# MEMORANDUM FROM THE SEWER SUPERINTENDENT

**TO:** GLENN MICHALOWSKI

**FROM:** STEVE AIEVOLI

**SUBJECT:** RENEWAL OF SLUDGE DISPOSAL AGREEMENT

**DATE:** JUNE 11, 2024

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Dear Glenn,

The contract with Casella Organics is set to expire on June 30th. We have received a new draft agreement with some changes that I would like to request be considered for approval at the next Council Meeting on June 18th.

Casella has had transportation issues during the recent contract cycle and is looking to have their clients haul the material themselves in the future. With the timing of this contract renewal occurring at the end of the budget season, the department is are not prepared to take on the hauling of the sludge. That would be a conversation to have in the very near future to prepare the town to start hauling the sludge.

There are several changes in the new agreement that stand out that I will list below. First, I would like to explain that there are several rates listed which coincide with how Casella Organics deals with the sludge once it is within their possession. The highest rate is how our sludge is disposed of currently so the information below will be based on the higher rate to ensure enough funds are budgeted to dispose of all sludge generated at the facility. The pricing is as follows:

1. A. The current rate for sludge disposal as of this writing is $127.40 per ton plus a $39.75 per ton surcharge for LD1911. LD1911 is the legislative measure that banned the land spreading of bio-solids to prevent contamination with so-called forever chemicals.
   B. The rate in the new contract is split into two charges; the first is $133 per ton for disposal plus $103 per ton for transportation. Both of these charges combined has the department needing to raise the sludge disposal budget $15,000 more than we were previously expecting. This would bring the sludge disposal budget to $195,000 for FY25.

2. LD1639 is still in place but is on hold until July 2025 and may have an impact on the FY26 budget. While there is language in the agreement regarding this potential charge, it is of no concern for the FY25 budget.

The remainder of the agreement, for the most part is similar to the previous agreement.

**RESIDUALS MANAGEMENT SERVICE AGREEMENT**

**DEFINITIONS**

Customer: Town of Lisbon
300 Lisbon Street
Lisbon, Maine 04250

Contractor: New England Waste Services of ME, Inc. d/b/a Casella Organics
755 Banfield Road, Suite 201
Portsmouth, NH 03801

Plant: The Plant referred to in this Agreement is Town of Lisbon Wastewater Treatment Facility Plant located at 744 Lisbon Road, Lisbon, Maine and owned by the Town of Lisbon.

Facility: The Juniper Ridge Landfill located in West Old Town, Maine operated by the Contractor and other locations permitted to receive Residuals (the "Facility" or "Facilities").

Residuals: The Residuals referenced in this Agreement are municipal biosolids generated at the Plant.

**RECITALS**

WHEREAS, Customer operates the Plant, and, as a by-product thereof, generates approximately 750 wet tons per year of Residuals; and

WHEREAS, the parties desire for Contractor to provide a comprehensive service for the removal and disposition of said Residuals on the terms and conditions set forth herein and known as the "Agreement".

NOW, THEREFORE, for good and valuable consideration, the undersigned parties hereby agree as follows:

**1. SERVICE**

1.1. General. Unless previously notified of Customer intent to provide transportation of Residuals, Contractor will collect at the Plant and transport and dispose of or recycle Residuals at the Facility, according to a schedule as provided herein (the "Schedule"). If Customer provides transportation of the Residuals, Contractor will receive Residuals at the Facility for disposal or recycling according to a Schedule.

1.2. Residuals Removal Schedule. The Schedule for removal or receipt of Residuals shall be prepared by Contractor. Customer will apply good faith efforts to accurately communicate to Contractor, Customer's service needs 48 hours in advance. Contractor will apply good faith efforts to meet Customer's service needs according to a Facility's ability to accept Residuals within the Schedule. Any proposed changes to the Schedule will be made by the Customer directly to the Contractor, and not to Contractor's subcontract transporter (if any). Unless otherwise mutually agreed, service is provided 5AM-12PM Monday – Friday, exclusive of holidays.

1.3. The Containers. Contractor will utilize 30 cubic yard capacity roll-off containers ("Containers"). Contractor will provide at least one Container available for loading at the Plant at all times.

