

DEPARTMENT OF JUSTICE**Antitrust Division**

[Civ. No. 1:98 CV 1616]

Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. sections 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the Northern District of Ohio, Eastern Division, in United States and States of Ohio, Arizona, California, Colorado, Florida, Maryland, New York, Texas, Washington, and Wisconsin, and Commonwealths of Kentucky and Pennsylvania v. USA Waste Services, Inc., Dome Merger Subsidiary, and Waste Management, Inc. Civ. No. 1:98 CV 1616.

On July 16, 1998, the United States and the listed eleven states and two commonwealths filed a Complaint, which alleged that USA Waste's proposed acquisition of Waste Management would violate Section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in commercial waste collection and/or municipal solid waste disposal in 21 geographic markets around the country, including: Akron, Canton, Cleveland and Columbus, OH; Allentown, Pittsburgh and Philadelphia, PA; Baltimore, MD; Denver, CO; Detroit, Flint and Northeast Michigan; Houston, TX; Los Angeles, CA; Louisville, KY; Miami and Gainesville, FL; Milwaukee, WI; New York, NY; Portland, OR; and Tucson, AZ. The proposed Final Judgment, filed the same day as the Complaint, requires that USA Waste and Waste Management divest commercial waste collection and/or municipal solid waste disposal operations in each of the geographic areas alleged in the Complaint.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer, II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, D.C. 20530 [telephone: (202) 307-0924].

Constance K. Robinson,*Director of Operations & Merger Enforcement.***Hold Separate Stipulation and Order**

It is hereby stipulated and agreed by and between the undersigned parties,

subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. *USA Waste* means defendant USA Waste Services, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes its successors and assigns, and its subsidiaries (including Dome Merger Subsidiary), divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. *WMI* means defendant Waste Management, Inc., A Delaware corporation with its headquarters in Oak Brook, Illinois, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. *Relevant Disposal Assets* means, unless otherwise noted, with respect to each landfill or transfer station listed and described herein, all tangible assets, including all fee and leasehold and renewal rights in the listed landfill or transfer station; the garage and related facilities; offices; landfill- or transfer station-related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all intangible assets of the listed landfill or transfer station, including landfill- or transfer station-related customer lists, contracts, and accounts, or options to purchase any adjoining property.

Relevant Disposal Assets, as used herein, includes each of the following properties:

1. Landfills

a. Akron/Canton, OH

WMI's Countywide R&D Landfill, located at 3619 Gracemont Street, SW, East Sparta, OH 44626, and known as the Countywide Landfill;

b. Columbus, OH

USA Waste's Pine Grove Landfill, located at 5131 Drinkle Road, SW, Amanda, OH 43102;

c. Denver, CO

USA Waste's Front Range Landfill, located at 1830 County Road 5, Erie, CO 80516-8005.

d. Detroit, MI

USA Waste's Carleton Farms Landfill, located at 28800 Clark Road, New Boston, MI;

e. Flint, MI

USA Waste's Brent Run Landfill, located at Vienna Road, Montrose Township, Genesee County, MI;

f. Houston, TX

USA Waste's Brazoria County Landfill, located at 10310 FM-523, Angleton, TX 77515; and

g. Los Angeles, CA

USA Waste's Chiquita Canyon Landfill, located at 29201 Henry Mayo Drive, Valencia, CA 91355;

h. Louisville, KY

USA Waste's Valley View Landfill, located at 9120 Sulphur Road, Sulphur, KY 40070;

j. Milwaukee, WI

USA Waste's Kestrel Hawk Landfill, located at 1989 Oakes Road, Racine, WI 53406; and WMI's Mallard Ridge Landfill, located at W. 8470 State Road 11, Delavan, WI 53315;

k. New York, NY/Philadelphia, PA

WMI's Modern Landfill & Recycling, located at 4400 Mt. Piscah Road, York, PA 17402, and known as the Modern Landfill;

l. Northeast Michigan

USA Waste's Whitefeather Landfill, located at 2401 Whitefeather Road, Pinconning, MI; and Elk Run Sanitary Landfill, located at 20676 Five Mile Highway, Onaway, MI;

m. Pittsburgh, PA

WMI's Green Ridge Landfill, located at 717 East Huntingdon Landfill Road, Scottdale, PA 15683, and variously known as the Green Ridge Landfill, the Y&S Landfill, or the Greenridge Reclamation Landfill;

n. Portland, OR

USA Waste's North WASCO Landfill, located at 2550 Steel Road, The Dalles, OR 97058; and

2. Transfer Stations

a. Akron/Canton, OH

WMI's Akron Central Transfer Station, located at 389 Fountain Street, Akron, OH;

b. Baltimore, MD

WMI's Southwest Resource Recovery Facility (known as Baltimore RESCO or BRESO), located at 1801 Annapolis Road, Baltimore, MD 21230; Baltimore County Resource Recovery Facility, located at 10320 York Road, Cockeysville, MD; and Western Acceptance Facility, located at 3310 Transway Road, Baltimore, MD;

c. Cleveland, OH

USA Waste's Newburgh Heights Transfer Station, located at 3227 Harvard Road, Newburgh Heights, OH 44105 (and known as the Harvard Road Transfer Station); and WMI's Strongsville Transfer Station, located at 16099 Foltz Industrial Parkway, Strongsville, OH;

d. Columbus, OH

WMI's Reynolds Road Transfer Station, located at 805 Reynolds Avenue, Columbus, OH 43201;

e. Houston, TX

USA Waste's Hardy Road Transfer Station, located at 18784 East Hardy, Houston, TX;

f. Louisville, KY

USA Waste's Poplar Level Road Transfer Station, located at 4446 Poplar Level Road, Louisville, KY;

g. Miami, FL

All USA Waste's operations related to its right, title, and interest in, or operation or, the Reuters Transfer Station Rights, as conveyed to Chambers Waste Systems of Florida, a subsidiary of USA Waste, pursuant to the Final Judgment in *United States v. Reuter Recycling of Florida, Inc.*, 1996-1 Trade Cas. (CCH) ¶ 71,353 (D.D.C. 1996), a copy of which is attached to the proposed Final Judgment as Exhibit A;

h. New York, NY

WMI's SPM Transfer Station, located at 912 East 132nd Street, Bronx, NY 10452, and all rights and interests, legal or otherwise, the WMI now enjoys, has had or made use of out of the SPMT Transfer Station, to deliver waste by truck to rail siding at the Oak Point Rail Yard in the Bronx, NY, and at the Harlem River Yards facility, located at St. Ann's and Lincoln Avenues at 132nd Street, Bronx, NY 1045; and

i. Philadelphia, PA

USA Waste's Girard Point Transfer Station, located at 3600 South 26th Street, Philadelphia, PA 19145; and USA Waste's Quick Way Inc. Municipal Waste Transfer Station, located at SE Corner, Bath and Orthodox Streets, Philadelphia, PA 19137.

D. *Relevant Hauling Assets*, unless otherwise noted, means with respect to each commercial waste collection route or other hauling asset described herein, all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, supplies except real property and improvements to real property (*i.e.*, buildings); and it includes all intangible assets, including

hauling-related customers lists, contracts and accounts.

Relevant Hauling Assets, as used herein, includes the assets in the following locations:

1. Akron, OH

USA Waste's and American Waste Corporation's front-end loader truck ("FEL") commercial routes that serve Summit County, Ohio;

2. Allentown, PA

WMI's FEL commercial routes that serve the cities of Allentown and Northampton and Lehigh County, PA;

3. Cleveland, OH

WMI's FEL commercial routes that serve Franklin County, Ohio;

5. Denver, CO

USA Waste's FEL commercial routes that serve the City of Denver, and Denver and Arapaho County, CO;

6. Detroit, MI

WMI's FEL commercial routes that serve the City of Detroit and Wayne County, MI;

7. Houston, TX

WMI's FEL commercial routes that serve the City of Houston, the Dickinson area, and Harris County, TX;

8. Louisville, KY

USA waste's FEL commercial routes that serve the City of Louisville and Jefferson County, KY;

9. Pittsburgh, PA

WMI's FEL commercial routes that serve Allegheny County and Westmoreland County, PA, and the garage facility (real estate and improvements) located at the Y&S Landfill;

10. Portland, OR

WMI's FEL commercial routes that serve the City of Portland, OR;

11. Tucson, AZ

USA Waste's FEL commercial routes that serve the City of Tucson and Pima County, AZ; and

12. Gainesville, FL

WMI's FEL commercial routes that serve Alachua County, FL.

E. *Hauling* means the collection of nonhazardous waste from customers and the shipment of the collected waste to disposal sites.

F. *Waste* means nonhazardous municipal solid waste.

G. *Disposal* means the business of disposing of waste into approved disposal sites.

H. *Relevant area* means the county in which the Relevant Hauling Assets or Relevant Disposal Assets are located and any adjacent city or county, except with respect to the Modern Landfill [see Section I(C)(1)(k)], for which the Relevant Area means Philadelphia, PA, and New York, NY.

I. *Relevant State* means the state in which the Relevant Disposal Assets or Relevant Hauling Assets are located, provided however, that state is a party to this Final Judgment. With respect to the Modern Landfill [see Section I(C)(1)(k)], the Relevant State means the Commonwealth of Pennsylvania and the State of New York.

II. Objectives

The Final Judgment filed in this case in meant to ensure defendants' prompt divestitures of the Relevant Disposal Assets and the Relevant Hauling Assets for the purpose of establishing viable competitors in the waste disposal business or the commercial waste hauling business, or both, in the Relevant Areas to remedy the effects that plaintiffs allege would otherwise result from USA Waste's acquisition of WMI. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Relevant Disposal Assets and the Relevant Hauling Assets are independent, economically viable, ongoing business concerns, and that competition is maintained during the pendency of the ordered divestitures.

III. Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the Northern District of Ohio, Eastern Division.

IV. Compliance With and Entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form hereto attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until

expiration of time of all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture contained therein.

V. Hold Separate Provisions

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and operate the Relevant Disposal Assets and the Relevant Hauling Assets as independent competitors with management, sales and operations held entirely separate, distinct and apart from those of defendants' other operations. Defendants shall not coordinate the marketing of, or sales by, any Relevant Disposal Asset or Relevant Hauling Asset with defendants' other operations. Within twenty (20) days after the filing of the Complaint, or thirty (30) days after the entry of this Order, whichever is later, defendants will inform plaintiffs of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the Relevant Disposal Assets and Relevant Hauling

Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the waste disposal business or waste hauling business, or both, in each Relevant Area; (2) management of the Relevant Disposal Assets and Relevant Hauling Assets will not be influenced by USA Waste; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning the Relevant Disposal Assets and Relevant Hauling Assets will be kept separate and apart from defendants' other operations. USA Waste's influence over the Relevant Disposal Assets and Relevant Hauling Assets shall be limited to that necessary to carry out USA Waste's obligations under this Order and the Final Judgment.

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the Relevant Disposal Assets and Relevant Hauling Assets, and shall maintain at 1997 or at previously approved levels, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Relevant Disposal Assets and Relevant Hauling Assets.

D. Defendants shall provide sufficient working capital to maintain the Relevant Disposal Assets and Relevant Hauling Assets as economically viable, and competitive ongoing businesses.

E. Defendants shall take all steps necessary to ensure that the Relevant Disposal Assets and Relevant Hauling Assets are fully maintained in operable condition at no lower than their current capacity or sales, and shall maintain and adhere to normal repair and maintenance schedules for the Relevant Disposal Assets and Relevant Hauling Assets.

F. Defendants shall not, except as part of a divestiture approved by plaintiffs, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Relevant Disposal Assets and Relevant Hauling Assets.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Relevant Disposal Assets and Relevant Hauling Assets.

H. Except as the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order, defendants shall not hire, transfer, terminate, or otherwise alter the salary agreements for any USA

Waste or WMI employee who, on the date of defendants' signing of this Hold Separate Stipulation and Order, either: (1) works at a Relevant Disposal Asset or Relevant Hauling Assets, or (2) is a member of management referenced in Section V(I) of this Hold Separate Stipulation and Order.

I. Until such time as the Relevant Disposal Assets and Relevant Hauling Assets are divested pursuant to the terms of the Final Judgment, the Relevant Disposal Assets and Relevant Hauling Assets of WMI and USA Waste shall be managed by Donald Chappel. Mr. Chappel shall have complete managerial responsibility for the Relevant Disposal Assets and Relevant Hauling Assets of WMI and USA Waste, subject to the provisions of this Order and the Final Judgment. In the event that Mr. Chappel is unable to perform this duties, defendants shall appoint, subject to the approval of the United States, after consultation with the Relevant States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States, after consultation with the Relevant State, within ten (10) working days the United States shall appoint a replacement.

J. Defendants Shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to purchasers acceptable to the United States, after consultation with the Relevant State.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures contemplated by the Final Judgment or until further order of the Court.

VI. Defendants' Expectations

In consenting to the entry of this Final Judgment, each defendant has relied upon, as a material factor, its understanding of the hauling routes that it will be required to divest, as set forth in a letter from James. R. Weiss and Neal R. Stoll, counsel for defendants, dated July 14, 1998, and acknowledged by Anthony E. Harris, Antitrust Division, U.S. Department of Justice, counsel for the United States.

Dated: July 16, 1998.

For Plaintiff United States of America:

Anthony E. Harris, Esquire

*U.S. Department of Justice, Antitrust Division,
Litigation II Section, Suite 3000, Washington,
DC 20005, (202) 307-6583.*

For Defendants

USA Waste Services, Inc. and Dome Merger Subsidiary

James R. Weiss, Esquire

Preston Gates Ellis & Rouvelas Meeds LLP, 1735 New York Avenue, NW, Washington, DC 20006-8425, (202) 662-8425.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to purchasers acceptable to the United States, after consultation with the Relevant State.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures contemplated by the Final Judgment or until further order of the Court.

VI. Defendants' Expectations

In consenting to the entry of this Final Judgment, each defendant has relied upon, as a material factor, its understanding of the hauling routes that it will be required to divest, as set forth in a letter from James R. Weiss and Neal R. Stoll, counsel for defendants, dated July 14, 1998, and acknowledged by Anthony E. Harris, Antitrust Division, U.S. Department of Justice, counsel for the United States.

Dated: July 16, 1998.

For Plaintiff United States of America

Anthony E. Harris, Esquire,
U.S. Department of Justice, Antitrust Division, Litigation II Section, Suite 3000, Washington, DC 20005, (202) 307-6583.

For Defendants USA Waste Services, Inc. and Dome Merger Subsidiary

James R. Weiss, Esquire,

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Gale A. Norton

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For Plaintiff State of Texas

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*Assistant Attorney General, Wisconsin
Department of Justice, P.O. Box 7857,
Madison, WI 53707-2818, (608) 264-9487*

ORDER

IT IS SO ORDERED by the Court, this
_____ day of July, 1998.

United States District Judge

Final Judgment

WHEREAS, plaintiffs, the United States of America, the State of Ohio, the State of Arizona, the State of California, the State of Colorado, the State of Florida, the Commonwealth of Kentucky, the State of Maryland, the State of Michigan, the State of New York, the Commonwealth of Pennsylvania, the State of Texas, the State of Washington, and the State of Wisconsin, and defendants USA Waste Services, Inc. ("USA Waste") and Waste Management, Inc. ("WMI"), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without the Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of the Final Judgment is the prompt and certain divestiture of the Relevant Disposal Assets and Relevant Hauling Assets to assure that competition is not substantially lessened;

And Whereas, plaintiffs require defendants to make certain divestitures for the purpose of establishing one or

more viable competitors in the waste disposal business, the commercial waste hauling business, or both in the specified areas;

And Whereas, defendants have represented to the plaintiffs that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *Ordered, Adjudged, and Decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. Definitions

As used in this Final Judgment:

A. *USA Waste* means defendant USA Waste Services, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes its successors and assigns, and its subsidiaries (including Dome Merger Subsidiary), divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. *WMI* means defendant Waste Management, Inc., a Delaware corporation with its headquarters in Oak Brook, Illinois, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. *Relevant Disposal Assets* means, unless otherwise noted, with respect to each landfill or transfer station listed and described herein, all tangible assets, including all fee and leasehold and renewal rights in the listed landfill or transfer station; the garage and related facilities; offices; landfill- or transfer station-related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and all intangible assets of the listed landfill or transfer station, including landfill- or transfer station-related customer lists, contracts, and accounts, or options to purchase any adjoining property.

