

ATTACHMENT 1

SERVICE AGREEMENT

LEE – HENDRY REGIONAL SOLID WASTE DISPOSAL FACILITY

SERVICE AGREEMENT

between

THE COUNTY OF LEE, FLORIDA

and

XXXXXX

Dated

XXXXXX

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Minimum Insurance Requirements: Risk Management in no way represents that the insurance required is sufficient or adequate to protect the vendors’ interest or liabilities. The following are the required minimums the vendor must maintain throughout the duration of this contract. The County reserves the right to request additional documentation regarding insurance provided	10
<i>*The required minimum limit of liability shown in a. and b. may be provided in the form of “Excess Insurance” or “Commercial Umbrella Policies.” In which case, a “Following Form Endorsement” will be required on the “Excess Insurance Policy” or “Commercial Umbrella Policy.”</i>	10
a. Under the Description of Operations, the following must read as listed:	11

- Appendix 1 — County Facility O&M Plans(s) and Solid Waste Permits
- Appendix 2 — Landfill Drawings Service Agreement Exhibits
- Appendix 3 — Performance Standards and Sample Guidance Incentive Calculations
- Appendix 4 — Required Operation Period Insurance
- Appendix 5 — Operation Price Index
- Appendix 6 — Form of Guaranty Agreement
- Appendix 7 — Not Used
- Appendix 8 — Landfill Remaining Life Projections
- Appendix 9 — Typical Recordkeeping and Reporting Forms
- Appendix 10 — Sample Special Waste Program
- Appendix 11 – Waste Material Types
- Appendix 12 – Administrative Fines
- Appendix 13 – Bid Schedule
- Appendix 14 – Landfill Equipment List
- Appendix 15 – Cost Schedule

THIS SERVICE AGREEMENT, dated as of **XXXXXX**, is made and entered into by and between the COUNTY OF LEE, FLORIDA (the “County”), a political subdivision duly organized and existing under the Constitution and laws of the State of Florida (the “State”), and **XXXXXX** (the “Company”) organized and existing under the laws of the State of ____

W I T N E S S E T H:

WHEREAS, pursuant to a Request for Proposals dated **XXX** (“RFP”), the County solicited services to operate and maintain certain portions of the Lee Hendry Regional Solid Waste Disposal Facility (the “Landfill Operations Areas”); and

WHEREAS, the Company submitted a response to the RFP, which the Company has attested to being correct and complete in all material respects, including, without limitation, all submittals, and all post-proposal submittals; and

WHEREAS, based on Company’s response to the RFP, County competitively selected Company to provide such operation and maintenance services; and

WHEREAS, the County and the Company desire to set forth in this Agreement the terms and conditions for the operation and maintenance of the Landfill Operations Areas; and

WHEREAS, the execution and delivery of this Agreement has been duly and validly authorized by the Board of County Commissioners of Lee County and constitutes a legal, valid and binding obligation of both parties, fully enforceable in accordance with its terms.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto covenant, agree and bind themselves as follows, with the above recitals hereby incorporated as if fully stated herein;

ARTICLE I DEFINITIONS AND INTERPRETATION

SECTION 1.1 DEFINITIONS

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

“Acceptable Waste” shall mean solid waste acceptable for disposal at the Lee-Hendry Regional Solid Waste Disposal Facility, as determined by permit or County policy. In no case shall Acceptable Waste be less restrictive than the meaning set forth in the Florida Department of Environmental Protection (FDEP) regulations, the Facility O&M Plans, and the Company O&M Manual(s).

“Agreement” or “Service Agreement” means this Landfill Facility Service Agreement between the Company and the County, including the RFP and the Appendices, as the same may be amended or modified from time to time in accordance herewith.

“Authorized Hauler” means a licensed hauler or resident of Lee or Hendry Counties, or County staff or contractors, approved and directed by the County personnel at the scale house of the Landfill to deliver Acceptable Waste to the Landfill.

“Base Fee” is a component of the Service Fee that is paid monthly to the Company, per the Bid Schedule in Appendix 13. The Base Fee includes equipment and labor costs for the first 10,000 tons per month of combined Class I MSW and Class I C&D Tonnage Rate Categories, for the first 5,000 tons per month of Class III Tonnage Rate Category, and for the first 3,000 tons per month of Ash Tonnage Rate Category. The Base Fee is paid regardless of tons applied to the Tonnage Fee during the period.

“Billing Period” means each calendar month in each Contract Year, except that (1) the first Billing Period shall begin on the Operation Date and shall continue to the last day of the month in which the Operation Date occurs and (2) the last Billing Period shall end on the last day of the Term of the Agreement. Any computation made on the basis of a Billing Period shall be adjusted on a pro rata basis to take into account any Billing Period of less than the actual number of days in the month to which such Billing Period relates.

“Class I Ash Monofill” – Means the +/- 37 acre area currently permitted for Class I / Ash Monofill operations under FDEP permit 0130719-014-SO. This area includes perimeter swales and is further shown in Appendix 2.

“Class I MSW Landfill” – Means the +/- 90 acre area currently permitted for Class I Landfill Operations under FDEP permit 0130719-018-SO. This area includes perimeter swales and

is further shown in Appendix 2.

“Class III Landfill” - Means the +/- 25 acre existing area currently permitted for Class III operations under FDEP permit 0130719-013-SO and future lateral expansions within the +/- 103 acre Future Class III/ Compost Area as shown in Appendix 2.

“Contract Year” means the fiscal year commencing on October 1 in any year and ending on the following September 30; provided, however, that the first Contract Year shall commence on the Contract Date and shall end on the following September 30, and the last Contract Year shall commence on October 1 prior to the date the Agreement expires, and shall end on the last day of the Term of the Agreement. Any computation made on the basis of a Contract Year shall be adjusted on a pro rata basis to take into account any Contract Year of less or more than 365 days.

“Cost Substantiation” means documentation reasonably acceptable to County provided by Vendor to support any third party cost or expense incurred or to be incurred by Vendor resulting from any costs identified under this Agreement for which Cost Substantiation must be supplied.

“County Breach” means the untruth of any material representation made by the County hereunder, or any breach, failure, nonperformance or noncompliance by the County with its obligations hereunder caused by any willful or negligent act, error or omission by the County, its officials, agents, employees, representatives, independent contractors or subcontractors of any tier that materially and adversely affects the Company’s performance or rights or obligations under the Agreement.

“Contract Administrator” means the Lee County Solid Waste Department Director or his designee.

“Facility” means the Lee-Hendry County Regional Solid Waste Disposal Facility at 5500 Church Road, Felda, Hendry County, Florida, and all contiguous land and structures, other appurtenances, and improvements located in Sections 04, 09, & 16, Township 45 S, Range 28 E in Hendry County, Florida. The Facility includes the Landfill Operations as well as other County operations, such as the Composting Facility, Deep Injection Well, leachate storage ponds, etc.

“Guaranty Agreement” means the Guaranty Agreement executed by the Guarantor in substantially the form attached to the Agreement as Appendix 6.

“Landfill Equipment means the equipment provided by the Company for the Operation Services as set forth in Appendix 14.

“Landfill Operations Areas” means the Company operations areas, both active and future areas, including the Class I Ash Monofill, the Class III Landfill, and the Class I MSW Landfill as depicted and described in Appendix 2.

“Material Type” means the scalehouse code assigned to waste received at the Facility, and which may be updated by the Contract Administrator from time to time. A full list of Material Types is provided in Appendix 11.

“Operating Assets” means all equipment, accessories, structures, items and appurtenances necessary for Operation Services at the Facility, including the Landfill Equipment.

“Operation Date” means October 1, 2025 or such other later date the County notifies the Company in writing that the Company will commence Operation Services, in accordance with the terms of the Agreement.

“O&M Manual(s)” or “O&M Manual” means the Company’s Manual for Operations at the Facility and shall be approved by the County and amended from time to time by the parties.

“O&M Plan(s)” or “O&M Plan” means the Facility’s permitted Operation & Maintenance Plan(s) attached hereto as Appendix 1, as amended from time to time by the parties or as required by applicable law.

“Operational Density” means the tons of waste placed during a defined time period divided by the airspace consumed expressed in cubic yards during the same time period and within the area of the Landfill Operations Area that received waste during the time period.

“Operation Price Index” has the meaning specified in the Appendix 5 to the Agreement.

“Operation Services” means everything required to be furnished and performed by the Company, relating to the Agreement by the Company pursuant to the terms of the Agreement, any and all state and federal regulations, applicable permits, and the facility O&M Plan(s) during the Operation Period.

“Performance Standards” means the performance standards set forth in Appendix 3 to the Agreement.

“Recovered Screen Material (RSM)” means the fines fraction, consisting of soil and other small materials, derived from the processing or recycling of construction and demolition debris which passes through a final screen size no greater than 3/4 of an inch.

“Service Fee” is the monthly payment due to the Company for performing the Operation Services in the Agreement.

“Soft / Wet Waste” means nonhazardous sludge, soft and/or wet wastes that pass the United States Environmental Protection Agency’s Paint Filter test but are not bladeable and stackable in the landfill and require some sort of fixation (stiffening/stabilization) before being introduced into the working face of the landfill cell. Nonhazardous wastes that average less than 750 pounds per square foot (psf) unconfined compressive strength would also meet the definition of soft or wet waste. Examples include, but are not limited to: pond sediment, process unit sludges, polymers, wastes mixed with bulking agents, and sump waste solids.

“Special Wastes” means solid wastes that can require special handling and management, including but not limited to, white goods, waste tires, used oil, lead-acid batteries, construction and demolition debris, ash residue, yard trash, biological wastes, and mercury-containing devices and lamps.

“Tonnage Fee” is a component of the Service Fee that is paid monthly to the Company and is paid as: the tons of waste received within the Tonnage Rate Category (above the first 10,000 tons of combined Class I MSW and Class I C&D Tonnage Rate Categories, above the first 5,000 tons of Class III Tonnage Rate Category, and above the first 3,000 tons of Ash Tonnage Rate Category) multiplied by the appropriate Tonnage Rate per the Bid Schedule in Appendix 13.

“Tonnage Rate” means the per-ton unit rate per the Bid Schedule in Appendix 13 for each of the Tonnage Fee Categories.

“Tonnage Rate Category” means a group of Material Types received at a designated Landfill Operations Area. Tonnage Rate Categories are: Class I MSW, Class I C&D, Class III, Ash, and “Other”.

“Unacceptable Waste” means any material not defined as Acceptable Waste.

SECTION 1.2 TERM

(A) Term

The initial term of this Agreement shall begin on the date that this Agreement is signed by both parties, and shall continue in effect for the duration (defined as the “Term”) of when currently permitted airspace is fully consumed in either the Class I MSW Landfill or the Class I Ash Monofill. Projections for the remaining permitted active life of each landfill unit are provided in Appendix 8 of this Service Agreement. The projections provided are not guaranteed and the

remaining life may be more or less than projected.

At the end of the Term of this Agreement, all other obligations of the parties hereunder shall terminate unless extended or noted herein.

(B) Operation Date and Transition Period

The Operation Date shall be October 1, 2025; however no work under this Agreement may begin at the Facility until the County issues a Notice to Proceed. The Transition Period will begin once the Company is issued a Notice to Proceed. The Transition Period will end on the Operation Date.

During the Transition Period, the Company and the County shall prepare for the transition of Operation Services from the previous landfill operator to the Company. The Company's Site Supervisor shall be onsite at least thirty (30) Days prior to the Operation Date. At the County's discretion, and at no additional cost to the County, the Company may be required to attend transition meetings; the Company shall attend site inspections as required under the terms of this Agreement.

Within sixty (60) days after the Operation Date, the County shall provide the Company with an initial Condition Assessment Report which details the condition of the Landfill Operation Areas as of the Operation Date. The Condition Assessment Report shall include, but not be limited to, (A) a review of (1) the site conditions at the Facility, and (2) the condition of the infrastructure at the Facility including the piping and the berms, and (B) a current topographic survey of the Landfill Operation Areas collected on or near the Operation Date as reasonably possible.

Any timeframes detailed as part of the Transition Period may be adjusted at the discretion of the Contract Administrator.

(C) Operations and Maintenance Manual

At least sixty (60) Days prior to the Operation Date, Company shall provide to the County a detailed Operations and Maintenance Manual (O&M Manual) to be approved by the Contract Administrator. The O&M Manual shall include a detailed description of all activities to be undertaken by Company to perform the Operation Services pursuant to this Agreement.

Company shall maintain an up-to-date version of the O&M Manual throughout the term of this Agreement. This plan shall be readily available at the Facility for review by the County. The O&M Manual and all revisions are subject to the Contract Administrator's review and approval.

The Contract Administrator shall have fifteen (15) days from receipt of the initial submittal to

respond to Company with approval or with comments as to items that need to be revised; Contract Administrator shall have seven (7) days to review and respond to Company's subsequent submittals with approval or follow up comments on changes on revisions made to the O&M Manual.

The O&M Manual shall include, at a minimum, the following information:

- Company Contacts: name and contact information for all key personnel and emergency contacts;
- Operational Procedures: traffic control, working face management, filling sequence, methods to achieve density, best compaction practices, maintenance of slopes and grades, receiving protocol and load inspection, special waste management, dust control, litter control, cover procedures;
- Landfill Repairs and Maintenance: schedule of inspection and maintenance procedures, including but not limited to stormwater, access and perimeter roads, cover grades and vegetation;
- Organization and Staffing Plan: Organizational chart, job descriptions for each position, staffing requirements for all positions, including temporary labor;
- Health and Safety Procedures: Onboarding safety training requirements and procedures for all employees, including temporary labor, which demonstrates compliance with all applicable laws, rules and regulations, emergency procedures, fire prevention and training, safety policy and procedures, hazardous waste handling training, housekeeping standards and schedule;
- Emergency Procedures: procedures for fire, toxic or hazardous substance release, personnel or customer injury, and other emergency conditions;
- Contingency Plan: Inclement weather operations, unscheduled Landfill Equipment downtime, manpower shortage;
- Landfill Equipment List and Maintenance: schedule of preventative and regular maintenance for each piece of Landfill Equipment, spare parts inventory.
- Reporting Procedures: complete procedures for all required reporting including sample reports and forms.

