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**MUNICIPAL WASTE PROCESSING/DISPOSAL CAPACITY AND INTEGRATED
WASTE AND RECYCLABLES MANAGEMENT SERVICE AGREEMENT
CLARION AND FOREST COUNTIES**

THIS MUNICIPAL WASTE PROCESSING/DISPOSAL CAPACITY AND INTEGRATED WASTE AND RECYCLABLES MANAGEMENT SERVICE AGREEMENT (“Agreement”) is made this _____ day of _____, 20____, by and between the Clarion and Forest Counties, Pennsylvania, counties organized and existing under the laws of the Commonwealth of Pennsylvania, with each operating a place of business in its respective county seat, hereinafter collectively known as the “COUNTIES”, and _____ (“Operator”).

BACKGROUND

The Municipal Waste Planning, Recycling and Waste Reduction Act (“Act 101”) requires the Counties, as part of its Municipal Waste Management Plan to provide capacity assurance for the processing and/or disposal of all municipal waste expected to be generated within Clarion and Forest Counties for a period of at least ten (10) years. On behalf of COUNTIES, Barton & Loguidice, D.P.C. (B&L) has issued a Solicitation of Interest (SOI) to solicit responses from interested parties to negotiate an agreement to provide capacity for processing/ disposal of all or a portion of municipal waste generated by Clarion and Forest Counties, as well as potentially supporting the enhancement and sustainability of integrated waste and recyclables management services for a minimum of ten (10) years, beginning in 2023. The Operator responded to the Solicitation of Interest, met the qualification requirements, and the Operator’s proposal was accepted by COUNTIES. This Agreement provides the terms and conditions under which the Operator will provide processing/disposal capacity and other potential services and support for the benefit of the COUNTIES.

NOW, THEREFORE, in consideration of the mutual promises contained herein and with intent to be legally bound, the parties hereby agree as follows:

Article 1. General Definitions and Terms

1.1 Definitions

Unless the context clearly indicates otherwise, the following words and terms, as used in this Agreement, shall have the following meanings:

Acceptable Waste. Municipal waste and all other wastes the Operator’s Facility is permitted to accept under applicable laws and regulations.

Act 101. The Pennsylvania Municipal Waste Planning, Recycling and Waste Reduction Act, Commonwealth Act of July 28, 1988, No. 101, as amended.

Agreement. The Municipal Waste Processing/Disposal Capacity and Integrated Waste and Recyclables Management Service Agreement between COUNTIES and the Operator’s Facility, as amended, supplemented or extended.

Alternative Facility. Any duly licensed or permitted facility designated by the Operator to accept the COUNTIES-generated acceptable wastes during temporary or protracted cessation of operation at the Operator’s Facility.

Commercial Establishment. An establishment engaged in non-manufacturing or non-processing business, including, but not limited to, stores, markets, office buildings, restaurants, shopping centers and theaters.

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Construction/Demolition Waste or C&D Waste. Solid waste resulting from the construction or demolition of buildings and other structures, including, but not limited to, wood, plaster, metals, asphaltic substances, bricks, block and unsegregated concrete. The term does not include the following if they are separate from other waste and are used as clean fill: (i) uncontaminated soil, rock, stone, gravel, brick and block, concrete and used asphalt; and (ii) waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material.

Department or DEP. The Pennsylvania Department of Environmental Protection (DEP).

Facility. Processing and/or disposal facilities, including but not limited to municipal waste, construction/demolition and residual waste landfills, and resource recovery facilities that are fully permitted and licensed for the processing/disposition of municipal waste (as defined herein), and/or residual waste.

Hazardous Waste. A waste or combination of wastes which, because of its quantity, concentration or physical, chemical or infectious characteristics may: (1) cause or significantly contribute to an increase in mortality or an increase in morbidity in either an individual or the total population; or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed or otherwise managed; or (3) is otherwise defined as hazardous by any federal or state statute or regulation.

Industrial Establishment. An establishment engaged in manufacturing and industrial processes, including, but not limited to, those carried out in factories, foundries, mills, processing plants, refineries, mines and slaughterhouses.

Institutional Establishment. An establishment engaged in service, including, but not limited to, public buildings, hospitals (non-infectious waste only), nursing homes, orphanages, schools and universities.

Leaf and Yard Waste. Leaves, garden residues, shrubbery and tree trimmings, and similar material, including grass clippings.

Municipal Waste. Garbage, refuse, industrial lunchroom or office waste and other material, including solid, liquid, semi-solid or contained gaseous material, resulting from operation of residential, municipal, commercial or institutional establishments or from community activities; and any sludge not meeting the definition of residual or hazardous waste from a municipal, commercial or institutional water supply treatment plant, wastewater treatment plant or air pollution control facility.