Relevant Disposal Assets, as used herein, includes each of the following properties:

1. Landfills and Airspace Disposal Rights

a. Akron/Canton, OH

WMI's Countywide R&D Landfill, located at 3619 Gracemont Street, SW, East Sparta, OH 44626, and known as the Countywide Landfill;

b. Columbus, OH

USA Waste's Pine Grove Landfill, located at 5131 Drinkle Road, SW, Amanda, OH 43102;

c. Denver, CO

USA Waste's Front Range Landfill, located at 1830 County Road 5, Erie, CO 80516-8005; and at purchaser's option, a two-year waste supply agreement that would require defendants to dispose of a minimum of 150 tons/day of waste at the Front Range Landfill, at disposal fees to be negotiated between purchaser and defendants;

d. Detroit, MI

USA Waste's Carleton Farms Landfill, located at 28800 Clark Road, New Boston, MI, subject to two conditions, viz., USA Waste's obligations to (1) dispose of ash from the Greater Detroit Resource Recovery Center's incinerator at a separate monofill cell on this site pursuant to an existing contract, and (2) dispose of waste from the Greater Detroit Resource Recovery Center's bypass transfer station at this landfill, until defendants transfer such obligation to another landfill, which they shall use their best efforts to accomplish expeditiously;

e. Flint, MI

USA Waste's Brent Run Landfill, located at Vienna Road, Montrose Township, Genesee County, MI;

f. Houston, TX

(1) USA Waste's Brazoria County Landfill, located at 10310 FM-523, Angleton, TX 77515; and

(2) Airspace disposal rights at WMI's Security Landfill, located at 19248 Highway 105E, Cleveland, TX, or WMI's Atascocita Landfill, located at 2020 Atascocita Road, Humble, TX, or both, pursuant to which defendants will sell to one or more purchasers rights to dispose of at least 3.0 million tons of waste, over a ten-year period, under the following minimum terms and conditions:

(a) The purchaser (or all purchasers combined), or their designee(s), may dispose of up to 360,000 tons of waste/year, or a maximum of 1,200 tons of waste/day, at either, or both of, WMI's Security or Atascocita landfills. If more than one person purchases the airspace

disposal rights, the minimum annual and daily disposal rates for each purchaser shall be specified in its purchase agreement, and the total of all purchasers' maximum disposal amounts shall be no less than 360,000 tons/year and 1,200 tons/day;

(b) For each purchaser of airspace rights (or their designee), defendants must commit to operate the Atascocita Landfill and Security Landfill gates, scale houses, and disposal areas under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in the metropolitan Houston area, except as to price and credit terms;

(c) At the end of the first five years of the agreement, the purchaser or purchasers will have been considered to have used a minimum of 1.4 million tons of airspace and can have no more than 1.6 million tons left to use under the purchase agreements. If there is more than one purchaser of the airspace, the minimum amounts used during the first five years shall be specified in their purchase agreements, but the total amount shall be no more than 1.4 million tons; and

(d) At the end of the first seven years of the agreement, the purchaser (or purchasers) will have been considered to have used a minimum of 2.0 million tons of airspace and can have no more than 1.0 million tons left to use under the purchase agreements. If there is more than one purchaser of the airspace, the minimum amount used during the first five years shall be specified in their purchase agreements, but the total amount shall be no more than 2.0 million tons;

g. Los Angeles, CA

USA Waste's Chiquita Canyon Landfill, located at 29201 Henry Mayo Drive, Valencia, CA 91355;

h. Louisville, KY

USA Waste's Valley View Landfill, located at 9120 Sulphur Road, Sulphur, KY 40070;

i. Miami, FL

Airspace disposal rights at USA Waste's Okeechobee Landfill, controlled by a subsidiary of USA Waste, and located at 10800 NE 128th Avenue, Okeechobee, FL 34972, pursuant to which defendants will sell a total of 4.3 million tons of airspace, over a 20-year time period, to one or more purchasers, under the following minimum terms and conditions:

(1) The right to dispose of a maximum of 1.8 million tons of South Florida

Waste, over a 20-year time period, as follows:

(a) The purchaser (or purchasers) must commit to dispose of no more than 600 tons/day, of South Florida Waste;

(b) The total amount of airspace used in each year may not exceed 150,000 tons; and

(2) Three options for additional airspace at Okeechobee Landfill, exercisable at the sole discretion of the purchaser of the airspace disposal rights, as follows:

(a) *First Options*: The right to dispose of an additional 1.0 million tons of South Florida Waste at the Okeechobee Landfill, for the remaining term of the agreement, as follows:

(i) The amount of airspace used each weekday must be at least 500 tons, but not more than 800 tons (including tonnage disposed of under prior air space commitments); and

(ii) The amount of airspace used in the year the option is exercised, and in each succeeding year over the term of the agreement, may not exceed 225,000 tons (including tonnage disposed of under prior air space commitments);

(b) *Second Option*: Exercisable at any time after the second anniversary of the agreement, and after exercise of the first option, the right to dispose of an additional 1.0 million tons of South Florida Waste at the Okeechobee Landfill, for the remaining term of the agreement, as follows:

(i) The amount of airspace used each weekday must be at least 600 tons, but not more than 1,000 tons/day (including tonnage disposed of under prior air space commitments); and

(ii) The amount of airspace used in the year Option Two is exercised and in each succeeding year of the life of the rights may not exceed 300,000 tons (including tonnage disposed of under prior air space commitments); and

(c) *Third Option*: Exercisable any time after the fifth anniversary of the agreement, and after exercise of the second option, the right to dispose of an additional 500,000 tons of South Florida Waste, for the remaining term of the agreement, as follows:

(i) The amount of airspace used must be at least 600 tons/weekday, but may not exceed 1,100 tons/weekday, (including tonnage disposed of under prior air space commitments);

(ii) The amount of airspace used in the year the third option is exercised, and in each succeeding year of the life of the rights may not exceed 300,000 tons/year (including tonnage disposed of under prior air space commitments); provided, that in any event,

(d) The Okeechobee Landfill Rights shall expire when the purchaser has

used the maximum tonnages available under the rights and exercised options, or twenty years from the date of purchase of the rights, whichever is sooner; and

(e) For each purchaser of airspace rights (or its designee), defendants must commit to operate the Okeechobee Landfill, and its gate, scale house, and disposal area under terms and conditions no less favorable than those provided to defendant's own vehicles or to the vehicles of any municipality in Florida, except as to price and credit terms;

j. Milwaukee, WI

USA Waste's Kestrel Hawk Landfill, located at 1989 Oakes Road, Racine, WI 53406; and WMI's Mallard Ridge Landfill, located at W. 8470 State Road 11, Delavan, WI 53115;

k. New York, NY/Philadelphia, PA

WMI's Modern Landfill & Recycling, located at 4400 Mt. Piscah Road, York, PA 17402, and know as the Modern Landfill;

l. Northeast Michigan

USA Waste's Whitefeather Landfill, located at 2401 Whitefeather Road, Pinconning, MI; and Elk Run Sanitary Landfill, located at 20676 Five Mile Highway, Onaway, MI;

m. Pittsburgh, PA

WMI's Green Ridge Landfill, located at 717 East Huntingdon Landfill Road, Scottdale, PA 15683, and variously known as the Green Ridge Landfill, the Y&S Landfill, or the Greenridge Reclamation Landfill;

n. Portland, OR

USA Waste's North WASCO Landfill, located at 2550 Steele Road, The Dalles, OR 97058; and

2. *Transfer Stations, Disposal Rights and Throughput Agreements*

a. Akron/Canton, OH

Throughput disposal rights of a maximum of 400 tons/day of waste, for a ten-year time period, at WMI's Akron Central Transfer Station, located at 389 Fountain Street, Akron, OH, under the following terms and conditions:

(1) The purchaser (or its designee) can deliver waste to the Akron Central Transfer Station for processing and, at the purchaser's option, load the processed waste into the purchaser's (or its designee's) vehicles for disposal;

(2) For each purchaser of such disposal rights (or its designee), defendants must commit to operate the listed Akron Central Transfer Station's gate, scale house, and disposal area

under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Ohio, except as to price and credit terms;

b. Baltimore, MD

Disposal rights of at least 600 tons of waste/day, pursuant to which defendants will sell to one or more purchasers rights to dispose, for a five-year time period, under the following terms and conditions:

(1) The purchaser(s) or its designee(s) may dispose of waste at any one or any combination of the following facilities, as specified in its purchase agreement: Southwest Resource Recovery Facility (known as Baltimore RESCO or BRESKO), located at 1801 Annapolis Road, Baltimore, MD 21230; Baltimore County Resource Recovery Facility, located at 10320 York Road, Cockeysville, MD; Western Acceptance Facility, located at 3310 Transway Road, Baltimore, MD; or Annapolis Junction Transfer Station, located at 8077 Brock Bridge Road, Jessup, MD 20794. If more than one person purchases the disposal rights, the minimum daily disposal rates, and the total of all purchasers' maximum disposal amounts at all facilities specified shall be no less than 600 tons/day;

(2) For each purchaser of disposal rights (or its designee), defendants must commit to operate the listed Baltimore, MD area facilities' gates, scale houses, and disposal areas under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Maryland, except as to price and credit terms;

c. Cleveland, OH

At purchaser's option, either USA Waste's Newburgh Heights Transfer Station, located at 3227 Harvard Road, Newburgh Heights, OH 44105 (and known as the Harvard Road Transfer Station); or all of WMI's right, title and interest in the Strongsville Transfer Station, located at 16099 Foltz Industrial Parkway, Strongsville, OH; provided, however, that the City of Strongsville, owner of the transfer station, approves such sale or assignment. Defendants will exercise their best efforts to secure the assignment to the purchaser of all their rights, title and their interests in the Strongsville Transfer Station, and in the event the purchaser selects Strongsville, defendants will not reacquire any right, title or interest in the Strongsville transfer station. If the contract is not assigned, defendants will enter into a disposal rights agreement with the

purchaser (or purchasers), which will provide, in effect, that the purchaser(s) will enjoy all disposal rights and privileges now enjoyed by defendants at the Strongsville Transfer Station, and that defendants will operate the facility's gate, scale house, and disposal areas under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Ohio, except as to price and credit terms;

d. Columbus, OH

WMI's Reynolds Road Transfer Station, located at 805 Reynolds Avenue, Columbus, OH 43201;

e. Detroit, MI

WMI's Detroit Transfer Station, located at 12002 Mack Avenue, Detroit, MI 48215;

f. Houston, TX

USA Waste's Hardy Road Transfer Station, located at 18784 East Hardy, Houston, TX;

g. Louisville, KY

USA Waste's Poplar Level Road Transfer Station, located at 4446 Poplar Level Road, Louisville, KY;

h. Miami, FL

All USA Waste's right, title, and interest in the Reuters Transfer Station Rights, as conveyed to Chambers Waste Systems of Florida, a subsidiary of USA Waste, pursuant to the Final Judgment in *United States v. Reuter Recycling of Florida, Inc.*, 1996-1 Trade Cas. (CCH) ¶ 71,353 (D.D.C. 1996), a copy of which is attached as Exhibit A;

i. New York, NY

(1) WMI's SPM Transfer Station, located at 912 East 132nd Street, Bronx, NY 10452, and all rights and interest, legal or otherwise, that WMI now enjoys, has had or made use of out of the SPM Transfer Station, to deliver waste by truck to rail siding at the Oak Point Rail Yard in the Bronx, NY, and at the Harlem River Yards facility, located at St. Ann's and Lincoln Avenue at 132nd Street, Bronx, NY 10454;

(2) All right, title, and interest in USA Waste's pending application to construct and operate a waste transfer station located at 2 North 5th Street, Brooklyn, NY 11211, and known as the Nekboh Transfer Station; and

(3) USA Waste's all City Transfer Station, located at 246-252 Plymouth Street, Brooklyn, NY 11202; and

(4) WMI's Brooklyn Transfer Station, located at 485 Scott Avenue, Brooklyn, NY 12222, but only in the event that USA Waste's Nekboh Transfer Station

has not been licensed or permitted to accept waste within one year from the date of entry of the Final Judgment; and

j. Philadelphia, PA

USA Waste's Girard Point Transfer Station, located at 3600 South 25th Streets, Philadelphia, PA 19145; and USA Waste's Quick Way Inc. Municipal Waste Transfer Station, located at SE Corner, Bath and Orthodox Streets, Philadelphia, PA 19137, subject to the conditions that (1) the existing City of Philadelphia waste contract is transferred to a WMI transfer station, which defendants must use their best efforts to accomplish, and (2) until such transfer is effected, USA Waste will be granted through put capacity at the Quick Way Transfer Station to handle this contract.

D. "Relevant Hauling Assets," unless otherwise noted, means with respect to each commercial waste collection route or other hauling asset described herein, all tangible assets, including capital equipment, trucks and other vehicles, containers, interest, permits, supplies [except real property and improvements to real property (i.e., buildings)] and it includes all intangible assets, including hauling-related customer lists, contract, and accounts.

Relevant hauling Assets, as used herein, includes the assets in the following locations:

1. Akron, OH

USA Waste's and American Waste Corporation's front-end loader truck ("FEL") commercial routes that serve the City of Akron and Summit County, Ohio;

2. Allentown, PA

WMI's FEL commercial routes that serve the cities of Allentown and Northampton and Lehigh County, PA;

3. Cleveland, OH

WMI's FEL commercial routes that serve the City of Cleveland and Cuyahoga County, Ohio (not including the northwestern quadrant);

4. Columbus, OH

WMI's FEL commercial routes that serve Franklin County, Ohio;

5. Denver, CO

USA Waste's FEL commercial routes that serve the City of Denver, and Denver and Arapahoe County, CO;

6. Detroit, MI

WMI's FEL commercial routes that serve the City of Detroit and Wayne County, MI;

7. Houston, TX

WMI's FEL commercial routes that serve the City of Houston, the Dickinson area, and Harris County, TX;

8. Louisville, KY

USA Waste's FEL commercial routes that serve the City of Louisville and Jefferson Country, KY;

9. Pittsburgh, PA

WMI's FEL commercial routes that serve Allegheny County and Westmoreland County, PA, and the garage facility (real estate and improvements) located at the Y&S Landfill;

10. Portland, OR

WMI's FEL commercial routes that serve the City of Portland, OR;

11. Tucson, AZ

USA Waste's FEL commercial routes that serve the City of Tucson and Pima County, AZ; and

12. Gainesville, FL

WMI's FEL commercial routes that serve Alachua County, FL.

E. *Hauling* means the collection of waste from customers and the shipment of the collected waste to disposal sites. Hauling, as used herein, does not include collection of roll-off containers.

F. *Waste* means municipal solid waste.

G. *Disposal* means the business of disposing of waste into approved disposal sites.

H. *Relevant Area* means the county in which the Relevant Hauling Asset or Relevant Disposal Assets are located and any adjacent city or county, except with respect to the Modern Landfill [see Section II(C)(1)(k)], for which the Relevant Area means Philadelphia, PA, and New York, NY.

I. *Relevant State* means the state in which the Relevant Disposal Assets or Relevant Hauling Assets are located, provided however, that state is a party to this Final Judgment. With respect to the Modern Landfill [see Section II(C)(1)(k)], the Relevant State means the Commonwealth of Pennsylvania and the State of New York. With respect to Section VII, the Relevant State means each state in which the disposal or hauling assets to be acquired are located, provided that state is a party to this Final Judgment.

J. *South Florida Waste* means waste collected, or delivered directly from a transfer station located, in Broward, Dade or Monroe County, FL.

III. Applicability

A. The provisions of this Final Judgment apply to defendants, their

successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active consent or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of its assets, or of a lesser business unit that includes defendants' hauling or disposal businesses in any Relevant Area, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV. Divestitures

A. With the exception of the Brooklyn Transfer Station (Section II(C)(2)(i)(4)), defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, within one hundred and twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to sell all Relevant Disposal Assets and Relevant Hauling Assets as viable, ongoing businesses to a purchaser or purchasers acceptable to the United States, in its sole discretion, after consultation with the Relevant State.

B. In the event that USA Waste's Nekboh Transfer Station has not been licensed or permitted to accept waste within one year from the date of entry of the Final Judgment, defendants are hereby ordered and directed, in accordance with the terms of Sections II, IV, V and VI of this Final Judgment, within one hundred and twenty (120) calendar days after such anniversary date, to sell WMI's Brooklyn Transfer Station, located at 485 Scott Avenue, Brooklyn, NY 12222, as a viable, ongoing businesses to a purchaser or purchasers acceptable to the United States, in its sole discretion, after consultation with the Relevant State.

C. Defendants shall sue their best efforts to accomplish the divestitures ordered by this Final Judgment as expeditiously and timely as possible. The United States, in its sole discretion, after consultation with the Relevant State, may extend the time period for any divestiture an additional period of time, not to exceed sixty (60) calendar days.

D. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known by usual and customary means, the availability of the Relevant Disposal Assets and the Relevant Hauling Assets. Defendants shall inform any person making an inquiry regarding a possible

purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the Relevant Disposal Assets and Relevant Hauling Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to the plaintiffs at the same time that such information is made available to any other person.

E. Defendants shall not interfere with any negotiations by any purchaser to employ any USA Waste (or former WMI) employee who works at, or whose primary responsibility concerns, any disposal or hauling business that is part of the Relevant Disposal Assets or Relevant Hauling Assets.

F. Defendants shall permit prospective purchasers of the Relevant Disposal Assets or Relevant Hauling Assets to have access to personnel and to any and all environmental, zoning, and other permit documents and information, and to make inspection of the Relevant Disposal Assets and Relevant Hauling Assets and of any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

G. With the exception of the facilities described in Sections II(C)(2)(e), (h) and (i)(2), defendants shall warrant to each purchaser of Relevant Disposal Assets or Relevant Hauling Assets that each asset will be operational on the date of sale.

H. Defendants shall not take any action, direct or indirect, that will impede in any way the operation of the Relevant Disposal Assets or Relevant Hauling Assets.

I. Defendants shall warrant to each purchaser of Relevant Disposal Assets or Relevant Hauling Assets that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that defendants will not undertake, directly or indirectly, following the divestiture of each asset, any challenges to the environmental, zoning, or other permits or applications for permits or licenses pertaining to the operation of the asset.

J. Unless the United States, after consultation with the Relevant State, otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V of this Judgment, shall

include all Relevant Disposal Assets and Relevant Hauling Assets and be accomplished by selling or otherwise conveying each asset to a purchaser in such a way as to satisfy the United States, in its sole discretion, after consultation with the Relevant State, that the Relevant Disposal Assets or Relevant Hauling Assets can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in waste disposal or hauling. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser (or purchasers) for whom it is demonstrated to the United States sole satisfaction, after consultation with the Relevant State, that: (1) the purchaser(s) has the capability and intent of competing effectively in the waste disposal or hauling business in the Relevant Area; (2) the purchaser(s) has the managerial, operational, and financial capability to compete effectively in the waste disposal or hauling business in the Relevant Area; and (3) none of the terms of any agreement between the purchaser and defendants gives any defendant the ability unreasonably to raise the purchaser's costs, lower the purchaser's efficiency, or otherwise interfere in the ability of the purchaser to compete effectively in the Relevant Area.