ARTICLE II OPERATIONS AND MAINTENANCE

SECTION 2.1 OPERATION GENERALLY

Commencing on the Operation Date, the Company shall operate and maintain the Landfill Operations Areas in accordance with sound operating practice, the terms and conditions of this Agreement, any and all local, state and federal regulations, and applicable permits. During the Term hereof, the Company shall not use or permit the use of the Landfill Operations Areas for any purpose other than those contemplated by this Agreement.

The Company at its own cost and expense shall maintain the Landfill Operations Areas, including assigned office space, and assigned maintenance area(s) in good working order and repair and in a neat and orderly condition, and shall take all necessary precautions to safely and efficiently receive customers, comply with all environmental permits and regulations, and minimize nuisance conditions. The Company shall provide or make provisions for all labor and Operating Assets and conduct the required periodic maintenance of the Landfill Operations Areas and Landfill Equipment consistent with facility permits, the facility O&M Plan(s), the Company's O&M Manual, and this Agreement.

In general, the Company responsibilities include, but are not limited to: operations and maintenance of the area within the perimeter road of each landfill. This includes receiving, pushing and compacting waste; constructing and maintaining landfill internal approach roads; maintaining slopes and grades; landfill mowing including landfill ditches and extending to the perimeter site roads; weed whacking around pump stations and penetrations including existing and future groundwater and gas well stickups; installation and maintenance of (daily and intermediate) cover systems; stormwater management and maintenance; erosion and sediment control; repairs to maintain cover and internal road systems; dust control; litter controls and collection; and localized seep and outbreak repairs. The Company is responsible for dust control on all unpaved roads within the Facility and litter control within the Facility.

The Company is not responsible for large capital projects such as landfill cell design; cell construction; installation, construction, operations, monitoring and maintenance of the landfill gas collection and control system, nor for the following environmental maintenance items: cleaning stormwater swales outside the Landfill Operations Areas; removing sediment from culverts; maintaining and managing the leachate collection and removal system; or landfill final closure.

SECTION 2.2 HOURS OF OPERATION

- (A) The Company shall ensure the Landfill Operation Areas are ready to receive customers and waste during the Gate Open Hours.
- (B) Gate Open Hours are daily Monday to Friday from 7 am to 4 pm and Saturday from 7 am to 12 pm. If a holiday falls on a weekday, the Facility will be open from 7 am to 4 pm on the Saturday after the holiday.

- (C) The Company shall account for any and all additional time needed outside of Gate Open Hours to fuel, service, start and clean rolling stock Landfill Equipment, cover waste placed in active Landfill Operations Areas at the close of each operating day, conduct daily meetings, any other activities needed to prepare to receive waste, and any other activities needed to cover waste at the end of the day.
- (D) Annual holidays recognized by the County where the Facility will be closed and the Company will not be required to operate are:
- New Year’s Day January 1
 - Memorial Day Last Monday in May
 - Independence Day July 4
 - Labor Day First Monday in September
 - Thanksgiving Day Fourth Thursday in November
 - Christmas Day December 25
- (E) From time to time the County may choose to extend Gate Open Hours beyond the Gate Open Hours as may be required to accommodate the County’s disposal requirements, including but not limited to a special event, a natural disaster, or an emergency condition (“Extended Delivery Hours”). If Extended Delivery Hours exceed four hours per week for more than two continuous weeks, the Company shall provide a cost for such Extended Delivery Hours as a Cost-Substantiated Special Project, per Section 3.1(H).

SECTION 2.3 SITE MANAGEMENT AND COMPANY PERSONNEL

- (A) The Company shall provide qualified, knowledgeable personnel to perform the work specified in this Agreement and supply all necessary staffing, including those needed for proper landfill operations, loading and hauling landfill cover material, traffic management and dust control, and for orderly operation and maintenance of the internal approach roads, landfill slopes and working faces.
- (B) All Company personnel shall be trained in accordance with Florida Administrative Code Chapter 62-701 Solid Waste Management Facilities. At a minimum, all personnel shall be trained as a Florida Certified Spotter, with the exception of clerical or financial staff. All Company supervisory or lead positions shall be certified as a Florida Certified Landfill Operator.
- (C) The Company shall, at its cost and expense, staff the Landfill Operation Areas during the Term of this Agreement with the appropriate number of hourly and salaried

employees consistent with good management practice and contract documents. The Company shall notify the County of any material change in staffing levels and shall not make any such material change if the new staffing level would adversely affect the ability of the Company to meet the terms and conditions of this Agreement.

- (D) The Company shall provide positions equivalent to a Contract Manager, Fiscal Manager, and Site Supervisor (the “Key Personnel”).

(1) Contract Manager – the Contract Manager shall be the individual designated by the Company in writing to represent it in all matters relating to the execution of the Operation Services. The Contract Manager shall at minimum, attend monthly operations meetings at the Facility; be the point of contact for all other company and subcontractor resources; be responsible for mid-term planning of operations within constructed cells and required materials and equipment; and be available to meet with and represent the Company to regulators and other outside parties.

(2) Fiscal Manager – the Fiscal Manager shall be the invoicing point of contact for the Contract Manager and County.

(3) Site Supervisor – the Site Supervisor shall oversee the daily / weekly operations of the Landfill Operation Areas, including but not limited to Landfill Equipment maintenance; temp laborers; subcontractors; staffing and personnel issues. At minimum, the Site Supervisor shall meet with and report weekly to the Contract Administrator the status of and plans for cover use, material stockpiles, stormwater management, equipment, staffing, and relevant Company or County activities in a way that is agreeable to the Contract Administrator. The Company shall identify an individual as the designated back-up to the Site Supervisor.

- (E) The Company shall not change any Key Personnel without cause unless mutually agreed to by the Contract Administrator. The Contract Administrator shall have the right to approve the qualifications of any replacement Key Personnel.

- (F) The Company shall have a visible means of identifying their staff to the public. At a minimum, the Company shall provide a uniform top with the Company’s name visible, along with the first name of the employee. All Company staff shall wear their uniform top at all times while working at the Facility. This requirement extends to Subcontractors responsible for interacting with the public.

SECTION 2.4 COMMUNICATIONS

The Company's personnel shall always have a means for communication with the Contract Manager and their designees during operational hours. Key Personnel shall be available after hours for emergency situations. The preferred method of communication is via cellular phone.

All equipment, vehicles, and personnel (including Subcontractors working within the Landfill Operations Areas) shall be equipped with vehicle and/or handheld CB Radio. The Company may maintain an internal channel but must also maintain an external channel capable of communication with customers and County staff.

SECTION 2.5 SAFETY

- (A) Company shall comply with all applicable law, rules, and regulations for the health and safety of employees, including temporary employees, persons, or property, or to protect them from damage, injury, or loss including but not limited to the Occupational Health and Safety Administration (OSHA) and the American National Standards Institute (ANSI).
- (B) Company shall be responsible for providing employees, including temporary employees, with personal protective equipment as required by applicable law. Company shall instruct employees, including temporary employees, in the principles of first aid and safety and in the specific operational procedures necessary to prevent accidents. Company shall provide and maintain adequate first aid supplies at the Facility at all times.
- (C) In emergencies affecting the safety of persons, equipment, building, site, or property adjacent thereto, Company, without special instruction or authorization from the Contract Administrator, is obligated to act at Company's discretion to prevent any and all threatened damage, injury, or loss of life and property. All emergencies that could affect the public health, safety, or welfare shall be communicated to the Contract Administrator as promptly as circumstances allow.
- (D) Company shall notify the County immediately of the occurrence of any accidents or incidents at the Facility affecting health or safety of the public or Company or County personnel.
- (E) The Company shall maintain a site-specific health and safety plan in full compliance with the Company's corporate safety policies.
- (F) The Company shall, at a minimum, be responsible to maintain the following safety records as part of their operational tasks working at County owned property:

- (1) Maintain OSHA 300/300A logs of Company employee work related injury and illnesses related to work performed as part of this Service Agreement.
- (2) Maintain all safety meeting and training logs for all personnel working or contracted by the Company and performed on County owned property.
- (3) Communicate chemical hazard information to potentially exposed employees performing work at County owned property.
- (4) Company to complete PPE/hazard assessments for all personnel employed or contracted by the Company that perform work on County owned property.
- (5) Company to provide incident reports for all injuries, illnesses, fires, chemical spills, property damage & liability claims that occur on County owned property.

SECTION 2.6 REGULATORY REQUIREMENTS

(A) Permits and Licenses

- (1) The County shall be responsible for obtaining all permits, permit modifications and permit renewals for the site. The County reserves the right to add, delete, or modify permits for the site as operational activities require.

The County has obtained and will maintain the permits and approvals required by the Florida Department of Environmental Protection (FDEP) for operation of the Facility. The Company is responsible to adhere to those permits located in the Table contained in the Solicitation Document for this Service Agreement, as may be updated and amended from time to time.

- (2) The Company shall obtain all permits and licenses necessary to operate as a business in the State of Florida and in Hendry County. The Company shall be responsible for payment of all expenses related to these transactions.
- (3) If the Company elects to provide additional structures at the site and the additional structure has been approved by the County, the Company shall be responsible for all costs associated with the structure including plans, drawings, permit applications and inspection fees. Any structures thus constructed will become the property of the County at the end of the Contract Term.

(B) Compliance

- (1) The Company shall be knowledgeable of all permit and operational plans for the Facility. If requested by the County, the Company shall produce data, drawings, reports, letters, and/or other information needed to document compliance with permits. The Company shall submit the requested information to the County within twenty-four (24) hours unless an alternate timeframe has been agreed to by the County.
- (2) As requested by the County, the Company's Key Personnel shall attend meetings and inspection events as necessary with regulatory agencies relative to the various permits. All correspondence with regulatory agencies concerning permit compliance shall be the responsibility of the County.
- (3) The site is operated under regulatory authority of federal, state, and local agencies, and can only operate under permission granted through permits to the County, as the owner. Failure to comply with the terms and conditions of the permits can result in penalties which shall be paid by the Company if the Company is responsible for the violation.

(C) The County's permitted Operations and Maintenance Plans are provided in Appendix 1. The Company shall at all times provide the Operation Services in accordance with the permitted Operations and Maintenance Plans, as amended from time to time by the County.

(D) Groundwater Wells/Water Quality Monitoring

The County shall be responsible for sampling and regulatory reporting of groundwater, surface water, landfill gas, leachate, and air emissions at the site.

(E) Recordkeeping and Reporting

Company reporting and compliance requirements include the following. Sample forms are provided in Appendix 9.

- (1) Perform random load inspection in full compliance with the Facility operating plan(s).
- (2) The Company shall be responsible for Stormwater Pollution Prevention Plan (SWPPP) and Spill Pollution Control and Countermeasure (SPCC)

routine inspections and reporting of the Landfill Operations Areas under the County site-wide SWPPP and SPCC plans.

- (3) The Company shall be responsible for annual SARA Tier II record keeping. The Company shall submit all records to the County at least fourteen (14) days prior to the regulatory deadline. The County will be responsible for preparing the annual report submission for the Facility.
- (F) Recordkeeping and Reporting requirements may change from time to time due to regulatory or County requests.
- (G) The Company shall direct any and all regulatory communications through the County.
- (H) If County, State, or Federal funds are going to be utilized for any purchase under this Agreement, as appropriate, all State procurement, all County, State, and Federal procurement requirements must be followed.
- (I) All construction-related Cost-Substantiated Special Projects, including repairs, must be procured in accordance with Lee County Ordinance No. 22-06 requirements, or be performed by the Company in accordance with the Cost Schedule in Appendix 15. A summary of current requirements needed to meet the County's procurement requirements is provided below. Projects outside these parameters must be coordinated through the Contract Administrator, who will then coordinate with the Lee County Procurement Department. Note that this guidance is subject to change and County Ordinance governs.
 - (1) Cost-Substantiated Operating Costs for certified engineering or surveying services up to \$35,000 will be considered substantiated and in compliance with County Procurement requirements if one written quote is provided in support of the work and the work is approved by the Contract Administrator..
 - (2) Cost-Substantiated Operating Costs for construction, repairs, or services up to \$49,999.99 will be considered substantiated and in compliance with County Procurement requirements if one written quote is provided in support of the work and the work is approved by the Contract Administrator.
 - (3) Cost-Substantiated Operating Costs for commodities and services from \$50,000 to \$249,999.99 will be considered substantiated and in compliance with County Procurement requirements if three written quotes are provided in support of the work and the work is approved by the Contract Administrator. If the Company is unable to receive three written quotes due to no-bids or lack of response, the Company must

demonstrate that at least five vendors were solicited for the work.

(4) Cost-Substantiated Operating Costs for construction or repairs from \$50,000 to \$199,999.99 will be considered substantiated and in compliance with County Procurement requirements if three written quotes are provided in support of the work and the work is approved by the Contract Administrator. If the Company is unable to receive three written quotes due to no-bids or lack of response, the Company must demonstrate that at least five vendors were solicited for the work.

(5) At the Company's discretion, the Company may either provide a full accounting with all documentation to the County evidencing that it has complied with the Lee County Procurement requirements, or the Company may choose to have Lee County Procurement perform the procurement process.

(6) These requirements are subject to change from time to time by the Contract Administrator.