Municipality. Any city, borough, incorporated town, township or county, or any municipal authority created by any of the foregoing.

Operator. _____, or any permitted successors, assigns, or affiliates.

Operator's Facility. The Operator's permitted facility that is offered to provide processing and/or disposal services under this Agreement, located in _____ (Township/Borough/City), _____ County, Pennsylvania, or in _____ (other state).

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Parent. Any corporation, now or at any time or times hereafter, owning or controlling (alone or with any other person) at least a majority of the issued and outstanding capital stock of the Operator.

Permit. A permit issued by DEP, or a permit and/or license issued by another state's regulatory agency, as required, to operate a municipal waste disposal or processing facility.

Person. Any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof.

Plan. The Clarion and Forest Counties Municipal Solid Waste Management Plan being prepared by or on behalf of COUNTIES, and approved or to be submitted for approval to DEP pursuant to Act 101.

Residual Waste. Any garbage, refuse, other discarded material or other waste, including solid, liquid, semi-solid or contained gaseous material resulting from industrial, mining and agricultural operations; and sludge from an industrial, mining or agricultural water supply treatment facility, wastewater treatment facility or air pollution control facility, if it is not hazardous.

Resource Recovery Facility. A facility that provides for the extraction and utilization of materials or energy from municipal waste that is generated off-site, including, but not limited to, a facility that mechanically extracts materials from municipal waste, a combustion facility that converts the organic fraction of municipal waste to usable energy and any chemical or biological process that converts municipal waste into a fuel product or other usable material. The term does not include methane gas extraction from a municipal waste landfill, nor any separation and collection center, drop-off point or collection center for recycling municipal waste, or any source separation or collection center for composting leaf and yard waste.

Tipping Fee. The schedule of fees established by the owner or operator of a facility for accepting various types of solid waste for processing or disposal.

Ton. Two thousand (2,000) pounds.

Transfer Station. A facility which receives and processes or temporarily stores municipal or residual waste at a location other than the generation site, and which facilitates the transportation or transfer of municipal or residual waste to a processing or disposal facility. The term includes a facility that uses a method or technology to convert part or all of the waste materials for offsite reuse. The term does not include a collecting or processing center that is only for source separated recyclable materials, including clear glass, colored glass, aluminum, steel and bimetallic cans, high grade office paper, newsprint, corrugated paper and plastics.

Unacceptable Waste. Any material that by reason of its composition, characteristics or quantity, is ineligible for disposal at the Operator's Facility pursuant to the provisions of the Resource Conservation and Recovery Act of 1976, 42 U.S.C., the Pennsylvania Solid Waste Management Act, 35 P.S. §6018.101 et seq., or other applicable federal, state or local law, or any other material that the Operator concludes would present an endangerment to the Operator's Facility, the public health or safety, or the environment.

Waste Hauler. Anyone engaged in the business of collecting and transporting solid waste and/or recyclables.

1.2 Other Words, Terms, Phrases

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Except as otherwise defined in this Agreement, all words, terms and/or phrases used herein shall be defined by the applicable definition therefore, if any, in Act 101 or the Pennsylvania Solid Waste Management Act or the regulations promulgated thereunder.

Article 2. Representations

2.1 Representations of COUNTIES

COUNTIES represents and warrants that:

- (a) COUNTIES have the full power, authority and legal right to enter into and perform this Agreement and all other agreements or instruments which they may enter into under any provision of this Agreement.
- (b) This Agreement and each other agreement or instrument entered into by COUNTIES pursuant to this Agreement, when entered into, will have been duly authorized, executed and delivered by the county and will constitute a legal, valid and binding obligation of the county.
- (c) There is no action or proceeding before any court or administrative agency pending or, to the knowledge of COUNTIES, threatened against or adversely affecting the ability of COUNTIES to perform its obligations hereunder.

2.2 Representations of Operator

The Operator represents and warrants to COUNTIES that:

- (a) It is the owner and operator of the Operator's Facility and is permitted as such by DEP or the appropriate state regulatory agency.
- (b) It is a corporation duly organized and existing in good standing under the laws of _____ and has the corporate power and authority to enter into and perform its obligations under this Agreement and each other agreement or instrument entered into or to be entered into under any provision of this Agreement.
- (c) It has the full power and legal right to enter into and perform this Agreement and all other agreements or instruments which it may enter into under any provision of this Agreement.
- (d) This Agreement and each other agreement or instrument entered into pursuant to this Agreement, when entered into, will have been duly authorized, executed by and delivered by the Operator, and will constitute a legal, valid and binding obligation.
- (e) The execution, delivery and performance hereof by the Operator: (i) has the requisite approval of all governmental bodies; (ii) will not violate any judgment, order, law or regulation applicable to the Operator; and (iii) does not (a) conflict with, (b) constitute a default under, or (c) except as specifically created hereby, result in the creation of any lien, charge, encumbrance or security interest upon any assets of the Operator under any agreement or

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instrument to which the Operator is party or by which the Operator or its assets may be bound or affected.