K. A purchaser of any Relevant Disposal Assets or Relevant Hauling Assets under this Final Judgment must demonstrate to the satisfaction of the United States, after consultation with the Relevant State, that the purchaser will comply with any and all applicable federal, state and local environmental and licensing laws.

L. Defendants may enter into an agreement, after review and approval of the United States, in its sole discretion, after consultation with the Relevant State, with a purchaser or purchasers of the Chiquita Canyon, Brazoria or Carleton Farms landfills (see Sections II (C)(1)(g), (f) and (d) for disposal of commercially acceptable waste collected or transferred from defendants' own route operations.

V. Appointment of Trustee

A. In the event that defendants have not sold the Relevant Disposal Assets or Relevant Hauling Assets within the time specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States, to effect the divestiture of each Relevant Disposal Asset or Relevant Hauling Asset not sold.

B. After the appointment of a trustee becomes effective, only the trustee shall

have the right to sell the Relevant Disposal Assets or Relevant Hauling Assets described in Sections II (C) and (D) of this Final Judgment. The trustee shall have the power and authority to accomplish any and all divestitures at the best price than obtainable upon a reasonable effort by the trustee, subject to the provisions of Section IV, VI, and IX of this Judgment, and shall have such others powers as the Court shall deem appropriate. Subject to Section V(C) of this Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. To assist in the sale of the Brent Run Landfill, described in Section II(C)(1)(e) of this Judgment, the trustee also shall have the power and authority to commit defendants to supply waste from defendant's routes in the Relevant Area to that landfill for up to a five-year time period at the best disposal price than obtainable upon reasonable effort by the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser or purchasers acceptable to the United States, in its sole discretion, after consultation with the Relevant State, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the Relevant State and trustee with ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of each Relevant Disposal Asset or Relevant Hauling Asset sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and

terms of the divestiture and the speed with which it is accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures, including best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and defendants shall develop financial or other information relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Defendants shall permit bona fide prospective purchasers of each Relevant Disposal Asset or Relevant Hauling Asset to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to sell the businesses to be divested.

F. If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time

furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestitures

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, defendants or the trustee, whichever is then responsible for affecting the divestiture, shall notify the United States and the Relevant State of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by the

United States and the Relevant State of such notice, the United States, in its sole discretion, after consultation with the Relevant State, may request from defendants, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Defendants and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice [or within twenty (20) calendar days after the United States and the Relevant State have been provided the additional information requested from defendants, the proposed purchaser, and any third party, whichever is later], the United States, after consultation with the Relevant State, shall provide written notice to defendant and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to defendants (and the trustee, if applicable) that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(B) of this Final Judgment. Upon objection by the United States, a divestiture proposed under Section IV or Section V of this Final Judgment shall not be consummated. Upon objection by

defendants under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Notice of Future Acquisitions

A. Defendants shall provide each Relevant State with 30 days' written notice (which period may be shortened by permission of the Relevant State) before acquiring, directly or indirectly, any interest in any business, assets (other than in the ordinary course of business), capital stock, or voting securities of any person that, at any time during the twelve (12) months immediately preceding such acquisition, was engaged in waste disposal or small containerized solid waste hauling in any area listed in Section VII(B), where that person's annual revenues from waste disposal or small containerized solid waste hauling in the area were in excess of \$500,000 annually, or its total revenues were in excess of \$,000,000 annually.

B. The notice provisions set forth in Section VII (A) above apply whenever defendants seek to acquire any interest in any business, assets (other than in the ordinary course of business), capital stock, or voting securities of any person that was engaged in waste disposal or small containerized solid waste hauling in any of the following areas:

Relevant state	Area of which defendants must provide relevant state notice of future acquisitions
Arizona	Pima Co. (hauling and disposal).
California	Los Angeles and Riverside (hauling and disposal); Ventura and Orange Co. (disposal only).
Colorado	Boulder and Denver Co. (hauling and disposal).
Florida	Brevard, Alachua, Marion, Orange, Osceola, Seminole, Lee, Charlotte, Sarsota, Putnam, Volusia and Flagler Co. (hauling and disposal).
Kentucky	Jefferson and Oldham Co. (hauling and disposal).
Maryland	Baltimore City, Baltimore, Anne Arundel, Hartford, Carroll, Howard, Montgomery, and Prince George's Co. (hauling and disposal).
Michigan	Wayne, Macomb, and Oakland Co. (hauling and disposal); Genessee, Shiawassee, Saginaw, Bay, Midland, Wexford, Manistee and Montmorency Co. (disposal only).
New York	New York, Bronx, Kings, Queens, and Richmond Co. (disposal only).
Ohio	Ashtabula, Cuyahoga, Delaware, Fairfield, Franklin, Geauga, Lake Licking, Lorain, Lucas, Mahoning, Medina, Pickaway, Portage, Stark, Summit, Trumbull, and Wood Co. (hauling and disposal); Carroll, Columbiana, Coshocton, Holmes, Knox, Madison, Tuscarawas, Union and Wayne Co. (disposal only).
Pennsylvania	Allegheny, Westmoreland, Washington, Beaver, Butler, Lehigh, Northampton, Dauphin, Cumberland, and Perry Co. (hauling and disposal); Philadelphia, Bucks, Montgomery, and Delaware Co. (disposal only).
Texas	Brazoria, Chambers, Ft. Bend, Galveston, Harris, Liberty, Montgomery, Walker and Waller Co. (hauling and disposal).
Washington	Cowlitz and Clark Co. (hauling and disposal).
Wisconsin	Milwaukee, Waukesha, Racine, Washington, Kenosha, Ozaukee, Walworth, Jefferson and Dane Co. (disposal only).

C. For purposes of this Section VII, the term "small containerized solid waste hauling" means the provision of solid waste hauling service to commercial customers by providing the

customer with a one to ten cubic yard container, which is picked up mechanically using a frontload, rearload or sideload truck, and excludes hand pick-up service, and service using a

compactor attached to or part of a container.

VIII. Defendants' Additional Obligations

Defendants are hereby ordered and directed to, in accordance with the terms of this Final Judgment:

A. Offer to extend, for an additional ten-year time period, the Solid Waste Service Agreement, dated August 8, 1996, by and between the Northeast Maryland Waste Disposal Authority and USA Waste's subsidiary, Garnet of Maryland, Inc. (attached hereto as Exhibit B), for the disposal of Anne Arundel County, MD and Howard County, MD waste at the Annapolis Junction Transfer Station;

B. Use their best efforts, prior to its divestiture, to obtain any and all licenses and permits to open and operate USA Waste's Nekboh Transfer Station, described in Section II(C)(2)(i)(2); and for a five-year period following such divestiture, to cooperate and assist the purchaser in obtaining any and all licenses or permits required to operate Nekboh Transfer Station and to refrain from opposing any application by the purchaser to obtain a license or permit to expand the Nekboh Transfer Station;

C. For a one-year period following entry of this Final Judgment, refrain from opposing any application by any person for permit or license to operate any waste transfer station in any borough of the City of New York, NY;

D. For a five-year period following entry of this Final Judgment, refrain from opposing any application by any person to obtain a license or permit to expand the remaining capacity or the average daily capacity of the Emerald Park Landfill, Glacier Ridge Landfill, or Valley Meadows Landfill, in the Greater Milwaukee, WI area;

E. Refrain from reacquiring any interest in any Relevant Disposal Assets or Relevant Hauling Assets divested pursuant to the terms of this Final Judgment, without prior written notice to, and written consent of, the United States and the Relevant State;

F. Refrain from conditioning the sale of any landfill pursuant to this Final Judgment on any understanding, agreement or commitment, written or understood, that the purchaser (or purchasers) will agree to sell airspace or otherwise permit defendants to dispose of waste in that landfill; provided, however, that USA Waste's Carleton Farms Landfill may be divested subject to USA Waste's obligation to dispose of ash from the Greater Detroit Resource Recovery Center's incinerator at a separate monofill cell on the Carleton Farms Landfill site;

G. Refrain from taking any action to enforce any agreement or understanding

that would prohibit any person from competing in Alachua or Marion County, FL; provided, however, that this provision shall not apply to a current or former employee of defendants (other than any employee who may be responsible in any way for route operations subject to divestiture under Sections II(D)(12), IV and V of this Judgment); and

H. Provide access to the gate, scale house and disposal area of the WMI Tucson transfer station, located at 5200 West Ina, Tucson, AZ, under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any county or municipality in Arizona.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Final Judgment in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section V of this Final Judgment, defendants shall deliver to plaintiffs an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, inter alia, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the businesses to be divested, and shall described in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that defendants have taken to solicit a buyer for any and all Relevant Disposal Assets and Relevant Hauling Assets and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States, after consultation with the Relevant State, to information provided by defendants, including limitations on informations shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to plaintiffs an affidavit which describes in detail all actions defendants have taken and all steps defendants have implemented on an on-going basis to preserve the Relevant Disposal Assets and Relevant Hauling Assets pursuant to Section X of this Final Judgment and the Hold Separate Stipulation and Order

entered by the Court. The affidavit also shall describe, but not be limited to, defendants' efforts to maintain and operate each Relevant Disposal Asset and Relevant Hauling Asset as a viable active competitor; to maintain separate management, staffing, sales, marketing and pricing of each asset; and to maintain each asset in operable condition at current capacity configurations. Defendants shall deliver to plaintiffs an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after any such change has been implemented.

C. For a one-year period following the completion of each divestiture, defendants shall preserve all records of any and all efforts made to preserve the Relevant Disposal Assets and Relevant Hauling Assets that were divested and to effect the ordered divestitures.

X. Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the sale of any Relevant Disposal Asset or Relevant Hauling Asset.

XI. Financing

Defendants are ordered and directed not to finance all or any part of any acquisition by any person made pursuant to Sections IV or V of this Final Judgment.

XII. Compliance Inspection

For purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, or upon written request of duly authorized representatives of the Attorney General's Office of any other plaintiff, and on reasonable notice to defendants made to their principal offices, shall be permitted:

1. Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to the matters contained in this Final Judgment and

the Hold Separate Stipulation and Order; and

2. Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, or upon the written request of the Attorney General's Office or any other plaintiff, defendants shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Sections VII or X of this Final Judgment shall be divulged by a representative of the plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States, or the Attorney General's Office of any other plaintiff, except in the course of legal proceedings to which the United States or any other plaintiff is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiffs, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by plaintiffs to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XIII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIV. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated _____ 1998.

United States District Judge

Exhibit A—Final Judgment, US v. Reuter Recycling of Florida, Inc.

In the United States District Court for the District of Columbia

United States of America and State of Florida, by and through its Attorney General, Plaintiffs, v. Reuter Recycling of Florida, Inc., and Waste Management Inc. of Florida, Defendants Civil Action No.: 951982. Filed: June 25, 1999. Entered: January 22, 1996.

Final Judgment

Whereas, Plaintiffs, United States of America (hereinafter "United States") and the State of Florida (hereinafter "Florida"), having filed their Complaint in this action on October 20, 1995, and Plaintiffs and Defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law; and without this Final Judgment constituting any evidence or admission by any party with respect to any issue of fact or law;

And Whereas, Defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the Plaintiffs intend Defendants to be required to preserve competition for solid waste disposal by honoring certain contracts, as amended, and by giving to a competitor an option to purchase real property capable of being used as a municipal solid waste transfer station to preserve competition in solid waste disposal in Dade and Broward Counties, Florida, now and in the future, and, by permitting a competitor to preserve its ability to compete for and to have access to capacity for sufficient volumes of municipal solid waste to remain a viable solid waste disposal competitor while it seeks another transfer station site;

And Whereas, Defendants have represented that the contract changes and the option agreement to purchase real estate described below can and will be made and honored and that Defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below.

Now, therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby

Ordered, Adjudged and Decried as follows:

I. Jurisdiction

This Court has jurisdiction of the subject matter of this action and over

each of the parties hereto. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

(A) "Broward" means Broward County, Florida.

(B) "Chambers" means Chamber Waste Systems of Florida, Inc., a subsidiary of USA Waste Services, Inc. Chambers is a corporation organized and existing under the laws of the State of Florida with its principal offices in Okeechobee, Florida.

(C) "Dade" means Dade County, Florida.

(D) "Defendants" means Reuter and WMF, as hereinafter defined.

(E) "Reuter" means defendant Reuter Recycling of Florida, Inc., Reuter is a corporation organized and existing under the laws of the State of Florida with its principal offices in Pembroke Pines, Florida.

(F) "Solid waste disposal service" means the final disposal of municipal solid waste, generally in a landfill or incineration facility.

(G) "Transfer Station Agreement" means the agreement between Reuter and Chambers dated as of July 14, 1993 pursuant to which Reuter, among other things, accepts for transfer certain solid waste material delivered by Chambers or Chambers' subcontractors. A copy of the Transfer Station Agreement is attached as Exhibit A.

(H) "Amendment to Transfer Station Agreement" means the Agreement between Reuter and Chambers dated October 20, 1995 modifying the Transfer Station Agreement. A copy of the Amendment to Transfer Station Agreement is attached as Exhibit B.

(I) "Option Agreement" means the Agreement between Reuter and Chambers dated October 20, 1995. A copy of the Option Agreement is attached as Exhibit C.

(J) "WMF" means defendant Waste Management Inc. of Florida, a subsidiary of Waste Management, Inc. WMF is a corporation organized and existing under the laws of the State of Florida with its principal offices in Pompano Beach, Florida.

(K) "Acquisition" means the acquisition of the majority of the outstanding stock of Reuter by WMF.

(L) "Reuter Transfer Station" means the facility owned by Reuter and located at 2079 Pembroke Road, Pembroke Pines, FL which currently, among other things, accepts for transfer certain solid waste material delivered by Chambers or Chambers' subcontractors and also accepts waste from the cities of Pompano Beach, Pembroke Pines, Dania, and Hallandale, FL.

III. Applicability

This Final Judgment applies to Defendants and to their officers, directors, managers, agents, employees, successors, assigns, affiliates, parents and subsidiaries, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. Nothing contained in this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be

construed to provide any rights to any third party.

IV. Entry Into and Compliance With Agreements

On or before the date the Acquisition is consummated, Reuter shall enter into the Amendment to Transfer Station Agreement and the Option Agreement. Defendants shall be bound by the terms of the Transfer Station Agreement, as modified by the Amendment to Transfer Station Agreement, and the Option Agreement. Defendants shall not convey to any person other than Chambers, the property subject to the Option Agreement, prior to the later of July 14, 1998 or any extension of that Option Agreement, except as provided in the Option Agreement. Defendants shall not exercise their right to replace Chambers as the Facility operator under Paragraph 3f of the Amendment to Transfer Station Agreement without the prior approval of the United States, in consultation with Florida.

V. Termination of the Agreements

In the event Chambers has secured the right to use and is using another transfer station capable of serving Broward or Dade Counties prior to July 14, 1998, Defendants may notify Plaintiffs of that fact and Defendants may request in writing that they be relieved of the obligation to extend the term of the Transfer Station Agreement as set forth in Paragraph 2 of the Amendment to Transfer Station Agreement, and of the obligation to convey property under the Option Agreement. The United States may grant one or both of Defendants; requests if it determines, in its sole discretion after consultation with Florida, that Chambers can effectively compete in the relevant markets without access to the Reuter Transfer Station or without access to the property subject to the Option Agreement.

VI. Interim Preservation of Viable Competition

(A) Defendants shall not enter into any contract or contracts, with any firm listed on Exhibit D, having a term in excess of one (1) year, or having multiple consecutive one (1) year terms, for the disposal of solid waste, where any such waste would be transported through the Reuter Transfer Station for disposal elsewhere, Exhibit D is a list of the customers of Chambers for whom Chambers uses the Reuter Transfer Station to enable it to dispose of solid waste as of the date this Final Judgment is filed ("Chambers Customers").

(B) Defendants' obligations under Paragraph VI.A. shall terminate upon the United States providing Defendants with written notice, following application by Defendants, that the United States, in its sole discretion after consultation with Florida, has determined that Chambers can compete effectively in the relevant market if Defendants are permitted to contract with Chambers' Customers as proscribed in Paragraph VI.A. In any event, Paragraph VI.A. shall terminate on the date the Transfer Station Agreement, as amended by the Amendment to the Transfer Station Agreement, terminates.

(C) Nothing herein shall preclude Defendants from contracting with any of the Chambers' Customers for a period of one (1) year or less; or, for a period in excess of one (1) year where that customer's solid waste is not transported by Defendants, directly or indirectly, through the Reuter Transfer Station.

VII. Defendants' Obligations of Noninterference and Assistance

In the event that Chambers seeks to permit a new transfer station or seeks access to a new or existing transfer station other than the Reuter Transfer Station, Defendants shall take no action to protest, lobby against, object to, or otherwise impede, directly or indirectly, any attempts by Chambers to lease, purchase, site, obtain appropriate zoning for, obtain permits and any and all other governmental approvals for a solid waste transfer station capable of serving Broward or Dade, nor shall Defendants provide financing or other assistance to any person who does so. Furthermore, from the effective date of the Option Agreement through the termination date of that Agreement, including any extensions thereof, Defendants will cooperate with Chambers' efforts to obtain any necessary government approvals on the property subject to the Option Agreement.

Notwithstanding the provisions of this Final Judgment, Defendants may bid on and enter into contracts with municipal or governmental entities for the provision or use of transfer station facilities in Dade and Broward.

VIII. Acquisition of the Option Property

If the option the purchase under the Option Agreement is exercised, Defendants shall not, without prior written consent of the United States, after consultation with Florida, re-acquire any of the property conveyed pursuant to the Option Agreement.

