a term to be selected by the Counties prior to financing, and which term is co-terminus with the term of the Revenue Bonds.
- 37) The NEA shall require that the Vendor guarantee the following, and be subject to damages for non-compliance:

- a. Annual Waste Processed;
- b. Annual Energy Production;
- c. Annual Ferrous and Non-Ferrous Metal Recovery Efficiency;
- d. Compliance with all Facility Permit Conditions and all applicable Federal, State and local laws, rules and regulations (to include payment of all applicable fines or penalties arising from violation of such);
- e. Utility and Residue Guarantees.

It is Acknowledged and Agreed that the Counties and the NEA will work together in good faith to develop the Facility and negotiate contracts based on the general terms above.

This Memorandum of Understanding evidences the intentions of the parties with regard to the facility.

All further financial obligations of the Counties' shall be memorialized in the Energy Recovery Agreement to be executed by and between Carroll County and the NEA and Frederick County and the NEA, in case of any conflict between that agreement and this MOU, the provisions of the Energy Recovery Agreement shall prevail.

This Memorandum of Understanding is signed this 23rd day of July 2009.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND

Mary E. Baker

By: Jan H. Gardner
Name: Jan H. Gardner
Title: President *JHG*

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF CARROLL COUNTY, MARYLAND

Stephen D. Powell

By: Stephen D. Powell
Name: STEVEN D. POWELL
Title: CHIEF OF STAFF

ATTEST:

NORTHEAST MARYLAND WASTE
DISPOSAL AUTHORITY

M. Catherine Cobb

By: Robin B. Davidov
Name: Robin B. Davidov
Title: Executive Director

(1) Letter from Malcolm D. Woolf, Director, Maryland Energy Administration to Governor O'Malley,
January 14, 2008.