- (f) This Agreement has been duly authorized, executed and delivered by the Operator, and constitutes a legal, valid and binding obligation of the Operator, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditor's rights generally, or by general equitable principles concerning remedies.
- (g) There is no litigation or proceeding pending or, to the knowledge of the Operator, threatened against or affecting the Operator: (i) challenging the validity of this Agreement; (ii) seeking to enjoin the performance by the Operator of its obligations under this Agreement; or (iii) which, if adversely determined, would materially adversely affect the ability of the Operator to perform its obligation under this Agreement.
- (h) Except as disclosed on the Submittal Form for Municipal Waste Processing/Disposal Capacity and Integrated Waste and Recyclables Management Program Support services contained in COUNTIES's Solicitation of Interest, attached hereto and incorporated herein by reference, the Operator is not a subsidiary of any parent.

2.3 Parent Guarantee

If and to the extent that the Operator is a subsidiary of a parent, the Operator agrees to cause such parent to execute and deliver to COUNTIES a guarantee of the obligations of the Operator under this Agreement in form reasonably satisfactory to COUNTIES.

2.4 Designation as Processing/Disposal Facility

In consideration of the Operator's Covenants and this Agreement, COUNTIES hereby agrees to include the Operator's Facility in its Plan as a designated processing/ disposal facility for municipal waste generated in Clarion and Forest Counties. The Operator acknowledges that this Agreement is nonexclusive and that COUNTIES may enter into agreements with other facilities to perform the same work and services that the Operator is contracted to perform hereunder. Nothing contained in this Agreement is meant to imply or explicitly intend to create a "put or pay" (as that phrase has generally been understood in the solid waste disposal industry) or similarly obligatory relationship between COUNTIES and the Operator and at no time during the term of this Agreement shall COUNTIES be obligated to deliver and dispose of acceptable waste at the Operator's Facility.

Article 3. Delivery and Disposal of Acceptable Waste

3.1 Delivery and Disposal of Acceptable Waste

On and after the effective date of this Agreement and pursuant to the capacity reservations specified in the Submittal Form for Municipal Waste Processing/Disposal Capacity and Integrated Waste and Recyclables Management Program Support services:

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- (a) COUNTIES may, at its option, cause to be delivered to the Operator's Facility during the receiving times all, part or none of the Acceptable Waste generated in Clarion and Forest Counties.
- (b) The Operator shall provide processing and/or disposal capacity as may be needed by COUNTIES for all Acceptable Waste generated within the geographic boundaries of Clarion and Forest Counties or any waste hauler may cause to be delivered to the Operator's Facility. This may include delivery of Acceptable Waste on an occasional basis by individual residents in small vehicles, if allowed at the Operator's Facility. The Operator and COUNTIES shall from time to time agree upon reasonable regulations and charges for such disposal, which will include all applicable fees.
- (c) The Operator agrees that it is reasonable to expect that, on average, waste haulers will not be required to wait more than twenty (20) minutes at the Operator's Facility before being able to unload.
- (d) The Operator shall not give preference to vehicles owned or operated by the Operator or its affiliates or by any other person.

Article 4. Conditions for the Delivery and Disposal of Waste

4.1 Control Procedures/Weighing of Waste Deliveries

- (a) The Operator shall be required to maintain a scale that conforms to the Pennsylvania Consolidated Weights and Measures Act, 3 Pa.C.S.A. Section 4101 et. seq. or the equivalent if the Operator is a jurisdiction other than Pennsylvania, to weigh all incoming waste. Vehicles of waste haulers of COUNTIES generated material and occasional County individual residents delivering municipal waste from sources located in the region to the Operator's Facility shall be weighed and their waste loads classified, and each vehicle shall receive an appropriate record indicating the classification, county of origin (including split counties of origin, as appropriate), and weight of all waste prior to disposal at the Operator's Facility.
- (b) If at any time testing of the weighing facilities indicates that the weights are inaccurate, any adjustments of waste delivery receipts shall revert to the date the last verified scale weights were recorded by the appropriate certification agency. COUNTIES or waste haulers may at all times have access to the scale accuracy records of the Operator. If the scale is inoperable for any reason, the waste haulers may use another certified scale of their choice, or the Operator may direct vehicles to another certified scale closest to the Operator's Facility. If none are available, estimated weights based on historic data pertinent to the affected waste haulers shall take the place of actual weighing during the scale outage. The Operator shall make disposal invoices for the preceding month, on a monthly basis, available to the waste haulers, and the Operator shall use this information to invoice the waste haulers for disposal at the Operator's Facility.
- (c) Operator shall at all times have an approved radioactive materials screening and monitoring system in effect, and shall employ an approved Radiation Protection Action Plan (RPAP) approved by the Department or, if the Operator is in a jurisdiction other than Pennsylvania, as required by the Operator's jurisdiction. The identification and handling of radioactive materials identified by such system shall be handled in accordance with the RPAP and applicable regulatory requirements.

