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To: MRC Member Communities

From: Greg Louder

Date: June 7, 2018

RE: **Waiver to Allow Interim Delivery of MSW to PERC**

I write to follow up on MRC's June 1, 2018 announcement that the MRC Board voted in favor of allowing Joining Members to deliver MSW to PERC for an interim period provided a \$90 per ton processing fee is paid to PERC and a \$30 per ton waiver fee is paid to Waste Management. The fee paid to Waste Management is in exchange for their granting of permission for interim MSW deliveries to PERC while also satisfying a prior contract obligation of MRC and member communities for MSW delivery to them.

We are pleased that we were able to work with Waste Management, our long-term contract partner for residuals and back up MSW disposal services, to achieve this interim flexibility and choice over the manner in which MSW is managed as we transition to start up and operation of the Fiberright/Coastal recycling and processing facility in Hampden. Securing this new waiver also makes way for MSW delivery to PERC for processing under the terms of the Waste Disposal Agreement MRC signed with them on January 31, 2018.

Please find enclosed a copy of a Waiver and Consent Agreement for you review and consideration. This new agreement, if entered into between your community and the MRC, would allow for the interim delivery of MSW to PERC for processing. If your community has an interest in learning more about implementing this new option, please contact Greg Louder at 664-1700 or glounder@mrcmaine.org.

WAIVER AND CONSENT AGREEMENT

This WAIVER AGREEMENT is executed and delivered as of the ___ day of _____, 2018, between MUNICIPAL REVIEW COMMITTEE, INC., a Maine nonprofit corporation with offices at Ellsworth, Maine (the "MRC"), and _____, a [municipality][solid waste disposal district][other entity] with offices at _____, Maine (the "Joining Member").

WHEREAS, the MRC, Coastal Resources of Maine LLC ("Coastal") and Waste Management Disposal Services of Maine, Inc. ("Waste Management") are parties to that certain Solid Waste Disposal Agreement dated August 24, 2015, as amended by Letter Agreement dated March 17, 2016, and as further amended by a First Amendment to Waste Disposal Agreement dated November 14, 2017 (collectively the "Crossroads Agreement"), covering and describing certain obligations for delivery and disposal of wastes described therein variously as "Residuals," "By-pass," and "Bridge Capacity" wastes; and

WHEREAS, the Crossroads Agreement requires that all municipal solid waste constituting Bridge Capacity (as defined therein and referred to herein as "Bridge Waste") be delivered for disposal exclusively to the Crossroads Landfill in Norridgewock, Maine (the "Crossroads Landfill"); and

WHEREAS, Joining Member and the MRC are parties to a Joinder Agreement dated _____ (the "Joinder Agreement") which provides, inter alia, that Joining Member is required to deliver all Bridge Waste to the Crossroads Landfill unless otherwise directed by the MRC; and

WHEREAS, the waste processing facility owned by Coastal and now under construction in Hampden, Maine (the "Hampden Facility") is still under construction and is not expected to be available to accept waste until later in 2018 (the period between the date of this Agreement and the Commercial Operation Date for the Hampden Facility, as defined in the Joinder Agreement, being referred to herein as the "Bridge Period"); and

WHEREAS, notwithstanding the provisions of the Joinder Agreement, Joining Member would like the option to deliver Bridge Waste on an interim basis during the Bridge Period to the Penobscot Energy Recovery Company ("PERC") waste processing facility in Orrington, Maine (the "PERC Facility") rather than to the Crossroads Landfill; and

WHEREAS, in anticipation of the possibility that the Hampden Facility would not be completed by April 1, 2018, the MRC has entered into a Waste Disposal Agreement dated as of

January 31, 2018, with Maine Waste Processing, LLC and Penobscot Energy Recovery Company Limited Partnership (collectively, "MWP") in substantially the form attached to this Consent and Waiver as Exhibit A (the "MWP Agreement) pursuant to which MWP has agreed to accept Bridge Waste for processing and disposal; and