SECTION 2.7 FACILITIES, GROUNDS, AND MAINTENANCE

- (A) The Operation Services are performed by the Company within the extents of the Facility. The County shall be responsible for general maintenance and repairs to facilities, grounds, and roadways outside of the Class I MSW, Class III, and Class I Ash Landfill Operations Areas. The County is also responsible for landfill gas and leachate infrastructure operations and maintenance within the Landfill Operations Areas.
- (B) Shared Use of County Owned Facilities. The Base Fee includes shared use of County owned facilities defined by the County and depicted on Exhibit 4 found in Appendix 2 of this Service Agreement.
- (C) Utilities. Company shall be responsible for arranging services and payment of expenses for phone and internet service to Company Office area. The Company shall also be responsible for providing its staff potable drinking water, and "Porta-Johns" for temporary and field workers. The County will provide non-potable water by means of an on-site well and on-site septic services.
- (D) Company to Provide Fuel. The Company will be required to provide for all fuel used in execution of the Operation Services.
- (E) Litter. The Company shall keep the Facility free of litter. The Company shall supply and install litter controls at the Landfill Operations Areas including, but not limited to, litter fencing and portable bull fencing to collect and control windblown litter from leaving the Landfill Operations Areas.

The Company shall include required labor needed to manage and collect within the Facility litter generated from all Facility areas, including customer vehicles after entering the Facility.

The County has a fine system for customers who un-tarp loads before arriving at the working face. The Company shall cooperate with the County to educate customers and assist the County with enforcement.

- (F) Dust. Dust control at the Facility shall be the responsibility of the Company. This includes the Class I MSW Landfill, Class I Ash Monofill, Class III Landfill, landfill internal approach roads, site roads, and stockpile areas. The Lee County Compost Facility and Overs Stockpile Area are excluded from Company dust control responsibility. Refer to Appendix 2 for dust control map.

Dust shall be minimized by frequent spraying of dirt roads and Landfill Operations Areas. Dust control measures shall meet the requirements of the Title V permit and other permits or rules pertaining to the Operation Services.

- (G) Infrastructure Protection. The Company shall replace and/or repair, at its own expense, all infrastructure damaged by the Company's operation of the Facility. This includes but is not limited to utility poles, pipes, culverts, ditches, swales, pumps, lift stations, and landfill gas collection infrastructure.

SECTION 2.8 LANDFILL OPERATIONS

- (A) Screening and Removal of Unacceptable Waste. The County shall not knowingly deliver, and shall use legal means reasonably available to prevent the delivery of, Unacceptable Waste to the Facility.

The Company shall refuse to accept any Unacceptable Waste delivered to the Landfill Operation Areas which is revealed by inspection of a load. If any Unacceptable Waste is delivered in any load, the Company shall immediately stop the customer from unloading of the waste.

If the Company finds Unacceptable Waste in a load and the customer is still in possession of the load, the Company shall immediately notify the Administrative Agent or their designee so that the County can follow up with the customer on the proper handling or disposal method for the Unacceptable Waste.

If the Company finds Unacceptable Waste in a load and the customer is no longer

in possession of the load, then the Company is responsible for properly disposing of the waste according to federal, state, and local regulations or policies at the Company's expense. If the Company determines who the generator of the waste is, the Company may seek recovery for expenses incurred; notification to the County is required.

(B) Special Wastes

(1) Special Waste Approvals. The Company shall be responsible for implementing and maintaining a Special Waste approval, acceptance, and recordkeeping program, through which Special Waste disposal requests are reviewed and approved by the Company for compliance with all site requirements and permits. Company shall be responsible for coordinating with Special Waste customers for scheduling receipt of waste and determining special handling requirements. The Special Waste Program shall meet the general requirements of the current program, provided in Appendix 10.

(a) Special waste handling requirements will be determined by the Company at the time of Special Waste approval. Notwithstanding, the County may require more stringent handling, to be determined at time of approval.

(b) Special waste handling and approval procedures may change from time to time and Company will cooperate with the County on such updates and modifications.

(2) Dead Animals. When bodies of dead animals are received and disposed of by the Company at the Landfill Operations Areas the Company shall promptly cover this waste material.

(3) Asbestos Containing Materials – Approved Special Waste Asbestos Containing Materials will be scheduled by the Company for receipt at the Class III Landfill only. The Company will receive the material, document disposal in accordance with facility permits, review and sign-off on manifests, and convey paperwork to the scale house. Both friable and non-friable asbestos-containing materials are required to be transported and handled as friable asbestos containing materials in order to be disposed of at the Facility.

(4) County Restricted and Special Handling. No treated or untreated biomedical waste may be accepted or disposed of at the Landfill Operations Areas.

(5) Soft / Wet Waste Limitations. The Company shall be responsible for

maintaining Soft / Wet Waste amounts in the Class I MSW Landfill limited to the more stringent of either 5% by weight, per Company's corporate recommendations, or as agreed to by the Contract Administrator. Company is responsible for conducting paint filter testing to determine compliance with site permits and regulations, and for spreading and mixing soft / wet waste with dry waste. Soft / wet waste shall not be placed within 50-feet of outside slopes, or as noted in the site O&M Plans or Company O&M Manual(s).

- (C) Outside County Waste. No solid waste generated outside Hendry County or Lee County shall be solicited or knowingly accepted by the Company for disposal at the Facility.
- (D) Authorized Haulers. The Company shall accord fair, proper and balanced treatment to all Authorized Haulers and shall not favor or disfavor any Authorized Hauler in relation to any other Authorized Hauler.
- (E) Waste Delivery Vehicle Turn -Around Time. The maximum time leaving from scale house to exiting the Landfill Operation Area for each waste delivery vehicle entering the facility shall be forty-five (45) minutes. This will be determined by scale house entry and exiting weight time stamps. If delays are caused by uncontrollable circumstances or by the fault of the delivery vehicle or through no fault or negligence of Company, then the requirement herein stated shall not apply.
- (F) The Company shall be responsible for assisting with the removal of stalled, abandoned, and disabled vehicles within the Landfill Operation Areas, including vehicles that become stuck. The Company may develop a liability waiver form for the customer to sign to relieve the Company of liability for damages to the customer's property, other than damages due to the negligence of the Company. A release of liability from the customer to the Company is acceptable with approval of the Contract Administrator.

SECTION 2.9 WEIGHING RECORDS

- (A) Measurement Devices and Procedures. The County shall operate and maintain truck scales, certified for commercial use in accordance with Florida Department of Agricultural and Consumer Services (FDACS) requirements, to weigh all vehicles delivering waste to the Facility. Each loaded vehicle shall be weighed, indicating gross weight, tare weight, date and time, waste classification and vehicle identification on a weight record. The Company and its agents shall have the right to monitor weighing activities and to receive copies of scale calibration certificates.
- (B) Estimates During Incapacitation. To the extent that weighing facilities are

incapacitated, are being tested, or are bypassed, the County shall estimate the quantity of waste and Direct-Haul Materials delivered. These estimates shall take the place of actual weighing and shall be the basis for records during the scale outage.

- (C) Flat Fee Rates. The County reserves the right to charge a flat fee for certain customers if it is determined to be in the County's best interest. Prior to implementing flat fee rates, the County and the Company will mutually agree to recordkeeping acceptable to both parties.
- (D) Weight Records. The County shall maintain daily records of the number of Tons of waste and Direct-Haul Materials delivered to the Company, indicating the date and time of arrival or departure of each vehicle transporting such material, with appropriate identification of each vehicle.

SECTION 2.10 LANDFILL EQUIPMENT

- (A) Purchase and Maintain. The Company is responsible for supplying any and all Landfill Equipment necessary to perform the services provided herein. It is anticipated the Landfill Equipment will be maintained in accordance with manufacturer recommendations stipulated for the work environment this Landfill Equipment will be exposed to including the Class I Ash Monofill.
- (B) Reliability. The Company shall minimize Landfill Equipment downtime and maximize Landfill Equipment reliability. If a piece of Landfill Equipment is scheduled to be down for a period exceeding five (5) continuous working days, the Company will be obligated to provide a replacement piece of Landfill Equipment from available Company inventory or provide a rental piece at no additional cost to the County.
- (C) Compaction. The Company will be required to place and compact waste in the Class I and Class III landfills using a designated steel-wheel compactor during all operating hours. The Service Fee shall account for supplying Landfill Equipment of a size and in a condition capable of meeting and achieving the recommended minimum in-place Operational Density "for no penalty" as detailed in Appendix 3 – Performance Standards of this Service Agreement.

SECTION 2.11 LANDFILL FILL PLANNING AND SURVEYING

- (A) Annual Topographic Survey and Control Surveys. The Company shall subcontract with a survey company registered in the State of Florida to perform an Annual

Topographic Survey within fifteen (15) days following commencement of each new Contract Year, or as soon as practicably possible. The Annual Survey will be used to determine airspace consumed within the fill areas and, by extension, Operational Density as further described in Appendix 3.

All surveying and mapping services must be performed by or under the responsible charge of a Florida Professional Surveyor and Mapper (PSM), in accordance with relevant sections of Florida Statutes Ch. 427, Chapter 5J-17, FAC – Professional Surveying, Mapping, Florida Statutes, and all other local, state, federal standards as applicable. The PSM must be full-time employee(s) of the Company's Subcontractor, registered with the State of Florida, as a business engaged in the practice or performance of surveying and mapping. The Company must provide the business's active business license number and certificate of authorization number of the survey company they choose to subcontract with.

Control surveys shall be performed by the PSM to establish on-site Facility ground control for use by the Company and prepare as-built survey referenced maps and topographic surveys.

- (1) The area to be included in the annual topographic survey shall include all areas of the Facility including, but not limited to, the soil stockpile areas, the Compost Facility, all closed and open Landfill Operations Areas, the Administration Buildings, scale house, and leachate storage ponds, etc.
- (2) The minimum data requirements and acquisition methods to conduct the Annual Topographic Survey are as follows:
 - (a) The County will provide existing control information, including control coordinate listing, existing horizontal and vertical datum's used, and any available Meta data to the Company's Subcontractor. This will determine the Existing Facility Control Statement that is currently being utilized by the Facility. The Company's Subcontractor will recover all existing control stations within the Facility. Using no less than three (3) existing control stations, the Company's Subcontractor shall verify existing control values and provided a report listing any observed differences to existing control values. These existing control stations may serve as major control stations as described below.

- (b) In order to perpetuate Facility control under this Service Agreement, a minimum of six (6) on-site major control stations will be identified across the Facility. If the existing control is limited in number, the Company's Subcontractor is required to set additional major control stations that shall minimally consist of a 5/8" diameter, 30" long, iron rod with an aluminum or plastic cap, appropriately and uniquely stamped, and identifying the subcontracting survey company name or PSM who set the station. Supplemental minor control stations or aerial control required to relate aerial imagery to ground control for the annual aerial survey may need to be re-established each year.
- (c) Company's Subcontractor shall acquire data to enable reporting of the relationship between Survey Control Stations per the Existing Facility Control Statement and the current realization of the National Spatial Reference System (NSRS). This relationship reporting between Existing Facility Control and the current realization of the NSRS shall be provided on all topographic survey, as-built survey, or other survey referenced maps the Company submits to the County.
- (d) Company's Subcontractor will acquire Orthorectified Aerial Imagery relative to ground control. Digital imagery will include natural color, panchromatic, and color infrared products using large or medium format digital aerial mapping cameras.
- (e) The horizontal accuracy of the mapping will be such that at least 90% of all well-defined features will be shown within at least 1/40" of their true position at map scale when compared to the nearest control station and none will be in error more than 1/20" using the same comparisons.
- (f) The vertical accuracy of the mapping shall be such that at least 90% of all elevations interpolated from solid line contours will be within one half the contour interval and none will be in error more than the contour interval.
- (g) The Company's Subcontractor must also be capable of testing and verifying the accuracy of the imagery in accordance with National Standards for Spatial Data Accuracy Assessment (NSSDA) and American Society for Photogrammetry and Remote Sensing (ASPRS) methodologies. Accuracy of the delivered imagery must exceed specifications by the South Florida Water Management District (SFWMD) and the Florida Department of Revenue (DOR).

- (h) Company's Subcontractor must be able to develop spatial metadata that is compliant with the Federal Geographic Data Committee's (FGDC) Content Standards for Digital Geospatial Metadata and District Standards. Metadata will be delivered in format compatible with ESRI ArcGIS products.
- (3) Survey deliverables will include both a signed and sealed (.pdf) and (.dwg) files unless otherwise specified, delivered electronically via FTP or file sharing platforms with the Contract Administrator, unless otherwise specified.
- (a) Report of Survey must be signed and sealed by a Professional Surveyor and Mapper (PSM) with an active license in good standing issued by the State of Florida.
 - (b) Topographic Survey at a scale of 1" = 200' of the entire Facility, reporting:
 - (1) 1-foot minor contours, spot elevations & all other acquired data
 - (2) Survey Control (planimetric location)
 - (3) Survey Control Table (existing facility control & current realization)
 - (4) Survey Control Statement (existing facility control & current realization)
 - (c) Topographic Survey(s) at a scale of 1" = 50' with 1-foot contours for all of the individual Landfill Operation Areas, hereinbefore described and contained in Appendix 2.
 - (d) Provide a 3D DTM TIN File (AutoCAD) (Digital Terrain Model, Triangulated Irregular Network). This is required for each individual surface model created.
 - (e) Aerial Photograph(s) of Site on 1" = 50-foot Digital Mosaic (TIF files for mosaic and consolidated TIF file with all mosaics stitched together in AutoCAD with location files (world files in the coordinate system as specified) and two – 4' x 4' hardcopies on photo quality paper.
 - (f) Submitted electronically via FTP or file sharing platform to the Contract Administrator, and will contain all, Survey Control, planimetric, and topographic data acquired or established.