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4.2 Receiving Time/Hours of Operation

- (a) The Operator's Facility shall be available to receive waste during the receiving times specified in the Submittal Form for Municipal Waste Processing/Disposal Capacity and Integrated Waste and Recyclables Management Support services, attached hereto and incorporated herein by reference.
- (b) If COUNTIES or a waste hauler requests and the Operator agrees, a waste hauler may deliver waste at times in addition to the specified receiving times at a cost which may exceed the fees specified herein.
- (c) Upon request by COUNTIES, the Operator shall use reasonable efforts to accept deliveries of waste at times other than the receiving times upon seven (7) days prior written notice or, in the event of a natural disaster or other emergency condition, such shorter notice as may be practicable.

4.3 Right to Refuse Delivery

- (a) Except as noted in Article 4.2, the Operator may refuse waste delivered at hours other than the specified receiving times.
- (b) The Operator shall have the right and discretion to inspect any load entering the Operator's Facility and may refuse: (i) waste for which specific regulatory agency approval is required when approval has not been obtained prior to delivery; (ii) loads containing significant amounts of Hazardous Waste, (iii) loads containing significant amounts of Unacceptable Waste. The Operator may refuse delivery of the entire load or only the portion that contains the unacceptable materials. The Operator shall notify waste haulers prior to initial waste delivery of the Operator's waste monitoring program and expected procedures and responsibilities under such program.
- (c) The Operator's Facility may not reject a load of Acceptable Waste from Clarion and Forest for any reason except those listed in Article 4.3 (a) and (b). Reaching the average daily permitted capacity may not be used as a basis for rejecting County-generated loads of Acceptable Waste.

4.4 Complaints

The Operator shall receive and respond to all complaints from waste haulers regarding the acceptance of waste materials at the Operator's Facility. Any complaints received by COUNTIES will be directed to the Operator. In the event the Operator cannot satisfactorily resolve a complaint within five (5) working days after the complaint, COUNTIES shall have the right to demand a written explanation or satisfactory resolution of the complaint pursuant to the breach of Agreement provisions herein.

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4.5 Title to Municipal or Residual Waste

Except in the case where Hazardous Waste or Unacceptable Waste are delivered to the Operator's Facility, title to the Municipal Waste and Residual Waste shall pass to the Operator upon delivery to the Operator's Facility and acceptance of such waste by the Operator.

4.6 Permits

The Operator shall be responsible for obtaining any and all permits necessary for the construction and operation of the Operator's Facility required to comply with the terms and conditions of this Agreement, and any and all costs or expenses of obtaining such permits. The Operator's failure to obtain and maintain permits shall constitute a default under this Agreement.

Article 5. Reservation of Minimum Capacity

(a) During the term of this Agreement, the Operator agrees that it will reserve on a daily basis from year to year capacity for disposal at the Landfill of municipal waste originating from sources located in Clarion and Forest Counties in the minimum volumes and tonnages set forth in Appendix A to this Agreement. Unless released from its commitment as authorized by Article 5(c), at any time during each calendar year the Operator shall maintain the reserved capacities set forth in Appendix A, calculated by multiplying the number of working days remaining in the year times the Daily Reserved Capacity for that year.

Operator also agrees to commit to COUNTIES, on a daily basis for those days when Operator exceeds its allowable daily average, an additional volume equal to the percentages set forth in Appendix A times the difference between Operator's maximum allowable daily volume and its allowable daily average.

The values of maximum allowable daily volume and allowable daily average are as given in the Permit which is attached hereto as Appendix B.

(b) The Operator at any time may request that COUNTIES release it from its commitment to provide all or part of the reserved capacity required by Article 5(a) of this Agreement for a particular calendar year. Such request shall be in writing and shall set forth the basis for the request. COUNTIES shall in good faith review Operator's request, based on an analysis of data generated by COUNTIES or provided to COUNTIES by the Operator and other municipal waste landfill operators, and make a determination within ten (10) business days of receipt of the request. If COUNTIES reasonably determines that the Operator can be released from all or part of its obligation under Article 4(a) without jeopardizing the ability of COUNTIES to ensure sufficient disposal capacity for municipal waste estimated to be generated during that particular calendar year, it shall grant the Operator's request. COUNTIES's decision shall be in writing and mailed to the Operator.