WHEREAS, notwithstanding the exclusivity provisions contained in the Crossroads Agreement, Waste Management has agreed to permit Joining Member to deliver or cause to be delivered to the PERC Facility Bridge Waste under the control of Joining Member during the Bridge Period (hereinafter "Joining Member Bridge Waste") notwithstanding the exclusivity provisions in the Crossroads Agreement, and the MRC has agreed to a limited waiver of Joining Members delivery obligations under the Joinder Agreement in order to permit delivery by Joining Member of Joining Member Bridge Waste to the PERC Facility;

NOW THEREFORE, in exchange for the mutual covenants contained herein and for other valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties have agreed as follows:

1. MRC Limited Waiver. The MRC hereby (i) consents to the delivery of Joining Member Bridge Waste by or on behalf of Joining Member to the PERC Facility during the Bridge Period pursuant to the MWP Agreement notwithstanding the requirements of the Joinder Agreement; (ii) for purposes of allowing such delivery of Joining Member Bridge Waste to the PERC Facility, waives the provisions of the Joinder Agreement to the extent those provisions would otherwise require Joining Member to deliver Joining Member Bridge Waste to a site other than the PERC Facility; and (iii) agrees that deliveries of Joining Member Bridge Waste pursuant to the MWP Agreement by or on behalf of Joining Member to the PERC Facility during the Bridge Period shall not constitute a default under the Joinder Agreement which shall otherwise remain in full force and effect.

2. Waiver Fee. Joining Member hereby acknowledges that, as consideration for a limited waiver granted by Waste Management of the exclusivity provisions of the Crossroads Agreement, the MRC has agreed to pay, or cause to be paid, to Waste Management a fee (the "Waiver Fee") in the amount of Thirty Dollars (\$30.00) for each ton of Joining Member Bridge Waste that is delivered for disposal during the Bridge Period to the PERC Facility. Joining Member hereby agrees that it shall be responsible for payment of all such Waiver Fees for all Joining Member Bridge Waste delivered to the PERC Facility. The Waiver Fee shall be invoiced and paid as more particularly described in Exhibit A.

3. MWP Agreement Tip Fee. Joining Member hereby acknowledges that, in 2018, the tip fee in the MWP Agreement is \$90 per ton, which exceeds the tip fee for 2018

in the Joinder Agreement of \$70 per ton. Joining Member agrees to pay the tip fee of \$90 per ton as provided in the MWP Agreement, or such lower tip fee has may hereafter be negotiated by the MRC, for Joining Member Bridge Waste delivered to the PERC Facility on the terms more particularly described in Exhibit A.

4. Target Value Reserve Fund. Joining Member will be entitled to any supplemental rebates that may become payable to it pursuant to Section 2(c) of Exhibit B to the Joinder Agreement with respect to Joining Member Bridge Waste that is delivered to the PERC Facility under the MWP Agreement. Payment of any such supplemental rebates during the Bridge Period will be made on the same basis as made to other Joining Members.

5. Delivery Obligations. Joining Member agrees that all deliveries of Joining Member Bridge Waste to the PERC Facility shall be subject to the terms and conditions of the MWP Agreement, and Joining Member hereby agrees to comply fully with all such terms and conditions applicable to it.

6. Indemnification. Other than as expressly provided in the Maine Waste Processing Agreement and in this Agreement, the MRC shall not have any responsibility or obligation to Joining Member, PERC, or any other party in connection with the delivery or disposal of Joining Member Bridge Waste delivered to the PERC Facility or to any other alternative delivery site. Joining Member hereby agrees to defend, indemnify, and hold harmless, the MRC, each other MRC 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 or arising in connection with (i) delivery of Joining Member Bridge Waste to the PERC Facility or to any other alternative delivery site, or (ii) any breach by Joining Member of its obligations under this Agreement. The foregoing indemnity expressly extends to claims of injury, death, or damage to employees and direct and indirect contractors of Joining Member, or anyone for whose acts the parties hereby indemnified may be liable.