- (B) Annual Operational Density. The Annual Survey will be used to determine the Operational Density at the close of the prior Contract Year and to compute the prior year incentives or penalties that may be due or charged to the Company as detailed in Appendix 3 – Performance Standards of this Service Agreement.
- (C) Operational Density Report. The Operational Density Report shall be submitted no later than sixty (60) calendar days after the date that the topographic survey was performed. The Report shall include all applicable calculations and supporting documentation that were utilized in determining the annual Operational Density.
- (D) Fill Sequence Plan. Annually, the Company shall provide a five (5) year interim fill sequence plan showing the topographic detail and sequence within a constructed Phase and Subcell where waste is planned to be buried each year, and progressing annually over five (5) years. Interim fills shall include sloping of all top decks to prevent surface ponding and reduce stormwater infiltration within each Landfill Operation Area.

The plans shall include schedule projections for new Phase or Subcell liner construction over the five (5) year period. The County will supply the tonnage projections that the Company will use to develop the fill sequence plans.

The Company shall include the location of the County planned landfill gas collection and control system (GCCS) wells and piping located within each fill sequence area. The County anticipates the need to begin building a GCCS system sometime in 2025. The Company is not responsible for constructing GCCS infrastructure but shall coordinate waste placement within existing and future GCCS construction areas.

The County is responsible for providing Final Closure Plans in .dwg format. These documents will be used to determine the top of waste grade surface and maximize fill limits.

- (E) Quarterly Surveys. The Company shall supply three quarterly volume and density surveys to monitor compliance with planned fill sequence areas and minimum density standards detailed in the Appendix 3 – Performance Standards of this Service Agreement. These shall be in addition to the Annual Survey, per Section 2.11. The Company must ensure that the quarterly surveys are compatible with similar standards of the Annual Survey.
- (F) Maintenance of Slope and Grade. The Company shall ensure all filling complies

with the most current permit grades and ensure all interim and final slope and fill requirements meet all cell permit plans. In order to maintain slope and fill extents the Company shall plan and schedule frequent survey stakeout events to be performed by a Registered Surveyor, licensed in the State of Florida to monitor and set fill placement extents. In order to reduce the frequency of survey stakeout events needed over the contract term the Company may include the use of portable survey grade GPS equipment to periodically check grades with on-site personnel or install GPS surface control systems in the Landfill Equipment. The Company shall ensure that initial personnel training and equipment calibration of any GPS equipment is performed under the guidance and direction of a Registered Surveyor. All costs associated with survey staking including the purchase and use of any GPS equipment to monitor and set fill placement extents shall be borne by the Company and included in the Base Fee.

SECTION 2.12 LANDFILL COVER AND INTERNAL APPROACH ROADS

- (A) Daily Cover and Intermediate Cover, including Alternative Daily Cover, shall be used in accordance with permit conditions and acceptable industry standards.
- (B) Landfill Operations Materials. The County will provide certain materials used for the operation of the landfill specifically for, Daily Cover, intermediate cover, road construction, and other beneficial uses. The County has a robust complement of materials available for operations which consist of Direct-Haul Materials and Company-Haul Materials. In all cases, Direct-Haul Materials and Company-Haul Materials shall be loaded and hauled by the Company from the stockpiled areas to the placement areas needing daily cover, intermediate cover, road construction, and other beneficial uses
- (C) Direct-Haul Materials:
 - (1) Recovered Screen Materials (RSM). RSM from the County's Construction and Demolition Debris Recycling Facility is hauled to the Class III Landfill for stockpiling and use as Alternative Daily Cover.
 - (2) Crushed Glass. Crushed Glass overs from the County's Recovered Materials Processing Facility is hauled to the Class III Landfill for stockpiling and use as Alternative Daily Cover.
 - (3) Ash. Ash from the County's Resource Recovery Facility is acceptable for Alternative Daily Cover at the Class I Ash Monofill and Class I MSW Landfill. It may only be used for internal slopes and/or road stabilization that will not shed stormwater to

exterior slopes. Ash that is placed in the Class I Ash Monofill either for disposal or as alternate daily cover is waste and is not considered a Landfill Operations Material.

(4) Other Beneficial Reuse Materials. From time to time, the County may identify other acceptable materials that can be beneficially used within the Landfill Operations Areas. The Company and County shall coordinate ticketing for loads delivered for beneficial reuse.

(D) Company-Haul Materials:

(1) Compost Overs. Stockpiled “Overs” from the Lee County Composting Facility are available for use as daily or intermediate cover at the Class I Ash Monofill, Class I MSW Landfill, and/or Class III Landfill. Stockpiled Compost Overs are to be loaded and hauled by the Company.

(2) Mulch. Mulched Yard Trash from the County’s Yard Waste Processing Facility at Buckingham or other generators may be available for use as an erosion control / stabilization material or as a 1:1 soil:mulch blend for daily cover. Sufficiently decomposed mulch may be used as soil in accordance with permit conditions. Stockpiled mulch is to be loaded and hauled by the Company.

(3) Rip Rap Rubble Material. Rubble material consisting of tile, concrete, rock, and similar materials from the County’s Construction and Demolition Debris Recycling Facility is hauled to the Facility by the County and stockpiled for on-site use. Stockpiled rip rap rubble is to be loaded and hauled by the Company.

(4) On-site clay stockpiles. On-site clay stockpiles are currently located where shown in Appendix 2. On-site clayey material is to be loaded and hauled by the Company.

(5) On-site soil stockpiles. On-site soil stockpiles are currently located where shown in Appendix 2. On-site soil materials are to be loaded and hauled by the Company.

(E) Source and disposition of both Company-Haul Materials and Direct-Haul Materials will be at the discretion of the Company, but subject to approval by the Contract Administrator depending on availability.

(F) The Company shall minimize the use of on-site soils by using supplied Landfill Operations Materials and/or supply and use of tarps for landfill daily cover.

(G) The Company shall install intermediate cover within permit-required timeframes.

Intermediate cover shall consist of on-site soils with a layer of Compost Overs to promote volunteer vegetative growth over the landfill surfaces. Slope stabilization beyond Compost Overs (such as sod or seed) will be performed by the Company at the County's request as a Cost-Substantiated Special Project, per Section 3.1(H).

- (H) The Company shall be responsible for landfill internal approach road construction and maintenance using available Landfill Operations Materials. The landfill internal approach roads shall be crowned, graded and provided with side ditches to ensure all-weather access to the landfill working faces at all times. Internal Approach Roads shall be maintained to prevent damage to customer vehicles.

SECTION 2.13 EROSION PROTECTION AND SEDIMENT CONTROL

- (A) The Company shall repair all localized seeps, outbreaks, and erosion encountered on any landfill surface. Landfill Operations Materials may be used to complete these repairs as appropriate.
- (B) The Company shall control rill erosion and provide temporary erosion and sediment control measures, including installation of temporary and permanent down chutes complete with appropriate inlet and outlet protection at Company's expense.
- (C) The Company shall be responsible for any and all cover repairs identified by observation and/or SEMs, as may be tested for by the County.
- (D) If localized seeps, erosion areas, and outbreaks are addressed promptly and the outbreaks persist at certain locations, the County may consider additional remediation measures as a Cost-Substantiated Special Project, per Section 3.1(H).

SECTION 2.14 MOWING

- (A) Landfill quarterly mowing including mowing/weed whacking around existing and future penetrations and pump stations shall be performed by the Company in the Landfill Operation Areas identified in Appendix 2. Alternatively, in lieu of weed whacking, a licensed herbicide and pesticide application company may be used by the Company to spray around penetrations and pump stations.
- (B) Mowed grass shall be raked so as not to impede stormwater flow. Company shall be responsible for maintaining positive drainage from slopes at all times.

SECTION 2.15 COMPLIANCE WITH APPLICABLE LAW

In fulfilling its responsibilities under this Agreement, Company shall comply with all applicable laws, regulations, permits and similar requirements, including all requirements concerning health and safety, noise, odors, effluent and emissions. In the event that the Company or any Subcontractor fails at any time to comply with applicable law with respect to the Operation Services, then the Company shall promptly remedy or cause its Subcontractor to remedy such failure at its cost and expense, and bear all losses and liabilities of the Company and the County resulting therefrom, and pay any resulting damages, fines, assessments, levies, impositions, penalties or other charges resulting therefrom.

SECTION 2.16 OPERATING PERIOD INSURANCE

Commencing on the Operation Date and continuing throughout the Term of this Agreement, the Company shall obtain and maintain the Required Operating Period Insurance for which it is responsible as specified in Appendix 4 hereto, shall on the Operation Date provide the County a certificate of insurance for the Required Operating Period Insurance, and shall comply with all applicable Insurance Requirements. Insurance coverage required pursuant to this Section shall be maintained with generally recognized financially responsible insurers, reasonably acceptable to the County, and qualified and licensed to insure risks in the State.

SECTION 2.17 NO NUISANCE COVENANT

The County and the Company acknowledge that a substantial objective of the County is to operate the Facility in an economically and environmentally sound manner and accordingly, the Company shall keep the Landfill Operations Areas, including offices, and maintenance area neat, clean and litter-free at all times, and, to ensure that the operation of the Landfill Operation Areas does not create any impermissible odor, litter, noise, fugitive dust, vector or other adverse environmental effects. Should any such nuisance condition occur, the Company shall expeditiously remedy same.

If a Notice of Violation (NOV) is issued by any governmental body for nuisance condition caused by the Company, the Company will be responsible, at its sole cost and expense, for any and all fines or damages that are levied as a result thereof, including remediation of the source or cause of such NOV.

SECTION 2.18 DELIVERY OF ACCEPTABLE WASTE BY THE COUNTY

- (A) Acceptable Waste Delivery Rights. Beginning on the Operation Date and throughout the Term of this Agreement, the County shall have the right, but not the obligation, to deliver or cause to be delivered to the Facility, Acceptable Waste.
- (B) Charges to Authorized Haulers. For the Operation Services provided hereunder the Company shall be paid the Service Fee by the County as provided in Section 3.1

hereof, and the Company shall not impose any charge, service fee, or tipping fee for its own account on Facility customers.

- (C) No County Liability for Failure to Deliver Acceptable Waste. The County shall not be liable for damages or otherwise for any failure to deliver or cause to be delivered any Acceptable Waste to the Facility or for the quality, quantity, composition, or type of Acceptable Waste delivered to the Facility.

ARTICLE III PAYMENT

SECTION 3.1 SERVICE FEE

- (A) The Company shall be compensated by the County for work performed based on criteria outlined below. The Company shall not be compensated for any work performed prior to its operation of the Facility such as the development and submittal of plans, attending Transition Period meetings, ordering Operating Assets, or the hiring of personnel.
- (B) Service Fee. Each month, the County shall pay to the Company the Service Fee. The Service Fee will be the total and complete compensation for the services performed by the Company under the terms of the Agreement. The Service Fee will be determined in accordance with the following formula:

$$SF = BF + TF + PI - PP - AF + CSOC$$

Where

SF	=	Service Fee
BF	=	Base Fee
TF	=	Tonnage Fees
PI	=	Performance Incentive
PP	=	Performance Penalty
AF	=	Administrative Fines
CSOC	=	Cost-Substantiated Operations Costs

Each component of the Service Fee shall be computed in accordance with this Article and may be adjusted from time to time as provided in this Agreement.

- (C) Base Fee. The Company shall be paid a monthly Base Fee, per the Bid Schedule in Appendix 13. The Base Fee shall include all equipment and labor costs for receipt and placement of the first 10,000 tons/month of combined Class I MSW and Class I C&D Tonnage Rate Categories, for the first 5,000 tons/month of Class III Tonnage Rate Category, and for the first 3,000 tons/month of Ash Tonnage Rate Category. The Base Fee shall also include all costs related to the Company's execution of this Agreement other than those tied to the Tonnage Fee exceeding monthly tonnage amounts stipulated above, including those costs associated with, but not limited to, all management costs, indemnification costs, intracompany and interest charges, radio/phone costs for on-site communications, miscellaneous building supplies and equipment needs, weekly and monthly reporting including

finance and accounting reporting and Company insurance costs, fill planning and surveying, special waste approval and management, erosion protection and sediment control, and mowing. Other Company responsibilities not included in the Tonnage Fee shall be incorporated into the Base Fee. The Base Fee in Appendix 13 is subject to annual escalation per Appendix 5.

- (D) Tonnage Fee. All waste received at the site will be weighed by the County. The County shall provide the Company with a daily report of the tonnage of all waste by Material Type and Landfill Operations Area. Tons of Landfill Operations Materials, beneficially reused material, daily cover, and intermediate cover used to cover the waste and build roadways are excluded from the Tonnage Fee.

The Material Types identified are generally disposed of at the Facility as waste and will be counted towards the Tonnage Fee. At times, some Material Types may be beneficially reused in the Landfill Operations Area, and alternatively, some beneficial reuse materials may be disposed of as waste. The Contract Administrator shall notify the Company accordingly of any changes to the Material Types included within the Tonnage Rate Category. The Tonnage Rates in Appendix 13 are subject annual escalation per Appendix 5.

From time-to-time the County may adjust tonnages due to ticketing error or other minor changes and will provide revised reports as applicable.

The Tonnage Fee will be paid as: number of incremental tons of waste above the first 10,000 tons of combined Class I MSW and Class I C&D Tonnage Rate Categories, above the first 5,000 tons of Class III Tonnage Rate Category, and above the first 3,000 tons of Ash Tonnage Rate Category multiplied by the appropriate Tonnage Rate per the Bid Schedule in Appendix 13. For Other Tonnage Rate Category waste that is directed to the Class I Ash Monofill, or Class I MSW Landfill, or Class III Landfill, the Tonnage Fee will be applied to each ton of waste received each month.