1.4. Loading and Minimum Load. When Contractor provides transportation of the Residuals, Customer will load Contractor's Containers evenly, to the level specified by Contractor. All loads will be filled to a minimum amount of tons per load (the "Minimum Load"), as follows: 30-cubic yard roll-off containers – 15 wet tons; At the discretion of the Contractor, the Minimum Load quantities may be adjusted to accommodate Contractor's operating

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requirements or legal requirements. Customer is responsible for not exceeding the maximum legal loads as designated by the Contractor. Containers that are overfilled, and in the determination of the Contractor or Contractor's subcontract transporter would exceed the legal load limit may require that some Residuals be removed from the Container prior to being removed from the Plant.

1.5. Utilization Options. Contractor retains the option, but not the obligation, to use the Residuals for purposes and in a manner other than those specified above, in accordance with applicable regulations.

1.6. Regulatory Responsibilities and Approvals. Contractor will provide itemized reports tracking the transportation and disposal of all Residuals, and other operations information regarding Contractor's services as may be required to enable Customer to prepare regulatory reports and respond to inquiries from regulatory agencies. Contractor will use reasonable business efforts to obtain permits and approvals, as required to fulfill its responsibilities pursuant to this Agreement, and service under this Agreement is contingent upon receipt and maintenance of applicable permits and approvals. Once obtained, Contractor will use reasonable business efforts to maintain such permits and approvals. Contractor will provide to Customer, upon request, copies of all permits relevant to the performance of their obligations hereunder. As the generator of the Residuals, Customer will provide Contractor, in a timely manner, with information about the production and/or waste treatment process associated with generating the Residuals, the Residuals themselves, and the Customer's operations. Customer agrees to execute permit applications and other certifications, all as may be reasonably necessary for Contractor to manage the Residuals as contemplated herein. In the event that the Plant is not operated by the Customer during the term of this Agreement, Customer will ensure that information necessary will be provided by the operator of the Plant in a timely manner.

## 2. PRICE & TERMS

2.1. Base Rates.

a. Customer will compensate Contractor at the rate of $133.00 per wet ton of Residuals received at the Juniper Ridge Landfill. Customer will compensate Contractor at the rate of $103.00 per wet ton of Residuals transported from the Plant. Customer will compensate Contractor at the rate of $280.00 per month for Container rental.

b. Customer will compensate Contractor at the rate of $133.00 per wet ton of Residuals received/reloaded at the Hawk Ridge Compost Facility. Customer will compensate Contractor at the rate of $74.00 per wet ton of Residuals transported from the Plant. Customer will compensate Contractor at the rate of $280.00 per month for Container rental.

c. Customer will compensate Contractor at rates, not to exceed those in 2.1a, for Residuals transported to, and received at a Facility which is not currently permitted at the time the Agreement is executed. Customer will compensate Contractor at the rate of $280.00 per month for Container rental.

d. L.D. 1639 Surcharge. The LD 1639 surcharge is associated with Contractor moving biosolids to a Facility or Facilities outside of the State of Maine due to associated limitations on biosolids capacity at the Juniper Ridge Landfill. These limitations are on hold through July, 2025, due to the enactment of LD 718. In the event that biosolids capacity becomes constrained due to the implementation of LD 1639, a per ton surcharge will apply. The surcharge formula assumes diversion of 4000 tons of biosolids per month from the Juniper Ridge Landfill. Based on this assumption, the surcharge would be $61.49 per ton, however, this fee will be adjusted proportionally based on actual tons diverted. Example: In July of 2025, LD1639 limits tonnage for acceptance by the Juniper Ridge Landfill, and accordingly, Contractor diverts 2000 tons of Residuals from the Juniper Ridge Landfill to an out of state Facility. The resulting LD 1639 Surcharge would be: 2000/4000 =50%. $61.49 * 50% = $30.74 per ton.

e. Total Solids Surcharge. *This section left intentionally blank.*

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f. Demurrage. Contractor may impose demurrage charges at One Hundred Thirty-Five Dollars ($135.00) per hour when loading and departure at the Plant exceeds forty (40) minutes. In the event Customer cancels pick-up upon Contractor's arrival or while enroute, a minimum four (4) hour demurrage charge will be applied.

g. All Rates herein are exclusive of taxes incurred by the Contractor to perform this Agreement. Customer is solely responsible for payment of all applicable taxes.

h. Minimum Load. A charge will be made for the Minimum Load at the above rates for the minimum volumes (tons or yards) in the event that Customer fails to provide the Minimum Load, as specified herein.