IX. Reporting and Plaintiffs' Access

(A) To determine or secure compliance with this Final Judgment, duly authorized representatives of the Plaintiffs shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division or the Florida Attorney General or his duly authorized representative, respectively, on reasonable notice given to Defendants at their principal offices, subject to any lawful privilege, be permitted:

(1) Access during normal office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other documents and records in the possession, custody, or control of Defendants, which may have counsel present, relating to any matters contained in this Final Judgment.

(2) Subject to the reasonable convenience of Defendants and without restraint or interference from them, to interview officers, employees, or agents of Defendants, who may have counsel present, regarding any matters contained in this Final Judgment.

(B) Upon written request of the Assistant Attorney General in charge of the Antitrust Division or the Florida Attorney General or his duly authorized representative, on reasonable notice given to Defendants at their principal offices, subject to any lawful

privilege, Defendants shall submit such written reports, under oath if requested, with respect to any matters contained in this Final Judgment.

(C) No information or documents obtained by the means provided by this Section shall be divulged by the Plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States government or of the State of Florida, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by Defendants to Plaintiffs, Defendants represent and identify in writing the material in any such information or document to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material "Subject to claim of protection under Rules 26(c)(7) of the Federal Rules of Civil Procedure," then ten days notice shall be given by Plaintiffs to Defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Defendants are not party.

X. Further Elements of Judgment

(A) This Final Judgment shall expire on the tenth anniversary of the date of its entry.

(B) jurisdiction is retained by this Court over this action and the parties thereto for the purpose of enabling any of the parties thereto to apply for the purpose of enabling any of the parties thereto to apply to this Court at any time for further order and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

XI. Public Interest

Entry of this Final Judgment is in the public interest.

Plaintiff's motion (unopposed) for entry of Judgment as granted.

Entered: January 22, 1996

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

Royce C. Lamberth,

United States District Judge.

Exhibit B—Service Agreement, Northeast Maryland Waste Disposal Authority and Garnet of Maryland, Inc.

Service Agreement by and Between Northeast Maryland Waste Disposal Authority and Garnet of Maryland, Inc. To Provide Solid Waste Acceptance, Processing, Transportation and Disposal Services for Anne Arundel and Howard Counties, Maryland

Dated as of August 8, 1996.

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This Service Agreement is made as of August 8, 1996 between the Northeast Maryland Waste Disposal Authority ("Authority") and Garnet of Maryland ("Company").

Recitals

A. The Authority is an instrumentality of the State of Maryland created to assist with the preservation, improvement and management of the quality of air, land and water resources and to promote the health and welfare of the citizens of the State by providing dependable, effective and efficient disposal of solid Wastes, including the recovery of usable resources from such Waste. Howard County and Anne Arundel County, Maryland (collectively, "Counties") have requested that the Authority provide for the Acceptance, Processing, Transfer and Disposal of certain amounts of non-recycled solid waste (the "Services") collected by, or on behalf of, the Counties.

B. The Authority and the Counties will enter into a Waste Disposal Agreement under which the Authority will be obligated to provide these Services.

The Authority intends to fulfill its obligations to the Counties to provide the Services by entering into and managing this Agreement.

C. The Authority, in cooperation with the Counties, has selected the Company through a competitive process. The Company has demonstrated that it is qualified to accept process, transport and dispose of solid Waste.

D. The Company shall provide the Acceptance Facility, Disposal Facility and other Facilities so as to receive and process all of the solid Waste delivered to the Company by the Counties or the Designated Haulers.

E. The Counties will be third party beneficiaries of the Company's obligations under this Agreement.

Now, therefore, in consideration of the mutual promises and covenants of each to the other contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties of this Service Agreement agree as follows:

Article I—Definitions and Rules of Interpretation

Section 1.1 Definitions

Capitalized terms used in this Agreement have the meanings set forth in Schedule 2.

Section 1.2 Rules of Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) All reference in this instrument to designated "Articles," Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed.

(b) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.

(c) Words, of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(d) The table of contents and the headings or captions used in this Agreement are for convenience of reference only and do not define, limit or describe any of the provisions hereof or the scope or intent hereof.

(e) References to agreements or contracts include all amendments, modifications and supplements thereto.

Article II—Obligations Relating to Acceptance of Waste; Operating Procedures; Performance of Authority's Obligations

Section 2.1 Acceptance, Processing, Transportation and Disposal of Waste

(a) The Company has sole responsibility for the provision and operation of all facilities, personnel, vehicles and sites necessary to provide the Service as described in Schedule 1. The Company shall communicate on a routine basis to ensure the day-to-day coordination of activities between the Company, the Counties and the Authority. Upon request of the Authority Representative or any of the County Representatives, the Company shall meet with the Authority and/or one or both of the Counties.

Beginning on the Commencement Date and continuing throughout the term of this Agreement the Company shall accept, process, transfer and dispose in accordance with this Agreement and Applicable Law all Acceptable Waste delivered by or on behalf of the Counties.

(b) Acceptable Waste will be delivered in vehicles owned or operated by employees of or under contract to, the Counties or a Designated Hauler. The Counties or a Designated Hauler may deliver Acceptable Waste in any form they deem appropriate. The Authority shall provide the Company with the following information about each vehicle delivering Acceptable Waste to the Company for its credit; hauler name and address, make, body type; tag or permit

number of each vehicle used; area of collection; and whether the vehicle is owned by the Counties or by a Designated Hauler.

(c) The Authority understands that the Company may accept Waste from other customers at the Facilities, but it may not accept Waste from other customers during the interim period at Anne Arundel County's Millersville Landfill.

Section 2.2 Refusal of Deliveries

(a) Extent of Refusal Rights

The Company may reject deliveries of Acceptable Waste delivered at hours established under Section 2.3. Acceptable Waste rejected by the Company for any reason other than as permitted pursuant to this Section 2.2 (a) or (b) or any other provision of this Agreement constitute Wrongfully Diverted Acceptable Waste. The amount of Wrongfully Diverted Acceptable Waste is used to calculate Alternate Disposal Damages under Section 3.2.

The parties agree that Company shall be the only party entitled to establish the classification of Waste delivered to a Facility, subject to the Authority's ability to object to such classification as set forth in Section 3.4.

(b) Inspection of Delivered Waste

The Company shall develop and maintain any and all reasonable appropriate screening programs at the Acceptance Facility. Any such screening programs shall include any reasonable programs and practices required by the Counties or the Authority. The Counties and the Authority shall cooperate with the Company with regard to the screening programs. Neither the inclusion of programs or practices in the Waste screening programs by the Authority or the Counties nor the review or comment by the Authority or the Counties upon any Company proposal with regard to the Waste screening programs relieves the Company of any of its obligations hereunder or imposes any liability upon the Authority or the Counties.

The Company may inspect the contents of all vehicles delivering Waste under this Agreement to the Acceptance Facility. The Counties will monitor their own collection operations to reduce the collection of Unacceptable Waste. The Company will institute appropriate procedures, including inspection procedures, to ensure that Unacceptable Waste is separated at the Acceptance Facility. The Company will give immediate notice to the Counties of deliveries of Unacceptable Waste to the Company, followed by prompt written notice indicating the time, the source of delivery and identity of the hauling firm and driver. The intent of this requirement is to ensure safe handling by the Company of the Waste received in compliance with Applicable Law. The Company shall handle and dispose of Unacceptable Waste that is received at the Acceptance Facility.

The cost for disposal of Unacceptable Waste shall be paid to the Company as specified in this Service Agreement.

The Company shall be entitled to the Unacceptable Waste Disposal Cost described in Section 3.2 for any amounts of Unacceptable Waste it removes from the Acceptance Facility.

Section 2.3 Receiving Hours and Waiting Time

(a) The Company shall accept the delivery of Acceptable Waste during the hours of 7:00 a.m. to 5:00 p.m., Monday through Saturday and until 7:00 p.m. on the first regular collection day following a Holiday. Acceptable Waste will not be delivered by the Counties on the following holidays. The Authority shall designate the dates on which holidays are to be observed.

New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

(b) The Company shall accept Acceptable Waste at hours other than the Receiving Hours, to the extent permitted by Applicable Law, upon reasonable prior notice of such delivery. The Out of Hours Delivery Charge for Company operations outside of Receiving Hours, pursuant to this Section 2.3(b), may be charged for each ton of Waste delivered before 7:00 a.m. and after 5:00 p.m. except that the Out-of-Hours Delivery Charge shall not be charged for Waste delivered between the hours of 5:00 p.m. and 7:00 p.m. on the first regular collection day following a holiday. *The amount shall be 3% above the per ton bid price.* The Out of Hours Delivery Charge shall not apply for any hours the Acceptance Facility is open to receive Waste from sources other than the Authority.

(c) The Company shall take all steps necessary to ensure that the time period between delivery vehicle arrival at and departure from the Acceptance Facility does not exceed 30 minutes for Acceptable Waste delivered by the Counties, Designated Haulers, or the Authority.

Section 2.4 Scales and Weighing Records

The Company shall operate and maintain the road vehicle scales at the Acceptance Facility which shall provide for automatic weighing and recording of all Wastes received and removed. The Company shall weigh all vehicles delivering Acceptable Waste to the Project. The scales shall incorporate a computer interface system and use software acceptable to the Authority. The weight record shall contain gross weight, tare weight, date, time of arrival, time of departure, description of Waste in the vehicle, vehicle identification (truck or permit number) and identification of origin of Waste in the vehicle.

The Authority may require each vehicle operator delivering Waste to present to the scale operator a card, permit, identification or license. The Company or the Authority may require from time to time the revalidation of the tare weight of any vehicle or the reweighing of unloaded vehicles.

If the permanent vehicle scales at the Acceptance Facility are not working properly or are being tested, the Company shall use portable scales at the Acceptance Facility. If portable scales or other alternate weighing facilities and equipment meeting the requirements of Applicable Law are not available, a "scale outage" will occur, and the Company shall estimate the quantity of Acceptable Waste delivered on the basis of

truck volumes and historical information about the Authority, the Counties, the Company and the Designated Haulers. These estimates shall take the place of actual weighing records during the scale outage. In order to participate in the estimating of quantities of Acceptance Waste during a scale outage, the Authority and/or County may have an employee or agent present in the scale house when each vehicle arrives.

The Company, at its expense, shall obtain approval of, inspect and test the vehicle scales as required by Applicable Law but no less frequently than once per year. At the written request of the Authority, the Company in the presence of the Authority Representative, shall make additional tests of all vehicle scales. The cost of these additional tests shall be borne by the Authority if the scales meet the accuracy requirements of Applicable Law.

If any test shows that a scale registers farther above or below the correct reading than permitted by Applicable Law, the charges and calculations based on scale readings made within thirty (30) days preceding the test shall be corrected by the percentage of inaccuracy found. If a test of the scales has been performed during the preceding thirty (30) days, only the readings and related charges and calculations made after that test shall be corrected on the basis of the subsequent test.

The Company shall maintain daily records of the total tonnage of Waste delivered to the Acceptance Facility, the tonnage of Waste accepted by the Company and the tonnages of Unacceptable Waste. The Company shall submit monthly reports, as specified in schedule 4 in a form approved by the Authority. The Company shall cooperate with the Authority and the Counties to provide this information electronically or on disk. The Company shall furnish the Authority a compilation of such information for each month, within ten days after the end of the month. The Company shall keep copies of all weight tickets for at least three years which shall be available for inspection by the Authority and the Counties upon request.

The Company shall pay all costs for accepting, transporting, processing and final disposal of Acceptable Waste.

Section 2.5 Hazardous Waste

(a) The Company shall develop a plan for the identification, handling and disposal of Hazardous Waste discovered at the Acceptance Facility (the "Hazardous Waste Plan"). The Company shall segregate and isolate all Hazardous Waste discovered at the Acceptance Facility in accordance with this Agreement, the Hazardous Waste Plan, Applicable Law and any procedures required by the Authority in connection with the segregation and isolation of Hazardous Waste (collectively, the "Hazardous Waste Protocol"). The Company shall maintain any screening programs reasonably necessary or otherwise reasonably required by the Authority that, under Applicable Law, segregate Hazardous Waste delivered to the Acceptance Facility.

(b) So long as the Company (i) acts in accordance with the Hazardous Waste

Protocol and Applicable Law and (ii) enforces its and the Authority's right to payments from third parties or under applicable insurance policies due to the discovery of Hazardous Waste, then the cost of segregation isolation and disposal of the Hazardous Waste shall be reimbursed if the Hazardous Waste was delivered in a vehicle owned, operated or contracted by one of the Counties, the Authority, or a Designated Hauler, provided that such vehicle is correctly identified by the Company as the particular vehicle which delivered such Hazardous Waste.

(c) If Hazardous Waste is delivered to the Acceptance Facility, and the source of such Hazardous Waste or hauler delivering Hazardous Waste cannot be determined by the Parties, the Company shall separately contain, set aside, segregate, isolate and manage the Hazardous Waste as required by law and by the Hazardous Waste Protocol, and the Authority and the Counties shall be notified immediately of its location, general character and amount. The Company shall remove, or cause to be removed, such Hazardous Waste from the Acceptance Facility and shall transport and dispose of, or shall cause such Hazardous Waste to be transported and disposed, in accordance with State and Federal law. The Company shall, at no expense to the Counties or the Authority, bear all of the costs of transportation and disposal of Hazardous Waste which is delivered to the Acceptance Facility because the Company has failed to follow or enforce any provision of the Hazardous Waste Protocol. The foregoing shall not be considered to be a waiver of any claim Company may have against any other third party, including a Designated Hauler. Company may make any such claim directly against the party involved, and to the extent necessary by law in order for such claim to proceed, the Authority and the Counties assign to Company their respective rights to make such a claim.

(d) Hazardous Waste delivered by a vehicle owned, operated, or contracted by one of the Counties, the Authority, or a Designated Hauler which is segregated for disposal as Hazardous Waste shall only be disposed of at a Disposal Facility approved by the Authority.

Section 2.6 Manner of Deliveries; Vehicle Size; Rules and Regulations

The Authority shall comply with the reasonable rules and regulations for the delivery of Acceptable Waste to the Acceptance Facility that are provided by the Company and agreed to by the Authority and Counties, which include regulations regarding vehicular movement on the Acceptance Facility Site and screening to segregate Unacceptable Waste. No rules or regulations are effective against the Authority, the Counties, or Designated Haulers unless approved by the Authority Representative and the County Representatives, which approval shall not be unreasonably withheld.

Section 2.7 Contract for Project Management; Performance Security

(a) The parties acknowledge that the dependable operation and maintenance of

the Acceptance Facility, the Disposal Facility and other Facilities providing the Service is in the interests of the parties to this Agreement. The Company shall not enter into or maintain any contract or subcontract with any person other than an Affiliate of the Company for any substantial portion of the operation, management or control of a Facility or the performance of any of the Company's obligations under this Agreement without the prior written consent of the Authority.

(b) No contract or subcontract between the Company and any other person will affect the Company's obligation under this Agreement.

(c) Prior to the Commencement Date the Company shall provide evidence of a Performance Bond, standby Letter of Credit or Corporate Guarantee from a surety or insurance company acceptance to the Authority, covering the performance obligations of the Company under Article II of this Agreement. The Performance Bond, Letter of Credit or corporate guarantee shall be in an amount equal to one year of estimated Service Fee payments to the Company, as defined in Section 3.1 of this Agreement, and name, among others, the Authority as beneficiary. The Performance Bond or LOC shall be in the form set forth in Schedule 5. The Company shall provide the Performance Bonds, Letter of Credit, or corporate guarantee until release by the Authority. The Authority shall release the Performance Bond, Letter of Credit or corporate guarantee upon termination of this Agreement as long as the Company is not in default and the Performance Bond, Letter of Credit, or corporate guarantee is not being drawn upon by the Authority.

Section 2.8 Repairs and Maintenance

The Company, at its own expense, shall maintain the Facilities in good condition at all times, and make all repairs and replacements required for the Company to perform its obligations under this Agreement. The Company shall maintain the safety of the Facilities at a level consistent with Applicable Law and standard facility practices.

Section 2.9 Authority and County Access

The Authority, the Counties and their respective agents, licensees and invitees may visit or inspect the Facilities at any reasonable time during the term of this Agreement. The Authority Representative or its designees, or the County Representatives or their respective designees may inspect the Facilities at any time from time to time without notice. The Authority, the Counties and their respective agents, licensees and invitees shall conduct visits to the Facilities in a manner that does not cause unreasonable interference with the Company's operations. To the extent practical, the Authority and the Counties shall provide the names of all invitees to the Company in advance. The Company may require any Person on a Facility site to comply with its reasonable rules and regulations and to sign a statement agreeing (i) to assume the risk of the visit but not the risk of injury due to the intentional or negligent acts or omissions of the Company or any of its subcontractors, agents

or employees and (ii) not to disclose or use any Confidential Information of the Company other than for the purpose for which it was furnished or, in the case of Authority or County employees and agents, except in accordance with Section 9.11.

Section 2.10 Clean-Up and Disposal

The Company shall keep the Facilities free from accumulation of Wastes or rubbish (except in appropriate locations) caused by operations at the Facilities and shall maintain and operate the Facilities so as to prevent the Sites from becoming unsightly or a nuisance under Applicable Law.

Section 2.11 Regulatory Requirements

The Company shall perform its obligations under this Agreement and operate the Facilities in accordance with all requirements of Applicable Law, regulations, and permits. The Company shall obtain and maintain, or cause to be obtained and maintained, all permits and licenses required by Applicable Law to perform its obligations hereunder, provided that the Company will not breach its obligations under this Section if (i) the Company is contesting the Applicable Law in good faith by appropriate proceedings conducted with due diligence and the Applicable Law allows continue operation of the Facilities pending resolution of the contest or (ii) the Company is diligently seeking to comply with such Applicable Law or to obtain or maintain any such permit or license and Applicable Law allows continued operation of the Facilities.

