

## Municipal Joinder Agreement

This Municipal Joinder Agreement (the "*Joinder Agreement*" or "*Agreement*") is made and executed on this \_\_\_\_ day of \_\_\_\_\_, 2016 (the "*Effective Date*") by and between the Municipal Review Committee, Inc., a Maine nonprofit corporation with offices at 395 State Street, Ellsworth, Maine 04605 (the "*MRC*") and \_\_\_\_\_, a [municipality] [solid waste disposal district] [other eligible entity] with offices at \_\_\_\_\_ ("*Joining Member*").

WHEREAS, the MRC was created and has operated since 1991 to represent its membership, consisting of Maine municipalities and public entities (the "*Charter Municipalities*"), in order to ensure the continuing availability to its members of long-term, reliable, safe and environmentally sound methods of solid waste disposal at a stable and reasonable cost; and

WHEREAS, the MRC is governed by a board of directors each of whom is elected by the membership to a three year term and all of whom represent, at large, all member communities; and

WHEREAS, the Charter Municipalities deliver municipal solid waste ("*MSW*") to the refused-derived fuel facility owned by the Penobscot Energy Recovery Company, L.P. ("*PERC*" or the "*PERC Partnership*") in Orrington, Maine, pursuant to long term waste disposal agreements (collectively, the "*Existing PERC Agreements*"); and

WHEREAS, the Existing PERC Agreements are scheduled to terminate on March 31, 2018; and

WHEREAS, the MRC has long experience reviewing operating financials of the PERC facility and has determined and recommended to the membership that it is not in the economic interest of its members to commit to a long term relationship obligating member communities to continue delivering municipal solid waste to the PERC facility beyond expiration of the current waste disposal agreements; and

WHEREAS, consistent with its mission, the MRC has investigated and developed alternative waste disposal arrangements to be available to its members on or about April 1, 2018, which arrangements would replace the Existing PERC Agreements upon their expiration; and

WHEREAS, Fiberight, LLC ("**Fiberight**" or, together with its successors or assignees, the "**Company**") has developed a technology for processing MSW into various marketable products and has expressed interest in developing a facility utilizing such technology in Maine; and

WHEREAS, the MRC and Fiberight have entered into a Development Agreement dated as of February 4, 2015, setting forth general business terms under which Fiberight proposes to develop, construct, maintain and operate a facility utilizing its technology to accept and process MSW (the "**Facility**"); and

WHEREAS, the MRC proposes to reach agreement with Charter Municipalities and other entities to supply to the Facility , in the aggregate, at least 150,000 tons of MSW per year; and

WHEREAS, the historical role of MRC has been to administer individual waste contracts on behalf of its members in order to provide an efficient and effective means of administering the Existing PERC Agreements and to maintain parity and fair treatment among and for its members; and

WHEREAS, tipping fees for municipal solid waste delivered to the proposed Fiberight Facility will be paid directly by each MRC member to Fiberight; and

WHEREAS, the MRC proposes to continue in its role administering revenue sharing among its members and providing for and managing various reserve funds while insulating each Joining Member from exposure to penalties for failure to deliver minimum quantities of municipal solid waste to the Fiberight Facility; and

WHEREAS, the MRC has acquired an option (the "**Site Option**") to purchase property in Hampden, Maine (the "Site") suitable for development of the Facility; and

WHEREAS, the MRC and Fiberight have negotiated a long-term lease of the Site (the "**Site Lease**") upon which Fiberight proposes to develop, construct, maintain and operate the Facility, such Site Lease to be executed following the anticipated exercise by the MRC of the Site Option and acquisition of the Site; and

WHEREAS, the MRC and Fiberight have executed a Master Waste Supply Agreement dated as of January 1, 2016 that, among other things, establishes a common set of terms and conditions pursuant to which interested Maine municipalities and other public and private

entities are expected to make long-term commitments for delivery of MSW to the Facility, which commitments would be memorialized through execution of Municipal Joinder Agreements in the form of this Agreement; and

WHEREAS, pursuant to 38 M.R.S. §1305(1), the Joining Member has responsibility under Maine law for ensuring availability of an option for disposal of MSW originating within its boundaries; and

WHEREAS, the Joining Member currently arranges for disposal of MSW originating within its boundaries by delivery to the PERC facility pursuant to an Existing PERC Agreement that is scheduled to terminate on March 31, 2018; and

WHEREAS, the Joining Member wishes to enter into a long term agreement for management and disposal of MSW originating within its boundaries [with service to commence as of the termination of its Existing PERC Agreement or as soon thereafter as feasible] pursuant to which it would commit to deliver MSW to the Facility on a long term basis and authorize the MRC to administer this Agreement and to otherwise represent its interests under this Agreement;

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein, and other good and valuable consideration each to the other paid, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1  
DEFINITIONS

Capitalized terms when used herein shall have the meanings set forth below. Other capitalized terms not otherwise defined in this Agreement shall, unless the context clearly requires otherwise, have the meanings ascribed to them in the Master Waste Supply Agreement.

**"Acceptable Waste"** shall have the definition set forth in Exhibit A to the Master Waste Supply Agreement.

**"Agreement" or "Joinder Agreement"** shall mean this Municipal Joinder Agreement.

**"Back-up Facility"** has the meaning set forth in Section 6.2.

**"Charter Municipalities"** shall mean the members of the MRC currently delivering MSW to the PERC Plant pursuant to the Existing PERC Agreements.

**"Debt Service Reserve Fund"** shall mean the Debt Service Reserve Fund currently administered by the MRC.

**"Delivery Assessment Reserve Fund"** shall mean the reserve fund created by the MRC pursuant to Section 3.3 as a reserve against payment of assessments to Fiberright for failure of the MRC to meet the Delivery Commitment prescribed under the Master Waste Supply Agreement.

**"Delivery Diversion Charge"** shall mean reimbursement by the Joining Member pursuant to Section 3.2 as a consequence of Acceptable Waste under its control being diverted to facilities other than the Facility for reasons other than those permitted hereunder.

**"Departing Municipalities"** shall mean Charter Municipalities that affirmatively elect not to become Joining Members or that otherwise do not sign a Municipal Joinder Agreement by the later of (i) seven days following the date of any scheduled town meeting of such Joining Member at which approval of the Municipal Joinder Agreement is to be considered, or (ii) May 1, 2016.

**"Effective Date"** shall mean the effective date of this Agreement.

**"Equity Charter Municipalities"** shall mean those Charter Municipalities having the status of Equity Charter Municipalities under the Existing PERC Agreements. **"Estimated Delivery Amount"** shall mean the estimated quantity of Acceptable Waste to which Joining Member has agreed pursuant to Section 3.3(b).

**"Event of Default"** has the meaning set forth in Article 10.

**"Extension Term"** shall have the meaning set forth in Section 2.1.

**"Force Majeure"** shall mean any unforeseeable act, event or condition, not in effect as of the Effective Date, that has had, or may reasonably expected to have, a material adverse impact on the rights or the obligations of either party under this Agreement; or a material adverse effect on the Facility, the Property or the Infrastructure or on the construction, ownership, possession or operation of the Facility, the Property or the Infrastructure, provided that such act, event or condition (a) is beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Agreement; (b) is not the result of willful or negligent action, inaction or fault of the party relying thereon; and (c) which, by the exercise of reasonable diligence, such party is unable to prevent or overcome.

Acts, events or conditions of Force Majeure shall include, without limitation; (i) acts of

God, epidemics, landslides, lightning, earthquakes, fires, hurricanes, floods, high-water washouts, and extraordinary storms (but excluding reasonably foreseeable weather conditions); (ii) a strike, work slowdown or similar industrial or labor action not exclusive to the Facility (iii) acts of the public enemy, wars, blockades, insurrections, riots, arrests and restraints by governments, civil disturbances, sabotage, and acts of terrorism or similar occurrences; (iv) catastrophic events such as explosions, breakage or accident to machinery or lines of pipe caused by the foregoing; (v) condemnation or taking by eminent domain of the Property or the Facility, in whole or in part, and (vi) a Change in Law which is not the result of the negligence or willful act of the party relying thereon. Force Majeure shall not include changes in market conditions for the supplies to or products of the Facility, and shall not include changes in the cost of the supplies, materials or labor needed to construct or operate the Facility, or that reduce the profitability of the Facility, unless specifically attributable to a specific Force Majeure event that affects the non-performing party as enumerated above.