2.2 Payment Terms & Credit Approval. Contractor's payment terms are Net Thirty (30) days. Customer agrees to make payment at the office of Contractor specified on the invoice within thirty (30) days after the date of Contractor's invoice. In the event Contractor has not received payment within thirty (30) days after the date of invoice, Customer will be responsible for paying a late fee on the unpaid balance. Such late fee shall be assessed monthly, beginning on the date of invoice, at the maximum rate allowed by applicable law or 18% per year, whichever is less. This Agreement and payment terms are effective only after Contractor's approval of Customer's credit.

2.3 Inflation Correction. Contractor will increase all Rates annually on the anniversary date of the Service Start Date of this Agreement, at a rate equal to the annual percentage increase in the May Consumer Price Index, published by the United States Department of Labor for All Urban Consumers, Series ID CUSR0000SEHG, water and sewer and trash collection services in U.S. city average, all urban consumers, seasonally adjusted. (https://data.bls.gov/timeseries/CUSR0000SEHG).

2.4 Fuel Adjustor. Contractor may assess a fee (the "Fuel Adjustor") on a monthly basis to cover increases in Contractor's costs caused by increases in the cost of diesel fuel over a floor price of $4.00 per gallon (the "Floor Price") based on the listed average price for diesel fuel for the month of service, as set forth on the EIA Retail On Highway Diesel Prices index for New England PADD 1A (the "Index") or a successor index. Each month Contractor will assess a Fuel Adjustor whenever the average monthly Index fuel price listed for the month of service (the "Service Month Index Price") exceeds the Floor Price. The Service Month Index Price can be located on the internet at the following web site: http://www.eia.gov/petroleum/gasdiesel/ and is listed in the spreadsheet link titled "full history".

The Fuel Adjustor will be made according to the following formula:

([(Service Month Index Price/Floor Price) X 11% X (Transportation Rate per ton)] – [11% X Transportation Rate per ton]) = Fuel Adjustor, per ton

The following example is provided for clarification and reference purposes only:

| | | |
|---|---|---|
| Example: | | |
| Service Month Index | = | $4.310 |
| Floor Price | = | $4.000 |
| Transportation Rate per ton | = | $103.00 |
| ([($4.310/4.000) X 11% X $103.00] – (11% X $103.00)) = $0.88 per ton | | |

2.5 Extraordinary Rate Adjustments. Contractor may make adjustments to cover increases in costs of Contractor's provision of services (hereinafter "Extraordinary Rate Adjustments") arising from any of the following occurrences (to

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the extent not resulting from the negligence or willful misconduct of Contractor or Contractor's violation of any permit, law or regulation): (i) receipt of Residuals which do not meet the Quality Standard or any material change in the quality of Residuals or excessive odors, (ii) changes in Quantities as per Article 5 of this Agreement, (iii) changes in any laws, ordinances, or regulatory requirements or guidelines or changes in interpretation or enforcement thereof, (iv) revocation, suspension, denial or modification of any permit, license or approval, or (v) change in price to Contractor of disposal at any third party site. All such Extraordinary Rate Adjustments in this Article 2.6 are subject to Customer's approval as provided below.

2.6 Procedure for Rate Adjustment. Contractor shall provide Customer with written notice of any such Extraordinary Rate Adjustment together with reasonable justification therefor. If Customer does not reject such Extraordinary Rate Adjustment in writing within seven (7) days after Contractor first gives notice of such adjustment to Customer, Customer will be deemed to have approved such Extraordinary Rate Adjustment, and the new Rate will be effective as of that date (7 days after written notice by Contractor). If Customer rejects such Extraordinary Rate Adjustment, Contractor shall have the right to terminate this Agreement upon thirty (30) days written notice, provided that Customer shall not have the right to reject the Inflation or Fuel Correction described above. Notwithstanding Contractor's notice to so terminate this Agreement, Customer may extend this Agreement at the increased rate for up to six (6) months after Contractor's notice of the increased rate; provided, Customer notifies Contractor in writing no more than fifteen days (15) after receiving notice of Contractor's intent to terminate, that Customer desires to so extend this Agreement. Customer's notice shall state the period of the extension.