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The Operator may dispute COUNTIES's decision by giving to COUNTIES a written request for arbitration within five (5) working days of receipt of the decision. The arbitration shall be conducted in accordance with the provisions and rules of the American Arbitration Association. The sole issue to be arbitrated is whether the requested release can be granted without jeopardizing the ability of COUNTIES to ensure sufficient disposal capacity for municipal waste generated in Clarion and Forest Counties for that year. Any decision of the arbitrator shall be final and binding on both parties.

(c) COUNTIES is not obligated by the terms of this Agreement to guarantee the delivery to the Landfill of any minimum quantities of municipal waste.

(d) If emergency or other situations beyond the Operator's control necessitate the temporary suspension of the handling of solid waste at the Disposal Facility and the Operator wishes to temporarily use another Disposal Facility(ies) owned by the Operator but not specifically designated in COUNTIES's Plan, the Operator may request that COUNTIES approve the temporary use of such other Disposal Facility(ies) as are listed in Appendix C.

COUNTIES in its sole discretion shall determine whether to approve the Operator's request. COUNTIES's decision shall be based on the reason for the request, the location of the alternate landfill(s), the length of time that the alternate landfill(s) is to be used, status of the permit for the alternate landfill and such other factors as COUNTIES may reasonably deem to be appropriate. Diversion of solid waste to an alternate site in order to prevent the Landfill from exceeding its allowable daily intake shall not be reason for approval of use of an alternate site.

COUNTIES shall not be liable for any costs associated with use of the alternate site(s).

Article 6. Recordkeeping and Reporting Requirements

The Operator shall establish and maintain a system to provide storage and ready retrieval of the Operator's Facility operating data pertinent to this Agreement, including, but not limited to, all information necessary to verify calculations made pursuant to its fee schedule.

6.1 Basic Reporting Requirements

On or before the 20th day of April, July, October and January, the Operator shall submit to the County a quarterly statement setting forth the following information:

- (1) a statement that the Operator's Permit for the Disposal Facility under the Solid Waste Management Act (if in Pennsylvania, or similar appropriate legislation in other states) has not been revoked or suspended, and that the Operator is in substantial compliance with all the terms and conditions of its permit, and the provisions of all applicable Federal, Department and County regulations.

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(2) the actual quantity and types of waste generated in Clarion and Forest Counties and delivered to the Operator's Facility by waste haulers and occasional individual County residents, along with any fees due to COUNTIES from the Operator. These reports shall include the totals by month for each type of waste and names of waste haulers delivering loads of County generated waste.

The requirements of this subsection may be met by the submission of copies of reports that have been submitted to COUNTIES pursuant to law, if such reports include the information required hereby. Reports should be sent to the respective County of Origin:

Clarion County - Jillian M. Fischer, County Administrator
Clarion County
330 Main Street
Clarion, PA 16214

Forest County – Donna Lynn Zofcin, Executive Director
Forest County Conservation District & Planning Dept.
526 Elm Street, Box 4
Tionesta PA 16353

6.2 Special Reporting Requirements

The Operator shall provide written notice to COUNTIES of any permit modification and applications for the following types of permit changes at the time the application is first submitted to the state or local regulatory agency: (i) changes in permitted site volume or capacity; (ii) changes in permitted average and/ or maximum daily waste volume or loading rates; (iii) changes in the permitted acreage; (iv) changes in materials accepted, or; (v) changes in ownership.

6.3 Administrative Inspections

Upon reasonable notice and during regular business hours, COUNTIES and its authorized representatives shall have access to the Operator's records pertaining to the quantities and sources of County-generated municipal waste for the purpose of verifying compliance with the terms and conditions of this Agreement.

Article 7. Tipping Fees and Other Charges

7.1 Tipping Fees

(a) The Operator shall not charge a tipping fee to any COUNTIES waste hauler or occasional individual resident that exceeds the maximum rates for a given calendar year established by this Agreement for each type of waste. Nothing in this Agreement shall prevent the Operator from negotiating alternate tipping fees with any waste hauler provided such fees do not exceed the maximum rates under this Agreement. All rates shall, however, include the following fees: (i) Act 101 host municipality fee plus any additional fee negotiated by the host municipality; (ii) other Act 101 mandated fees; (iii) any Growing Greener or other state fees, and; (iv) any negotiated COUNTIES fees.