Article III—Service Fee; Damages; Payments

Section 3.1 Service Fee, Damages, Payments

(a) From and after the Commencement Date, the Company may charge and collect from the Authority a fixed Service Fee as shown in Schedule 3 for each ton of Acceptable Waste accepted by the Company from the Counties, or Designated Haulers for disposal hereunder.

(b) the Authority shall pay to the Company certain other charges as detailed in Section 3.2. The Authority may retain or set-off from any amounts due the Company, Acceptance Facility Delay Damages, Alternate Disposal Damages, Alternate Procurement Damages and Delivery Delay Damages.

(c) The Service Fee and Out of Hours Delivery Charge shall not be adjusted by any inflation factor.

Section 3.2 Monthly Payments

(a) The Company shall provide the Authority and the Counties with a statement or invoice for all amounts payable hereunder by the twenty-fifth (25th) day of the calendar month immediately succeeding the calendar month for which such amounts are payable. Amounts invoiced are due thirty (30) days after receipt of the invoice by the Authority and the Counties. Each invoice shall set forth amount of the Service Fee and other charges payable to the Company for the applicable period, together with supporting documentation including scale records, sufficient to allow the recipient of the invoice to verify the Company's calculations of the Service Fee and other charges for such

period. The supporting documentation shall be adequate to allow the Authority to determine the portion of the amount payable by each of the Counties. The amounts payable monthly in accordance with Section 3.2 are calculated as follows:

(i) The amount due for Service Fee payments shall be the product of the Service Fee multiplied by the aggregate number of tons of Acceptable Waste delivered by a County, a Designated Hauler, or the Authority during the month; plus

(ii) Any Out-of-Hours delivery charges; plus

(iii) The Company's direct out of pocket costs for Unacceptable Waste that is delivered to the Acceptance Facility by a County, a Designated Hauler, or the Authority and disposed of by the Company; less

(iv) The amount of Acceptance Facility Delay Damages, Alternate Disposal Damages, Alternate Procurement Damages and Delivery Delay Damages, if any.

All Company invoices and statements shall be delivered by hand or mailed first class, postage prepaid, to: Northeast Maryland Waste Disposal Authority, 25 S. Charles Street, Suite 2105, Baltimore, Maryland 21201-3330, Attention: Executive Director.

The Authority shall have no obligation to make payment for any amount of Acceptable Waste delivered to the Acceptance Facility by any Person other than a County, a Designated Hauler, or the Authority.

Section 3.3 Late Payment

Any amounts payable under this Agreement by the Authority or the Company that are not paid when due in accordance with this Agreement shall, unless otherwise specifically provided, bear interest, to the extent permitted by Applicable Law, at the Late Payment Rate.

Section 3.4 Disputes as to Service Fee or Other Charges

If the Company or the Authority disputes any amount owed as the Service Fee, Out-of-Hours Delivery Charge pursuant to Section 9.15, the classification of Waste made by the Company, or the amount of Damages claimed by the Authority under Section 3.2(iv) or elsewhere herein, the disputed portion of such adjustment is not effective until resolution of a dispute. Immediately after the resolution of a disagreement about a Service Fee or Out-of-Hours Delivery Charge, classification of Waste or amount of Damages, the party whose position does not prevail shall reimburse the other party for the aggregate amount of any underpayment or overpayment, plus interest at the Late Payment Rate.

Section 3.5 Books and Records, Audit and Reports

(a) The Company shall maintain all books, records and accounts necessary to record all matters affecting the Service Fee, Out-of-Hours Delivery Charge, applicable damages or other amounts payable by or to the Authority or the Company under this Agreement or other agreements, including, but not limited to, policies for Required Insurance, policy amendments and all other related insurance documents. The Company

shall maintain all such books, records and accounts in accordance with GAAP. The Company's books, records and accounts shall accurately, fairly and in reasonable detail reflect all the Company's dealings and transactions under this Agreement and other agreements and shall contain sufficient data to enable those dealings and transactions to be audited in accordance with generally accepted auditing standards. The Company shall make all such books, records and accounts available for inspection and photocopying by the Authority or the Counties within 5 business days of a written request by the Authority or a County.

(b) The Company shall provide the Authority and the Counties with the reports and information set forth in Schedule 4 at the times required by Schedule 4. The report format can be modified with approval of the Authority to reflect the facilities used by the Company to provide the Service.

(c) The Company certifies that all information the Company has provided, or will provide to the Authority or the Counties, is true and correct and can be relied upon by the Authority and the Counties in awarding, modifying, making payments, or taking any other action with respect to this Agreement. Any material false or misleading information is a ground for the Authority to terminate this Agreement for cause, without opportunity to cure, and to pursue any other appropriate remedy.

Section 3.6 Accounting

Beginning July 1, 1997, within sixty (60) days following the end of each Fiscal Year, the Company shall provide an accounting to the Authority and the Counties of all payments made by the Authority for the Fiscal Year and all amounts payable by the Authority for such Fiscal Year.

Article IV—Processing Capacity Reductions and Uncontrollable Circumstances

Section 4.1 Effect of Uncontrollable Circumstances

A party to this Agreement shall not be in default under this Agreement or liable to the other party for its failure to perform obligations under this Agreement, if such failure results from an Uncontrollable Circumstance. The Company shall diligently overcome or remove such Uncontrollable Circumstance as soon as possible. The Company shall give prompt notice of such claim to the Authority and to the County Representatives with reasonably requested information concerning the nature of such claim and the efforts to overcome or remove the Uncontrollable Circumstance.

Section 4.2 Changes Necessitated by Uncontrollable Circumstances

(a) As soon as possible after an Uncontrollable Circumstance occurring on or after the Commencement Date, the Company shall give the Authority Representative and the County Representatives a statement describing the Uncontrollable Circumstance and its cause (to the extent known to the Company), and a description of the conditions preventing the performance of the Company's obligations

(b) If a Facility is unavailable due to an Uncontrollable Circumstance, the Company

must diligently pursue finding an alternate facility. Any alternate acceptance facility must be within the same geographic boundaries as shown in the RFB. Alternate disposal facilities must be approved by the Authority. The Company may seek pre-approval of an alternate disposal facility.

In no case will the Service Fee increase due to an Uncontrollable Circumstance.

(c) The Company shall answer any inquiries of the Authority Representative or the County Representatives regarding the conditions caused by the Uncontrollable Circumstance and shall provide them with such information as they reasonably request. Upon the request of the Authority Representative or the County Representative, a consulting engineer, at the Authority's expense, may review the Company's estimate of the time schedule for repairing a Facility or the alleged causes of the Uncontrollable Circumstance.

Article V—Insurance and Indemnification

Section 5.1 Types of Insurance for the Company

The Company shall obtain and maintain, or cause to be obtained and maintained, the Required Insurance in the forms approved by the Authority. The deductible limits contained in Schedule 6 shall not be increased. The Company shall procure and maintain any additional insurance coverage requested by the Authority that is available on commercially reasonable terms and such other insurance required by Applicable Law if the Authority agrees that the cost of the additional insurance may be added to the Service Fee. Insurance required to be obtained by the Company pursuant to this Section 5.1 is "Required Insurance" for all purposes of this Agreement.

Section 5.2 Delivery of Evidence of Insurance: Certain Required Provisions

(a) Within ten (10) business days of execution of this Agreement by the Authority, and at any time thereafter, the Company shall deliver to the Authority copies of all certificates of insurance for Required Insurance and any policy amendments and policy renewals upon ten (10) business days after receipt by the Company. Except for Worker's Compensation Insurance, each policy shall name the Authority and the Counties as co-insured and required the insurer to provide the Authority and the Counties sixty (60) days' prior written notice of termination or cancellation or of any change in coverage or deductibles under such Policy.

(b) The Company shall use only responsible insurance companies of recognized standing which are authorized to do business in Maryland as providers of all Required Insurance. The Company shall carry all Required Insurance with insurance companies rated at least "A-" or its equivalent by Best's Key Rating or another national rating organization. The Company may effect Required Insurance by endorsement of blanket insurance policies.

(c) The Company shall not take out separate insurance concurrent in form or contribution in the event of loss with Required Insurance if the existence of such

insurance reduces amounts payable under Required Insurance if the existence of such insurance reduces amounts payable under Required Insurance. The Company shall immediately notify the Authority whenever it applies for any separate insurance and shall promptly deliver the policy or policies evidencing the separate insurance to the Authority.

(d) The Company shall submit to the appropriate insurer timely notices and claims of all losses insured under any Required Insurance policy, pursue such claims diligently and comply with all terms and conditions of Required Insurance policies. The Company shall promptly give the Authority and the Counties copies of all notices and claims of loss and any documentation or correspondence related to such losses. The Company shall make all policies for Required Insurance, policy amendments and other related insurance documents available for inspection and photocopying by the Authority or the Counties on reasonable notice.

Section 5.3 Indemnification

Company agrees to indemnify, save harmless and defend the Authority, the Counties and their respective officers, employees and agents, from and against any and all liabilities, claims, penalties, forfeitures, suits and the costs and expenses incident thereof (including costs of defense, settlement and reasonable attorneys' fees), which they, individually or collectively, may incur, become responsible for or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, to the extent caused, in whole or in part, by a breach of any term, provision, representation or warranty of this Agreement or any negligent act or omission or willful misconduct of the Company, or its officers, employees or agents. This indemnification is not to be deemed as a waiver of any immunity which may exist in any action against the Authority or the Counties.

The Company shall also indemnify, defend, hold harmless and hereby waives any claim for contribution against the Authority, the State of Maryland, the Counties, or their respective officers, agents and employees, for any Environmental Claim arising in whole or in part from the performance of the Company or its officers, employees, agents or subcontractors, under this Agreement, irrespective of whether such performance is negligent or willful or breaches any term or provision of this Agreement. For purposes of this section of the Agreement, the following definitions apply:

"Environmental Claim" means any investigation, notice, violation, demand, allegation, action, suit, injunction, judgment, order, consent decree, penalty, fine, lien, proceeding or claim arising (a) pursuant to, or in connection with, an actual or alleged violation of, any Environmental Law, (b) in connection with any Hazardous Waste or actual or alleged Hazardous Waste Activity, (c) from any abatement, removal, remedial, corrective, or other response action in

connection with a Hazardous Waste, Environmental Law or other order of a Governmental Authority or (d) from any actual or alleged damage, injury, threat, or harm to health, safety, natural resources, or the environment.

"Environmental Law" shall mean any current or future Legal Requirement pertaining to (a) the protection of health, safety and the indoor or outdoor environment, (b) the conservation, management, or use of natural resources and wildlife, (c) the protection or use of surface water or groundwater, (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, Release, threatened Release, abatement, removal, remediation or handling of, or exposure to, any Hazardous Waste or (e) pollution (including any release to air, land, surface water and groundwater), and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*, Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*, Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251, *et seq.*, Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*, Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2601 *et seq.*, Hazardous Wastes Transportation Act, 49 U.S.C. App. §§ 1801 *et seq.*, Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 *et seq.*, Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 *et seq.*, Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 1101 *et seq.*, National Environmental Policy Act of 1969, 42 U.S.C. §§ 4421 *et seq.*, Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300(f) *et seq.*, any similar, implementing or successor law, including, without limitation, laws enacted by the State of Maryland or any other State, and any amendment, rule, regulation, order, or directive issued thereunder.

"Governmental Approval" means any permit, license, variance, certificate, consent, letter, clearance, closure, exemption, decision or action or approval of a "Governmental Authority."

"Governmental Authority" means any international, foreign, federal, state, regional, county, or local person or body having governmental or quasi-governmental authority or subdivision thereof.

"Hazardous Waste" has the meaning given in Schedule 2 to this Agreement.

"Hazardous Waste Activity" shall mean any activity, event, or occurrence involving a Hazardous Waste, including without limitation, the manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, Release, threatened Release, abatement, removal, remediation, handling of or corrective or response action to any Hazardous Waste.

"Legal Requirement" means any treaty, convention, statute, law, regulation, ordinance, Governmental Approval, injunction, judgment, order, consent decree, or other requirement of any Governmental Authority.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching,

dumping, or disposing into the indoor or outdoor environment, including, without limitation, the abandonment or discarding of barrels, drums, containers, tanks or other receptacles containing or previously containing any Hazardous Waste.

Article VI—Default and Termination

Section 6.1 Remedies for Default

(a) If the Authority breaches any of its obligations under this Agreement, the right of the Company to recover damages or to be reimbursed ordinarily constitutes an adequate remedy. Therefore, the Company may not terminate its obligations under this Agreement for cause or any breach unless an Event of Default (as defined in Section 6.3) on the part of the Authority has occurred and is continuing.

(b) The Company acknowledges that a breach of this Agreement or an Event of Default by the Company entitles the Authority to recover, to the extent proven, all of its damages, as set forth in this Agreement, caused by such default or Event of Default. Nevertheless, any persistent failure by the Company to provide Service hereunder entitles the Authority to terminate this Agreement.

Section 6.2 Events of Default by the Company

Each of the following constitute an Event of Default on the part of the Company.

(a) The failure or refusal by the Company to fulfill any of its material obligations to the Authority in accordance with this Agreement, the RFB and the bid submittal unless such failure or refusal is excused or justified pursuant to this Agreement, or the failure or refusal by the Guarantor to fulfill any of its obligations in accordance with the Guaranty Agreement. Regardless of whether there exists an event of Default, if the Company fails or refuses to perform any of its obligations, the Company shall be liable to the Authority for the full amount of the Authority's Alternate Disposal Damages. No such failure or refusal on the part of the Company or Guarantor shall constitute an Event of Default unless and until:

(i) The Authority has given written notice to the Company stating that in its opinion a particular default or defaults (described in reasonable detail in such notice) exist that shall, unless corrected, constitute a material breach of this Agreement on the part of the Company and that give the Authority a right to terminate its obligations to the Company under this agreement for cause under this Section unless such default is corrected within a reasonable period of time; and

(ii) The Company or the Guarantor, as the case may be, have neither corrected such default nor initiated reasonable steps to correct it within a reasonable period of time (a reasonable period of time, for purposes of this paragraph, shall in any event be not less than 30 business days from the date of the notice given pursuant to clause (i) of this Section for any obligation other than one related to a failure by the Company to accept Waste pursuant to the terms of this Agreement, for which obligation a reasonable period of time shall in any event be not less than five (5) business days from the date of

the notice given pursuant to clause (i) of this Section 6.2(a)), *provided* that if the Company or the Guarantor has commenced to take reasonable steps to correct such default within such reasonable period of time, the default shall not constitute an Event of Default for as long the Company or the Guarantor, as the case may be, is continuing to take reasonable steps to correct it; or

(b) If, by the order of a court of competent jurisdiction, a receiver, liquidator, custodian or trustee of either the Company or the Guarantor or of a major part of either of their property is appointed and is not discharged within sixty (60) days, or if, by decree of such a court, the Company or the Guarantor is adjudicated insolvent or a major part of either of their property is sequestered and such decree has continued undischarged and unstayed for sixty (60) days after the entry of such decree, or if a petition to reorganize the Company or the Guarantor pursuant to the Federal Bankruptcy Code or any other similar statute applicable to the Company or the Guarantor, as now or hereinafter in effect, is filed against the Company or the Guarantor and is not dismissed within sixty (60) days after such filing; or

(c) If either the Company or the Guarantor is adjudicated bankrupt or files a petition in voluntary bankruptcy under any provision of any bankruptcy law or consents to the filing of any bankruptcy or reorganization petition against either the Company or the Guarantor under any such law, or (without limitation of the generality of the foregoing) files a petition to reorganize the Company or the Guarantor pursuant to the Federal Bankruptcy Code or any other similar statute applicable to the Company or the Guarantor, as now or hereafter in effect; or

(d) If either the Company or the Guarantor makes an assignment for the benefit or creditors, or admits, in writing, an inability to pay debts generally as they become due, or consents to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of the either the Company or the Guarantor or a major part of either or their property; or

(e) If the Company provides or has provided materially false or misleading information to the Authority or the Counties; or

(f) The failure of the Company or other Facility operators to comply with Applicable Law in any material fashion; or

(g) The failure of the Company to provide a fully operational Service by the Commencement Date, including the Acceptable Facility by January 1, 1997, or failure to provide evidence upon request of Authority that the Acceptable Facility will be available by January 1, 1997.

Section 6.3 Events of Default by the Authority

Each of the following constitutes an Event of Default on the part of the Authority:

(a) The failure by the Authority to pay any amount in excess of \$550,000, that the Authority is required to pay to the Company under this Agreement within sixty (60) days after receipt by the Authority of written demand from the Company accompanied by notice stating that unless such amount is

paid within sixty (60) days after such demand the failure shall constitute an Event of Default; or

(b) The failure or refusal by the Authority substantially to fulfill any of its material obligations to the Company in accordance with this Agreement, other than as provided in subparagraph (a) above, unless such failure or refusal is excused or justified pursuant to the provisions of this Agreement, *provided* that no such failure or refusal constitutes an Event of Default unless and until:

(i) The Company has given prior written notice to the Authority and the County Representatives stating that in its opinion a particular default or defaults (described in reasonable detail in such notice) exists and unless corrected, constitute a material breach of this Agreement on the part of the Authority and gives the Company a right to terminate this Agreement for cause under this Section 6.3(b) unless such default is corrected within a reasonable period of time; and

(ii) Neither the Authority nor the Counties have corrected such default nor initiated steps to correct it within a reasonable period of time (a reasonable period of time for purposes of this paragraph shall in any event not be less than thirty (30) Business Days from the date of the notice given pursuant to clause (i) of this Section 6.3(b)), *provided* that if the Authority or the Counties have commenced to take reasonable steps to correct such default within such reasonable period of time, it shall not constitute an Event of Default for as long as the Authority or the Counties are continuing to take reasonable steps to correct it; and

(iii) There exists no reasonable expectation that the Company can obtain relief other than by termination of this Agreement for such default sufficient to compensate it for any loss incurred as a result of such Authority default.