2.7 Measurement & Reports. Contractor will weigh all Residuals on a certified scale at Contractor Facility, the Plant or other suitable location, and Contractor's weight slips obtained at such scales shall be the basis for measurement and billing for Residuals managed under this Agreement. Contractor will provide Customer with a scale report or shipping report monthly via e-mail, regular mail or overnight delivery. The scale report includes a complete listing of the data on all the individual scale/shipping records. Prior to removing Containers or trailers loaded with Residuals from Customer's Plant, representatives of both Customer and Contractor will sign a Shipping Record prepared by the Contractor to verify information about the load contained therein, including the total volume of Residuals in cubic yards. If a representative of the Customer is not available at the time of service, the Shipping Record signed solely by the Contractor will be used to verify the information about the load. If certified scales are temporarily not available, the signed Shipping Records will be the basis for measurement and billing for the Residuals managed under this Agreement. Contractor will use an assumed density of sixteen hundred fifty (1650) pounds per cubic yard of Residuals, unless density is reasonably documented by the Contractor or Customer to differ by more than five (5) percent.

## 3. RESIDUALS QUALITY & QUALITY STANDARD

3.1 Quality Standard. Customer warrants that the Residuals identified in this Agreement and supplied to the Contractor are not classified as hazardous waste under United States Environmental Protection Agency (USEPA) and/or any other applicable laws and regulations, including but not limited to, state and local laws and regulations, and any such Residuals classified as such shall be deemed "Non-Conforming Waste". The Residuals shall meet the requirements of applicable law, regulation and permits for the uses contemplated in this Agreement. Customer will provide Residuals that are not frozen and are free of any trash, hazardous waste or other debris. The Residuals will have no free liquid, be *free from excessive malodors*, have a minimum total solids concentration of greater than *thirteen percent (13%) and less than thirty percent (30%)*, and pass a paint filter test. Residuals to be recycled shall not have a PFOA or PFOS concentration above 20 ppb. Together, the above provisions of this Section 3.1 constitute the "Quality Standard." The Quality Standard is subject to revision upon written notice in the event of a change in law, regulatory, or Facility requirement. All materials generated at the Plant that fail to meet this Quality Standard shall be called "Non-Conforming Waste". Contractor shall have the right to refuse any Non-Conforming Waste in its sole discretion. Customer shall use reasonable business efforts to generate and provide to Contractor Residuals that meet the Quality Standard. Contractor shall have the right of first refusal to transport, process, recycle and/or dispose of Non-Conforming Waste. Customer shall provide Contractor with a Safety Data Sheet referencing the Residuals.

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3.2 Odor Control. Customer is responsible for providing Residuals that are free from excessive malodors. Residuals that cause malodors during transport or at the Facility are Non-Conforming Waste per Section 3.1. Customer will ensure that malodors will be addressed during Service. Customer will install, operate, and maintain a system to introduce odor neutralizing compounds. It is incumbent on the Customer to ensure the proper function, of the system and effective treatment of all Residuals intended for removal by Contractor.

3.3 Timely Odor Notification. Customer is responsible for prompt notification to Contractor (within 24 hours), of observable changes or process upsets that appear to reduce the effectiveness of the odor neutralizing compounds, or the general quantity of odor observed in the Residuals.

3.4 Changes in Quality. Customer will use reasonable efforts to notify Contractor in writing ninety (90) days in advance of any change in the treatment or manufacturing process at the Plant that could materially affect the quality of the Residuals. Any material change in the composition of the Residuals to be generated may, in the sole discretion of Contractor, be considered a material change and, in the Contractor's sole discretion, may require new characterization, approval, and price.

## 4 TITLE

4.1 Title to Residuals shall pass to Contractor when Contractor or its subcontractors remove Residuals from the Plant, or in the case where Contractor does not provide transportation, title to Residuals shall pass to the Contractor upon receipt at the Facility. Title to and legal responsibility and liability for Non-Conforming Waste shall, at all times, remain with Customer. The provisions of this Section shall survive the termination of this Agreement without regard for the reason for termination.