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- (b) COUNTIES shall not be responsible for the direct payment of tipping fees to the Operator under the Agreement. All tipping fees shall be paid directly by the waste haulers that deliver the waste to the Operator's Facility. The Operator shall be responsible for the billing and collection of all tipping fees.
- (c) Unless COUNTIES and the Operator mutually agree to an alternate date, all annual rate adjustments shall become effective on January 1st of each year of the Agreement.

Article 8. Insurance

- (a) The Operator shall maintain, in full force and effect throughout the term of the Agreement and any renewal or extension thereof, insurance coverage consistent with all current state regulations. COUNTIES and Operator hereby waive any and every claim for recovery from the other for any and all loss or damage to each other resulting from the performance of this Agreement; to the extent such loss or damage is recovered under insurance policies.
- (b) COUNTIES shall be designated as additional insured under all required insurance policies and shall be provided with copies and certificates of said insurance policies. Each such insurance policy shall provide COUNTIES with a thirty (30) day notice of cancellation.

Article 9. Indemnification

9.1 Indemnification

The Operator or its successors and assigns shall protect, indemnify and hold harmless the COUNTIES, its officers, members, employees, agents, contractors and subcontractors (COUNTIES indemnified parties) from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and attorneys' fees, and shall defend COUNTIES-indemnified parties in any suit, including appeals, for personal injury to or death of any persons or persons, or loss or damage to property arising out of:

- (a) any act or omission of Operator or its successors or assigns, or any of its officers, agents, employees, contractors or subcontractors in connection with Operator obligations or rights under this Agreement; and
- (b) the construction, operation, closure and post-closure care and maintenance of the Operator's Facility.

The Operator shall not be liable or required to indemnify or reimburse a COUNTIES-indemnified party for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses or attorneys' fees arising out of the award of this Agreement or damages directly attributable to the act or omission of a COUNTIES-indemnified party.

9.2 Cooperation Regarding Claims

If either party shall receive notice or have knowledge of any claim, demand, action, suit or proceeding that may result in a claim for indemnification by a party, such party shall so notify the other party and provide pertinent information and documents. Failure to promptly give such notice or to provide such information and documents shall not relieve a party of any obligation of indemnification it may have under Article 9.1 unless such failure shall materially diminish the

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ability of the other party to respond to, or to defend the party failing to give such notice against such claim, demand, action, suit or proceeding. The parties shall consult with each other and cooperate in respect of the response to and the defense of any such claim, demand, action, suit or proceeding and, in the case of a claim for indemnification pursuant to Article 9.1, the Operator shall, upon acknowledgment in writing of its obligation to indemnify COUNTIES, be entitled to cooperate with COUNTIES with respect to the defense. With the written consent of COUNTIES, the Operator may assume the defense or represent the interests of COUNTIES with respect to such claim, demand, action, suit or proceeding which shall include the right to select and direct legal counsel and other consultants, appear in proceedings on behalf of COUNTIES and to propose, accept or reject offers of settlement.

Article 10. Disputes, Defaults and Remedies

10.1 Resolution of Disputes

In the event any claim, controversy or dispute arises between COUNTIES and the Operator, or if any approvals, agreements or concurrences specified herein shall not have been timely given, the Operator and COUNTIES shall undertake in good faith to resolve the dispute. If the parties cannot resolve the dispute, the parties agree that the venue for the resolution of any disputes shall be either the Court of Common Pleas of Clarion County or Forest County, Pennsylvania or the Federal District Court for the Western District of Pennsylvania.

10.2 Events of Default by COUNTIES

The persistent or repeated failure or refusal by COUNTIES to perform under this Agreement in accordance with the terms hereof shall constitute an event of default by COUNTIES hereunder, provided, however, that no such failure or refusal shall constitute an event of default unless and until:

- (a) The Operator shall have given written notice to COUNTIES stating that in its opinion a particular default or defaults (to be described in reasonable detail in such notice) exists which will, unless corrected, constitute a material breach of this Agreement on the part of COUNTIES; and
- (b) COUNTIES shall have failed to cure such default within thirty (30) days from its receipt of the written notice given pursuant to Article 9.2 above, provided that if COUNTIES shall have commenced to take reasonable steps to correct such default within such thirty (30) day period, COUNTIES's failure to complete its cure of the indicated default shall not constitute an event of default for as long as COUNTIES is continuing to take reasonable steps to cure such default within the earliest practicable time.

10.3 Events of Default by Operator

The Operator shall be considered to be in default of this Agreement for failure to accept Acceptable Waste from COUNTIES or its waste haulers or occasional individual County residents delivered to the Operator's Facility under the terms of this Agreement, or failure to otherwise fulfill its material obligations under this Agreement.