**“Force Majeure Plan”** shall have the meaning set forth in Section 13.3 of the Master Waste Supply Agreement.

**“Indemnified Party”** shall have the meaning set forth in Section 8.3.

**“Indemnifying Party”** shall have the meaning set forth in Section 8.3.

**"Initial Term"** shall have the meaning set forth in Section 2.1.

**“Joining Member”** means the entity identified in the preamble to this Agreement.

**"Master Waste Supply Agreement"** means the proposed waste supply agreement between the MRC and Fiberright on substantially the terms set forth in the form of agreement attached to this Agreement as **Exhibit A**.

**"MRC Board"** shall mean the Board of Directors of the MRC as it may be constituted by vote of its members from time to time.

**“New Charter Municipalities”** shall mean those Charter Municipalities that are not Equity Charter Municipalities.

**"Non-Charter Municipalities"** shall mean Joining Members who were not Charter Municipalities.

**"Operating Funds"** shall mean the Operating Fund and an Operating Budget Stabilization Fund currently administered by the MRC.

"Party" shall mean a party to this Agreement and "Parties" shall mean both parties to this Agreement.

"Target Value Reserve Fund" shall mean the reserve fund established pursuant to paragraph 2 of Exhibit B of this Agreement.

"Term" shall mean the term of this Joinder Agreement as provided in Article 2.

"Tip Fee Stabilization Fund" shall mean the reserve fund currently maintained by the MRC for the benefit of the Charter Municipalities which is to be administered as provided in Exhibit B.

"Unacceptable Waste" shall have the meaning set forth in Exhibit A to the Master Waste Supply Agreement.

## ARTICLE 2

### TERM

**2.1 Term.** The initial term of this Agreement shall commence on the Effective Date and shall continue through the later of April 1, 2033, or the fifteenth (15<sup>th</sup>) anniversary of the Commercial Operation Date (the "**Initial Term**") unless terminated in accordance with the terms hereunder. Subject to the limitations in Section 2.2 below, the Joining Member shall have the right to extend the Agreement for up to five (5) consecutive periods of five (5) years each (each an "**Extension Term**," and together with the Initial Term, the "**Term**") by written notice to the MRC exercising such right to an Extension Term, which notice must be provided by the Joining Member no later than twelve (12) months prior to the expiration of the then current Term. Upon timely exercise of each right to extend, the Term shall be automatically extended, provided that there is no then existing Event of Default under this Agreement on the part of the Joining Member at either the time of the exercise of the right to extend the Term or the commencement of the applicable Extension Term.

**2.2 Right to Terminate.** Notwithstanding receipt of a notice from Joining Member exercising a right to an Extension Term, the MRC shall have the right at the end of the Initial Term or any applicable Extension Term, to terminate this Agreement by written notice to the Joining Member, which notice shall be given not later than nine (9) months prior to the expiration of the then current Term. Such notice of termination shall not be valid unless the MRC is simultaneously providing valid notices of termination to all Joining Members.

ARTICLE 3  
DELIVERY OF WASTE

**3.1 Delivery.** Joining Member hereby agrees to become a Joining Member of the MRC, as defined in the Master Waste Supply Agreement. Except as otherwise provided in Section 6.2 of this Agreement, beginning on the Commercial Operation Date and continuing through the Term of this Agreement, Joining Member shall deliver, or cause to be delivered, to the Facility under the Master Waste Supply Agreement on an exclusive basis all Acceptable Waste generated within its borders the collection and disposition of which is under its control. Joining Member (a) shall comply with the conditions of delivery set forth in Exhibit E of the Master Waste Supply Agreement; and (b) shall not deliver, or cause to be delivered, Unacceptable Waste. For purposes of this Agreement, Acceptable Waste shall be deemed to be under the control of Joining Member if it is collected and delivered directly by Joining Member, its employees or agents, or by a hauler under contract and at the direction of Joining Member.

**3.2 Diversion of Waste.** Joining Member understands and agrees that violation of its obligation to deliver Acceptable Waste to the Facility on an exclusive basis could have a material adverse effect on the financial performance of the Facility and/or on the Joining Members. Notwithstanding the foregoing, (i) Joining Member shall not be required to institute flow control or implement other measures to the extent that, in its good faith opinion, such measures would constitute a violation of Law; and (ii) Joining Member shall have the right to establish, continue, expand or discontinue, at Joining Member's sole option, existing or future programs intended to encourage reduction, reuse or recycling of MSW generated within its borders, subject to the requirements of Section 3.4, and such activity shall not be deemed a violation of the delivery requirements imposed by this Agreement and shall not subject Joining Member to a Delivery Diversion Charge.

Joining Member agrees that, to the extent that Acceptable Waste under its control is diverted to facilities other than the Facility for reasons other than those permitted hereunder, Joining Member shall pay to the MRC, upon receipt of an invoice, a Delivery Diversion Charge to be deposited into the Delivery Assessment Reserve Fund to be established pursuant to Section 3.3(c) for the benefit of all Joining Members that are Charter Municipalities in the amount of the sum of (a) the product of the diverted tons of Acceptable Waste and the Tipping Fee that would have been paid in respect of the diverted tons had they been delivered to the Facility; plus (b) Joining Member's share of any penalty billed to MRC by the Company as a consequence of such diversion. Provided that Joining Member pays in full when due all Delivery Diversion

Charges imposed hereunder, the diversion of Acceptable Waste forming the basis for such charges shall not be deemed to constitute a breach by Joining Member of its obligations under this Agreement.

### **3.3 Aggregate Delivery Requirements.**

(a) The MRC and Joining Member acknowledge that, under the terms of the Master Waste Supply Agreement, the MRC has committed to cause not less than 150,000 tons of Acceptable Waste per Contract Year to be delivered to the Facility by or on behalf of all Joining Members as a group, and that, in order to support the financing of the Facility, the Master Waste Supply Agreement provides that the MRC shall in certain circumstances be liable for Delivery Sufficiency Payments in the event that the MRC minimum delivery requirement is not met. Joining Members shall not have direct responsibility for payment of any Delivery Sufficiency Payments assessed by the Company against the MRC or otherwise.

(b) Joining Member, after consultation with the MRC and consistent with such guidelines as may be established from time to time by the MRC, has agreed that it is reasonable to estimate that its annual deliveries to the Facility will be at least \_\_\_\_\_ tons of Acceptable Waste per Contract Year (the "*Estimated Delivery Amount*"), which will be its estimated annual contribution to the aggregate delivery requirement of the MRC. For purposes of determining the Estimated Delivery Amount for Joining Member, recyclable materials derived from any Single Stream Recycling Program that Joining Member delivered under Section 5.2 of the Master Waste Supply Agreement shall not be included in determining whether the Delivery Commitment has been met. Joining Member agrees to the foregoing Estimated Delivery Amount and acknowledges that it is reasonable in light of current circumstances and historical MSW deliveries by the Joining Member to PERC (and/or such other waste disposal facility as may have been utilized by Joining Member), forecasted changes in MSW generation (net of anticipated waste reduction efforts), delivery patterns, diversion, and management through methods permitted by this Agreement or not under the control of Joining Member. Joining Member and the MRC shall review this commitment either (a) at the written request of either party, such request to be made no more frequently than every five years; or (b) for good cause shown, any such request to be made not less than sixty (60) days prior to the end of the then current calendar year, and the Estimated Delivery Amount of the Joining Member shall be adjusted, as appropriate, to reflect then current circumstances.