(c) The failure of the Company to comply with the Project's MBE requirements as found in the Minority Business Enterprise Terms and Conditions.

Notwithstanding the foregoing provisions, in no event shall the Authority's or Counties' failure to deliver Acceptable Waste constitute an Event of Default under this Agreement as neither the Authority nor the Counties guarantee delivery of any minimum quantity of Acceptable Waste.

Section 6.4 Termination on Default

The right of termination for cause may be exercised only by a notice of Termination (the "Notice of Termination") given to the party in default. Subject to Section 9.13(b), the proper exercise of the right of termination is in addition to and not in substitution for, such other remedies, whether damages or otherwise, of the party exercising the right of termination. When one party terminates its obligations to the other party in accordance with this Agreement, all of their rights, remedies, powers and privileges under this Agreement are terminated, except as provided in Sections 6.7 and 6.8.

Section 6.5 Termination for Certain Uncontrollable Circumstances

If, as a result of the occurrence of one or more Uncontrollable Circumstances, the Acceptance Facility is closed for 10 (ten) or more consecutive days, then the Authority may terminate this Agreement upon notice to the Company. If this Agreement is so terminated, then neither party shall owe or be liable to the other party for any amounts otherwise due hereunder, except for (i) Service Fee amounts due for Waste actually delivered prior to the effective date of the termination and (ii) amounts due in accordance with Section 5.3 "Indemnification."

Section 6.6 Termination for Convenience

Notwithstanding, any other provision of this Agreement to the contrary and subject to State law, the Authority may terminate this Agreement and its obligations to the Company under this Agreement at any time by (i) giving the Company thirty (30) days' notice of such termination, (ii) paying the Termination Settlement Amount and (iii) providing the releases in accordance with Schedule 9.

Section 6.7 Default Termination Damages Payable to the Authority

If this Agreement is terminated by the Authority for cause as a result of an Event of Default by the Company, the Company shall immediately pay, without duplication, to the Authority (i) all amounts necessary to provide for the excess costs to the Authority of substitute performance by another firm, during the Service Agreement's term, not including renewal terms, had the Agreement not been terminated for default, (ii) an amount equal to Alternate Disposal Damages during the then remaining term of this Agreement, and (iii) Alternate Procurement Damages.

With the prior express written consent of the Authority and the County, such consent not to be unreasonably withheld, the Company may mitigate its Default Termination Damages payable under this Section 6.7 by providing the Service using alternative facilities which (i) are in compliance with Applicable Law and, (ii) the Authority has agreed and meets all of the minimum technical requirements in the RFB.

Section 6.8 Survival of Certain Rights and Obligations

The rights and obligations of the parties under Section 5.3 and Articles I and VIII shall survive any termination of this Agreement. No termination of this Agreement limits or otherwise affects the rights and obligations of any party that have accrued before the date of such termination.

Article VII—Term; Renewal

Section 7.1 Term

This Agreement is in effect from its date and, unless sooner terminated, shall continue in effect until December 31, 1999.

Section 7.2 Renewal

This Agreement may be extended at the Authority's option at one year intervals up to an additional three years.

The Authority shall give the Company thirty (30) days notice of its intent to renew the Service Agreement for each additional year.

Article VIII—Representations and Warranties

Section 8.1 Representations and Warranties of the Authority

The Authority hereby makes the following respective representations and warranties, as of the date of execution and delivery of this Agreement, to and for the benefit of the Company:

(a) The Authority is a body politic and corporate validly existing under the Constitution and laws of Maryland, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

(b) The Authority has duly authorized the execution and delivery of this Agreement and this Agreement has been duly executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms.

(c) Neither the execution or delivery by the Authority of this Agreement, nor the performance of the Authority's obligations in connection with the transactions contemplated hereby nor the Authority's fulfillment of the terms or conditions of this Agreement (i) conflicts with, violates or results in a breach of any Applicable Law, or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the Authority is a party or by which the Authority or any of its properties or assets are bound, or constitutes a default thereunder.

(d) No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution and delivery by the Authority of this Agreement except those that have been duly obtained or made.

Section 8.2 Representations and Warranties of the Company

The Company hereby makes the following representations and warranties to and for the benefit of the Authority and the Counties:

(a) The Company is duly organized and validly existing as a Corporation under the laws of the State of Maryland with full legal right, power and authority to enter into and perform its obligations under this Agreement, and is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned by it therein or in which the transaction of its business makes such qualification necessary, including, but not limited to, the State of Maryland.

(b) The Company has duly authorized the execution and delivery of this Agreement and this Agreement has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

(c) Neither the execution or delivery by the Company of this Agreement, nor the performance by the Company of its

obligations in connection with the transactions contemplated hereby or the fulfillment by the Company of the terms or conditions of this Agreement (i) conflicts with, violates or results in a breach of any Applicable Law, or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the Company is a party or by which the Company or any of its properties or assets are bound, or constitutes a default thereunder or (iii) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Company.

(d) No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution and delivery of this Agreement by the Company, except such as have been duly obtained or made.

(e) Except as disclosed to the Authority, in writing, there is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of the Company's knowledge, threatened, against the Company, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Company of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the Authority in connection with the transactions contemplated hereby.

Article IX—Miscellaneous

Section 9.1 Authority Representative, County Representatives and Company Representative

(a) The Authority Representative is the Executive Director of the Authority.

(b) The Company Representative is the President of the Company or any vice president of the Company who the Company designates as the Company Representative and who is authorized to contractually bind the Company.

(c) The County Representatives are the Directors of Public Works for each County.

(d) Any party may change its authorized representative upon five (5) Business Days' written notice to the other parties. Only the Authority Representative or the Company Representative may make the approvals, requests and notices by a party to the other party under this Agreement.

Section 9.2 Assignment

Neither the Authority nor the Company may assign this Agreement without the prior written consent of the other party except that the Authority may assign its rights, remedies, powers and privileges under this Agreement to any of the Counties without the consent of the Company.

Section 9.3 Notices

All notices, designators, consents, approvals, and other communications required, permitted or otherwise delivered under this Agreement shall be in writing and may be telexed, cabled, sent by facsimile or

delivered by hand or mailed by first call registered or certified mail, return receipt requested, postage prepaid, and in any case shall be addressed as follows:

If to the Authority: Executive Director, Northeast Maryland Waste Disposal Authority, 25 S. Charles Street, Suite 2105, Baltimore, Maryland 21201-3330, Fax: (410) 333-3721.

With a copy to the County Representatives:

Director, Howard County Department of Public Works, 3430 Courthouse Drive, Ellicott City, Maryland 21043, Fax: (410) 313-3408

Director, Anne Arundel County Department of Public Works, 2662 Riva Road, Annapolis, Maryland 21401, Fax: (410) 222-7329

If to the Company: Earl Mikolitch, President, Atlantic Region, Sanifill, Inc., 6525 The Corners Parkway, Suite 540, Norcross, GA 30092.

With a copy to: H. Steven Walton, General Counsel, Sanifill, Inc., 2777 Allen Parkway, Suite 700, Houston, TX 77019-2155.

Any party entitled to receive communications under this agreement may change the address to which its communications are delivered by notice to the other parties. Any communications given by mail in accordance with this Section 9.3 shall be deemed to have been given five (5) business Days after the date of mailing; communications given by any means shall be deemed to have been given when delivered.

Section 9.4 Entire and Complete Agreement

This Agreement (including Schedules 1 through 9 to this Agreement) constitutes the entire and complete agreement of the parties with respect to its subject matter and supersedes all prior or contemporaneous understandings, arrangements, commitments and representation, all of which, whether oral or written, are merged into this Agreement. The Schedules to this Agreement are an integral part of this Agreement and shall be afforded full force and effect as though incorporated in their entirety in the Articles of this Agreement.

Section 9.5 Binding Effect

This Agreement binds and inures to the benefit of the parties to this Agreement and any successor or assignee acquiring an interest hereunder permitted by Section 9.2.

Section 9.6 Further Assurances and Amendments

Each party shall execute and deliver any instruments and perform any acts necessary and reasonably requested by the other party in order to give full effect to this Agreement.

Section 9.7 Governing Law

The laws of the State of Maryland govern the validity, interpretation, construction and performance of this Agreement.

Section 9.8 Counterparts

The Authority and the Company may execute this Agreement in counterparts, each of which is deemed an original, and all of which, when executed and delivered, together constitute one and the same instrument.

Section 9.9 Amendment or Waiver

Neither the Authority nor the Company may change, modify, amend or waive this Agreement or any provision of this Agreement except by a written instrument signed by the party against whom enforcement of such change, modification, amendment or waiver is sought.

Section 9.10 Relationship of the Parties

No party to this Agreement has any responsibility whatsoever with respect to services provided or contractual obligations assumed by any other party and nothing in this Agreement is deemed to constitute one party a partner, agent or legal representative of any of the other parties or to create any fiduciary relationship between the parties.

Section 9.11 Confidential Information

The rights and obligations of the parties set forth herein with respect to Confidential Information are subject to Applicable Law, including Title 10, Subtitle 6 of the State Government Article of the Annotated Code of Maryland, as amended.

To the extent permitted by Applicable Law, the Authority shall hold Confidential Information in strict confidence and take all reasonable precautions to prevent disclosure to third parties. The Authority shall promptly notify the Company of the identity of any Person who requests a disclosure of Confidential Information. The Authority in its sole discretion shall determine the response to any request for disclosure of Confidential Information and is not required to withhold disclosure of Confidential Information upon a lawful request for information. The Authority shall consider any information or legal arguments presented by the Company before the disclosure of the requested information.

Section 9.12 Severability

If a court of competent jurisdiction determines any provision of this Agreement is, for any reason, invalid, illegal or unenforceable in any respect, the parties hereto shall negotiate in good faith and make such amendments, modifications or supplements of or to this Agreement, that to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified or supplemented, or otherwise affected by such action, remain in full force and effect.

Section 9.13 Damages

(a) The Alternate Disposal Damages and Alternate Disposal Procurement Damages specified in this Agreement constitute the parties' sole and exclusive remedy for the acts, errors or omissions for which "Damages" those Damages are imposed. The parties may recover additional amounts for damages caused by other acts, errors or omissions.

(b) Notwithstanding the foregoing, in no event, whether based upon contract, tort or otherwise, arising out of the performance or nonperformance by the Authority of any obligation under this Agreement, is the

Authority liable or obligated in any manner to pay special, consequential or indirect damages, or any other amount except as specifically provided in this Agreement.

Section 9.14 Effect of Authority and County Approvals

(a) No review, comment or approval by the Authority or the Counties under this Agreement affects the rights, remedies, powers or privileges of the Authority or the Counties in connection with (i) licenses, permits, reviews or approvals pursuant to Applicable Law, (ii) the enactment, interpretation or enforcement of any Applicable Law, (iii) any of its other governmental functions, or (iv) matters not related to this Agreement.

(b) Now review, comment or approval, nor any failure to review, comment or give approval, by the Authority or the Counties under this Agreement relieves the Company of any of its obligations under this Agreement or imposes any liability upon the Authority or the Counties.

Section 9.15 Dispute Resolution

The Authority and the Company shall in good faith attempt to resolve any dispute or matter in controversy under this Agreement. All disputes under this Contract, if not resolved by the parties, shall be resolved by courts of competent jurisdiction in the State of Maryland and in accordance with the laws of the State of Maryland.

Section 9.16 Limitation of Liability and Defenses

(a) Notwithstanding any other provision of this Agreement to the contrary, the obligations of the Authority to the Company under this Agreement are limited to the obligations of the Authority under the Waste Disposal Agreements (the "WDA") to the extent such obligations are satisfied. Neither the Authority nor the Counties will be liable to the Company for consequential damages of any type. The Authority represents that payments to be received from the Counties under the Waste Disposal Agreement are or will be sufficient to make monetary payments to the Company.

(b) Notwithstanding any other provision of this Agreement to the contrary, the liability and obligations of the Authority for all monetary payments with respect to this Agreement are limited obligations payable solely from WDA Revenues as and to the extent such WDA Revenues are received and available to pay such amounts under Applicable Law. The Authority represents that Revenues to be received from the Counties are or will be sufficient to make monetary payments to the Company. The liability of the Authority for any such monetary payments with respect to this Agreement are not payable from the general funds of the Authority and the incurrence or nonperformance of such obligations or payments shall not constitute or create a legal or equitable pledge of, or lien or encumbrance upon, or claim against, any of the assets or property of the Authority or of its income, receipts or revenues. Notwithstanding any provision of this Agreement to the contrary, the Company may bring legal action against the Authority if

WDA Revenues received from the Counties are not sufficient to make monetary payments to the Company.

(c) No recourse for the payment of any amounts due by the Authority under this Agreement or upon any representation, warranty, covenant, agreement or obligation contained in this Agreement or in any document, certificate or instrument that this Agreement requires to be executed and delivered by the Authority or from any claim herein or therein shall be had by the Company, except from WDA Revenues.

(d) The execution and delivery of this Agreement by the Authority shall not impose any personal liability on the members, officers, directors, employees or agents of the Authority. No recourse shall be had by the Company for any claims based on this Agreement against any member, officer, employee or other agent of the Authority in his or her individual capacity, all such liability, if any, being expressly waived by the Company by the execution of this Agreement.

(e) Unless specifically excused by this Agreement, the Company shall not assert impossibility or impracticability of performance, the existence, nonexistence, occurrence or nonoccurrence of a foreseen or unforeseen fact, event or contingency that may be a basic assumption of the Company, or commercial frustration of purpose as a defense against any claim by the Authority or the Counties against the Company.

Section 9.17 Counties as Third Party Beneficiaries

The Counties are singly and jointly third-party beneficiaries of all of the obligations of the Company under this Agreement. The Counties have the right, but not the obligation, to enforce rights, remedies, powers and privileges of the Authority under this Agreement if any of the Counties provides ten (10) days' prior written notice to the Authority and the Company. Unless such prior notice is given by the Counties, it is understood by all parties that the Authority Representative shall have the authority to direct the Company with respect to the Authority's and Counties' rights herein and the Company shall have the right to rely on such direction.

Section 9.18 Nondiscrimination

The Company shall not discriminate or permit discrimination against a Person because of race, color, religion, national origin or sex. This provision prohibiting discrimination is a material term of this Agreement.

Section 9.19 Minority Business Participation Requirements

The Company shall structure its procedures for the performance of the services required by this contract to achieve the Authority's minority business participation goals. Such performance by minority business enterprise shall be in accordance with this Section and Schedule 7. The Company agrees to use its best efforts to carry out the requirements of this Section consistent with efficient performance of the Project.

Section 9.20 Public Ethics

(a) The Authority may terminate the right of the Company to proceed under this Agreement if it is found by the Authority that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Company, or any agent or representative of the Company, to any officer or employee of the Authority or a County with a view toward securing this Agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of this Agreement; the facts upon which the Authority makes such findings may be reviewed in any competent court.

(b) In the event this Agreement is terminated as provided in paragraph (a), above, the Authority shall be entitled (i) to pursue the same remedies against the Company as it could pursue in the event of a breach of the Agreement by the Company, and (ii) in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Authority) which shall be not less than three nor more than ten times the costs incurred by the Company in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Authority provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

(d) No employee of the State of Maryland, the Authority, or any department, commission, agency or branch thereof, whose duties as such employee include matters relating to or affecting the subject matter of this Agreement, shall, while such employee, become or be an employee of the party or parties hereby contracting with the State, the Authority, or any department, commission, agency or branch thereof.

Section 9.21 Impossibility of Performance

if, during the Term of this Agreement, an event occurs that causes either party's performance under this Agreement to be impossible, then each party hereto agrees to negotiate in good faith for a modification to this Agreement that is mutually agreeable to each party. The Company and the Authority acknowledge that no change in Applicable Law that imposes or increases any cost, tax, fee, assessment or charge shall be considered to render the affected party's performance impossible for purposes of this Section.

In witness whereof, the Authority and the Company have executed and sealed this Agreement as of the date first written above.

Witness: [Signature Illegible]

Witness: [Signature Illegible]

Northeast Maryland Waste Disposal
Authority [Signature Illegible]

Garnet of Maryland, Inc.

By: _____
Earl Mikolitch,
President.

Schedule 1 to Service Agreement*Description of the Service*

The Company shall perform the Services described in this Agreement and in the following documents:

1. The Request for Bids issued on April 16, 1996.
2. The Bid Submittal dated May 13, 1996.
3. Addenda were issued as follows:
—Addendum No. 1 issued on April 17, 1996
—Addendum No. 2 issued on April 26, 1996
—Addendum No. 3 issued on May 6, 1996

In the event of a conflict among these documents, the Service Agreement shall supersede all prior or contemporaneous agreements, representations and understandings. The RFB shall likewise supersede the Bid Submittal.

Incorporated by reference from the bid submittal of Garnet of Maryland, Inc. is the following:

1. A description of the bidder's system.
2. Interim Period Service description.
3. Evidence of Acceptance Facility availability on or before January 1, 1997, if applicable.

Schedule 2 to Service Agreement*Definitions*

"Acceptance Facility" means the Facility located at Annapolis Junction Transfer Station, 8077 Brock Bridge Road.

"Acceptance Facility Delay Damages" means an amount equal to twenty-five percent (25%) of the applicable Service Fee during the period beginning on January 1, 1997 in which the Acceptance Facility is not available and the Company is using a County landfill for the Acceptance, Processing and Transfer of Acceptable Waste.