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10.4 Force Majeure

Neither the Operator nor COUNTIES shall be liable for the failure to perform their duties and obligations under the Agreement if such failure was the result of an act of God, riot, insurrection, war, catastrophe, natural disaster, labor strike or any other cause which was beyond reasonable control of the Operator or COUNTIES and which the Operator or COUNTIES was unable to avoid by exercise of reasonable diligence. Documentation of the event that caused the Operator to be unable to meet its obligation hereunder must be submitted to COUNTIES within ten (10) working days after the occurrence of the event.

10.5 Waivers

A waiver by either COUNTIES or Operator of any default of any provisions of the Agreement shall not be taken or held to be a waiver of any succeeding default of such provisions or as a waiver of any provision itself. No payment or acceptance of compensation for any period subsequent to any default shall be deemed a waiver of any right or acceptance of defective performance. To be effective, a waiver must be in writing and signed by the party granting such waiver.

Article 11. Term and Termination

11.1 Effective Date

This Agreement shall become effective on ----- or, if later, the date that DEP approves the County Plan. The Operator shall begin to accept waste deliveries from County sources under the terms and conditions of this Agreement on this date.

11.2 Term of Agreement

The term of this Agreement shall commence on the effective date, and the total length of the Agreement shall be for a minimum of ten (10) years, unless further extended upon mutual agreement of all parties. The Agreement shall be separated into two equal terms. The initial term of the Agreement shall be for five (5) years, commencing on the effective date, with an option to renew the Agreement for an additional term of five (5) years. The Agreement shall automatically renew at the end of the first term (five (5) years from the effective date), unless COUNTIES has exercised its right to terminate the Agreement or agreed to an alternate Agreement period, by submitting this information to the Operator in writing no less than 30 days prior to the end of the first term. COUNTIES shall have the sole discretion to exercise its right to renew the Agreement at the initial term's expiration date.

11.3 Effect of Termination

Upon the termination of this Agreement, the obligations of COUNTIES and the Operator hereunder shall cease, provided that any obligation for the payment of money or otherwise arising from the conduct of COUNTIES or Operator pursuant to this Agreement prior to such termination shall not be affected by such termination and shall survive and remain in full force and effect.

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Article 12. Miscellaneous

12.1 Assignment

- (a) This Agreement may not be assigned by either COUNTIES or the Operator or its rights sold by Operator except with the written consent of COUNTIES or Operator or as further provided in this Article. COUNTIES may, however, contract with a third party or parties for the collection, transportation, processing and disposal of waste, and such contracting will not be interpreted as an assignment of this Agreement. Further, any municipality within the political boundaries of Clarion and Forest Counties and/or any waste hauler may avail itself of the rights of COUNTIES under this Agreement without violating the assignment provision, provided, however, that such municipalities and waste haulers will be bound by the covenants of COUNTIES in this Agreement. The Operator shall not assign this Agreement except to a licensed and permitted successor to the Operator capable of performing all covenants of this Agreement and with ninety (90) days prior written notice to COUNTIES and the written consent of COUNTIES.
- (b) In the event of any assignment or delegation of duties under this Agreement, the delegate shall assume full responsibility and liability, and shall be responsible for compliance with and performance of all terms and conditions of this Agreement, including but not limited to provisions for sureties and assurances of availability of capacity and services under this agreement. The assignment or delegation of any Agreement duties will not relieve the Operator or its surety of any liability and/or obligation to perform.

12.2 Notices

All notices, demands, requests and other communications under this Agreement shall be deemed sufficient and properly given if in writing and delivered in person or by recognized carrier service, or sent by certified or registered mail, postage prepaid, with return receipt requested, to the following addresses:

Clarion County: Jillian M. Fischer, County Administrator
Clarion County
330 Main Street
Clarion, PA 16214

Forest County: Donna Lynn Zofcin, Executive Director
Forest County Conservation District & Planning Dept.
526 Elm Street, Box 4
Tionesta PA 16353

Operator: TBD

Either COUNTIES or Operator may, as specified above, designate any additional or different addresses to which subsequent notices shall be sent.

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12.3 Entire Agreement/Modifications

The provisions of this Agreement, together with the Agreements and exhibits incorporated by reference, shall constitute the entire Municipal Waste Processing/ Disposal Capacity and Integrated Waste and Recyclables Management Service Agreement between COUNTIES and the Operator, superseding all prior disposal capacity Agreements and negotiations, if any, and, except as otherwise provided in this Agreement, shall only be modified by written agreement duly executed by both parties to this Agreement. COUNTIES and Operator agree that any existing municipal waste disposal contracts between them are hereby rendered null and void and superseded by this Agreement.

12.4 Severability

In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, COUNTIES and Operator shall negotiate in good faith and agree to such amendments, modifications or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of COUNTIES and Operator as reflected herein. The other provisions of this Agreement shall, as so amended, modified, or supplemented, or otherwise affected by such action, remain in full force and effect.