7. Reaffirmation of Joinder Agreement. Joining Member hereby reaffirms all of its obligations under the Joinder Agreement except to the extent expressly modified hereby. Without limiting the generality of the foregoing, Joining Member affirms (i) its obligation under Section 3.1 of the Joinder Agreement to deliver or cause to be delivered all Acceptable Waste (as defined therein) under its control to the Hampden Facility as soon as such facility can accept and process such Acceptable Waste, and in no event later than the Commercial Operation Date (as defined therein); (ii) its obligation under Section 5.1 of the Joinder Agreement to authorize the MRC to act on its behalf as set forth therein, which shall be understood to include the administration of the MWP Agreement and this Agreement;

and (iii) its obligation under Section 5.2 of the Joinder Agreement to pay all dues that may be assessed by the MRC, including dues assessed based on tonnage of Joining Member Bridge Waste delivered to the PERC Facility or to any other delivery site.

8. Payment obligations. Joining Member understands that failure to make payments within thirty (30) days of the due date set forth on the invoice shall be an event of default under this Agreement. In the event of such failure to pay, the MRC, after notice to Joining Member, shall have the right to terminate this Agreement on five (5) days' notice and to pursue all available remedies to recover amounts that are payable and remain unpaid, including, without limitation, offsetting such obligations against amounts otherwise payable to Joining Member and pursuing its right to indemnification.

9. Dispute Resolution. For purposes of Section 11.8 of the Joinder Agreement, any dispute between Joining Member and the MRC arising hereunder shall be deemed to have arisen under the Joinder Agreement.

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

11. 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. References to exhibits shall be deemed references to the exhibits to this Agreement.

12. 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.

13. Entire Agreement. This Agreement, together with the Joinder Agreement and the Crossroads Agreement, shall constitute the entire agreement between the parties with respect to its subject matter and shall supersede any prior written or oral understanding.

14. Modification of Agreement. Any modification of this Agreement shall be binding only if such modification is documented in writing and signed by each party.

15. 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.

16. 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.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has caused this Consent and Waiver to be duly executed and delivered as of the date first above written.

MUNICIPAL REVIEW COMMITTEE, INC.

By: _____

Name:

Title:

JOINING MEMBER

Name of Member: _____

By: _____

Title:

SEEN AND AGREED:

COASTAL RESOURCES OF MAINE LLC

By Fiberight LLC, Its Manager

By: _____

Name:

Title:

EXHIBIT A
PAYMENT MECHANICS

- Under the terms of the Maine Waste Processing Agreement, PERC will invoice the MRC for a tip fee of \$90 per ton, or such lower tip fee as may hereafter be negotiated by the MRC (the "PERC Tip Fee"), for all Joining Member Bridge Waste accepted at and processed by the PERC Facility under this Agreement.
- Under the terms of a separate agreement with Waste Management, for each ton delivered to the PERC Facility, Waste Management will invoice the MRC for the Waiver Fee of \$30 per ton (with partial tons rounded to the nearest hundredth of a ton).
- The MRC will invoice, or will cause Coastal to invoice, Joining Member on a weekly basis for (i) the PERC Tip Fee for each ton of Joining Member Bridge Waste delivered to and accepted by the PERC Facility during the previous week for which PERC has provided the MRC with evidence that the MSW has been processed as required by the MWP Agreement; plus (ii) the Waiver Fee due to Waste Management with respect to such deliveries.
- Joining Member shall remit invoiced amounts either directly to MWP or to the MRC or Coastal, as indicated on the invoice or as the MRC may direct.
- Waiver Fees shall be paid to Waste Management by the MRC or by Coastal on behalf of the MRC and shall be reimbursed by Joining Member either to the MRC or to Coastal as indicated on the invoice or as the MRC may direct.
- Joining Member shall remit payment of all amounts due hereunder within ten (10) days of invoicing. All invoiced amounts shall be deemed accepted by Joining Member unless Joining Member provides notice in writing within five (5) days of receipt of the invoice that the invoice is disputed, such notice to set forth with reasonable particularity the basis for the dispute.