(c) The MRC intends to set aside funds in a reserve fund (the "*Delivery Assessment Reserve Fund*"). The Delivery Assessment Reserve Fund shall be managed by the MRC for the



sole purpose of providing a reserve in the event that the Delivery Commitment is not met in any year. The MRC shall have the authority to determine the amount and timing of contributions to the Fund, which shall be derived from other reserve funds, contributions from Joining Members, or such other sources as the MRC Board of Directors may determine to be available. The MRC Board of Directors shall manage investment of the Fund and authorize withdrawals from the Fund, all as it deems appropriate in accordance with the terms of this Agreement.

(d) In the event that Delivery Sufficiency Payments become due under the Master Waste Supply Agreement, they shall be paid as follows:

(i) First, to the extent that a Delivery Sufficiency Payment is attributable to the fact that one or more Joining Members has not delivered, or cause to be delivered, to the Facility all MSW under its control required to be delivered by it pursuant to the terms of this Agreement, each such Joining Member shall be assessed its ratable share of the payment, as determined by the MRC on the basis of tons of Acceptable Waste delivered (each a "*Delivery Diversion Charge*"), and the MRC shall apply the proceeds of such assessment to the payment of the Delivery Sufficiency Payment to which it relates. The MRC acknowledges that the fact that Joining Member has not achieved the Estimated Delivery Amount in and of itself will not justify imposition of a Delivery Diversion Charge.

(ii) Second, from the Delivery Assessment Reserve Fund, that portion of the remaining Delivery Sufficiency Payment allocable to Charter Municipalities as provided in **Exhibit B** to this Agreement.

(iii) Third, each Non-Charter Municipality shall pay an assessment equal to its allocable share of an amount equal to the amount paid from the Delivery Assessment Reserve Fund pursuant to subparagraph (ii) above multiplied by the percentage which aggregate deliveries by or on behalf of Non-Charter Municipalities for the time period as to which the Delivery Sufficiency Payment applied bears to all deliveries by or on behalf of Joining Members during that period.

(iv) Fourth, to the extent that the proceeds of Delivery Diversion Charges, plus amounts available in the Delivery Assessment Reserve Fund, plus amounts paid by Non-Charter Municipalities pursuant to subparagraph (iii) above are not adequate to fully fund a Delivery Sufficiency Payment, after notice to potentially affected Joining Members and an opportunity for them to be heard, each Joining Member may be assessed its ratable share of such penalty, as determined by the MRC consistent with the requirements of this Agreement, which special

assessment may, at the option of the MRC, be either collected directly from Joining Members or offset against rebates otherwise payable to Joining Members, and the MRC shall apply the proceeds of such assessments directly to the payment of the Delivery Sufficiency Payment.

(e) Upon termination of this Agreement, and after payment of reasonable expenses attendant to termination, any balance remaining in the Delivery Assessment Reserve Fund shall be returned to Joining Members as provided in **Exhibit B** to this Agreement.

### **3.4 Changes in Waste Delivery Patterns.**

(a) Subject to subparagraph (b) below, if a Joining Member proposes to alter the scope of its responsibility for collection, transfer and transportation of MSW originating within its borders, it shall provide to the MRC not less than sixty (60) days notice of such proposed change and shall consult with the MRC with regard to such change prior to any implementation. The MRC will advise the Joining Member regarding contract compliance impacts to the Joining Member and all other Joining Members resulting from implementation of any such planned changes in the scope of its responsibility.

(b) In recognition of the importance of organic waste delivered to the Fiberight Facility, as of the Effective Date, Joining Member shall not, (i) without first providing to the MRC not less than sixty (60) days notice of such proposed change and consulting with the MRC with regard to such change prior to any implementation, and (ii) without the prior consent of the Company, initiate new programs, or significantly and materially expand existing programs, to divert organic components from MSW for management through facilities or programs other than the Facility, but may continue to operate existing programs substantially as operated as of the Effective Date. Notwithstanding the foregoing, Joining Member may institute "pay as you throw" or similar waste reduction programs at its discretion without prior approval from the MRC so long as all MSW generated within its borders and under its control continues to be delivered to the Facility.

**3.5 Unacceptable Waste.** Joining Member shall not deliver Unacceptable Waste to the Facility and shall use reasonable efforts to offer residents local options for disposal of household hazardous waste. Joining Member shall pay its full cost for, and shall indemnify and hold harmless the Company and the MRC and the members, directors, officers and agents or each, from and against any liability, claim or damage arising from delivery of Unacceptable Waste to the Facility by or on behalf of Joining Member. The MRC agrees that it will, upon request, provide advice and guidance consistent with the MRC's historical practice to Joining

Member in connection with any claims made against it pertaining to delivery of Unacceptable Waste to the Facility.

**3.6 Compliance By Haulers.** To the extent that Joining Member contracts with independent hauler or haulers to deliver MSW to the Facility, Joining Member shall be responsible for ensuring that all such haulers comply with the delivery requirements set forth in this Agreement including, but not limited to, the requirement that all MSW generated within the borders of Joining Member the collection and disposal of which is under its control be delivered to the Facility or to the Back-up Facility as contemplated by Section 6.2(d).

#### ARTICLE 4 TIPPING FEES AND REBATES

**4.1 Tipping Fees.** Joining Member agrees to pay tipping fees for Acceptable Waste and other wastes delivered and credited to its account in the amount of \$70.00 per ton, subject to annual increase equal to the amount of annual increase in the CPI, as provided in the Master Waste Supply Agreement. Joining Member specifically acknowledges that, if it fails to pay tipping fees on a timely basis, it may be precluded from delivering Acceptable Waste to the Facility or the Back-up Facility under this Agreement. The MRC shall review and accept or dispute tipping fee calculations provided by the Company and used to determine amounts due from Joining Member. Joining Member may make separate arrangements to bring materials collected through Single Stream Recycling programs to the Facility and to pay tipping fees directly to Company for such deliveries.

**4.2 Invoicing.** Joining Member will receive an invoice directly from the Company on a weekly basis within five (5) days of the end of each calendar week setting forth the number of tons of material delivered by or on behalf of Joining Member and accepted at the Facility during the preceding week and the tip fee due in respect of such deliveries. The amount due shall be equal to the then applicable Tipping Fee multiplied by the number of tons (rounded to the nearest twenty pounds) delivered by the Joining Member to the Facility during such calendar week. Joining Member shall pay all such invoices directly to the Company within thirty (30) days of receipt unless the calculation thereof has been challenged by the MRC.

**4.3 Rebates.**

(a) Joining Member hereby authorizes the MRC to manage on its behalf rebates derived from revenue sharing in the Fiberright Project and payable to the MRC as provided under

the Master Waste Supply Agreement. Without limiting the generality of the foregoing, Joining Member acknowledges that the MRC shall direct disposition of rebates received from the Company in such manner as the MRC may determine to be in the best interests of the Joining Members as a group. Without limiting the generality of the foregoing, the MRC is specifically authorized to offset against rebates otherwise payable to Joining Member (i) any Delivery Diversion Charges against Joining Member; (ii) amounts designated by the MRC to be deposited in the Delivery Assessment Reserve Fund; (iii) any special assessment determined by the MRC to be necessary to cover otherwise unfunded liability for payment of shortfall penalties; (iv) other costs attributable to failure of Joining Member to comply with this Agreement as determined by the MRC; and (v) costs occasioned by the delivery by or on behalf of Joining Member of Unacceptable Waste. The MRC shall provide to all Joining Members a quarterly report summarizing all rebate offsets applied during the preceding calendar quarter.

(b) The Company shall calculate rebates due all Joining Members on a quarterly basis as provided in the Master Waste Supply Agreement and shall forward its calculation to the MRC which shall make such calculation available to all Joining Members. The MRC shall review and accept or dispute the calculation of rebates due, and for that purpose shall review and consider in good faith any dispute of such calculation communicated to it by Joining Member, and shall inform Joining Member and the Company of its action.