12.5 Change of Ownership

In the event of any change of control or ownership of the Operator's Facility, COUNTIES may, at its option, determine that the new ownership can adequately and faithfully perform the duties and obligations of the Agreement for the remaining term of the Agreement, and elect to execute a novation, which will allow the new ownership to assume the rights and duties of the Agreement and release the former ownership of all obligations and liabilities.

12.6 Governing Law

This Agreement and any question concerning its validity, construction, or performance shall be governed by the laws of the Commonwealth of Pennsylvania. The Operator shall conduct the services provided for in this Agreement in compliance with all applicable federal and state laws and regulations.

12.7 Joint and Severable Liability

If the Operator is comprised of more than one individual, corporation or other entity, each of the entities comprising the Operator shall be jointly and severally liable.

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12.8 Counterparts

This Agreement may be executed in more than one (1) counterpart, each of which shall be deemed to be an original but all of which taken together shall be deemed a single instrument.

12.9 No Co-Partnership or Agency

It is understood and agreed that nothing contained in this Agreement is intended or shall be construed to in any respect create or establish the relationship of co-partners between COUNTIES and the Operator, or as constituting the Operator the general representative or general agent of COUNTIES for any purpose whatsoever.

12.10 Section Headings/References

The section headings and captions contained in this Agreement are included for convenience only and shall not be considered a part of this Agreement or affect in any manner the construction or interpretation of this Agreement. Except as otherwise indicated, all references in this Agreement refer to sections of this Agreement.

12.11 Conventions

In this Agreement:

- (a) the singular includes the plural and the plural the singular;
- (b) words importing any gender include the other gender;
- (c) references to statutes are construed as including all statutory provisions consolidating, amending or replacing the statute referred to;
- (d) references to writing include printing, typing, lithography and other means of reproducing words in a visible form;
- (e) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments thereto or changes therein entered into in accordance with their respective terms;
- (f) references to persons include their permitted successors and assigns; and
- (g) the term including shall mean including without limitation.

12.12 Nondiscrimination

Neither the Operator nor any subcontractor nor any person(s) acting on their behalf shall discriminate against any person because of race, sex, age, creed, color, religion or national origin, ancestry, disability, sexual orientation, any other protected classes or union membership.

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12.13 Plan Amendments

Nothing herein shall be deemed to restrict COUNTIES's right to submit an amendment of its Plan to the Department for approval. If for any reason the Disposal Facility is deleted from the approved Plan, the Disposal Facility's commitment to maintain the reserved capacities set forth in Appendix A will likewise be released.

Article 13. Integrated Waste and Recyclables Management Program Support

13.1 Minimum Processing/ Disposal Capacity Donation for Non-Profit Activities

The Operator commits to providing COUNTIES the following tonnage of free disposal capacity for non-profit cleanups and illegal dump cleanups. The County will coordinate the use of the donated tonnage directly with the disposal facility.

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IN WITNESS WHEREOF, the parties have caused this Municipal Waste Processing/Disposal Capacity and Integrated Waste and Recyclables Management Service Agreement to be executed as of the date and year first written.

COUNTIES

By: _____

Date: _____

Title: _____

By: _____

Date: _____

Title: _____

By: _____

Date: _____

Title: _____

OPERATOR

By: _____

Date: _____

Title: _____

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APPENDIX A

RESERVED CAPACITY

Typical Municipal Solid Waste

YEAR	ADA	x %Res.	= DRC	x EWD	= ARC(T)
2023					
2024					
2025					
2026					
2027					
2028					
2029					
2030					
2031					
2032					

Construction & Demolition Waste

YEAR	ADA	x %Res.	= DRC	x EWD	= ARC(T)
2023					
2024					
2025					
2026					
2027					
2028					
2029					
2030					
2031					
2032					

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Municipal Sewage Sludge

YEAR	ADA	x %Res.	= DRC	x EWD	= ARC(T)
2023					
2024					
2025					
2026					
2027					
2028					
2029					
2030					
2031					
2032					

- ADA = Allowable Daily Average as per Permit (tons)
- % Res. = % of Allowable Daily Average Reserved for Municipal Waste Generated in COUNTIES jurisdiction
- DRC = Daily Reserved Capacity (tons)
- EWD = Estimated Working Days per Year
- ARC (T) = Annual Reserved Capacity (tons)

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APPENDIX B

DISPOSAL FACILITY OPERATOR'S PERMIT

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APPENDIX C

ALTERNATE DISPOSAL FACILITY SITE(S)

Disposal Facility	Operator	Municipality/County	Permit No.

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