4.2 In the event that the Service provided by the Contractor as described herein contributes to the creation of attributes such as carbon offset credits, renewable energy credits, tax benefits and the like (hereinafter "Environmental Credits"), Contractor retains the rights and title to such Environmental Credits, and to the extent practical, Customer will provide substantiating documentation related to the Service.

## 5 QUANTITIES

5.1 Customer is not obligated to provide a minimum quantity of Residuals to Contractor. However, Customer will provide to the Contractor, and Contractor will manage pursuant to this Agreement, all of the Residuals generated at the Plant. Should the quantities vary by more than 10% from the quantities specified in the Recitals, this may be considered a material change and, in the Contractor's sole discretion, may require a new price.

## 6 RESIDUALS ANALYSES

6.1 Contractor may require the Customer test Residuals upon request or on a regular basis and report the results to the Contractor. Customer shall pay for all laboratory analysis of Residuals (including sampling and sample shipment costs) as required by regulation and Contractor or Contractor Policy for the uses contemplated in this Agreement, including those required by Facility and Plant permits. Contractor and Customer will promptly provide to each other all laboratory analyses and information which it obtains about the Residuals and which is required for regulatory reporting or as necessary to implement their mutual obligations pursuant to this Agreement. Customer will provide complete analytical reports including the cover page, lab narrative, results, Chain of Custody, and when necessary Electronic Data Deliverables (EDD). If Contractor obtains test data on the Residuals, Customer may request copies of the analyses.

## 7 TERM, TERMINATION & SURVIVAL

7.1 A Term. This Agreement shall be effective on the latest date of execution hereof (the "Effective Date"). The Initial Term of this Agreement shall be three (3) years, commencing on July 1, 2024 (the "Service Start Date"). Thereafter, the term shall be automatically extended for an additional one (1) year term, unless either party provides written notice of termination to the other party by personal delivery, express mail or certified or registered mail, return receipt requested, at least six (6) months prior to the expiration of the Initial Term or any subsequent renewal term.

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7.2 Termination. Termination shall be permitted (i) as provided in Article 2.6; (ii) immediately upon notice by either party in the event that any of the representations and warranties contained in this Agreement are shown to be materially untrue; (iii) for Breach, as provided for in the Standard Terms and Conditions Attached; (iv) at any time by both parties upon mutual written agreement.

## 8 INSURANCE

8.1 Contractor & Customer agree to furnish each other upon request with certificates attesting to the existence of Worker's Compensation insurance providing statutory benefits and comprehensive business automobile and general liability insurance including bodily injury, property damage, environmental impairment liability and contractual liability with policy limits of not less than $1,000,000 combined single limit, each occurrence.

## 9 NON-CIRCUMVENTION, CONFIDENTIAL INFORMATION & INTELLECTUAL PROPERTY

9.1 During the term of this Agreement, it may be necessary or desirable for the parties to exchange "Confidential" or propriety information as is required for each to perform its obligations hereunder, including but not limited to identification of Contractor's Facility used for service hereunder, Contractor's rates, the content of this Agreement, and Contractor's customer list. Each party agrees to use only for the intended purposes and to maintain in confidence any information designated herein or later in writing as "Confidential" by the other party during the term of this Agreement, and for a period of three years after termination of this Agreement. The standard of care for protecting such information, imposed on the party receiving such information, will be that degree of care the receiving party uses to prevent disclosure, publication or dissemination of its own confidential or proprietary information. However, obligations of confidentiality shall not apply to any information to the extent it is (a) in the public domain, (b) learned from a third party not in breach of any confidentiality obligation, (c) already known without restriction by the party receiving it at the time of disclosure, or (d) required by court or regulatory order to be disclosed.