(c) The Company shall pay rebates for all Joining Members directly to the MRC which shall, after reserving such funds as the MRC may deem appropriate, pay to each class of Joining Member its allocable share of remaining distributable proceeds based on actual Acceptable Waste delivered to the Facility and in the manner set forth in Exhibit F of the Master Waste Supply Agreement.

(d) Notwithstanding any other provision of this Agreement, in addition to the additional tipping fees contemplated by paragraph 6 of **Exhibit B**, unless the MRC Board of Directors determines otherwise for good cause shown, no Non-Charter Municipality or Departing Municipality that subsequently is re-admitted to membership in the MRC shall be entitled to any rebate payments during the Initial Term.

**4.4 Amendment of Tipping Fee.** The Tipping Fee is governed by both this Article 4 and by Section 5.1 of the Master Waste Supply Agreement. The MRC hereby acknowledges that, except in cases of Force Majeure or actions of the Joining Member or the MRC contrary to the terms of this Agreement or the Master Waste Supply Agreement, it cannot agree to amendments to the Tipping Fee that might be proposed by the Company unless Joining Member explicitly authorizes the MRC to amend the

Tipping Fee by amending this Joinder Agreement. In the event that the Company provides a formal proposal for amendment of the Tipping Fee that the MRC agrees is reasonable and necessary for the Company to continue operation of the Facility on a sustainable basis, the MRC will facilitate presentation by the Company of such proposed amendment to Joining Member for its consideration, and Joining Member agrees to consider such amendment in good faith.

## ARTICLE 5 AUTHORIZATION TO ACT FOR JOINING MEMBER

**5.1 Contract Management and Authorization to Act.** Joining Member explicitly acknowledges that it is one of a group of municipal and quasi-municipal entities that have become Joining Members for the purpose of collectively managing disposal of MSW under the auspices of the MRC for the benefit of all Joining Members. In addition to administering the provisions of this Agreement, the Master Waste Supply Agreement and the Site Lease, the MRC shall serve as an advocate for and advisor to the Joining Members in furtherance of its mission of ensuring the continuing availability to its members of long term, reliable, safe and environmentally sound methods of solid waste disposal at stable and reasonable cost. In order to accomplish these objectives in an efficient and effective manner, it hereby authorizes the MRC to work with all Joining Members to manage the disposal of MSW pursuant to this Agreement and the Master Waste Supply Agreement. Without limiting the generality of the foregoing, and subject to the provisions of the MRC's Articles of Incorporation and Bylaws and of Maine law, in each case as in effect from time to time, Joining Member hereby authorizes the MRC to act in its behalf (a) to ensure that the Company complies with all of its obligations and covenants to or for the benefit of the Joining Members and the MRC set forth in this Agreement, the Development Agreement, the Master Waste Supply Agreement and the Site Lease; (b) to file and prosecute in its own name and/or in the name of Joining Member permit applications relating to this Agreement or the Project; (c) to prosecute or otherwise participate in administrative and court proceedings related to the Project in its own name and/or in the name of Joining Member; (d) to review and administer, accept, invest, apply and distribute tip fees, rebates and other payments to the MRC and/or Joining Members consistent with the terms of this Agreement, including but not limited to the establishment and funding of such reserve funds as the MRC may deem appropriate from time to time; ; and (e) negotiate and enter into in the name of and on behalf of Joining Member and other Joining Members contracts related to the collective transportation, management and disposition of MSW including, without limitation contracts related to the transportation and bypass of waste and the disposition of non-processibles and residuals, it being understood that the MRC will enter into any such contracts only after

appropriate notice to Joining Members affording them an opportunity to be heard with regard to such contracts.

**5.2 Ratification of MRC Articles of Incorporation and Bylaws; Authorization.**

By executing and delivering this Agreement, Joining Member expressly (i) consents to becoming a Joining Member; (ii) agrees to comply with the Components of Ratification specified in **Exhibit C**; and (iii) agrees to become, or continue to be, a Member of the MRC and ratifies and confirms acceptance by it of the MRC Articles of Incorporation and Bylaws, as the same may be amended from time to time. Without limiting the generality of the foregoing, Joining Member hereby authorizes the MRC to collect and distribute payments made to or by Joining Member, including dues to the MRC in such amount as may be set by the MRC Board of Directors (historically \$1.25 per ton), to allocate such payments among Joining Members, and to establish and administer reserve or other similar accounts, in each case such manner, at such times and in such amounts as the MRC may deem to be appropriate after due public review and consideration.

ARTICLE 6

TRANSPORTATION AND DISPOSITION OF BYPASS AND BRIDGE WASTE

**6.1 Transportation.** Joining Member and the MRC each acknowledge that it may be in the interests of all Joining Members to enter into collective arrangements for the transportation of MSW to the Facility and/or for the use of transportation fuel produced at the Facility. Joining Member and the MRC agree to cooperate and afford each other an opportunity to be heard with regard to such arrangements.

**6.2 Disposition of Bridge Capacity and Bypass Waste.** Joining Member acknowledges that the MRC has entered into an agreement for disposal of the following waste streams at a Back-up Facility (the Crossroads Landfill):

(a) Bridge Capacity Waste, which, in the event the Commercial Operation Date is delayed after April 1, 2018, is Acceptable Waste collected by the Joining Member from April 1, 2018, until the Commercial Operation Date (as that term is defined in the Site Lease) that cannot be accepted for processing at the Facility.

(b) Bypass Waste, which is Acceptable Waste that is collected by the Joining Member for delivery to the Facility after the Commercial Operation Date, but cannot be accepted for processing by the Facility, because either (i) the Facility has not yet achieved Commercial

Operation as of the end of the Excused Delay Period; or (ii) the Facility is out of service for maintenance or repair or as the result of a Force Majeure or otherwise.

(c) Joining Member agrees to cooperate and consult with the MRC to implement delivery of Bridge Capacity Waste and Bypass Waste to the Crossroads Landfill. Joining Member shall pay the Tipping Fee with respect to Bypass Waste as if it were Acceptable Waste delivered to the Facility. Joining Member shall pay tipping fees with respect to Bridge Capacity Waste to the Back-up Facility in accordance with the agreement for management of Bridge Capacity Waste as directed by the MRC. Joining Member shall arrange transportation to, and pay transportation costs for, delivery of Bridge Capacity Waste to the Back-up Facility. The MRC agrees to cooperate with the Joining Members and afford them an opportunity to be heard before implementing arrangements for delivery of Bridge Capacity Waste and Bypass Waste with the objective of avoiding or minimizing additional transportation costs to the Joining Members as a group.

(d) Joining Member agrees to comply with the delivery procedures and transporter rules and regulations that govern deliveries of Acceptable Waste to the Back-up Facility.

ARTICLE 7  
DISPOSITION OF ASSETS  
ADMINISTERED BY THE MRC

**7.1 Existing Assets.** If Joining Member is a current member of the MRC and a Charter Municipality currently delivering MSW to PERC pursuant to the Existing PERC Contracts, the provisions set forth in **Exhibit B** shall govern the disposition of assets of Joining Member and other Charter Municipalities, including Departing Municipalities, following expiration of the Existing PERC Contracts, as well as any additional assets held by the MRC.

**7.2 Disposition of Project Site Assets.** In the event of a sale of the Project Site, after payment of expenses of sale, the remaining sale proceeds shall be distributed in accordance with **Exhibit B**.

ARTICLE 8  
INDEMNIFICATION

**8.1 Indemnification by Joining Member.** Joining Member agrees to defend,

indemnify, and hold harmless the MRC, each other Joining Member, and their respective members, directors, elected officials, officers, agents and employees against any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, to the extent resulting from any failure by Joining Member to perform fully, in any respect, its obligations under this Agreement. The foregoing indemnity expressly extends to claims of injury, death, or damage to employees of Joining Member or of a subcontractor, anyone directly or indirectly employed by Joining Member, or anyone for whose acts they may be liable. In claims against any person or entity indemnified under this Section 8.1 by an employee of Joining Member or subcontractor, the indemnification obligation under this Section 8.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Joining Member or a subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. Joining Member expressly waives immunity under workers' compensation laws for the purposes of this indemnity provision.

