

STATE OF VIRGINIA
CITY OF MARTINSVILLE

AGREEMENT

THIS AGREEMENT entered into this 24th day of November, 2020 by and between the City of Martinsville, a municipal corporation and political subdivision of the Commonwealth of Virginia (hereinafter referred to as "City"), party of the first part, and the County of Henry ("County"), a political subdivision of the Commonwealth of Virginia, party of the second part:

WITNESSETH

WHEREAS, the City has contracted for long term solid waste disposal services with First Piedmont Corporation ("Contractor"), said services to include the construction and operation of a transfer station at the City's Landfill, transportation, and disposal of industrial, commercial, and municipal solid waste formerly delivered to the City of Martinsville Landfill, said waste originating from generators throughout the City and Henry County; and

WHEREAS, the County desires to participate as a customer at the transfer station, and

WHEREAS, the City is willing to accept the County as a customer upon the terms and conditions as set forth herein,

NOW, THEREFORE, that for and in consideration of the mutual and respective covenants and agreements contained herein, the parties to this Agreement hereby agree as follows:

SECTION 1

Definitions

- 1.1 "Acceptable Waste" shall include municipal solid waste, commercial waste, and industrial waste, as defined in the Solid Waste Management Regulations as promulgated by the Virginia Department of Environmental Quality and any other waste approved for disposal by the Landfill.
- 1.2 "Agreement" shall mean this document and all other provisions, specifications, insurance certificates, or amendments thereto.
- 1.3 "Business Hours" shall refer to the normal operation schedule of the Transfer Station which will operate weekly Monday through Friday, 7:00 am to 5:00 pm, 7:00 am to 12:00 noon on Saturday for the general public, and an additional five hours on Saturday as needed to accommodate the County's weekend collection program. Acceptable Waste shall be accepted at the Transfer Station up until one half hour before the designated closing time. The Transfer Station shall close for the following holidays unless provided for otherwise in the Agreement: New Year's Day, Thanksgiving Day and Christmas Day.
- 1.4 "Consumer Price Index (CPI) Adjustments" shall be defined as set forth in the attached Exhibit B entitled "CPI Adjustments".

- 1.5 **“Contract Manager”** shall mean the Public Works Director of the City of Martinsville (or such other designated agent of the City).
- 1.6 **“County”** shall mean the political subdivision of the Commonwealth of Virginia known as Henry County.
- 1.7 **“Green Waste”** shall mean: (i) all debris waste resulting from land clearing operation including but not limited to stumps, wood, brush, leaves, soil, and road spoils; (ii) all yard waste including but not limited to decomposable waste materials generated by yard and lawn care including leaves, grass trimmings, brush, wood chips, and shrub and tree trimmings, and (iii) all other organic waste that may be produced by residential or commercial landscaping or other similar activities, and shall include, organic yard waste, limbs, brush, stumps, Christmas trees, and lawn cuttings.
- 1.8 **“Landfill”** shall refer to the First Piedmont Corporation Industrial Waste landfill located in Pittsylvania County, Virginia, VDEQ permit #65; the Pittsylvania County Sanitary Waste Landfill operated by Pittsylvania County and located in Dry Fork, Virginia, VDEQ permit # SWP 571, or any other landfill mutually approved by the City and Contractor. The Landfill shall be permitted under the appropriate regulations and/or regulatory agency to accept the types of waste to be delivered to the facility.
- 1.9 **“Martinsville Landfill”** shall refer to the landfill owned by the City located in Henry County Virginia which address is 225 Arden Circle, Martinsville, Virginia.
- 1.10 **“Scrap Metal”** shall mean any object constructed of metal or metal alloy, including bits and pieces of metal parts such as bars, rods, wire, empty containers, or metal pieces that may be combined together with bolts or soldering, and which constitute a substantial volume of material, which warrants the removal of such items from the waste stream for recycling purposes when it is economically and commercially reasonable and viable to removed and recycle such objects, and when such objects are readily apparent within the waste stream.
- 1.11 **“Transfer Station”** shall mean the facility to be owned, constructed, and operated by the Contractor at the Martinsville Landfill.
- 1.12 **“Unacceptable Waste”** shall mean any materials received by the Contractor at the Transfer Station that is not accepted by the Landfill, or which the Landfill charges additional fees to dispose of, or any waste not specifically provided for herein that is covered by any federal or state regulation pertaining to the storage, transportation or disposal of hazardous materials; such waste shall include but is not limited to paint, batteries, electronic equipment, industrial chemicals, medical waste, biological waste, heavy metal such as lead and mercury, asbestos, explosive corrosive or combustible chemicals including but not limited to acids, petroleum products, radioactive materials, toxic or noxious chemicals, and products the production of which have been heavily regulated or abolished by the federal government.
- 1.13 **“White Goods”** shall mean all large household appliances constructed of metal, including all refrigerators, ovens, dishwashers, water heaters, furnaces, and air conditioning units.