Table 3.1

<u>Tonnage Rate Category</u>	<u>Landfill Operations Area for Disposal</u>	<u>Included Material Types*</u>
Class I MSW	Class I MSW Landfill	LMSW, HMSW
Class I C&D	Class I MSW Landfill	L C&D, H C&D, LCLASSIII, HCLASS III, LSHINGLE, LTIRECHIPS

Class III	Class III Landfill	L C&D, H C&D, LCLASSIII, HCLASS III, LSHINGLE, TIRECHIPS, RSM, L HORT, L HORT RES, H HORT
Ash	Class I Ash Monofill or Class I MSW Landfill	LASH
Other	Class I Ash Monofill or Class I MSW Landfill or Class III Landfill	SLUDGE HEN, SLUDGE LEE, CFM SLUDGE, CONT SOIL, TIRE XL, HTIRE XL, LTIRECHIPS, SAND, HSAND, L ASBEST, H ASBESTOS, L BOAT/RV

*A description of Material Types is provided in Appendix 11 – Waste Material Types

(E) Performance Incentive:

The Company shall receive an annual incentive based upon the value of the airspace saved as a result of the Operational Density achieved by the Company for the contract year as follows, and as further detailed in Appendix 3:

Table 3.2

	Class I MSW Landfill	Class III Landfill
Bonus Parameter	≥1,800 pounds per cubic yard (pcy)	≥1,650 pcy
No Bonus	1,550 – 1,800 pcy	1,400 pcy – 1,650 pcy
Penalty Parameter	≤1,550 pcy	≤1,400 pcy
Point of Calculation	1,675 pcy	1,525 pcy

When the Company achieves the Bonus Parameter Operational Density shown in Table 3.2, the value of the airspace saved during the year will be calculated as the difference between volume consumed at the achieved Operational Density and the volume that would have been consumed at the Point of Calculation density. The volume of airspace saved will be converted to tons of airspace saved using the achieved Operational density.

For the Class I MSW Landfill, the Performance Incentive will consist of a 30% incentive applied to the tons of airspace saved multiplied by the current published Lee County MSW gate rate at the Facility. If the MSW gate rate at the Facility changes during the calculation period, the Performance Incentive will be calculated

separately for tons received under each rate.

For the Class III Landfill, the Performance Incentive will consist of a 20% incentive applied to the tons of airspace saved multiplied by the current published Lee County Class III gate rate at the Facility. If the Class III gate rate at the Facility changes during the calculation period, the Performance Incentive will be calculated separately for tons received under each rate.

The Performance Incentive will be calculated annually; however the Company may choose each month if it believes the Incentive will be met through quarterly surveys or other metrics. If the Company chooses to assume the incentive will be met and the Contract Administrator concurs, 50% of the Incentive will be paid to the Company and 50% will be accrued for final true-up following the end of the Contract Year. Final true-up will occur as part of the December billing cycle.

(F) Performance Penalty:

The Company shall pay an annual Performance Penalty based upon the value of the airspace lost as a result of the Operational Density calculation results achieved by the Company for the contract year, per Table 3.2 and as further detailed in Appendix 3.

When the Company achieves the Penalty Parameter Operational Density shown in Table 3.2, the value of the airspace lost during the year will be calculated as the difference between volume consumed at the achieved Operational Density and the volume that would have been consumed at the Point of Calculation density. The volume of airspace lost will be converted to tons of airspace lost using the achieved Operational density.

For the Class I MSW Landfill, the Performance Penalty will consist of a 20% penalty applied to the tons of airspace lost multiplied by the current published Lee County MSW gate rate at the Facility. If the MSW gate rate at the Facility changes during the calculation period, the Performance Penalty will be calculated separately for tons received under each rate.

For the Class III Landfill, the Performance Penalty will consist of a 20% penalty applied to the tons of airspace saved multiplied by the current published Lee County Class III gate rate at the Facility. If the Class III gate rate at the Facility changes during the calculation period, the Performance Penalty will be calculated separately

for tons received under each rate.

- (G) Administrative Fines. Administrative Fines include damages incurred by the County for which the Company is responsible. The Company shall also be responsible for payment of any monetary penalty assessed by a regulatory agency that is due to Company's acts or omissions in the execution of the Operation Services. The Company may appeal to the Contract Administrator on the assessment of any Administrative Fines or monetary penalty if it is believed the assessment has been unfairly applied. Administrative Fines are provided in Appendix 12.
- (H) Cost-Substantiated Special Projects. From time-to-time, the County may require services outside the scope of this Agreement that are nonetheless required for safe, compliant, or economical operation of the Facility. The County may request Special Projects for which the Company will be reimbursed as a Cost-Substantiated Operations Cost.

Special Projects will be in accordance with Section 2.6(I) and must be approved by the Contract Administrator prior to any work being completed.

Special projects may include such work including, but not limited to:

- (1) Supply material aggregate from off-site material sources.
- (2) Sodding and seeding services.
- (3) Supplemental litter pickup along Church Road entering the Facility.
- (4) Stormwater swale and pond cleanout.
- (5) Leachate pond cleanout.
- (6) Leachate pond liner repairs.
- (7) Extended Gate Open Hours.
- (8) Excavating and stockpiling on-site soil materials

SECTION 3.2 RATE ADJUSTMENTS

- (A) Extraordinary Rate Adjustment. The Company may petition the County for an

additional rate adjustment on the basis of extraordinary or unusual changes in the cost of operations that could not reasonably be foreseen by a prudent operator, such as, that resulting from a change in law. The Company's request must contain substantial evidence and justification, as determined by the Contract Administrator, to support the need for the rate adjustment. The County may request from the Company, and the Company shall provide, all information as may be reasonably necessary in making its determination. The Company can only receive a maximum of one extraordinary rate adjustment per calendar year. The County reserves the right to consider, and act upon, all available options instead of, or in addition to, rate adjustment to resolve or otherwise mitigate the issue(s) which resulted in the Company's petition.

- (B) Index Adjustment. The Base Fee and Tonnage Fee shall be adjusted annually per the procedures in Appendix 5.

SECTION 3.3 BILLING OF THE SERVICE FEE

- (A) Billing Statements. For each Billing Period the Company shall render a statement (a "Billing Statement") to the County by the 25th day of the following Billing Period, which shall set forth each component of the Service Fee. Each Billing Statement shall also include, for such Billing Period, (1) all other amounts payable by the County to the Company hereunder, (2) all amounts payable by the Company to the County hereunder, and (3) with respect to items (1) and (2) above the balance due to or from the County (the "Other Payments Balance"). The Company shall provide all information required pursuant to this Agreement, including Recordkeeping and Reporting Forms per Section 2.6 (E) with each Billing Statement. The County shall pay the Service Fee and any Other Payments Balance due to the Company, less Other Payments Balance due to the County, within sixty (60) days of the date of the Billing Statement.
- (B) Billing Period Processing Record. The County shall furnish the Company with a record, within ten (10) days after each Billing Period, of the waste and Direct-Haul Materials which were delivered to the Landfill Operations Area during such Billing Period for Company Records. The Company shall notify the County within seven (7) calendar days after receiving the record of any discrepancy in the record.
- (C) Billing Estimates and Adjustments. To the extent that the actual value of any item in any Billing Statement cannot be accurately determined at the Billing Statement date, such item shall be billed on an estimated basis and an adjustment shall be made to reflect the difference between such estimated amount and the actual amount of such item on the Billing Statement following the date on which the Company learns the

exact amount of such item.

- (D) Interest on Overdue Payments. All payments to be made by either party under this Agreement that are outstanding after the applicable due date, shall bear simple interest at the maximum rate permitted by Florida law, and in accordance with the local Government Prompt Payment Act, Florida State Statutes 218.70- 218.76.
- (E) Invoice or Payment Disputes. If any Party shall dispute an amount owing to the other Party, such Party shall: (i) give notice to the other Party of such disputed amount together with sufficient information to allow the other Party to understand the nature of the dispute and deliver such notice on or before the due date of the amount disputed; and (ii) pay all undisputed amounts on the due date. Interest at the rate specified in Section 3.3(D), or as specifically established for such item so disputed, shall accrue from the original due date on disputed amounts, or the portions thereof, to the Party which is ultimately determined to be entitled to such disputed amount (or any portions of such disputed amounts).
- (F) Proration. If any payments, rights or obligations under this Agreement (whether relating to Fees and Taxes, insurance, or to any other provision of this Agreement) relate to a period in part before the Operation Date or in part after the date of expiration or termination of the Term, the parties hereto agree that appropriate adjustments and proration shall be made.
- (G) Operations Summary. This Invoice statement shall include the following operational information for the billing period:
 - (1) Daily records of all Landfill Operations Materials used to perform the Operation Services.
 - (2) Daily, weekly and monthly reporting including, but not limited to, Landfill Equipment runtimes, Landfill Equipment downtime, waste tonnage handled, fuel usage, fleet inspection logs.
 - (3) Finance and accounting reporting.
 - (4) A description of any maintenance and repairs on the Landfill Equipment during the prior month exceeding \$3,000 and anticipated during the current and following month. These reports shall present the data in a form reasonably acceptable to the County.

- (5) A description of past-period employee staffing levels, hours worked, absences, and job responsibilities, as well as next-period projections.

SECTION 3.4 ANNUAL SETTLEMENT

Within thirty (30) calendar days after the end of each Contract Year, the Company shall deliver to the County an annual settlement statement (the “Annual Settlement Statement”) setting forth the actual aggregate Service Fee payable with respect to such Contract Year and a reconciliation of such amount with the amounts actually paid by the County pursuant to the Billing Statements with respect to such Contract Year, including, without limitation, all adjustments to the Service Fee made pursuant to this Article III, all adjustments made pursuant to Section 3.3 hereof, and any other amounts payable by the County or the Company pursuant hereto. If any amount is then in dispute, the Annual Settlement Statement shall set forth the Company’s estimate of such amount and a final reconciliation of such amount shall be made in the Billing Statement for the Billing Period immediately following the resolution of such dispute.

Within sixty (60) calendar days following commencement of each Contract Year, the County shall prepare an annual Condition Assessment Report to determine whether the Landfill Operations Areas, including office, maintenance areas, and the Landfill Equipment used by the Company have been operated and maintained as required by the Agreement. The County shall provide a copy of the Condition Assessment Report to the Company.

**ARTICLE IV BREACH, DEFAULT, TERMINATION FOR CAUSE AND DISPUTE
RESOLUTION**

SECTION 4.1 COMPANY PERFORMANCE

- (A) Compliance and Remedies. The Company shall at all times during the Term of this Agreement comply with such, except to the extent excused by any County Breach. If the Company fails to comply with any of the terms or conditions, the Company shall at its own cost and expense (1) pay any applicable penalties provided for herein and any other resulting damages, fines, levies, assessments, impositions, penalties or other charges resulting therefrom, and (2) take any action necessary in order to comply with such term or condition, continue or resume performance hereunder and eliminate the cause of, and avoid or prevent recurrences of noncompliance with, such term or condition and (3) indemnify the County for all losses and liabilities incurred due to the Company's failure to comply with the terms and conditions.

SECTION 4.2 SPECIFIC PERFORMANCE

The Company acknowledges that the County may enforce by an action for specific performance the Company's obligations hereunder to operate and maintain the Landfill Operations Areas on the terms and conditions provided herein. Neither party shall have the right to terminate this Agreement for cause except after an Event of Default determined in accordance with the provisions of this Article IV shall have occurred and be continuing.

SECTION 4.3 EVENTS OF DEFAULT

- (A) The following shall constitute an Event of Default by either party:
- (1) Persistent and repeated failure or refusal to perform timely, any obligation under this Agreement, unless such failure or refusal is clearly recognized, justified and excused by the terms and conditions of this Agreement.
 - (2) Failure to pay amounts owed under this Agreement within ninety (90) calendar days following the date they become due and owing.
 - (3) A party or, as to Company, the Guarantor's being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property, or (b) a bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding instituted by

or against a party or, as to Company, the Guarantor under the laws of any jurisdiction, which proceeding has not been dismissed within sixty (60) days, or (c) any action or answer by a party or, as to Company the Guarantor approving of, consenting to, or acquiescing in, any such proceeding, or (d) the levy of any distress, execution or attachment upon the property of a party or, as to Company, the Guarantor which shall substantially interfere with its performance hereunder.

(4) As to Company, the default of the Guarantor under the Guarantee.

(B) This Section 4.3 shall survive the termination or the expiration of this Agreement.

SECTION 4.4 DEFAULT NOTICES

Neither Party may exercise its termination rights pursuant to Section 4.3, unless and until such Party shall have given the other Party written notice of its failure or refusal to perform as applicable. If an Event of Default specified in a required notice of default is cured within ninety (90) calendar days after such notice, no Event of Default shall occur pursuant to such notice. However, the occurrence of an Event of Default specified in Sections 4.3(A)(3) or (A)(4) shall not require any notice.

SECTION 4.5 TERMINATION

(A) Termination for Event of Default

(1) If an Event of Default has not been cured within ninety (90) days of notice, as required by Section 4.4, the non-defaulting party may terminate this Agreement upon thirty (30) days' notice.

(2) If an Event of Default has occurred pursuant to Section 4.3(A)(3) or (A)(4), the non-defaulting party may terminate this Agreement forthwith.

(B) Termination for Labor Unrest

If personnel employed by the Company and performing services pursuant to the Company's obligations under this Agreement shall go on a labor strike or slowdown, or if a work stoppage, walkout or secondary boycott shall occur, for any reason or cause whatsoever, and such act or event effectively prevents the Company from performing its material obligations under this Agreement, the County may, in its sole discretion, by notice to the Company, terminate this

Agreement forthwith.

(C) Termination by Law

If the execution of the Operation Services or the County's direction of Solid Waste under this Agreement becomes unenforceable, then the County or the Company may terminate this Agreement forthwith. The Company hereby agrees not to be a party or participant to any action contesting the enforceability of this Agreement. In the event of such termination neither the County nor the Company shall have any legal or equitable remedy against the other for such termination except to the extent provided below.

(D) Termination for Convenience

Either party may terminate this Agreement for its convenience at any time upon providing 180 calendar days' written notice to the other party, with or without cause. If either party elects to terminate this Agreement for its convenience, then County is entitled to a pro rata refund of the funds paid by County to Vendor which is applicable to the portion of the term subsequent to the effective date of termination.