9.2 Any and all inventions, improvements, techniques, methods, designs, processes, procedures and/or works of authorship developed, conceived, conceptualized, produced, described or made by Contractor or its employees, agents or subcontractors in connection with or related to the performance of Contractor's services under this Agreement (collectively, "Contractor's Intellectual Property"), whether or not patentable or copyrightable, shall at all times be and remain the sole and exclusive property of Contractor, and Contractor shall have and retain all rights and privileges of ownership therein and thereto, including, without limitation, the rights to file patent or trademark applications or copyright registrations, to license, assign, sell, transfer or convey any or all of the Contractor's Intellectual Property or any right or interest therein to any other person, firm or entity, and to receive and retain any and all fees, proceeds or other consideration attributable to any such license, assignment, sale, transfer or conveyance, provided that, during the Term of this Agreement, Contractor shall license to Customer all of the Contractor's Intellectual Property on a non-exclusive basis for use at the Facility without any additional charge, compensation or consideration therefor.

9.3 The provisions of this Section 9 shall survive the termination of this Agreement without regard for the reason for termination.

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## 10 STANDARD TERMS AND CONDITIONS

Contractor Standard Terms and Conditions are attached as Exhibit A and are incorporated herein.

Executed and agreed as of the day and year last written below.

| **Authorized Agent for Contractor**<br>**New England Waste Services of ME, Inc.** | **Authorized Agent for Customer**<br>**Town of Lisbon** |
|---|---|
| By: _____<br>(signature) | By: _____<br>(signature) |
| Name: Robert Cappadona | Name: _____ |
| Title: Vice President | Title: _____ |
| Date: _____ | Date: _____ |

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# EXHIBIT A: STANDARD TERMS AND CONDITIONS

**Notices.** All notices to be given under this Agreement shall be in writing and delivered personally, or shall be mailed by U.S. Express, registered or certified mail, return receipt requested or an overnight service with receipt as follows:

New England Waste Services of ME, Inc.
755 Banfield Road, Suite 201
Portsmouth, NH 03801

With a copy to
Casella Waste Systems, Inc.
25 Greens Hill Lane
Rutland, VT 05701
Attn: Office of General Counsel

With a copy to
Town of Lisbon
300 Lisbon Street
Lisbon, Maine

**Governing Law.** This Agreement and any issues arising hereunder or relating hereto shall be governed by and construed in accordance with the laws of the state in which services are being performed except for conflicts of laws provisions that would apply the substantive law of another state.

**Venue.** The Parties agree that all actions or proceedings arising in connection with this agreement shall be tried and litigated only in the state and federal courts having jurisdiction over Androscoggin County, Maine.

**Compliance with Law.** The parties agree to comply at all times with all applicable federal, state, and local laws, by-laws, ordinances rules and regulations.

**Limitation of Liability**. Neither party shall be liable to the other for special, incidental, exemplary, punitive or consequential damages including without limitation loss of use, loss of profits or revenues, or cost of substitute or re-performed services, suffered, asserted or alleged by either party or any third party arising from or relating to this Agreement, regardless of whether those damages are claimed under contract, warranty, indemnity, tort or any other theory at law or in equity.

**Breach and Nonpayment.** Neither party may cancel or terminate this Agreement ("terminating party") as a result of the other party failing to substantially perform its obligations hereunder ("breaching party") unless such failure shall continue for more than thirty (30) days after the terminating party has notified the breaching party thereof in writing. If any payment required to be made by Customer hereunder is past due, Contractor, in addition to all other rights and remedies it may have, may suspend any or all services (including provision of equipment) until all past due amounts are paid. Customer will be responsible for all charges for the Contractor's reasonable expenses of collection of overdue amounts, including, but not limited to legal expenses.

**Force Majeure.**

a. "Force Majeure" means shall mean any act, event or condition materially and adversely affecting the ability of a party to perform or comply with any material obligation, duty or agreement required under this Agreement, if such act, event, or condition is beyond the reasonable control of the nonperforming party or its agents relying thereon, is not the result of the willful or negligent action, inaction or fault of the party relying thereon, and the nonperforming party has been unable to avoid or overcome the act, event or condition by the exercise of due diligence, including, without limitation: (i) an act of God, epidemic, landslide, lightning, earthquake, fire, explosion, storm, flood or similar occurrence; (ii) an act of public enemy, war, blockage, insurrection, riot, general unrest or restraint of government and people, civil disturbance or disobedience, sabotage, act of terrorism or similar occurrence; (iii) a strike, work slowdown, or similar industrial or labor action; (iv) an order or judgment (including without limitation a temporary restraining order, temporary injunction, preliminary injunction, permanent injunction, or cease and desist order) or other act of any federal, state, county or local court, administrative agency or governmental office or body which prevents a party's obligations as contemplated by this Agreement; (v) adoption or change (including a change in interpretation or enforcement) of any federal, state or local law after the Effective Date of this Agreement; or (vi) the revocation, suspension, denial or modification of any permit, license or approval regarding transportation, processing, treatment, composting, land-application, handling and/or disposal of Residuals preventing performance of or compliance with the obligations hereunder.