SECTION 2

Scope of Services Offered by Contractor

2.1 Scope of Transfer Station Services. The Contractor will build, operate, and maintain the Transfer Station and scale house at the City's landfill site. Any licenses, fees, or permits necessary for the operation of the Transfer Station will be the responsibility of the Contractor. All operational practices, materials, and equipment of the Contractor shall comply with all applicable federal, state, and local codes.

2.2 Scope of Transportation and Disposal Services. Contractor shall have the exclusive right to transport and dispose of Acceptable Waste delivered to the Transfer Station. The Contractor shall furnish and maintain all equipment, trucks and drivers necessary and required for the hauling and disposal of Acceptable Waste delivered to the Transfer Station. The Contractor shall be responsible for loading the transfer trailers and delivering trailers from the Transfer Station to the Landfill. The Contractor shall comply with the applicable requirements of all federal and state regulatory agencies governing transportation and disposal of waste. Trucks used for transporting waste shall be in good repair, painted, and numbered. Services shall be provided in such a manner so as not to create a nuisance.

2.3 Scope of Recycling Services. The Contractor shall separate from the waste stream delivered to the Transfer Station, tires, White Goods, and Scrap Metal. The Contractor will determine the most economically viable means of having such material recycled. Any revenue generated from such operation shall revert to the Contractor. The Contractor shall provide weight records of such materials which may be used for recycling rate calculations by the City and County. At Contractor's sole discretion, Contractor may remove from the waste stream any and all recyclable material not described above. The Contractor shall have the sole and exclusive right to any revenues derived from such recycling activities.

2.4 Weekends/Holidays. The Contractor will operate the Transfer Station from 7:00 am to 12:00 noon on Saturday for the general public and an additional five hours as needed to accommodate the County's weekend collection program. The Contractor will operate on all holidays except those listed in Section 1.3 of this agreement.

SECTION 3

Payments to the Contractor

In consideration of the operation of the operation of the Transfer Station, transportation services, and disposing of the Acceptable Waste, the rates as shown in Exhibit A shall be the gate rate charged by the Contractor to all customers, including but not limited to the City and the County, of the Transfer Station. Payments by the County for tonnage delivered by County collection crews will be made on a monthly basis. The Contractor shall submit monthly invoices on or about the 10th day of the calendar month following the month for which the services, as set forth in Exhibit A, were provided. All such invoices shall be paid the County within 15 days after receipt. Rate increases shall be adjusted using the Consumer Price Index Adjustment Schedule on an annual basis as set forth in Exhibit B and based on rates in Exhibit A.

In addition to the foregoing, Contractor shall be entitled to receive a per ton fee adjustment to cover an increase in the per-ton fee equal to the amount of any fee surcharge, duty, or other charges of any nature imposed by the federal government, any agency thereof, by any state government, any agency thereof, or by any local government agency, which is payable by reason of the nature of the operations conducted by the contractor and any other sales or service taxes of general application to the transportation or disposal services that occurs after the date of this Agreement, provided pursuant to this

Agreement, Contractor shall be responsible for documenting the need or requirement of such adjustment. The Contractor shall also be entitled to an increase in the per-ton fee to offset the increased cost of operating the Transfer Station, transportation component, or disposal means resulting from changes in federal, state or local environment or other laws or regulations which become effective after the date of this Agreement, concerning the receipt, disposal or handling of waste as provided for in this Agreement. The Contractor shall be responsible for providing documentation regarding the need for such adjustment.

SECTION 4

Contract Term

This Agreement shall be for a term of five (5) years. The term shall begin January 1, 2021 and extend through December 31, 2025.

SECTION 5

Contractor's Relationship

5.1 Contractor as Independent Contractor. It is expressly agreed and understood that Contractor is in all respects an independent contractor as to the Services and is in no respect an agent, servant, or employee of the City or any of its contractual partners. This Agreement specifies the Services to be provided by the Contractor, but the method to be employed to accomplish the Services shall be at the sole discretion of the Contractor.

SECTION 6

County's Responsibility

6.1 Delivery of Waste. The County agrees to deliver to the Transfer Station for the term covered by the Agreement, all waste collected by the County or its subcontractors. This excludes any material that may be collected by the County for recycling purposes or any green waste (yard waste, leaves, limbs, brush, stumps, etc.) that may be handled in a more economical manner.