**8.2 Indemnification by MRC.** The MRC agrees to defend, indemnify, and hold harmless Joining Member, its elected and appointed officials, officers, agents, and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, to the extent resulting from (i) any willful or negligent act or omission by the MRC, its directors, officers, agents, employees (including duly authorized volunteers), contractors, or anyone acting on the MRC's behalf; and (ii) any failure by the MRC to perform fully, in any respect, its obligations under this Agreement. The foregoing indemnity expressly extends to claims of injury, death, or damage to employees of the MRC or of a subcontractor, anyone directly or indirectly employed by the MRC, or anyone for whose acts they may be liable. In claims against any person or entity indemnified under this Section 8.2 by an employee of the MRC or subcontractor, the indemnification obligation under this Section 8.2 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the MRC or a subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. The MRC expressly waives immunity under workers' compensation laws for the purposes of this indemnity provision.

**8.3 Notice.** A Party asserting a right to indemnification under this Article VII (the "Indemnified Party") shall give to the other Party (the "Indemnifying Party") written notice of the commencement of any legal action or other circumstance which may give rise to a claim for indemnification hereunder within ten (10) days of receipt of written notice by it of commencement of a legal action and within thirty (30) days of learning of any other circumstances giving rise to a claim for indemnification; provided, however, that failure to so notify the Indemnifying Party shall discharge it from its indemnification obligation hereunder only if and to the extent that it has been prejudiced thereby. The Indemnified Party shall afford to the Indemnifying Party access to all records and information relating to such claim, facts and circumstances (except those matters privileged or otherwise protected from disclosure under applicable state or federal law or rules of evidence) reasonably necessary to permit the Indemnifying Party to evaluate the merits of such claim or the accuracy of such facts and circumstances. Upon receipt of notice, the Indemnifying Party may elect to participate in or, if it



acknowledges its obligation to indemnify, assume defense of, such action at its own expense and with counsel of its own choosing. The Indemnified Party shall not settle or compromise any claim with respect to which indemnification is sought without the prior written consent of the Indemnifying Party which consent may not be unreasonably withheld or delayed.

Notwithstanding that the Indemnifying Party may have assumed defense of an indemnified claim, the Indemnified Party shall have the right, at its sole expense, to retain its own counsel to participate in such defense.

**8.4 Opportunity to Cure.** The Indemnifying Party shall be entitled, at its sole cost and expense, to undertake to cure any circumstances or to pay or settle any claim which is the subject of a claim for indemnification provided that, prior to such settlement, the Indemnifying Party either (i) acknowledges its obligation hereunder to indemnify the Indemnified Party, or (ii) obtains the written consent of the Indemnified Party to the settlement.

**8.5 Resolution of Dispute as to Indemnification.** Any dispute relating to indemnification may, at the election of either Party, be resolved through the dispute resolution procedure contemplated by Section 11.8 of this Agreement.

**8.6 De Minimis Payment Provisions.** Notwithstanding the foregoing, no payments in respect of any indemnification claim shall be required of any Indemnifying Party unless and until the total amount of the indemnification claims payable by such Indemnifying Party has exceeded Twenty-Five Thousand Dollars (\$25,000) in the aggregate, after which, however, all such indemnification claims, including those included in the de minimus calculation, shall be subject to payment as provided herein.

**8.7 Limitation of Liability.** Notwithstanding the provisions of this Article 8, except in the case of fraud neither Party shall be liable to the other for any incidental, indirect, or consequential damages arising out of the performance or breach of this Agreement.

**8.8 No Waiver of Immunities.** Nothing in this Agreement or the Master Waste Supply Agreement shall constitute a waiver or diminution by Joining Member or the MRC of any immunities or statutory limitations on liability, nor shall anything in this Agreement be construed to constitute a waiver of any defense, immunity or limitation of liability that may be available to a governmental entity, or any of its officers, officials, agents or employees pursuant to the Eleventh Amendment to the Constitution of the United States of America, the Maine Constitution, the Maine Tort Claims Act (14 M.R.S.A. §8101 *et seq.*), any state or federal statute, the common law or any privileges or immunities as may be provided by law.

**8.9 Assignment.** The Indemnified Party shall assign to the Indemnifying Party all claims it may have that arise in connection with claims indemnified by the Indemnifying Party.

ARTICLE 9  
ASSIGNMENT

**9.1 General Prohibition of Assignment.** Except as otherwise specifically provided herein, neither Party may assign its rights or delegate its obligations under this Agreement, including without limitation any transfer by operation of law, in any manner whatsoever without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Any attempt at any such assignment, transfer, or sale without the consent required hereby shall be void and of no effect, and shall, at the option of the other Party, terminate this Agreement.

**9.2 Assignment by the MRC.** Subject to member approval rights as set forth in the Bylaws of the MRC, and notwithstanding the provisions of Section 9.1, the MRC may, after providing prior notice to Joining Members and affording them an opportunity to be heard, assign its rights under this Agreement to a successor entity formed for the purpose of assuming the obligations and mission of the MRC. Any other attempt by the MRC to assign, transfer, or pledge this Agreement, whether in whole or in part, to any person without the prior written consent of the Joining Member shall be null and void.

ARTICLE 10  
EVENTS OF DEFAULT; TERMINATION

**10.1 MRC Event of Default.** Each of the following shall constitute an Event of Default as to the MRC:

(a) The MRC shall have failed to fulfill its obligations under this Agreement, the Master Waste Supply Agreement or the Site Lease and such failure has not been cured within the longer of (a) thirty (30) days following receipt of written notice from the Joining Member specifying that a particular default exists, or (b) any otherwise applicable cure period; provided, however, that if it is not possible to cure such default within the applicable cure period, no Event of Default shall be deemed to exist so long as the MRC takes action within such period to initiate steps to effect a cure and pursues such cure with reasonable diligence.

(b) The MRC or any permitted assignee shall (a) file, or have filed against it a petition which is not dismissed within sixty (60) days, in bankruptcy, reorganization or similar proceedings under, or shall be adjudicated a bankrupt under, the bankruptcy laws of the United States, (b) have a receiver, permanent or temporary, appointed by a court of competent authority for it or on its behalf which is not dismissed within sixty (60) days, (c) request the appointment of a receiver, (d) make a general assignment for the benefit of creditors, or (e) shall have its bank accounts, property or receivables attached and such attachment proceedings are not dismissed within sixty (60) days.

(c) The MRC or any permitted assignee shall dissolve or liquidate or shall have ceased operations for a period in excess of sixty (60) days.

**10.2 Joining Member Event of Default.** Each of the following shall constitute an Event of Default as to the Joining Member:

(a) Joining Member shall have failed to fulfill its obligations as a member under the MRC Articles of Incorporation or Bylaws or under this Agreement, the Master Waste Supply Agreement or the Site Lease and such failure has not been cured within the longer of (i) thirty (30) days following receipt of written notice from the MRC specifying that a particular default exists, or (ii) any otherwise applicable cure period; provided, however, that if it is not possible to cure such default within the applicable cure period, no Event of Default shall be deemed to exist so long as the Joining Member takes action within such period to initiate steps to effect a cure and pursues such cure with reasonable diligence.

(b) Joining Member or any permitted assignee shall (i) file, or have filed against it a petition which is not dismissed within sixty (60) days, in bankruptcy, reorganization or similar proceedings under, or shall be adjudicated a bankrupt under, the bankruptcy laws of the United States, (ii) have a receiver, permanent or temporary, appointed by a court of competent authority for it or on its behalf which is not dismissed within sixty (60) days, (iii) request the appointment of a receiver, (iv) make a general assignment for the benefit of creditors, or (v) shall have its bank accounts, property or receivables attached and such attachment proceedings are not dismissed within sixty (60) days.