(E) Termination for Non-appropriation

All funds for payment by the County under this Agreement are subject to the availability of an annual appropriation for this purpose by the Lee County Board of County Commissioners. In the event of non-appropriation of funds by the County for the services provided under this Agreement, the County will terminate the Agreement, without termination charge or other liability, on the last day of the then current fiscal year or when the appropriation made for the then-current year for the services covered by this Agreement is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by the Company on thirty (30) days' prior written notice, but failure to give such notice shall be of no effect and the County shall not be obligated under this Agreement beyond the date of termination.

(F) Remedies of the Company

- (1) If the Company terminates this Agreement pursuant to Sections 4.3(A)(1) or (A)(2), the Company shall receive (a) 50% of the annualized Service Fee resulting from multiplying the average monthly Service Fee by 12 months,

if termination occurs after the Contract Date and on or before the date which is the first anniversary of the Contract Date; (b) 25% of the annualized Service Fee resulting from multiplying the average monthly Service Fee by 12 months, if termination occurs after the first anniversary of the Contract Date and on or before the date which is the second anniversary of the Contract Date; or (c) 10% of the annualized Service Fee resulting from multiplying the average monthly Service Fee by 12 months, if termination occurs after the second anniversary of the Contract Date and on or before the date which is the third anniversary of the Contract Date. The parties agree and acknowledge that the damages provided for in this paragraph are to be liquidated damages and shall be the sole and exclusive measure of damages or liability for any breach or non-performance by the County under Sections 4.3(A)(1) or (A)(2) and that the provisions for damages set forth herein are intended to measure as accurately as possible the direct damages of the Company and are not intended to include punitive, special, consequential, incidental or indirect damages

- (2) If the Company terminates this Agreement pursuant to Section 4.3(A)(3), the Company shall have the right to seek legal and equitable remedies provided by law for such Event of Default.

(G) Remedies of the County

If the County shall terminate this Agreement pursuant to Section 4.3, the County shall have the right to seek legal and equitable remedies provided by law for such Event of Default and termination right, respectively, and the County shall have the right to call the Guaranty and shall be free to negotiate with other contractors or any other person or company for performance of the Operation Services.

(H) Manner of Termination Payment

All performance and payment obligations under this Agreement, including payment of all fees and charges that are due and owing, shall continue pursuant to the terms of this Agreement and any amount accrued but unpaid prior to termination shall, if due and owing, be payable in accordance with this Section. Except as otherwise specifically provided in this Agreement with respect to the time of payment following termination, within ninety (90) calendar days following termination of this Agreement, the County and the Company shall reconcile all amounts then due and payable to each other under the terms of this Agreement. Upon reaching, as a result of such reconciliation, the total amount of the

outstanding unpaid balance which the County and the Company owe the other, the County and the Company shall, within thirty (30) calendar days thereafter, make the final payments in complete discharge of their obligations under this Agreement, except those obligations which survive the termination of this Agreement. Payment obligations under this Section are subject to Sections 3.3(D) and 3.3(E).

(I) Exclusive Remedies

The remedies specifically set forth in this Agreement are exclusive, and the parties waive any other remedies they may have at law or in equity; provided, however, that either Party may seek judicial enforcement of any remedy provided herein and any amounts payable hereunder.

(J) Survival

This Section 4.5 shall survive the expiration or termination of this Agreement.

SECTION 4.6 CERTAIN OBLIGATIONS OF THE COMPANY UPON TERMINATION

(A) Obligations on Termination. Upon termination of this Agreement, the Company shall take the following actions:

- (1) stop the Operation Services on the date and to the extent specified by the County;
- (2) promptly take all action as necessary to protect and preserve all materials, equipment, tools, facilities and other property;
- (3) promptly remove from the Facility all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by the Company (including, but not limited to, sheds, trailers, workshops and toilets), and repair any damage caused by such removal;
- (4) clean the offices and maintenance areas, and leave the same in a neat and orderly condition; and
- (5) promptly remove all employees of the Company and any Subcontractors and vacate the Facility.

- (B) In the case of early termination by the Company pursuant to a County Event of Default, the County shall reimburse the Company for the items listed above.
- (C) Before the end of the Term of the Agreement, the Company shall within thirty (30) calendar days of receipt of the final Condition Assessment Report develop a Remediation Plan for any item that is identified in the final Condition Assessment Report as requiring remediation, including cost estimates for remediation and reassessment, subject to County approval. Upon review and approval of the Remediation Plan by the County, the Company shall proceed with the Remediation Plan and shall complete all necessary work set forth in the Remediation Plan before the end of the Term of the Agreement. The County may in its discretion withhold in escrow all or a portion of the Service Fees due to the Company during the period commencing 6 months prior to the end of the final Contract Year, if in the County's reasonable opinion, the Company is not proceeding diligently to perform the work set forth in the Remediation Plan. Upon expiration of the Term of the Agreement the County may disburse to the Company all funds held in escrow pursuant hereto, upon a determination that the Company has fully complied with the Remediation Plan. The costs of such remediation shall be the responsibility of the Company.
- (D) This Section 4.6 shall survive the termination or the expiration of this Agreement.

ARTICLE V GENERAL

SECTION 5.1 INDEMNIFICATION

- (A) Indemnification. To the fullest extent provided by applicable law, the Company shall protect, defend, indemnify and save the County, its agents, officials, commission members, employees, servants, including volunteers, any firm, company, organization or individual, or their contractors or subcontractors with whom the Company may be contracted, harmless from and against any and all claims, demands, fines, loss or destruction of property, liabilities, damages, including incidental, special, actual, punitive, consequential, indirect and environmental pollution, judgments, losses, costs, expenses, suits, actions, and causes of action of every kind and character, including, but not limited to, claims based on negligence, strict liability, and absolute liability which may arise in favor of any person or persons on account of illness, disease, loss of property, services, wages, death or personal injuries resulting from the Company's performance or non-performance of its obligations or operations under this Agreement, regardless whether others may be wholly, concurrently, partially or solely negligent, or strictly liable, or absolutely liable or otherwise at fault, except damages arising out of injuries or property claims to third parties caused solely by the negligence or willful misconduct of the County, its officials, commissioners, employees or agents. Further, the Company hereby agrees to indemnify the County for all reasonable expenses and attorney's fees incurred by or imposed upon the County in connection therewith for any loss, damage, injury or other casualty. The Company additionally agrees that the County may employ an attorney of the County's own selection to appear and defend any such action, on behalf of the County, at the expense of the Company. The Company further agrees to pay all reasonable expenses and attorney's fees incurred by the County in establishing the right to indemnity.
- (B) County Limitation of Liability. IN NO EVENT, BECAUSE OF A BREACH OF THIS AGREEMENT OR ANY OTHER CAUSE, WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), WARRANTY, DELAY OR OTHERWISE, ARISING OUT OF THE PERFORMANCE OR NONPERFORMANCE BY THE COUNTY OF ITS OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, SUITS BY THIRD PERSONS, SHALL THE COUNTY BE LIABLE FOR OR OBLIGATED IN ANY MANNER, EXCEPT TO THE EXTENT EXPRESSLY AND SPECIFICALLY RECOGNIZED IN THIS AGREEMENT, TO PAY INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL OR INDIRECT DAMAGES OF ANY NATURE INCURRED BY IT WHETHER OCCURRING DURING OR SUBSEQUENT

TO THE PERFORMANCE OF THIS AGREEMENT.

- (D) Survival. This Section 5.1 shall survive the termination or expiration of this Agreement.

SECTION 5.2 ASSIGNMENT AND TRANSFER

No assignment of this Agreement or any right occurring under this Agreement shall be made in whole or part by the Company without the express written consent of the County. The County shall have full discretion to approve or deny, with or without cause, any proposed assignment or assignment by the Company. Any assignment of this Agreement made by the Company without the express written consent of the County shall be null and void and shall be grounds for the County to declare a default of this Agreement and immediately terminate this Agreement by giving written notice to the Company, and upon the date of such notice this Agreement shall be deemed immediately terminated, and upon such termination all liability of the County under this Agreement to the Company shall cease, and County shall have the right to call upon the Guarantor and shall be free to negotiate with other contractors or any other person or company for the service of the franchise area which is the subject of this Agreement. In the event of any assignment approved by the County, assignee shall fully assume all the liabilities of the Company.

For purposes of this section, a parent, subsidiary or holding company shall mean any person, corporation or company holding, owning or in control of more than 5% stock or financial interest of another person, corporation or company.

For purposes of this section, assignment means: (1) Selling, exchanging, or otherwise transferring to a third party effective control of Company management; (2) Selling, exchanging, or otherwise transferring to a third party any of the Company's assets dedicated to its performance obligations, herein, unless such assets are promptly replaced with assets of greater or equal value and equivalent function; (3) Issuing stock or selling, exchanging, or otherwise transferring eight (8) percent or more of the then-outstanding common stock of the Company or Guarantor to an entity other than the shareholders owning said stock as of the Contract Date; (4) Any dissolution, reorganization, consolidation, merger, recapitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction that results in a change of ownership or control of the Company or the Guarantor; (5) Any combination of the foregoing (whether or not in related or contemporaneous transactions) that effects a change of ownership or control of the Company.

SECTION 5.3 RECORDS

Company specifically acknowledges its obligations to comply with §119.0701, F.S., with regard to public records, and shall:

- (A) keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services required under this Agreement;
- (B) upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 Florida Statutes or as otherwise provided by law;
- (C) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
- (D) meet all requirements for retaining public records and transfer, at no cost to the County, all public records in possession of Company upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology system of the County.

The County shall have final decision on whether records are exempt from disclosure under Chapter 119, Florida Statutes.

IF THE COMPANY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE COMPANY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, PUBLICRECORDS@LEEGOV.COM, OR <http://www.leegov.com/publicrecords>.

SECTION 5.4 NO DISCRIMINATION, PREVAILING WAGES AND AFFIRMATIVE ACTION

During the performance of this contract, the Company agrees as follows:

The Company will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Company will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Company agrees to post in conspicuous places, available to employees and

Notices shall be effective when received at the address as specified above. Changes in the respective address to which such notice is to be directed may be made from time to time by written notice. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received (i.e.; printed) after 5:00 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their duly authorized officers or representatives as of the date first above written.

WITNESS/ATTEST:

COUNTY OF LEE, FLORIDA

By: _____
Clerk of the Board of County
Commissioners

By: _____
Commissioner Director

WITNESS/ATTEST:

By: _____

Name: _____

Title: _____

APPENDIX 1
COUNTY FACILITY OPERATION AND MAINTENANCE PLAN(S)
SOLID WASTE PERMITS

APPENDIX 2
LANDFILL DRAWINGS SERVICE AGREEMENT EXHIBITS

APPENDIX 3
STANDARDS AND PROCEDURES
FOR CONTRACT PERFORMANCE INCENTIVES AND PENALTIES

**STANDARDS AND PROCEDURES
FOR CONTRACT PERFORMANCE INCENTIVES AND PENALTIES**

The Company will measure the amount of airspace consumed in the areas where waste was placed during each operational year to determine the Operational Density. An Operational Density shall be determined for the Class I Ash Monofill, the Class I MSW Landfill, and the Class III Landfill. Only the Operational Density at the Class I MSW Landfill and the Class III Landfill will be used to determine Performance Incentive / Penalty. Historic densities for the Landfill Operations Areas, and a sample Base Fee and Tonnage Fee calculation are provided at the end of this Appendix.

Airspace consumed shall be determined by comparing the topographic survey from the previous year to the current year's topographic survey and within the determined boundary of where waste was filled during the operational year. The Company shall provide advance notice of at least 72 hours prior to the survey. The airspace consumed calculation shall be the fill volume within the boundary of where waste was placed for the operational year and not the full extent of the landfill permitted boundary.

Stockpile deductions for material piles in place at time of survey and other deductions approved by the Contract Administrator shall be allowed. All deductions and waste-fill boundaries shall be confirmed by the County and the Company in the field within 24-hours of when the survey takes place and confirmed by engineering representatives of the County and the Company. Any cut value will not be included as a deduction in the calculation as it should be minimized or near zero to stay only within the area of waste fill for the operational year. All deductions shall include a map and quantity calculations justifying the quantity for the deductions within the boundary of the operational area for the year.

As-built drawing top-of-drainage-soil elevations shall be used to calculate the operational density for initial placement of waste into the cell. A deduction for the tons of waste placed and the volume consumed in cubic yards shall be provided for the initial 4-foot "fluff layer" placement of waste in a new cell. Tons of waste to be allocated to the "fluff layer" shall be confirmed by the Contract Administrator.

The Company shall use the daily tonnage reports provided by the County of waste materials received at each Landfill Operations Area and the topographic survey provided by the Company to calculate the Operational Density.

The Annual Operational Density shall be calculated as follows:

Example 1 – The information provided is presented for illustrative purposes only to demonstrate the density calculation method.

- Airspace consumed between October 3, 2022 and October 4, 2023 = 326,678 CY (Fill)

Only the fill quantity calculated from the comparison of the topographic survey surfaces in AutoCAD within the boundary of the operational area will be used for airspace consumed. Any cut value will not be included as a deduction in the calculation since it should be minimized or near zero to stay only within the area of waste fill for the operational year.

- Total stockpile = 0 CY

Stockpile deductions are as approved by the Contract Administrator for any stockpiles identified on the date of the survey. Refer to discussion above for allowed deductions. All deductions shall include a map and quantity calculations from the Contractor justifying the quantity for the deductions within the boundary of the operational area for the year.

- Total airspace consumed for Fluff Lift between survey dates = 0 CY

If applicable, the fluff lift will be calculated using 4' times the area of the fluff lift in acres and converted to cubic yards.