SECTION 7

Ownership of Waste/Unacceptable Waste

It is understood and agreed that the Contractor takes title and ownership of the acceptable waste upon delivery of said waste to the aforementioned Transfer Station and it is understood and agreed that it shall be the sole responsibility of the Contractor for disposal. Contractor will notify the delivering party if unacceptable waste is detected upon delivery to the Transfer Station and at its discretion, the Contractor may reject any such waste, however, the Contractor agrees to work with County for the handling and disposal of such waste. The Contractor will make arrangements for the proper handling and disposal of unacceptable waste, and will pass along to the delivering party, actual costs for such handling plus a reasonable markup for the Contractor's time.

SECTION 8

Force Majeure

From and after the date of this Agreement, Contractor is responsible for providing the solid waste handling and disposal services outlined in this Agreement. In the event that such performance by the Contractor is prevented, delayed, or hindered, Contractor shall provide alternative waste handling and disposal options to the City and its contractual partners to ensure the performance conditions covered by this Agreement are carried out.

SECTION 9

Conformance of Agreement with the Law and Enforcement

9.1 Conformance with Laws. It is the intent and understanding of the parties to this Agreement that each and every provision of law required to be inserted in this Agreement shall be, and is, inserted herein. Furthermore, it is hereby stipulated that every such provision is deemed to be inserted herein, and if through mistakes, or otherwise, any such provision is not inserted in correct form, then this Agreement shall upon application of either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party.

9.2 Severance. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

9.3 Choice of Law. This Agreement and the performance hereof shall be governed by and enforced under the laws of the Commonwealth of Virginia.

SECTION 10

Mediation

If any dispute arises between the parties that are a result of an ambiguity within this Agreement, the matter shall be submitted to mediation by an independent third party selected by the County and the City. In the event that the County and the City cannot agree on an independent third party, they shall each select an independent third party, and those two independent parties shall select a third independent third party who shall mediate the dispute. In all other disputes including any breach of the terms of this Agreement the parties reserve the right to institute legal proceedings to enforce the provisions of this Agreement.

SECTION 11

Entire Agreement & Modification

This Agreement, the exhibits attached hereto, and the other documents contemplated herein contain the entire agreement and understanding of the parties to this Agreement with respect to the transactions

contemplated herein; and this Agreement, the exhibits attached hereto, and the other documents contemplated herein supersede all prior understandings and agreements of the parties with respect to the subject matter hereof. The parties may amend, modify, and /or supplement this Agreement in such manner as may be agreed upon by the parties, provided such amendments, modifications, and /or supplement are reduced to writing and signed by the parties, their designated representatives, or their successors in interest. Throughout this Agreement, wherever the context requires or permits, the neuter gender shall be deemed to include the masculine and feminine, and the singular number to include the plural, and vice versa.

IN WITNESS WHEREOF, the City and County have each caused this Agreement to be signed and sealed on their behalf by their duly authorized officers or principals in two (2) original counterparts, each counterpart to be deemed the original Agreement without the need to account for the other and all of which counterparts together shall constitute.

City of Martinsville

By: Jem Sawanick
Title: CITY MANAGER

Attest: Heaven Roberts
Title: Clerk of Council

County of Henry

By: [Signature]
Title: County Administrator

Attest: Juha B. Steffen
Title: Administrative Asst.

EXHIBIT A

Contract Rates for Services

The following rates are for services covered by this Agreement. Rates will be effective January 1, 2021, with cost adjustments as provided for in Exhibit B:

Tipping Fee for Industrial/Commercial waste (excluding household and food waste) hauled to the Contractor's Landfill in Pittsylvania County, VA \$58.30/ton

Tipping Fee for all other Acceptable Waste hauled to the Pittsylvania County Sanitary Waste Landfill in Dry Fork, VA \$58.30/ton

Tipping Fee for hauling and disposal of Wastewater Treatment Sludge hauled to the Pittsylvania County Sanitary Waste Landfill in Dry Fork, VA \$45.51/ton

EXHIBIT B

CPI Adjustments

Contractor's rates as specified in Exhibit A of this Agreement shall be adjusted on January 1, 2022, and every succeeding January 1st thereafter during the Term of this Agreement, based on sixty percent (60%) of the annual rate for the latest 12 month Consumer Price Index-U as published by the United States Bureau of Labor Statistics (the "**Consumer Price Index (CPI) Adjustments**"), not to exceed 5% on an annual basis.