"Acceptable Waste" means all Waste which is not Unacceptable Waste and typically includes:

A. Household garbage, trash, rubbish and refuse of the kinds normally generated by residential housing units and commercial establishments located in the Counties, including, without limitation:

1. Large household items such as beds, mattresses, sofas, bicycles, baby carriages, automobile parts and roofing Wastes of the types that are generally collected by the Counties and private haulers from residential housing units located in the Counties, or which are delivered to drop-off locations operated by the Counties; and

2. Brush, branches, leaves, twigs, grass and plant cuttings.

B. Commercial and light industrial Waste normally generated by governmental, commercial and light industrial and manufacturing establishments located in the Counties.

C. Construction and demolition debris.

D. Residue from a Materials Resource Recovery Facility, or Composting Facility.

E. Acceptable Waste previously deposited in the existing Counties' landfills.

"Affiliate" means any other Person who controls, is controlled by, or is under common control with the Company.

"Agreement" means this Service Agreement between the Authority and the Company (including Schedules 1 through 10 to this Agreement).

"Agreement Date" means August 8, 1996.

"Alternate Disposal Damages" means an amount equal to all reasonable expenses incurred by the Authority and the Counties as a result of the failure of the Company to fulfill its obligations under this Agreement for the cost of acceptance, transfer and disposal of Waste, the cost of statutory or regulatory penalties, counsel fees and reasonable expenses incurred by the Counties or the Authority and which are not foreseeable by the Parties at this time.

"Alternate Procurement Damages" means an amount equal to the reasonable and direct costs estimated to be incurred by the Authority and the Counties to procure another company to provide the Service. In no event must Alternate Procurement Damages exceed actual costs incurred by the Counties and Authority in procuring another Company for this Agreement.

"Applicable Law" means any law, regulation, requirement or order of any Federal, State or local agency, court or other governmental body (including, without limitation, the Anne Arundel County and Howard County Comprehensive Solid Waste Management Plans and all permits, licenses and governmental approvals required as of the date of this Agreement), applicable to: 1) the acquisition, design, construction, equipping, testing, financing, ownership, possession or operation of the Acceptance Facility and the Disposal Facility or any other Facility used to provide the Service 2) the Agreement; or 3) the performance of any obligations under the Agreement or any other agreement entered into in connection with the Agreement.

"Business Day" means any day other than Saturday, Sunday or a day on which either state or national banks in Maryland are not open for normal banking business.

"Company" means Garnet of Maryland, Inc., and its permitted successors and assigns.

"Commencement Date" means the first day on which Acceptable Waste is delivered to the Company under this contract, which date is expected to be July 1, 1996.

"Company Representative" means the authorized representative of the Company designed in accordance with Section 9.1.

"Confidential information" means proprietary information of the Company related to solid Waste disposal given to the Authority or the Counties by the Company in connection with this Agreement that (1) the Counties or the Authority (as the case may be) is not required to disclose under Applicable Law, (2) is not in the public domain, (3) is in tangible form, (4) is identified as confidential by the word "confidential" conspicuously marked on the upper right hand corner of each page thereof, and (5) is annotated to reference the provisions of Applicable law that authorize non disclosure of such material and information to the public.

"County" or "Counties" means, respectively, Howard County, Maryland, and Anne Arundel County, Maryland, and their respective successors and permitted assigns.

"County Representative" means the Person designated by each County in accordance with Section 9.1.

"Delivery Delay Damages" means an amount equal to fifty percent (50%) of the applicable Service Fee or Out of Hours Delivery Charge for every ton of Waste delivered by the Authority, County or a Designated Hauler for which the delivery vehicle had to wait in excess of 30 (thirty) minutes after arrival at the Acceptance Facility property boundary in order to deposit the Waste.

"Designated Hauler" means any Person who is designated by the Authority, or a County to deliver Waste to the Acceptance Facility, on behalf of the Authority or a County.

"Disposal Facility" means the solid waste disposal facility identified by the Company as the facility for final disposal of Acceptable Waste delivered by the Authority under the Agreement. If the Acceptable Waste is delivered to a waste-to-energy facility, composting facility, or other processing facility the Company must provide a disposal facility for all residue, non-processible and bypass waste.

"Event of Default" means an Event of Default as defined in Article VI.

"Facility or Facilities" means any component of the Company's system which receives, processes, transports and/or disposes of Waste and any residue or byproduct of processing Waste.

"Fiscal Year" means the year commencing on July 1 of any calendar year and ending on June 30 of the succeeding calendar year.

"GAAP" means those principles of accounting set forth in pronouncements to the Financial Accounting Standards Board, the American Institute of Certified Public Accountants, or which have other substantial and nationally recognized authoritative support and are applicable in the circumstances as of the date of a report, as such principles are from time to time supplemented and amended.

"Guarantor" means.

"Hazardous Waste" means:

A. Any Waste or substance, the treatment, storage or disposal of which, because of the composition or characteristics of the Waste or substance, is unlawful to treat, store or dispose of at the Acceptance or Disposal Facility or other facilities to be used in providing the Service and is considered hazardous Waste under Applicable Law, including, without limitation, Wastes that are:

1. Regulated as a toxic or hazardous Waste as defined under either Subtitle C of the Solid Waste Disposal Act, 42 U.S.C. §§ 6921-6939a, or Section 6(e) of the Toxic Substances Control Act, 15 U.S.C. § 2605(e), as replaced, amended, expanded or supplemented, and any rules or regulations promulgated thereunder, or under the Environment Article of the Annotated Code of Maryland, Title 7, Section 7-101 *et seq.*, as replaced, amended, expanded, or supplemented, and any rules or regulations promulgated thereunder; or

2. Low level nuclear Wastes, special nuclear Wastes or nuclear by-product Wastes, all within the meaning of the Atomic Energy

Act of 1954, as replaced, amended, expanded or supplemented, and any rules, regulations or policies promulgated thereunder.

B. Any other Wastes which any Governmental Body or unit having appropriate jurisdiction shall lawfully determine, from time to time, to be ineligible for disposal through facilities of the type being used to provide the Service because of the harmful, toxic, or dangerous composition or characteristics of the Waste or substance. Any such designation would, under the Agreement, be considered an Uncontrollable Circumstance as defined in the Service Agreement.

"Hazardous Waste Costs" means with respect to Hazardous Waste proven to have been delivered to a Facility by the Authority, a County or a Designated Hauler, the actual costs of the removal and disposal of such Hazardous Waste and all other costs and liabilities associated with or arising from the delivery, removal, or disposal of such Hazardous Waste; provided, that Hazardous Waste Costs do not include:

(a) Any costs or liabilities incurred due to the Company's negligence, willful misconduct or failure to adhere to Applicable Law or the Hazardous Waste Protocol in connection with any Waste it knows or should know to be Hazardous Waste;

(b) Any costs incurred by the Company for the operation or maintenance of a Facility as a result of the discovery of Hazardous Waste;

(c) Any costs or liabilities paid by any third party or insurance policy.

Hazardous Waste Costs also include the cost, if approved in writing by the Authority, of any repairs or alterations to a Facility necessitated by the presence or inadvertent Acceptance of such Hazardous Waste and all liabilities, damages, claims, demands, expenses, suits or actions including reasonable appeals, fines, penalties and attorney's fees in connection with any civil or administrative proceeding arising from the presence of such Hazardous Waste at a Facility or the removal or disposal of such Hazardous Wastes including, without limitation, any suit for personal injury to, or death of, any person or persons, or loss or damage to property resulting from the presence, removal, disposal or inadvertent processing of such Hazardous Waste.

"Holiday" means those days listed in Section 2.3 for which an observance date is established by the Authority.

"Interim Period" means July 1, 1996-December 31, 1996 during which time the Company shall provide Service to Anne Arundel County.

"Labor Action" means a strike, lockout or other similar work shutdown or stoppage by workers.

"Late Payment Rate" means an amount equal to Nations Bank N.A. prime rate of interest, as adjusted from time-to-time, plus two percent.

"Non-performing Party" means a party to this Agreement who fails to perform any obligation or comply with any requirement of such party under this Agreement.

"Notice of Termination" means a written notice requiring the termination of this Agreement due to an Event of Default pursuant to Article VI hereof that specifies

the factual basis for such termination and the date on which this Agreement will terminate pursuant to Article VI hereof.

"Performance Bond" means the performance bond relating to the provision of the Service in substantially the form set forth in Schedule 5.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company or unincorporated organization, or any government unit or agency or political subdivision not otherwise expressly named in this Agreement.

"Process" means to separate, combine, combust, compost, compact, load or otherwise handle Waste delivered to a Facility in accordance with the Applicable Law.

"Receiving Hours" means from 7:00 a.m. until 5:00 p.m. Monday through Saturday, (except Holidays) and until 7:00 p.m. on the first regular collection day following a Holiday, or such other hours as may be established in writing from time to time by the Authority Representative, the Company Representative and the County Representatives.

"Require Insurance" means the types and amounts of insurance set forth in Schedule 6.

"Service" means the acceptance, processing, transportation and disposal of Acceptable Waste delivered to the Company pursuant to this Agreement.

"Service Fee" has the meaning set forth in Article III of this Agreement

"Subcontractor Default" means the failure of any Subcontractor that is not an Affiliate of the Company or other subcontractor or supplier (except an Affiliate of the Company) selected with reasonable care to furnish labor, services, Waste or equipment.

"Termination Settlement Amount" means an amount calculated in accordance with the formula set forth in Schedule 9.

"Ton" means a "short ton" of two thousand (2,000) pounds.

"TPD" means Tons Per Day.

"TPY" means Tons Per Year.

"Unacceptable Waste" means:

(a) Hazardous Waste; and

(b) That portion of solid Waste the disposal of which (i) may present a substantial endangerment to public health or safety, or (ii) would cause Applicable Law to be violated, or (iii) is likely to materially adversely affect the operation of a Facility; provided, however, that if such unacceptable Waste (other than Hazardous Waste) is delivered in quantities and concentrations as determined by the Authority and as part of normal collections so as not to have the effect described in clauses (i), (ii) and (iii) above it shall constitute Acceptable Waste unless otherwise directed by State or federal regulatory authorities. The Unacceptable Wastes described in this paragraph (b) shall include:

(1) Pathological and biological Waste, explosives, medical and infectious Waste, cesspool and other human Waste, human and animal remains;

(2) Large automobile and vehicular parts, trailers, agricultural equipment, marine vessels;

- (3) Oil sludge or liquid Wastes; and
(4) Radioactive Wastes.

"Uncontrollable Circumstance" means an event or condition listed in this definition, whether affecting the Authority, the Counties or the Company, that has, or may reasonably be expected to have, a material adverse effect on the operation of a Facility, if such event or condition is beyond the reasonable control, and not the result of willful or negligent action or a lack of due diligence, of the Non-performing Party relying thereon as justification for not performing any obligation or complying with any condition required of such party hereunder, for delaying such performance or compliance. The following events or conditions, and no others, shall constitute Uncontrollable Circumstances if they meet the requirements of the preceding sentence:

(a) An act of God (but not including reasonably anticipated weather conditions for the geographic area of a Facility), hurricane, landslide, earthquake or similar occurrence, fire, explosion or other casualty, an act of the public enemy, war, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, or sabotage committed at a Facility by a Person other than an employee or agent of, or visitor invited by, the Company or its Affiliates, or the Company's subcontractors of any tier;

(b) The failure of the jurisdiction in which a Facility is situated or the appropriate federal or state agencies or public utilities having operational jurisdiction in the area or location of the Facility to provide and

maintain and assure the maintenance of all utilities services (excluding sewerage and water lines) to the Facility for operation of the Facility, provided they are essential to the Facility;

(c) A non-Company or non-subcontractor Labor Action.

(d) Any host fee or surcharge imposed by either Howard or Anne Arundel County after the bid submittal which applies to a solid Waste acceptance facility (which term is defined by Maryland Environmental Code Ann. §9-501(n)) located in either County.

No other costs of any kind shall be considered an Uncontrollable Circumstance for the purposes of this Agreement.

In no event will Subcontractor Default or a Company Labor Action constitute an Uncontrollable Circumstance.

The term "reasonable control" includes investigation or planning that is required by sound management or industry practices. No change in any Applicable Law imposing or increasing any tax, fee, assessment or charge shall constitute an Uncontrollable Circumstance. Neither the Authority nor the Counties shall be liable for the loss of any benefits relating to the Service for any reason whatsoever, if any.

"Waste" means solid Waste including Acceptable Waste, delivered to the Acceptance Facility by, or on behalf of, the Authority and the Counties.

"Waste Disposal Agreement" means the Agreement between the Authority and each County.

"Waste Disposal Services Revenues" means (i) all payments to the Authority by

the Counties directly attributable to the Service, and (ii) all other receipts of the Authority directly attributable to the Service.

"Wrongfully Diverted Waste" means any Waste delivered to the Company, but which is rejected by the Company for any reason other than as permitted pursuant to Section 2.2(a) or any other provision of the Service Agreement.

Schedule 3 to Service Agreement

Service Fees

Bid Price for Waste Acceptance, Processing, Transportation and Disposal for July 1, 1996—December 31, 1996 for Anne Arundel County, January 1, 1997—December 31, 1999 for Howard and Anne Arundel Counties with three one-year renewal options held solely by the Counties with no inflation adjustment available and including the option Anne Arundel County reserves for itself to send additional tonnage to the Company during the term of the Service Agreement in an amount anywhere between 1–300 additional tons per day.

Bid Price—\$33.00/ton

Schedule 4 To Service Agreement

Reporting Requirements

The Company shall give the Authority Representative and the County Representatives the following reports and information at the times indicated below.

The Company shall deliver the following information:

A. Pre-Commencement Date Documents:

PRE-COMMENCEMENT DATE REPORTS

Information	Delivery date
Copies of Required Insurance, Performance Bond, Letter of Credit, Corporate Guarantee	Prior to Service Agreement Execution Date.

B. Periodic Reports During Operations:

PERIODIC REPORTS DURING OPERATIONS

Report	Delivery date
Monthly Performance Report (see Exhibit A to this Schedule)	Accompany Monthly Invoice for payment.
Scale Certification	Once per year or more frequently if required by Applicable Law.

PERIODIC REPORTS DURING OPERATIONS

Other information	Delivery date
Copies of permits and permit renewals subsequent to the permits submitted as part of the bid submittal.	Within 5 (five) business days of receipt by or delivery to the Company.
Copies of all compliance reports and notices submitted to or received from authorities regulating the Facilities must be submitted to the Authority. Any notices of violation or potential violation at the Facilities must be submitted to the Authority as well as any notice designating the Facility as a Superfund Site or notice of potential National Priority List designation.	Within 5 (five) business days of receipt by or delivery to the Company.
Copies of all reports and notices submitted to or received from a host community pursuant to a host community agreement. Copies of any amendments to any host community agreement for the Disposal Facility.	Within 5 (five) business days of receipt by or delivery to the Company.
Reports or notices of environmental violations of Applicable Law or citations related to violations of Applicable Law relating to the Facilities providing the Service.	Within 5 (five) business days of receipt by or delivery to the Company.

PERIODIC REPORTS DURING OPERATIONS—Continued

Other information	Delivery date
Reports of lawsuits requesting declaratory, injunctive or other equitable relief and lawsuits in excess of \$1,000,000 in which the Company, its parent company, or affiliates is a party related to Facilities providing the Service. If the litigation involves any issues relating to the environment, the dispute must be reported without regard to monetary amount.	Within 5 (five) business days of receipt by or delivery to the Company.
Any material adverse change in the financial condition of the Company or Guarantor, if applicable.	Within 5 (five) business days of receipt by or delivery to the Company.
Notice of any proposed transfer of ownership, possession, or control of the Company, Guarantor, if applicable, or Facilities must be given to the Authority. The notice must include identification of the transferee, and other information as specified in RFB Section 1.4.3 D.	60 (sixty) days prior to effective date of action.
Monitoring well water quality analysis and assessment monitoring reports as specified in RFB Section 1.4.3.H.	Semi-annually.

Exhibit A To Schedule 4 To Service Agreement*Monthly Performance Report Forms*

The Company must complete the Monthly Tonnages Report Form in Schedule 4 and

submit the form to the Authority and the Counties with the monthly invoice for payment.

	Month	Ytd
1. Tonnage ¹		
Acceptable Waste Received: Anne Arundel County Howard County		
Acceptable Waste Disposed: Anne Arundel County Howard County		
Unacceptable Waste Received ² : Anne Arundel County Howard County		
Unacceptable Waste Disposed ² : Anne Arundel County Howard County		
2. Out of Hours Deliveries (attach back-up data verifying delivery time)		
Anne Arundel County Howard County		

¹ Include all scale records to correspond with the invoiced tonnages.

² Describe how the Waste was handled, including copies of any manifests required by Applicable Law.

Schedule 5 To Service Agreement*Form of Performance Bonds*

Performance Bond

Principal

Business Address of Principal

Surety

Obligee

a corporation of the State of _____ and authorized to do business in the State of Maryland.

Northeast Maryland Waste Disposal Authority and Anne Arundel County, Maryland, and Howard County, Maryland

Penal Sum of Bond (express in words and figures)

Date of Contract: _____, 19____

Date Bond Executed: _____, 19____

Service Agreement to provide Waste acceptance, processing, transportation and disposal.

Contract Number: _____

Know all men by these presents, That we, the Principal named above and Surety named above, are held and firmly bound unto the Obligee named above in the Penal Sum of this Performance Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents. However, where Surety is composed of corporations acting as co-sureties, we, the co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such ability shall be the full amount of the Penal Sum.