- Total Airspace Consumed after Deductions = 326,678 CY

Total airspace consumed = Airspace consumed – Deductions – Fluff Lift Airspace Consumed

- Total tons landfilled between survey dates (as provided by the County in tonnage report) = 232,405 tons

- Total Fluff Lift Tonnage reduction = 0 Tons

If applicable, the fluff lift tonnage reduction will be calculated using information provided by the Company. Information provided by the Company shall include weigh tickets and dates for each load of waste placed in the fluff lift. Weigh tickets to be allocated to the “fluff layer” shall be discussed with the Contract Administrator at the weekly meetings with the Site Supervisor.

- Total Tonnage to be used in calculation = 232,405 tons

Total Tonnage = Total Tons Landfilled – Total Fluff Lift Tonnage Reduction

- The Annual Operation Density = 1,422.8 pound per cubic yard

Density = Total Tonnage to be used for Calculation x 2,000 (lbs/ton) / Total Airspace consumed after Deductions (cubic yards)

The Annual Operational Density will be calculated for each of the three Landfill Operations Area, however only the Annual Operation Densities for the Class I MSW Landfill and the Class III Landfill will apply to the Operational Density Performance Incentive.

If the Operational Density Performance Incentive is earned, it will be valued as shown below:

Class I MSW Landfill Performance Incentive = 30% of the tons of airspace saved multiplied by the current published Lee County MSW gate rate at the Facility. The tons of airspace saved shall be calculated as the difference between the volume consumed at the achieved Operational Density and the volume that would have been consumed at the Point of Calculation density, per Table 3.2 of this Agreement. The volume of airspace saved will be converted to tons of airspace saved using the achieved Operational Density.

Class III Landfill Performance Incentive = 20% of the tons of airspace saved multiplied by the current published Lee County Class III gate rate at the Facility. The tons of airspace saved shall be calculated as the difference between the volume consumed at the achieved Operational Density and the volume that would have been consumed at the Point of Calculation density, per Table 3.2 of this Agreement. The volume of airspace saved will be converted to tons of airspace saved using the achieved Operational Density.

The Performance Incentive will be calculated annually; however the Company may choose each month if it believes the Incentive will be met through quarterly surveys or other metrics. If the Company chooses to assume the incentive will be met and the Contract Administrator concurs, 50% of the Incentive will be paid to the Company and 50% will be accrued for final true-up following the end of the Contract Year. Final true-up will occur as part of the December billing cycle.

If the Operational Density Performance Penalty is earned, it will be valued as shown below:

- Class I MSW Landfill Performance Penalty = 30% of the tons of airspace lost multiplied by the current published Lee County MSW gate rate at the Facility. The tons of airspace lost shall be calculated as the difference between the volume consumed at the achieved Operational Density and the volume that would have been consumed at the Point

of Calculation density, per Table 3.2 of this Agreement. The volume of airspace lost will be converted to tons of airspace lost using the achieved Operational Density.

- Class III Landfill Performance Penalty = 20% of the tons of airspace lost multiplied by the current published Lee County Class III gate rate at the Facility. The tons of airspace lost shall be calculated as the difference between the volume consumed at the achieved Operational Density and the volume that would have been consumed at the Point of Calculation density, per Table 3.2 of this Agreement. The volume of airspace lost will be converted to tons of airspace lost using the achieved Operational Density.

Lee-Hendry Landfill Historic Densities

Class I MSW Landfill										
Period Start	Period End	Remaining Volume (CY)	Period Airspace Used (CY)	Tons landfilled	Period Density (lb/cy)	Total Waste Accepted (tons)	Total Volume Filled (cy)	Historic Apparent Density (lb/cy)	Built Footprint (AC)	% Ash for related FY
11/21/2016	12/4/2017	1,094,148	33,459	24,733	1,478	1,664,025	1,676,343	1,985	38	0%
12/4/2017	12/23/2018	980,936	130,210	110,441	1,696	1,758,133	1,793,449	1,961	38	51%
12/23/2018	12/5/2019	908,455	76,779	71,891	1,873	1,831,977	1,870,228	1,959	38	43%
12/5/2019	10/1/2020	860,209	53,542	51,352	1,918	1,878,111	1,923,770	1,953	38	37%
10/1/2020	10/5/2021	650,640	160,743	162,295	2,019	2,040,396	2,084,513	1,958	38	45%
10/5/2021	10/3/2022	821,189	209,088	185,724	1,777	2,226,130	2,293,601	1,941	38	37%
10/3/2022	10/4/2023	7,831,087	326,678	232,405	1,423	2,459,357	2,620,279	1,877	38	3%
Class I Ash Monofill										
Period Start	Period End	Remaining Volume (CY)	Period Airspace Used (CY)	Tons landfilled	Period Density (lb/cy)	Total Waste Accepted (tons)	Total Volume Filled (cy)	Historic Apparent Density (lb/cy)	Built footprint (AC)	
11/21/2016	12/4/2017	1,947,606	162,588	195,073	2,400	1,580,420	1,163,272	2,717	36	
12/4/2017	12/23/2018	1,713,671	99,035	133,990	2,706	1,713,151	1,254,575	2,731	36	
12/23/2018	12/5/2019	1,621,882	98,932	138,256	2,795	1,857,105	1,353,507	2,744	36	
12/5/2019	10/1/2020	1,546,666	76,546	120,231	3,141	1,967,422	1,430,053	2,752	36	
10/1/2020	10/5/2021	1,462,596	47,657	74,868	3,142	2,042,262	1,477,711	2,764	36	
10/5/2021	10/3/2022	1,412,867	45,764	69,611	3,042	2,111,874	1,523,475	2,772	36	
10/3/2022	10/4/2023	1,372,977	83,810	132,178	3,154	2,244,458	1,607,285	2,793	36	
Class III Landfill										
Period Start	Period End	Remaining Volume (CY)	Period Airspace Used (CY)	Tons landfilled*	Period Density (lb/cy)	Total Waste Accepted (tons)	Total Volume Filled (cy)	Historic Apparent Density (lb/cy)	Built Footprint (AC)	
11/21/2016	12/4/2017	1,618,547	98,230	58,066	1,182	270,172	337,460	1,601	25	
12/4/2017	12/23/2018	1,447,771	180,191	130,754	1,451	384,628	509,917	1,509	25	
12/23/2018	12/5/2019	1,337,385	118,133	82,590	1,398	472,101	628,050	1,503	25	
12/5/2019	10/1/2020	1,233,598	109,053	84,175	1,544	549,774	737,103	1,492	25	
10/1/2020	10/5/2021	1,061,355	156,296	123,692	1,583	673,476	893,399	1,508	25	
10/5/2021	10/3/2022	931,896	133,194	104,484	1,569	777,861	1,026,593	1,515	25	
10/3/2022	10/4/2023	602,987	326,678	251,873	1,542	1,030,608	1,355,346	1,521	25	

EXAMPLE BASE FEE, TONNAGE FEE, AND PERFORMANCE INCENTIVE / PENALTY CALCULATION

EXAMPLE BID VALUES BY COMPANY

PROVIDED BY LCSW

EXAMPLE DATA FOR BILLING

MONTH DAYS IN MONTH	Oct-23 23.2	Nov-23 22.2	Dec-23 21.5	Jan-24 23.2
CLASS I MSW TONS DELIVERED	20,185	18,194	20,067	20,494
CLASS I C&D TONS DELIVERED	0	0	0	0
CLASS III TONS DELIVERED	12,420	9,857	9,103	9,753
ASH TONS DELIVERED	10,279	8,533	8,544	11,479
"OTHER" TONS DELIVERED	755	572	614	356
TOTAL TONS	43,639	37,156	38,328	42,082
TONS/DAY	1881.0	1673.7	1782.7	1813.9

EXAMPLE BASE AND TONNAGE FEES

	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000
BASE FEE	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000
TONNAGE FEE				
"CLASS I MSW" and "CLASS I C&D"				
TONNAGE RATE	\$7.00	\$7.00	\$7.00	\$7.00
"CLASS I MSW / CLASS I C&D" GROSS				
TONNAGE FEE (tons above 10k ton floor)	\$ 71,294.86	\$ 57,357.65	\$ 70,466.13	\$ 73,458.70
"CLASS III" TONNAGE RATE	\$ 5.00	\$ 5.00	\$ 5.00	\$ 5.00
"CLASS III" GROSS TONNAGE FEE (tons above 5k ton floor)	\$ 37,099.70	\$ 24,283.55	\$ 20,513.40	\$ 23,763.95
"OTHER" TONNAGE RATE	\$ 6.00	\$ 6.00	\$ 6.00	\$ 6.00
"OTHER" GROSS TONNAGE FEE	\$ 4,532.16	\$ 3,433.50	\$ 3,685.68	\$ 2,134.68
"ASH" TONNAGE RATE (tons above 3k ton floor)	\$ 4.00	\$ 4.00	\$ 4.00	\$ 4.00
"ASH" GROSS TONNAGE FEE	\$ 29,116.32	\$ 22,132.76	\$ 22,177.16	\$ 33,916.32
TOTAL BASE +TONNAGE FEES	\$ 392,043.04	\$ 357,207.46	\$ 366,842.37	\$ 383,273.65

COMPANY REQUESTS MONTHLY PERFORMANCE INCENTIVE/PENALTY - CLASS I MSW LANDFILL

	MSW	C&D
BONUS PARAMETERS:	>1800	>1650
NO BONUS:	1550-1800	1400-1650
POINT OF CALCULATION	1675	1525
PENALTY PARAMETER:	<1550	<1400

ACHIEVED CLASS I OPERATIONAL DENSITY (LB/CY)	1801.0	1801.0	1801.0	1801.0
TONS WASTE MATERIALS PLACED IN CLASS I MSW LF	20185.0	18194.0	20066.6	20494.1
VOLUME CONSUMED CLASS I MSW LF (CY)	22415.3	20204.3	22283.8	22758.6
DENSITY POINT OF CALCULATION (LBS/CY)	1675	1675	1675	1675
POINT OF CALCULATION VOLUME (CY)	24101.5	21724.1	23960.1	24470.6
VOLUME SAVED/(LOST) BY COMPANY	1686.2	1519.8	1676.3	1712.0
TONNAGE SAVED/(LOST) BY COMPANY	1518.4	1368.6	1509.5	1541.6
LEE COUNTY CLASS I MSW GATE RATE	\$ 63.56	\$ 63.56	\$ 63.56	\$ 63.56
30% VALUE/(PENALTY) SHARE TO COMPANY	\$ 28,952.71	\$ 26,096.84	\$ 28,782.89	\$ 29,396.10
CLASS I MSW LANDFILL PERFORMANCE INCENTIVE ALLOWED PENDING TRUE-UP (50%)	\$ 14,476.35	\$ 13,048.42	\$ 14,391.45	\$ 14,698.05

COMPANY REQUESTS MONTHLY PERFORMANCE INCENTIVE/PENALTY FOR CLASS 3 TONS

	MSW	C&D
BONUS PARAMETERS:	>1800	>1650
NO BONUS:	1550-1800	1400-1650
POINT OF CALCULATION	1675	1525
PENALTY PARAMETER:	<1550	<1400

ACHIEVED CLASS III OPERATIONAL DENSITY (LB/CY)	1682.0	1682.0	1682.0	1682.0
TONS WASTE MATERIALS PLACED IN CLASS III LANDFILL	12419.9	9856.7	9102.7	9752.8
VOLUME CONSUMED CLASS III LF (CY)	14768.1	11720.2	10823.6	11596.7
DENSITY POINT OF CALCULATION (LBS/CY)	1525	1525	1525	1525
POINT OF CALCULATION VOLUME (CY)	16288.4	12926.8	11937.9	12790.5
VOLUME SAVED/(LOST) BY COMPANY	1520.4	1206.6	1114.3	1193.9
TONNAGE SAVED/(LOST) BY COMPANY	1278.6	1014.8	937.1	1004.1
LEE COUNTY CLASS III GATE RATE	\$ 63.94	\$ 63.94	\$ 63.94	\$ 63.94
20% VALUE/PENALTY SHARE TO COMPANY	\$ 16,351.29	\$ 12,976.70	\$ 11,984.00	\$ 12,839.89
CLASS III LANDFILL PERFORMANCE INCENTIVE ALLOWED PENDING TRUE-UP (50%)	\$ 8,175.64	\$ 6,488.35	\$ 5,992.00	\$ 6,419.95

TOTAL PROPOSED INCENTIVE/PENALTY EARNED:	\$ 45,304.00	\$ 39,073.54	\$ 40,766.89	\$ 42,235.99
TOTAL PROPOSED BILLING (BASE FEE, TONNAGE FEE, AND	\$ 414,695.04	\$ 376,744.23	\$ 387,225.82	\$ 404,391.65

APPENDIX 4
REQUIRED OPERATING PERIOD INSURANCE

REQUIRED OPERATION PERIOD INSURANCE

Minimum Insurance Requirements: *Risk Management in no way represents that the insurance required is sufficient or adequate to protect the vendors' interest or liabilities. The following are the required minimums the vendor must maintain throughout the duration of this contract. The County reserves the right to request additional documentation regarding insurance provided*

- a. **Commercial General Liability** - Coverage shall apply to premises and/or operations, products and completed operations, independent contractors, contractual liability exposures with minimum limits of:

\$1,000,000 per occurrence
\$2,000,000 general aggregate
\$1,000,000 products and completed operations
\$1,000,000 personal and advertising injury

- b. **Business Auto Liability** - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$1,000,000 combined single limit (CSL); or
\$500,000 bodily injury per person
\$1,000,000 bodily injury per accident
\$500,000 property damage per accident

- c. **Workers' Compensation** - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Workers Compensation exemptions may be accepted with written proof of the State of Florida's approval of such exemption. Employers' liability will have minimum limits of:

\$500,000 per accident
\$500,000 disease limit
\$500,000 disease – policy limit

- d. **Pollution Liability** – Covering property loss and liability arising from pollution-related damages, for sites that have been inspected and found uncontaminated. Transporter moving hazardous products or waste as cargo aboard the transporter's truck:

\$1,000,000 bodily injury / property damages / cleanup, including wrongful delivery

**The required minimum limit of liability shown in a. and b. may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies." In which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."*

Verification of Coverage:

1. Coverage shall be in place prior to the commencement of any work and throughout the duration of the contract. A certificate of insurance will be provided to the County's Risk Manager for review and approval. The certificate shall provide for the following:

a. Under the Description of Operations, the following must read as listed:

“Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials are automatic additional insureds and includes an automatic waiver of subrogation with regard to general liability. The certificate holder is an additional insured on a primary and noncontributory basis with regards to general liability.”

b. The certificate holder must read as follows

Lee County, a political subdivision and Charter County of the State of Florida
P.O. Box 398
Fort Myers, Florida 33902

Verification of Coverage

Coverage shall be in place prior to the commencement of any work and throughout the duration of the contract. A certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:

1. The certificate holder shall read as follows:

Lee County Board of County Commissioners
P.O. Box 398
Fort Myers, Florida 33902

2. “Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials” will be named as an "Additional Insured" on the General Liability policy, including Products and Completed Operations coverage.