(c) Joining Member or any permitted assignee shall dissolve or liquidate.

(d) Joining Member fails to make any undisputed payment due hereunder within thirty (30) days after the same is due.

**10.3 Expiration of Term.** This Agreement shall terminate upon the expiration of the Master Waste Supply Agreement. Notwithstanding termination, Joining Member shall remain liable for any obligations, including payment obligations, arising prior to the date of termination.

**10.4 Remedies.** Either party may terminate this Agreement upon the occurrence and during the continuance of an Event of Default by the other party. Unless otherwise provided by Law, any right or remedy provided for herein shall not be considered as the exclusive right or remedy of the non-defaulting Party, and such right or remedy shall be considered to be in addition to any other right or remedy allowed by Law. Without limiting the generality of the foregoing, Joining Member acknowledges that the MRC and the other Joining Members are relying on its commitment to deliver Acceptable Waste originating within its borders to the Facility under the Master Waste Supply Agreement and that breach of that obligation would cause irreparable damage to the MRC and the other Joining Members for which monetary damages would not provide an adequate remedy. Accordingly, in the event of such a breach, in addition to such other remedies as may be available to the MRC at law or in equity, Joining Member expressly acknowledges that the MRC shall be entitled to specific performance of the delivery obligations of Joining Member hereunder.

**10.5 Limitation on Cure Period.** Notwithstanding any other provision of this Agreement, in the event that either Party shall have breached a provision hereof and shall have relied upon a cure period in order to avoid termination under the provisions of this Article 10, such party shall not, within a period of two (2) years from the date of the initial breach, be entitled to the benefit of a cure period with respect to a subsequent breach of the same provision.

## ARTICLE 11 OTHER PROVISIONS

**11.1 Force Majeure.** In the event either Party is rendered unable, wholly or in part, by a Force Majeure to carry out any of its obligations under this Agreement, and provided that such party is using reasonable business efforts to resume performance at the earliest practicable time, then the obligations of such Party, to the extent affected by such a Force Majeure, shall be suspended during the continuance of the Force Majeure but no longer. Any time that a Party intends to rely upon a Force Majeure to excuse or suspend its obligations hereunder, such Party shall notify the other Party as soon as is reasonably practicable, describing in reasonable detail the circumstances of the Force Majeure. Notice shall again be given when the effect of the Force Majeure has ceased. Notwithstanding the foregoing, the existence of a Force Majeure shall not relieve a Party from its obligation to make payments due or payable prior to or independent of the Force Majeure.

**11.2 Notification of Force Majeure or Event of Default.** The MRC shall notify the Joining Member of the occurrence of any Force Majeure or Event of Default under the Master Waste Supply Agreement or the Site Lease.

**11.3 Waste Deliveries During Force Majeure.** In the event of a Force Majeure under the Master Waste Supply Agreement or the Site Lease that would preclude acceptance and processing of Acceptable Waste at the Facility, the Joining Member shall deliver collected Acceptable Waste to the Facility or to the Back-up Facility at the direction of the MRC for the duration of such Force Majeure, which deliveries shall be treated as Bypass Waste under Section 6.2 hereof.

### **11.4 Opportunity To Be Heard.**

(a) In the event of a Force Majeure under the Master Waste Supply Agreement, promptly upon receipt of a Force Majeure Plan, the MRC shall inform the Joining Members and provide to them an opportunity to be heard as to whether to accept, accept a modified version of, accept subject to dispute, or not accept such Force Majeure Plan, and shall indicate the projected impact of implementing the proposed Force Majeure Plan on future Tipping Fees and Rebates. In the event of an Event of Default under the Master Waste Supply Agreement or the Site Lease, the

MRC shall inform the Joining Members of such default and of the actions proposed to be taken by the MRC in response thereto. Joining Member shall accept and abide by decisions of MRC with respect to any such default or Force Majeure.

(b) In the event that the MRC wishes to amend the Master Waste Supply Agreement or the Site Lease, it shall provide to the Joining Members notice of the proposed amendment and an opportunity to be heard and shall consider in good faith any comments received prior to any such amendment taking effect.

**11.5 Change In Law.** Joining Member shall notify the MRC, and the MRC shall notify Joining Member, promptly as soon as either party has knowledge of any action of the federal government, state legislature, state administrative or regulatory authority, court of applicable jurisdiction, or any other governmental body that could lead to the occurrence of a Change in Law. MRC and Joining Member shall use reasonable efforts to cooperate to avoid any such action and to mitigate its potential adverse impact on their obligations hereunder or on the Master Waste Supply Agreement, the Site Lease, or operation of the Facility or the Back-up Facility.

**11.6 Relationship of Parties.** Nothing in this Agreement is intended or should be construed in any manner as creating or establishing a partnership or joint venture between the Parties. Except as otherwise provided herein, neither Party shall have the authority to contractually bind the other Party. No employees or agents of one Party shall be deemed the employees or agents of the other Party for any purpose. In addition, nothing in this Agreement is intended or should be construed in any manner to empower the MRC to act other than for the sole and exclusive benefit of all of the Joining Members as a group.

**11.7 Waiver.** The failure of either Party to take action with respect to any breach of any term, covenant, or condition contained in this Agreement shall not be deemed to be a waiver of such term, covenant, or condition. Any waiver by either Party of any breach of any term, covenant, or condition contained in this Agreement shall be effective only if in writing and shall not be deemed to be a waiver of any subsequent breach of the same, or of any other term, covenant, or condition contained in this Agreement. Nothing in this Agreement shall be construed to constitute a waiver of any defense, immunity or limitation of liability that may be available to a governmental entity, or any of its officers, officials, agents or employees pursuant to the Eleventh Amendment, to the Constitution of the United States of America, the Maine Constitution, the Maine Tort Claims Act (14 M.R.S.A. §8101 *et seq.*), any state or federal statute, the common law or any privileges or immunities as may be provided by law.

### **11.8 Dispute Resolution.**

(a) Any dispute arising under this Agreement shall be resolved only in accordance with this Section 11.8.

(b) A dispute shall arise when one Party sends a written notice of dispute by certified mail to the other Party. The Parties shall first attempt to resolve the dispute through informal negotiations in which each party agrees to participate in good faith.

(c) If the Parties cannot resolve the dispute informally within fourteen (14) days of such written notice, either Party may submit the dispute to arbitration to be conducted under the commercial arbitration rules of the American Arbitration Association. Arbitration shall be initiated by the serving of a written notice of intent to arbitrate (an “*Arbitration Notice*”) by one Party upon the other. Arbitration proceedings shall be conducted by a single arbitrator to be agreed upon by the Parties; provided, however, that if the Parties are unable to agree upon a single arbitrator within ten (10) days from the date of the Arbitration Notice, each Party shall select an arbitrator and the two so named shall name a third arbitrator. The arbitration proceedings shall then be heard by the arbitrator(s) and the decision of the arbitrator, or of a majority if a panel of three has been selected, shall be final and binding on the parties. The arbitrator(s) shall have no authority to add to, detract from, reform or alter in any manner any provision of this Agreement. Judgment upon the arbitration award may be entered in any court of competent jurisdiction. Any Arbitration Notice must be served within two (2) years from the date on which the claim arose, and failure to bring such claim within such two year period shall constitute a waiver of such claim and an absolute bar to further proceedings with respect to it. All arbitration proceedings shall be conducted in Bangor, Maine unless the parties otherwise agree in writing. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to preclude either party from seeking temporary or permanent injunctive relief from a court of competent jurisdiction with respect to any breach of this Agreement. For purposes of this Section 11.8, a claim shall be deemed to have arisen as of the later of (i) the date on which the circumstances forming the basis for the claim first occurred, or (ii) the date upon which such circumstances are discovered or with reasonable diligence should have been discovered.