b. Neither party shall be liable to the other for damages without limitation (including liquidated damages) if such party's performance is delayed or prevented due to an event of Force Majeure. In such event, the affected party shall promptly notify the other of the event of Force Majeure and its likely duration. During the continuation of the Force Majeure Event, the nonperforming party shall (i) exercise commercially reasonable efforts to mitigate or limit damages to the performing party; (ii) exercise commercially reasonable due diligence to overcome the Force Majeure event; (iii) to the extent it is able, continue to perform its obligations under this Agreement; and (iv) cause the suspension of performance to be of no greater scope and no longer duration than the Force Majeure event requires.

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c. In the event of a delay in either party's performance of its obligation hereunder for more than sixty (60) days due to a Force Majeure, the other party may, at any time thereafter, terminate this Agreement.

**Representations and Warranties of Authority**. Each party represents and warrants to the other that:
a. it is duly qualified to do business and is in good standing in every jurisdiction in which this Agreement requires its performance; b. it has full power and authority to execute, deliver and perform its obligations under this Agreement; c. the execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action by such party; and d. the execution and delivery of this Agreement by such party and the performance of the terms, covenants and conditions contained herein will not violate the articles of incorporation or by-laws of such party, or any order of a court or arbitrator, and will not conflict with and will not constitute a material breach of, or default under, the provisions of any material contract by which either party is bound. These warranties shall survive the expiration or termination of this Agreement.

**Entire Agreement**. It is understood and agreed that all understandings and agreements heretofore had between and parties thereto are merged in this Agreement, which alone fully and completely expresses their agreement and contains all of the terms agreed upon between the parties with respect to the subject matter of this Agreement, and that this Agreement is entered into after full investigation, neither party relying upon any statement or representation, not embodied in this Agreement, made by the other. All exhibits, schedules and other attachments are a part of this Agreement and the contents thereof are incorporated herein by reference.

**Amendment**. This Agreement may not be amended, modified or supplemented, except in writing and signed by the parties.

**Non-Waiver**. No waiver by any party to this Agreement of any failure or refusal by the other party to comply with its obligations shall be deemed a waiver of any other or subsequent failure or refusal to so comply. No waiver by either Party of any right or remedy hereunder shall be valid unless the same shall be in writing and signed by the Party giving such waiver. No waiver by either Party with respect to any default, misrepresentation, or breach of warranty or covenant hereunder shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

**Severability; Modification Required By Law**. If any term or provision of this Agreement shall be found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions thereof or hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreement of the parties herein set forth.

**Successors and Assigns.** This Agreement and all of the provisions thereof and hereof shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

**Assignment**. Neither this Agreement nor any of the rights, interests, obligations, and remedies hereunder shall be assigned by either party, including by operation of law, without the prior written consent of the other, such consent to not be unreasonably withheld, conditioned or delayed, except (1) to its parents, subsidiaries and affiliates, (2) at its expense to a person, firm, or corporation acquiring all or substantially all of the business and assets of the assigning party provided that the assignee assumes the obligations of the assigning party arising hereunder from and after the date of acquisition, and (3) as security to entities providing financing for the assigning party or for any of its affiliates or for construction, reconstruction, modification, replacement or operation of any of the facilities of the assigning party or its parents, subsidiaries or affiliates.

**Survival.** The provisions of the Indemnification and Representations and Warranties of Authority Sections of this Agreement shall survive the termination of this Agreement without regard for the reason for termination.