1.1 Subcontractors

It is the responsibility of the Company to ensure that all subcontractors comply with all insurance requirements.

APPENDIX 5
OPERATION AND PRICE INDEX

OPERATION AND PRICE INDEX

The Base Fee (Fixed) will be adjusted (up or down) in accordance with the Operation Price Index (“OPI”) as set forth in the Agreement and as set forth below, with an annual cap of 3.5% percent increase.

The Operation Price Index for Contract Year “n” shall be the number determined as follows:

- | | | |
|----------|---|--|
| 0.7 | X | Labor Index for Contract Year “n” divided by Labor Index for the preceding Contract Year (“LI”); |
| plus 0.3 | X | Machinery and Equipment Index for Contract Year “n” divided by Machinery and Equipment Index in the preceding Contract Year (“MEI”). |

$$\text{OPI} = 0.7 \text{ LI} + 0.3 \text{ MEI}$$

Where:

- (a) The index for any Contract Year is the index published in October of the prior Contract Year for the FL area. To the extent the index is preliminary, such index shall be utilized until a final index is published, whereupon the OPI shall be recalculated utilizing the final index and any adjustments in the Base Fee (Fixed) from utilizing the preliminary index due to either party shall be paid in the next schedule payment period without interest due thereon;
- (b) The Labor Index is the average hourly earnings of Production Workers as published by the BLS under Utilities Industry (Series ID: CEU4422000008) for such current quarter, Not Seasonally Adjusted;
- (c) The Machinery and Equipment Index is the BLS Producers Price Index Table 6, Commodity Code 114 for General Purpose Machinery and Equipment (Series ID: WPU114), Not Seasonally Adjusted.

APPENDIX 6
FORM OF GUARANTY AGREEMENT

GUARANTY AGREEMENT

from

[GUARANTOR]

to

THE COUNTY OF LEE, FLORIDA

Dated

, 202X

GUARANTY AGREEMENT

This Guarantee made as of the __ day of _____, 20__ by _____ (Guarantor) having its principal place of business in Florida to the benefit of Lee County, Florida, a political subdivision of the State of Florida, ("County"),

WITNESSETH:

WHEREAS, XXXXXX a Florida corporation, (the "Company") having an office at XXXXXXXXXXXXXXXX has entered into the Service Agreement (the "Agreement") with the County dated as of __, 202X.

WHEREAS, Guarantor is willing to guarantee, as set forth below, the performance of the Company under the Agreement; and

WHEREAS, County would not enter into the Agreement unless the Guarantor provided this Guarantee.

NOW, THEREFORE, as an express inducement to the County to enter into this Agreement, Guarantor agrees and guarantees as follows:

Guarantor hereby absolutely and unconditionally guarantees the full and prompt performance by the Company of all of the Company's obligations under the Agreement in accordance with the terms and conditions therein.

This Guarantee shall be governed by the laws of the State of Florida exclusive of the choice of law rules thereof, and Guarantor hereby agrees to the service of process in the State of Florida for any claim or controversy arising out of this Guarantee or relating to any breach hereof.

This Guarantee shall be binding upon and enforceable against the Guarantor, its successors, assigns and legal representatives (including any successor by merger or consolidation or any transferee of all or substantially all of the properties of Guarantor), whether or not such obligations are expressly assumed by such successor, assignee or transferee and is for the benefit of the County, and any permitted successors and assigns under the Agreement.

This Guarantee may be enforced by the County without first resorting to any legal or administrative actions against Company or exhausting any other remedies that the County may have.

Each and every Event of Default under the Agreement shall give rise to a separate cause of action hereunder, and separate demands may be brought hereunder by the County as each cause

of action arises. Guarantor waives presentation to, demand of performance from, and protest to the County of the obligations of the Company under the Agreement.

No failure or delay by the County in exercising any right, power or privilege hereunder or under the Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other right, power or privilege. No waiver, amendment, release or modification of this Guarantee shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the party against whom such waiver, amendment, release or modification is sought to be enforced.

Guarantor may not assign its obligations hereunder, except to a successor by merger or consolidation or to any transferee of all or substantially all of the assets of the Guarantor. Notice of any such assignment shall be given in writing to the County within thirty (30) days of the effective date of any such merger, consolidation or transfer.

The respective obligations of Guarantor to the County set forth in this Guarantee shall be absolute and unconditional, shall not be subject to any requirement that County first enforce any remedies it may have against the Company or any other Person, or any requirement to seek to recover from Company hereunder before proceeding against Guarantor hereunder, and shall not be subject to any claim of Guarantor against any other Person including the County, other than a claim that the matter giving rise to the County's claim is the subject of dispute resolution in good faith under the Agreement or in the courts of the United States or the State of Florida.

This Guarantee may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. The invalidity or unenforceability of one or more provisions of this Guarantee shall not affect the validity or enforceability of the remaining portions of this Guarantee. This Guarantee is entered into by Guarantor solely and exclusively for the benefit of the County, and may be enforced against Guarantor by the County.

Any term used but not otherwise defined herein and defined in the Agreement shall have the meaning attributed to it in the Agreement.

Notices to be given pursuant to this Guarantee unless otherwise stated shall be in writing and shall be served personally or sent by certified mail, return receipt requested, to:

If to the Guarantor: XXXXXXXXXXXX
with a copy to: XXXXXXXXXXXX

If to the County: Lee County Solid Waste Department
10500 Buckingham Road, Suite 200
Fort Myers FL 33905

or to such other address as shall be designated by such party in a written notice to the other party hereto. Any notice given pursuant to this Section if transmitted by certified mail shall be effective immediately upon receipt and if delivered by hand upon delivery.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in the name and on its behalf by its duly authorized officer as of the date first above written.

[GUARANTOR]

By: _____

Name: _____

Title: _____

SEAL
(Impressed on Execution copies)

Accepted and Agreed to by:
COUNTY OF LEE, FLORIDA

By: _____

Name: _____

Title: _____

THE COUNTY OF LEE, FLORIDA

By: _____

Name: _____

Title: _____

APPENDIX 7
NOT USED

APPENDIX 8
LANDFILL REMAINING LIFE PROJECTIONS

APPENDIX 9
TYPICAL RECORDKEEPING AND REPORTING FORMS

APPENDIX 10
SAMPLE SPECIAL WASTE PROGRAM

APPENDIX 11
WASTE MATERIAL TYPES

WASTE MATERIAL TYPES

LEE/HENDRY LANDFILL MATERIAL AND GRID LISTING FOR REFERENCE				
<u>INBOUND MATERIALS TO GRID</u>				
<u>GRID A = CLASS I ASH MONOFILL</u>				
<u>GRID B = CLASS I LANDFILL</u>				
<u>GRID C = LEE COUNTY COMPOST FACILITY</u>				
<u>GRID D = CLASS III LANDFILL</u>				
KEY	DESCRIPTION	PRIMARY GRID	SECONDARY GRID	<u>NEVER TO THIS GRID</u>
CFM SLUDGE	Nonhazardous wastewater treatment plant residuals generated by City of Ft. Myers Central or South WRF.	C	A	D
CONT SOIL	Special waste, including soil, mulch, dredge sediment contaminated with non-hazardous pollutant, including petroleum contaminated soil.	A		C,D
COVERG LASS	Screened recycled glass.	D	A	C
H ASBEST	Manifested asbestos generated in Hendry County; also used for other special wastes requiring a hole and cover.	D		A,B,C
H C&D	C & D generated in Hendry County	D		A,B,C
H HORT	Horticultural waste generated in Hendry County.	D		A,B,C
HBOAT/R V	Boats/RVs generated in Hendry County, drained of fluids and with salvage title.	D		A,B,C
HMSW	MSW generated in Hendry County	B	A	C,D
HSAND	Non-hazardous, manifested Special Wastes including granular fertilizer, grit and screen material, spent activated carbon, sand blast media, dry lime, tank cleaning material, or street sweeping material – generated in Hendry County.	A	B	C,D
HTIRE XL	Off road tires generated in Hendry County	A		C
L ASBEST	Manifested asbestos generated in Lee County; also used for other special wastes requiring a hole and cover.	D		A,B,C

L C&D	C & D generated in Hendry County	D		A,B,C
L HORT	Horticultural waste generated in Lee County.	D		A,B,C
L HORT RES	Non-commercial horticultural waste generated in Lee County.	D		A,B,C
LASH	Combined ash from the Lee County Resource Recovery Facility.	A	B	C,D
LBOAT/RV	Boats/RVs generated in Lee County, drained of fluids and with salvage title.	D		A,B,C
LCLASSIII	Class III generated in Lee County.	D		A,B,C
LMSW	MSW generated in Lee County	B	A	C,D
LTIRECHIPS	Shredded tires, may be used as initial cover if rule requirements are met.	B		C
RSM	Recycled recovered screen material from the Lee County C&D Recycle Facility	D		A, B
SAND	Non-hazardous, manifested Special Wastes including granular fertilizer, grit and screen material, spent activated carbon, sand blast media, dry lime, tank cleaning material, or street sweeping material – generated in Lee County.	A		C,D
SLUDGE HEN	Non-hazardous, manifested Special Waste including water and wastewater treatment residuals, alum sludge, lime sludge, other dewatered sludges – generated in Hendry County	A		B, D
SLUDGE LEE	Non-hazardous, manifested Special Waste including water and wastewater treatment residuals, alum sludge, lime sludge, other dewatered sludges – generated in Lee County	C	A	B, D
TIRE XL	Off road tires generated in Lee County	A		C
LSHIN	Dedicated loads of roof demolition materials.	D	A,B	C

Notes on Inbound Materials: All inbound materials need to have a grid assigned by scale house staff. Contract Administrator must approve sending a material to a secondary grid.

APPENDIX 12
ADMINISTRATIVE FINES

ADMINISTRATIVE FINES

If the Company fails to apply cover materials in accordance with Operational Permits, the County shall provide notice to the Company. If the Company fails to remedy the issue within 48-hours of Notice from the County, Administrative Fines in the amount of \$900 per day will be assessed.

If the Company fails to keep and utilize on site the levels of manpower required to provide the Operation Services in accordance with the Agreement, the County shall provide notice to the Company. If the Company fails to remedy the issue within 72 hours of Notice from the County, Administrative Fines in the amount of \$900 per day will be assessed.

If the Company fails to provide and maintain Landfill Equipment in working order, the County shall provide Notice to the Company. If the Company fails to remedy the issue within 72 hours of Notice from the County, Administrative Fine in the amount of \$900 per day will be assessed until such time that the County determines the issue has been resolved.

If the Company is notified of a permit condition violation and fails to remedy the violation within 72 hours of such Notice from the County, Administrative Fines of \$1,800 per day will be assessed until such time as the County determines that the issue has been resolved. This does not relieve Company of financial or legal obligations under Section 2.15.

If the Company fails to place waste loads in the Landfill Operations Area designated as “primary” for that Material Type in Appendix 11, without approval from the Contract Administrator, Administrative Fines of \$2,000 per occurrence will be assessed.

APPENDIX 13
BID SCHEDULE

Insert Bid Schedule from Solicitation Here

APPENDIX 14
LANDFILL EQUIPMENT LIST

Insert Landfill Equipment List from Solicitation Response Here

APPENDIX 14
LANDFILL EQUIPMENT LIST

APPENDIX 15 – COST SCHEDULE

Item/Labor Category	Rate
Surface Emission Monitoring, per NSPS standards	\$/day
Groundwater monitoring well installation, 20 – 40 feet bls	\$/LF
Landfill gas well raising (above ground)	\$/LF
60 mil HDPE liner repair above ground, clean and prep, test and provide repair report	\$/day
60 mil HDPE liner repair material	\$/SF
Slope earthwork crew (light grading) - dozer, operator	\$/day
Slope earthwork crew (excavation and grading) - dozer, excavator, end dump, operators and material removal	\$/day
Leachate forcemain jetting and cleaning	\$/day
Cover soil, supply and stockpile	\$/ton
Drainage sand, supply and stockpile	\$/ton
Baserock, supply and stockpile	\$/ton
Operate for Extended Delivery Hours (above four hours per week for more than two continuous weeks)	\$/hour
Leachate collection and removal system troubleshooting	\$/hour
Silt fence, supply and install	\$/LF
Supplemental mowing	\$/day
Day labor	\$/day/person
Lined pond sediment removal	\$/day
Sod, delivered and installed	\$/SF
Seed and mulch	\$/SF
Stormwater ditch clean-out	\$/LF
Equipment rental reimbursement	At cost, no markup

**Items not listed above may be negotiated as necessary between the County and Vendor.