(d) Each of the Parties will bear its own costs in connection with any dispute resolution proceeding. The Parties shall share equally the cost of any single arbitrator. If a panel of three arbitrators is appointed, each Party shall pay the costs of the arbitrator appointed by it, and the cost of the third arbitrator shall be shared equally.

**11.9 Notices.** All notices, demands, or other writings provided for in this Agreement shall be deemed to have been fully given or made or sent if in writing and either (i) delivered in person, (ii) sent by recognized overnight courier with acknowledgement of receipt, (iii) sent by certified mail, return receipt requested, or (iv) sent by email, provided a confirmation copy is sent promptly by overnight courier or certified mail, in each case to the following addresses:

If to the MRC:                   Municipal Review Committee  
  395 State Street  
  Ellsworth, ME 04605  
  Attention: Executive Director

Email: glounder@mrcmaine.org

With a copy to: Eaton Peabody  
80 Exchange Street  
P.O. Box 1210  
Bangor, Maine 04402  
Attention: Daniel G. McKay, Esq.  
Email: dmckay@eatonpeabody.com

If to Joining Member: \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

Either party may change the address at which notices to it are to be delivered by providing notice of such change in the manner provided above.

**11.10 Parties Bound.** The covenants and conditions contained in this Agreement shall bind the successors and assigns of each of the Parties.

**11.11 Time of the Essence.** Time is of the essence in this Agreement, and in each and every covenant, term, condition, and provision of this Agreement.

**11.12 References.** The captions appearing under the section number designations of this Agreement are for convenience only, are not a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement. Unless the context clearly requires otherwise, references to section numbers and exhibits shall be deemed references to the section numbers and exhibits to this Agreement.

**11.13 Governing Law.** This Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of Maine without regard for conflict of law provisions.

**11.14 Entire Agreement.** This Agreement shall constitute the entire agreement between the parties with respect to its subject matter. Any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.

**11.15 Modification of Agreement.** Any modification of this Agreement shall be binding only if such modification is documented in writing and signed by each Party or an

authorized representative of each Party.

**11.16 Additional Documents.** The Parties agree to execute whatever reasonable papers and documents may be necessary to effectuate the terms and intent of this Agreement.

**11.17 No Special or Consequential Damages.** Notwithstanding any other provision of this Agreement, in no event shall either Party be liable under this Agreement for any special or consequential damages whatsoever.

**11.18 Severability.** The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement.

**11.19 Third Party Beneficiary.** Company shall be a third party beneficiary of the obligations of Joining Member hereunder and may enforce such obligations directly. Otherwise, this Agreement is intended for the sole benefit of the Parties, and no other party shall be regarded as a third party beneficiary of the obligations of the Parties hereunder.

**11.20 Partial Contract Year.** In the event of a partial Contract Year, all amounts and allocations shall be adjusted appropriately based on the ratio which the number of days in such partial Contract Year bears to the number of days in a full 365 day calendar year.

**11.21 Counterparts.** This Agreement may be executed in counterparts. A signature transmitted by facsimile, email or other electronic means shall have the effect of an original.

*[Signature page follows.]*



IN WITNESS WHEREOF, each Party has caused this Agreement to be executed as a sealed instrument as of the date first above written.

MUNICIPAL REVIEW COMMITTEE

By: \_\_\_\_\_

Name:

Title:

JOINING MEMBER

By: \_\_\_\_\_

Name:

Title:

**List of Exhibits**

- A Form of Master Waste Supply Agreement**
- B Disposition of Municipal Assets**
- C Components of Ratification**

**Exhibit A**  
**to Municipal Joinder Agreement**

**MASTER WASTE SUPPLY AGREEMENT**

**[Exhibit attached to original]**

**Exhibit B  
to Municipal Joinder Agreement**

**Management and Disposition of  
Existing Municipal Assets and Project Assets**

**1. Applicability.** This Exhibit B sets forth how the MRC shall manage the disposition of assets held in the name of the Equity Charter Municipalities upon the expiration of the Existing PERC Contracts and the disposition of certain payments to be made by Non-Charter Municipalities. The following assets, none of which are owned by the MRC, are addressed herein:

- **The Custody Account and Tip Fee Stabilization Fund.** Pursuant to the Existing PERC Contracts, the MRC manages two reserve accounts held in the names of the Equity Charter Municipalities -- the Custody Account and the Tip Fee Stabilization Fund – with a combined balance on the order of \$26.6 million as of the end of 2015 and projected to be in the range of \$25.0 million to \$28 million by March 2018. The Custody Account, established in 1999, has been used as a working capital account to accept payments from the PERC Partnership and proceeds of sales of Bangor Hydro warrants, and to pay cash distributions to the Charter Municipalities in order to achieve the target values. The Tip Fee Stabilization Fund, established in 2002, has been used for investment of funds in excess of what is needed for cash distributions to the Charter Municipalities. The main sources of funds for these accounts through 2015 have been Performance Credits (\$58.098 million), proceeds of sales of warrants in Bangor Hydro stock (\$19.920 million), Net Cash Flow distributed by the PERC Partnership (\$13.235 million) and earnings on the fund balance (\$6.102 million). Uses have included distributions to the Charter Municipalities (\$60.555 million) and purchases of partnership shares in PERC on behalf of Charter Municipalities (\$10.032 million). Note that all of the Net Cash Flow (resulting from ownership of PERC partnership shares) and proceeds of sales of warrants in Bangor Hydro stock received to date have been distributed to the Equity Charter Municipalities, and that the remaining balances in these accounts are comprised of undistributed Performance Credits and earnings on the fund balance.
  
- **The Operating Account and the Operating Budget Stabilization Fund.** Pursuant to the Existing PERC Contracts, the MRC manages two operating accounts held in the names of the Equity Charter Municipalities -- the Operating Fund and the Operating Budget Stabilization Fund – with a combined balance of less than \$1.0 million. The

Operating Account, which is funded by dues, has been used to fund MRC administration costs since the MRC was created in 1991. The Operating Budget Stabilization Fund, established in 2004, has been used to provide funds to the Operating Account in order to avoid dues increases while covering the costs of developing an arrangement to manage MSW from Charter Municipalities after termination of the Existing PERC Contracts. The sources of funds for the Operating Budget Stabilization Fund have been releases of reserve funds associated with the financing of PERC, as well as a one-time “windfall” payment made by the PERC Partnership to the Equity Charter Municipalities in 2004.

- **The Debt Service Reserve Fund.** The Debt Service Reserve Fund is a reserve account in the amount of approximately \$1,333,333 which is pledged in support for existing PERC Partnership senior financing and which is held for the term of the financing by the lender for distribution to the MRC for the benefit of the Equity Charter Municipalities. If not called upon to pay debt service, this fund is scheduled to be released to the MRC in early 2018.
- **Limited partnership shares in the PERC Partnership.** The Equity Charter Municipalities own a total of 25.5214 percent of the limited partnership shares in the PERC Partnership, which are managed on their behalf by the MRC. Note that the PERC Partnership is scheduled to be dissolved by the end of 2018.

2. **The Custody Account and the Tip Fee Stabilization Fund.**

Upon expiration of the Existing PERC Contracts, the MRC shall manage and dispose of the funds in the Custody Account and the Tip Fee Stabilization Fund as follows:

- (a) Fund up to \$5.0 million for actual expenditures pursuant to the Site Lease, the Master Waste Supply Agreement and this Agreement for acquisition of the Site and development of related infrastructure (the Site Capital Costs);
- (b) Pay Equity Charter Municipalities that are Departing Municipalities their allocable share of the Custody Account and the Tip Fee Stabilization Fund as of the date of termination of the Existing PERC Contracts, as determined by cumulative application of the Transaction Guidelines and other policies that have been used to make such allocations since 1998; provided that (i) the balance that is the basis for the allocation calculation shall be increased by up to \$5.0 million to account for actual expenditures for the Site Capital Costs; and (ii) the amount allocated to each Equity Charter Municipality shall assume that all Site Capital Costs are allocated to Joining Charter Municipalities and no Site Capital Costs are allocated to Departing Municipalities; and (iii) the allocation shall account for the costs of administering such payment, including reserves

held for the pro rata share of the Departing Municipalities against total liabilities and costs associated with the dissolution of the PERC Partnership and the closure of the PERC facility. Payment shall be made timely after the termination of the Existing PERC Agreements, subject to such reserves as the Board of Directors may establish on a basis comparable to amounts being reserved from the allocable accounts of the Joining Members, to those Departing Municipalities that have executed a Termination Agreement in such form as may be approved by the MRC, and shall make subsequent and final payments promptly after confirming the extent to which reserve funds continue to be needed.