**Construction**. This Agreement and its exhibits and schedules are the result of negotiations between the parties and have been reviewed by all parties. Accordingly, this Agreement will be deemed to be the product of the parties thereto and no ambiguity will be construed in favor of or against any party.

**Disclaimer of Joint Venture, Partnership, and Agency.** This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the parties or to impose any partnership obligation or liability upon either party. Neither party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent of representative of, or to otherwise bind, the other party.

**Independent Contractor.** Contractor's relationship with Customer under this Agreement shall be that of an independent contractor. The employees, procedures, equipment and Facilities used by the Contractor shall at all times, be under its exclusive direction and control. Nothing in this Agreement shall be construed to designate the Contractor, or any of its employees, agents or subcontractors, as employees, agents, joint ventures or partners of Customer.

**No Third Party Beneficiaries**. Nothing in this Agreement, express or implied, is intended to confer upon any third party any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

**Confidential Information**
*This document is Confidential Information and shall not be disclosed, reproduced, copied, loaned, or transferred to another person directly or indirectly, in whole or in part, nor used for any purpose other than that for which it is specifically furnished, without the prior written consent of Contractor.*

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**No Brokers.** The parties agree that they have entered into this Agreement without the benefit or assistance of any brokers, and each party agrees to indemnify, defend and hold the other harmless from any and all costs, expenses, losses or liabilities arising out of any claim by any person or entity that such person or entity acted as or was retained by the indemnifying party as a finder or broker with respect to the transactions described herein.

**Further Acts**. Each party agrees to perform any further acts and to execute, acknowledge, and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.

**Counterparts**. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but which together will constitute one and the same instrument.

**Disputes**.

a. Unless otherwise ordered by the court, if a claim or dispute arises out of this Agreement or its performance, the parties agree to endeavor in good faith to resolve it equitably through negotiation, or if that fails, through non-binding mediation under the rules of the American Arbitration Association, before having recourse to the courts. Each party shall bear its own costs and expenses related to any mediation including, without limitation, attorneys' fees. Each party shall bear an equal share of the arbitrators' and administrative fees of arbitration. However, prior to or during negotiation or mediation, either party may initiate litigation that would otherwise become barred by a statute of limitations.

b. Notwithstanding the foregoing to the contrary, the parties hereby understand and agree that where a party believes it may suffer immediate and irreparable harm and damage should a party fail to comply with any of its obligations under this Agreement and that monetary damages will be inadequate to compensate such party for such a breach of this Agreement, the parties agree that a party shall not be required to proceed with mediation as described herein but shall be entitled to all appropriate relief, including, without limitation, injunctive and other equitable relief, by a court of competent jurisdiction to enforce the terms of this Agreement including the payment of reasonable attorneys fees and costs.

**Indemnification**.

a. Contractor, by acceptance of the Residuals identified in this Agreement, agrees, for itself, its successors, and assigns, to defend, indemnify, and hold harmless Customer, its shareholders, officers, directors and employees from and against any and all loss, damage, suits, penalties, costs, liabilities, expenses, claims, and actions (including, but not limited to, reasonable investigation and legal expenses) arising from Contractor's handling, transporting, recycling or disposing of Residuals, to the extent said loss, damage, suits, penalties, costs, liabilities, expenses, claims, and/or actions result from the negligence or willful misconduct of Contractor or Contractor's breach of the terms and conditions of this Agreement. This indemnity shall be inapplicable to the extent that the loss, damage, suits, penalties, costs, liabilities, expenses, claims, and/or actions result from Customer's provision to Contractor of Hazardous Waste or Non-Conforming Waste.

b. Customer hereby agrees for itself, its successors, and assigns, to defend indemnify, and hold harmless Contractor its shareholders, officers, directors and employees from and against any and all loss, damage, suits, penalties, costs, liabilities, expenses, claims, and actions (including, but not limited to, reasonable investigation and legal expenses) arising out of any claim of tortuous interference, restraint of trade or any similar type of claim or any claim for loss of, or damage to, property, including Contractor's property, and injuries to, or death of persons, including Contractor's employees, to the extent caused by, or resulting from, Customer's: (i) negligence or willful misconduct; or (ii) provision to Contractor of Non-Conforming Waste, or (iii) any other breach of the conditions of this Agreement.

**Confidential Information**

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