(c) Use the funds allocable to the Equity Charter Municipalities that are Joining Members to provide initial funding to establish reserve funds in support of the Site Lease, Master Waste Supply Agreement and this Agreement as follows:

- Up to \$7.0 million as a reserve against purchase of the building in the event of termination (the Building Reserve), which amount may be reduced once per year in accordance with Exhibit C to the Site Lease. Amounts released from the fund each year shall be distributed to the Equity Charter Municipalities in accordance with the amount of their original contributions (e.g., their fund balances as brought forward on April 1, 2018). The value of the building, if purchased, shall also be allocated among the Equity Charter Municipalities that are Joining Members pro rata with the amount of their original contributions.
- An initial amount of \$3.0 million for the Delivery Sufficiency Reserve Fund, which shall be used, as needed, to make Delivery Sufficiency Payments for the benefit of all Charter Municipalities that are Joining Members. Funds not used at the end of the term of the Joinder Agreement shall be allocated among the Equity Charter Municipalities that are Joining Members pro rata with the amount of their original contributions.
- \$1.167 million held by the Equity Charter Municipalities that are Joining Members as a reserve against liabilities and costs associated with the dissolution of the PERC Partnership and the closure of the PERC facility (the Closure Reserve Fund). The MRC shall revisit the need to maintain the Closure Reserve Fund before the end of calendar year 2018. When released, amounts in the Closure Reserve Fund shall be allocated among the Equity Charter Municipalities that are Joining Members pro rata with the amount of their original contributions.

- Up to \$1.0 million to offset costs of transportation of Bridge Waste per the direction of the MRC, with amounts remaining in the fund to be transferred to the Target Value Fund as defined below.
- All remaining amounts shall be deposited into a fund (the "Target Value Reserve Fund") for distribution to the Charter Municipalities that become Joining Members as a supplement to rebates provided by Fiberright to Joining Members, all as directed by the MRC. In the first thirty-six months following the Commercial Operation Date, the MRC shall distribute (i) to Equity Charter Municipalities that are Joining Members \$5.00 per ton for each ton delivered to the Facility, and (ii) to New Charter Municipalities that are Joining Members \$3.00 per ton for each ton delivered to the Facility; provided, however, that such payments will be made only to the extent that funds are available therefor and only to the extent necessary in order to achieve a net disposal cost, after payment of all other rebates, of \$65.00 per ton for Joining Members which are Equity Charter Municipalities and \$67.00 per ton for Joining Members which are New Charter Municipalities. Thereafter, distributions from the Target Value Reserve Fund shall be made on such basis as may be approved by the MRC Board of Directors at a properly-noticed meeting in accordance with the MRC Bylaws.

3. **Operating Account and Operating Budget Stabilization Fund.** Upon expiration of the Existing PERC Contracts, the MRC shall manage and dispose of the funds in the Operating Account and the Operating Budget Stabilization Fund as follows:

- Pay Departing Municipalities their allocable share of the Operating Budget Stabilization Fund as of the date of termination of the Existing PERC Contracts, as determined by cumulative application of the Transaction Guidelines and other policies that have been used to make such allocations since 1998.
- Retain the remaining funds in the Operating Account and Operating Budget Stabilization Fund to support administrative costs of the MRC beyond termination of the Existing PERC Contracts.

4. **Debt Service Reserve Fund.** The MRC shall manage the allocation of funds released from the Debt Service Reserve Fund as follows:

- (a) First, pay the costs of securing the release of the funds.

- (b) Second, pay costs of the Equity Charter Municipalities in the dissolution of the PERC Partnership, including the costs to the MRC of representing the Equity Charter Municipalities in the course of such dissolution.
- (c) Third, pay the Equity Charter Municipalities their allocable share of the Debt Service Reserve Fund as determined based on the relative shares of tonnage delivered by each Charter Municipality during the term of the financing to which the Debt Service Reserve Fund relates, which payments shall be net of the costs of subsections (a) and (b) above and net of any amounts held in reserve until the full cost of dissolution is known.

By the end of calendar year 2018, the MRC shall identify the amounts from the Debt Service Reserve Fund that have been used to pay costs per subsections (a) and (b) above; that are being held in reserve in anticipation of additional future costs; and that are available for payment to each Equity Charter Municipality. The MRC shall make such payments, if any, promptly after such decision has been made in 2018, and shall make subsequent and final payments promptly after confirming the extent to which reserve funds continue to be needed.

**5. PERC Partnership Limited Partnership Interests.** An Equity Charter Municipality's partnership interest in the PERC Partnership shall continue to be administered by the MRC and shall be disposed of as provided in the PERC Partnership Agreement until either (a) the Partnership is dissolved and its affairs concluded; or (b) Municipality has divested itself of any and all ownership shares in the Partnership. Municipality hereby affirms its authorization of the MRC to represent its partnership interest for all purposes including, but not limited to, determining the value of PERC Partnership interests, approving their disposition and determining or approving the allocable share of any distribution allocable to each Equity Charter Municipality.

**6. Non-Charter Municipalities.** Non-Charter Municipalities shall make additional payments of \$2.21 per ton over the Initial Term of their agreements with the MRC, which payments shall be added to the Target Value Reserve Fund for the benefit of the Charter Municipalities that are Joining Members. Unless the MRC Board of Directors determines otherwise for good cause shown, Departing Municipalities that subsequently are re-admitted to membership in the MRC shall, as a condition to their re-admittance, repay funds previously distributed to them from the Tip Fee Stabilization Account and the Operating Budget Stabilization Account, shall be regarded as Non-Charter Municipalities for purposes of this paragraph only, and shall be obligated to make payments to the Target Value Reserve Fund as contemplated hereby on the same basis as other Non-Charter Municipalities.



**Exhibit C**  
**to the Municipal Joinder Agreement**  
**Components of Ratification**

1.0 Execution of the Joinder Agreement

- Contact information for administrator of the Agreement
- Signed original version of the Agreement
- Evidence to confirm proper authorization and execution of the Agreement (e.g., minutes recording action by the appropriate legislative authority; sworn statement by the Town Clerk, etc.)
- Legal opinion or certificate as to enforceability of the Agreement and delegation of authority by municipal counsel

2.0 Baseline information on Joining Members

- Value for estimated annual minimum deliveries in tons per year, with description of geographic area (municipal boundaries or other designations) to which the value applies. Identify sources of municipal waste from separate authorities (e.g., schools) and confirm they are included.
- Description of method for MSW collection and delivery as of the Effective Date (including vehicle or container type and capacity, and whether municipal or private), and method for directing deliveries to the Facility
- List of MSW diversion and materials recycling programs sponsored by the Municipality as of the Effective Date, including organics diversion programs

3.0 Joining Member preference items

- Interest in regional approach to transfer or haul to the Hampden Facility
- Preferred bypass arrangements: direct to Facility or direct to Crossroads Landfill
- Interest in delivery of source-separated recyclables or clean wood or brush
- Interest in technical assistance in deciding whether to sustain or discontinue a recycling program
- Interest in regional approach to management of tires and other Unacceptable Wastes, and textiles and other potential Residual Wastes