Whereas, Principal has entered into or will enter into a contract with the Northeast Maryland Waste Disposal Authority (the "Authority"), which contract is described and dated as shown above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or any of them, or to any other items incorporated into the contract shall hereinafter be referred to as "the Agreement."

Now, therefore, during the term of said Agreement, this Performance Bond shall remain in full force and effect unless and until the following terms and conditions are met:

1. Principal shall well and truly perform the Contract; and

2. Principal and Surety shall comply with the terms and conditions in this Performance Bond.

Whenever Principal shall be declared by the Authority to be in default under the Agreement, the Surety may within fifteen (15) days after notice of default from the Authority notify the Authority of its election

to either promptly proceed to remedy the default or promptly proceed to complete the contract in accordance with and subject to its terms and conditions. In the event the Surety does not elect to exercise either of the above stated options, then the Authority thereupon shall have the remaining contract work completed, Surety to remain liable hereunder for all expenses of completion up to but not exceeding the penal sum stated above.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligations on this Performance Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or to the Specifications.

This Performance Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

In witness whereof, Principal and Surety have set their hands and seals to this Performance Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture have signed below, each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution or power of attorney authorizing such action, and each such duly authorized representative to sign below and to set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

In Presence of:

Witness

Individual Principal

In Presence of: Witness

Attest:

Corporate Secretary

Partnership Principal

Name of Partnership

Corporate Principal

(Name of Corporation)

President

Affix Corporate Seal

Attest:

Signature

(Surety)

By:

Title:

Affix Corporate Seal

Business Address of Surety:

Bonding Agent's name:

Agent's Address:

Approved as to legal form and sufficiency
this _____ day of _____ 1996.

Assistant Attorney General

Schedule 6 to Service Agreement

Required Insurance

On and after the Commencement Date, the Company shall obtain and keep in force the following insurance with insurance companies licensed and qualified to do business in the State of Maryland rated at least "A -" or its equivalent by Best's Key Rating Guide, evidenced by a certificate of insurance and certified copies of all insurance policies.

(a) Worker's Compensation.

The Company shall maintain such insurance as required by Maryland Law covering all of its employees as will protect them and save the Counties and Authority harmless from claims. The Company shall maintain Employers' Liability Coverage in the following amounts: \$500,000 for each accident; \$500,000 for each disease per employee; \$500,000 for bodily injury by disease policy aggregate and shall save the Counties and the Authority harmless from claims.

(b) Commercial General Liability Insurance.

The Company shall arrange and pay for a general liability policy which will protect the Authority, the Company and the County from public liability for any personal injury, including death or property damage which may arise from his operations or the operations of his Company and Sub-Contractors or by anyone directly or indirectly employed in the work by either of them under this Agreement, as follows:

\$1,000,000 per occurrence for bodily injury and property damage
\$1,000,000 aggregate for products and completed operations

\$2,000,000 general aggregate (on a per project basis)

\$1,000,000 per occurrence for personal & advertising injury liability

There shall be no exclusions for explosion, collapse or underground exposures; the Company shall obtain contractual liability coverage, independent contractors coverage, broad from property damage coverage, and shall name the facility operator as an additional insured.

(c) Business Automobile Liability Coverage.

The Company shall maintain coverage which extends to all owned, leased, rented or borrowed automobiles in the amount of \$1,000,000 for each accident involving bodily injury and or property damage. Coverage must extend to include all monetary state and federal regulations as well as respects uninsured/underinsured motorists coverage, ICC, PUC filings and financial responsibility requirements.

(d) Umbrella/Excess Liability coverage must be obtained in minimum amounts of \$10,000,000 per occurrence and in the aggregate. Coverage must at a minimum follow form with applicable underlying insurance.

(e) Professional Liability/Errors & Omissions insurance is required for all professional services performed under the contract in amounts customary for the profession.

(f) Environmental Impairment Liability covering the Facilities.

Company shall acquire and maintain Environmental Impairment Liability Insurance including sudden, non-sudden and gradual exposure, for all of Company's operations hereunder, including but not limited to disposal of Waste pursuant to this Agreement. Company shall purchase limits of \$1 million per occurrence and \$2 million annual aggregate for any release of toxics or hazardous Waste or other hazardous substance requiring monitoring, cleanup or corrective action under CERCLA. A combination of primary and excess coverage is acceptable, provided that there are no pollution exclusions in either policy.

(g) All Companies and subcontractors must submit evidence of required insurance prior to performance.

(h) Each Company must carry property damage insurance for all property owned, leased or loaned by the Company whether to be used in this project or not. Limits should equal the replacement value of such equipment and coverage must be on an "all risk."

(i) The Company must provide the Authority with evidence that the disposal site owner carries insurance for site property damage. In addition, the Company must provide the Authority with evidence that the disposal site, if a landfill, carries environmental impairment liability insurance for that site of at least ten million dollars.

Section 2. General

(a) The Authority and the Counties shall be named as additional insurers on the above Commercial General Liability and Environmental Impairment policies.

(b) All losses under the required insurance shall be adjusted to the satisfaction of the Authority and the County.

(c) The Company shall purchase commercial insurance for the above coverages. Approval for deductibles higher than \$25,000 for the liability policies will be required from the Authority and the Counties.

(d) All claims made policies shall provide a minimum of five (5) years' discovery period.

(e) The Authority and the Counties shall be advised promptly in writing of the following change in the insurance policies:

(i) Setting up a new retro date.

(ii) Exhausting any aggregate limit under any of the above policies.

(iii) Switching occurrence based coverage to claims made coverage or vice versa.

(f) The Company shall assure that all subcontractors performing services in accordance with this Agreement carry identical coverages as required above, either individually or as an additional insured on the policies of the Company.

Schedule 7 To Service Agreement

Minority Business Participation Policy

The Company shall comply with and meet the minority business participation requirements of the Authority, a copy of which is attached hereto.

Minority Business Enterprise—Terms and Conditions

For Municipal Solid Waste Acceptance, Processing, Transportation and Disposal Services

By the Northeast Maryland Waste Disposal Authority on Behalf of Anne Arundel County, Maryland and Howard County, Maryland

Date: February 5, 1996.

I. MBE Program Goals

The Authority will attempt to obtain the Project's MBE participation goals primarily through two mechanisms: by requiring prime Companies to utilize MBE as subcontractors/suppliers and by encouraging MBE to respond directly to this request for bids. Accordingly, the Authority's MBE participation percentage goal for this Project is 10% of the value of the contract.

II. Responsibilities

The Executive Director of the Authority will be responsible for implementing, coordinating and monitoring the Project's MBE program.

All bidders are expected to take positive steps to use MBEs. These positive efforts should consist of the following:

a. Extending opportunities for subcontracting joint arrangements and material supplying to MBEs.

b. Identifying in *monthly* reports to the Executive Director of the Authority the MBE firms to be used.

c. Maintaining records of MBEs contacted, including negotiation efforts to reach competitive price levels and awards to MBEs.

d. Requiring subcontracts under the contract to comply with the MBE policy.

e. Keeping the Authority informed of all MBE sub-agreements or changes in plans to award subcontracts previously reported as proposed for MBEs.

All Minority Business Enterprises are expected to take the following actions at a minimum:

a. Become involved in the project planning and bid process.

b. Provide capability statements to the Authority.

c. All MBEs must be certified as MBEs by the State of Maryland or Howard County or Anne Arundel County.

The Authority hereby notifies all bidders responding to this RFP that minority business enterprises will be afforded full opportunity to submit bids in response to this notice and will not be subjected to discrimination on the basis of race, color, sex or national origin in consideration of an award.

After bid opening but *prior to contract award*, and execution of the Service Agreement, the apparent low bidder will be required to submit documentation showing minority participation.

After a meeting with the apparent low bidder and evaluation of its compliance to the MBE requirement, the Authority will notify the bidder of the following:

a. Final award of the contract.

b. Apparent low bidders who fail to achieve the desired MBE participation can be declared "non-responsive" bidders in which case the next low bidders becomes the apparent low bidder. This process may be repeated until an apparent low bidder meeting the MBE requirement is obtained or the Authority may elect to rebid the Project to obtain both an equitable price and MBE compliance.

III. Contract Compliance Process

a. The Authority will conduct periodic compliance reviews with all prime Companies required to comply with the MBE goal.

b. Companies will be given prior notification of a pending on-site verification and review for contract compliance. During such on-site review, the Company will have the following available for inspection:

1. Copies of Purchase Orders and subcontracts containing EEO clauses.

2. Records to indicate the number, names, dollar value of the minority subcontracts, the amount and dates and the scheduled times for each MBE to be on the job site.

3. Any other appropriate documents requested prior to the on-site visit.

c. The on-site verification and interviews as a minimum will consist of the following:

1. An initial meeting with the Company or his representative to explain visit objectives.

2. Tour of the job site.

3. Interviews of subcontractors, suppliers, etc.

d. At the conclusion of the on-site visit an exit conference will be conducted. This conference will consist of a discussion of the compliance process and determination time frame, and suggestions for corrective action to be taken if necessary.

e. A monthly report indicating compliance status will be prepared and forwarded to the Executive Director of the Authority.

1. If a determination of noncompliance is made, the Authority may conduct further investigation. The Company will be notified and an attempt made informally to remedy any problems of compliance. In the event conciliation fails, the Authority will declare the Company in noncompliance.

IV. Enforcement

If a Company fails or refuses to take corrective action, the Authority will determine which of the following should be imposed to promote the purpose of the Project's MBE Program.

a. Declare an Event of Default under the contract (Service Agreement).

b. Withhold a percentage of progress payment.

c. Assess liquidated damages.

d. Deny the Company or any subcontractor the right to participate in any future contracts awarded by the Authority.

e. Other appropriate action within the discretion of the Executive Director of the Authority.

This MBE policy document is hereby incorporated into the Service Agreement and failure to comply with its terms may be declared an event of default under Section 6.3(c) of the Service Agreement.

Schedule 8 to Service Agreement

Guaranty

This Guaranty, dated as of _____, 199____, is made by _____ ("Guarantor"), to and for the benefit of the Northeast Maryland Waste Disposal Authority (the "Authority").

Recitals

_____, (the "Company") and the Authority are entering into a Authority Agreement dated as of _____, 199____ (the "Service Agreement") under which the Company will provide Waste acceptance, processing, transportation and disposal services to the Authority. The Service Agreement is by reference incorporated in this Guaranty and made a part of it.

The Guarantor has determined that it is in its best interests for the Company to enter into the Service Agreement with the Authority.

The Authority is willing to enter into the Service Agreement only if the Guarantor executes this Guaranty and carries out its obligations under this Guaranty.

The Guarantor is willing to guaranty, as set forth below, the performance of the Company under the Service Agreement.

Now, therefore, as an inducement to the Authority to enter into the Service Agreement, and to and for their benefit, the Guarantor agrees as follows:

1. Guarantee.

The Guarantor hereby directly, unconditionally, irrevocably and absolutely guarantees the full and punctual performance by the Company of all the Company's obligations under the Service Agreement in accordance with its terms and conditions.

2. Guarantee Absolute.

The Guaranty provided for herein is absolute, unconditional and continuing, and the Authority shall be entitled to enforce any

and all obligations guaranteed hereby directly against the Guarantor. If the Company fails to perform any of its obligations contained in the Service Agreement, when and as the same is required to be performed, the Guarantor shall cause the performance of such obligation.

3. *Nature of Obligations.*

The Guarantor hereby agrees that at any time and from time to time, the Authority may, without in any manner affecting, impairing, lessening, modifying, waiving or releasing any or all of the obligations and liabilities of the Guarantor under this Guaranty, with or without notice to the Guarantor, modify, extend, amend, change, compromise, settle, release, terminate, waive, surrender or otherwise deal with in any manner satisfactory to the Authority, any or all of the provisions of the Service Agreement, so long as such action is taken in accordance with the Service Agreement.

4. *Subordination.*

The payment of any and all past, present and future indebtedness, liabilities and obligations of the Company to the Guarantor of every kind, nature and description is hereby subordinated and postponed by the Guarantor to the obligations set forth in the Service Agreement. The Guarantor agrees that the obligations under the Service Agreement shall have priority in payment, right and remedy over the subordinated obligations to the Guarantor. Nothing in this Section 4 shall impair the right of the Guarantor to receive dividends, distributions or any return of any capital investment or repayment of any loan made to the Company so long as there is not an Event of Default of the Company under any provision of the Service Agreement.

5. *Consent to Jurisdiction, Etc.* This Guaranty shall be governed by and construed in accordance with the laws of the State of Maryland, and the Guarantor irrevocably submits to the jurisdiction of any state or federal court sitting in the State of Maryland over any suit, action or proceeding arising out of or relating to this Guaranty. The Guarantor hereby irrevocably designates and appoints [], as the Guarantor's authorized agent to accept and acknowledge on the Guarantor's behalf service of process in any suit, action or proceeding of any nature referred to in this paragraph, provided that duplicate copies thereof be simultaneously delivered to the Guarantor.

6. *Maintenance of Corporate Existence and Credit Rating.* The Guarantor must maintain and do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and material rights and franchises. The Guarantor must not seek or permit the dissolution or liquidation of the Guarantor, in whole or in part, to merge into, consolidate with, enter into a joint venture or partnership with or in any way be acquired by any Person, unless the Guarantor is the surviving corporation, or unless this Guaranty is assumed, in its entirety, by the surviving corporation.

7. *No Set-Off, Etc.*

No set-off or counterclaim, reduction or diminution of, or defense of any kind to, any obligation of the Guarantor hereunder that

the Guarantor may have against the Authority, shall be available to the Guarantor against the Authority to reduce its obligations under this Agreement unless it arises out of the Service Agreement.

8. *Notices.*

All notices and other communications hereunder shall be in writing and shall be delivered, or mailed by certified or registered mail, as follows:

If to the Guarantor:

With copy to:

If to the Authority: Executive Director, Northeast Maryland Waste Disposal Authority, 25 S. Charles Street, Suite 2105, Baltimore, Maryland 21201-3330.

With copy to:

or at such other addresses as any party shall furnish to the others in writing.

9. *Miscellaneous.*

9.1 The Authority or the counties may jointly or severally enforce the performance and observance of this Guaranty.

9.2 No delay or omission to exercise any right, remedy, power or privilege accruing upon any default, omission or failure of performance hereunder shall impair any such right, remedy, power or privilege or be construed to be waiver thereof, but any such right, remedy, power or privilege may be exercised from time to time and as often as may be deemed expedient. In the event any provision contained in this Guaranty shall be breached by the Guarantor and thereafter duly waived in writing by the Authority, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, release or modification of this Guaranty shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the Authority.

9.3 This Guaranty may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

9.4 The invalidity or unenforceability of any one or more provisions of the Guaranty shall not affect the validity or enforceability of the remaining portions of this Guaranty.

9.5 This Guaranty shall terminate if all amounts payable or obligations to the Authority by the Company under the Service Agreement have been paid in full or performed, as the case may be, in accordance with the terms of the Service Agreement.

9.6 This Guaranty is solely for the benefit of the Counties and the Authority and shall create no rights in favor of any other person, firm, corporation or governmental entity whatsoever.

In witness whereof, the Guarantor has caused this Guaranty to be signed, sealed and delivered on the day and year first above written.

The Company joins in the execution of this guaranty only so as to signify the Company's acceptance of and consent to the subordination provisions of Section 4 of this Guaranty.

Schedule 9 to Service Agreement

Termination Procedures and Costs

1. If the Authority exercises its right to terminate this Agreement pursuant to Section 6, then the Authority will follow the termination for convenience process as set forth in COMAR 21.07.01.12, which regulation is attached hereto.

Schedule 5 to Service Agreement

Form of Performance Bonds

Performance Bond

Bond No. ESD7617301

Principal: Sanifill, Inc./Garnet of Maryland

Business Address of Principal: 2777 Allen Parkway, Suite #700, Houston, TX 77019-2155

Surety: American Home Assurance Company

Obligee: Northeast Maryland Waste Disposal Authority

a corporation of the State of New York and authorized to do business in the State of Maryland.

Northeast Maryland Waste Disposal Authority and Anne Arundel County, Maryland and Howard County, Maryland

Penal Sum of Bond (express in words and figures): Six Million Seventy Eight Thousand Six Hundred and no/100———Dollars (\$6,078,600.00)

Date of Contract: August 8, 1996

Date Bond Executed: August 6, 1996

Service Agreement to provide Waste acceptance, processing, transportation and disposal.

Contract Number: _____

Know all men by these presents, That we, the Principal named above and Surety named above, are held and firmly bound unto the Obligee named above in the Penal Sum of this Performance Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents. However, where Surety is composed of corporations acting as co-sureties, we, the co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such ability shall be the full amount of the Penal Sum.

Whereas, Principal has entered into or will enter into a contract with the Northeast Maryland Waste Disposal Authority (the "Authority"), which contract is described and dated as shown above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or any of them, or to any other items incorporated into the contract shall hereinafter be referred to as "the Agreement."

Now, therefore, during the term of said Agreement, this Performance Bond shall remain in full force and effect unless and until the following terms and conditions are met:

1. Principal shall well and truly perform the Contract; and
2. Principal and Surety shall comply with the terms and conditions in this Performance Bond.

Whenever Principal shall be declared by the Authority to be in default under the Agreement, the Surety may within fifteen (15) days after notice of default from the Authority notify the Authority of its election to either promptly proceed to remedy the default or promptly proceed to complete the contract in accordance with and subject to its terms and conditions. In the event the Surety does not elect to exercise either of the above stated options, then the Authority thereupon shall have the remaining contract work completed, Surety to remain liable hereunder for all expenses of completion up to but not exceeding the penal sum stated above.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligations on this Performance Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or to the Specifications.

This Performance Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

In witness whereof, Principal and Surety have set their hands and seals to this Performance Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture have signed below, each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution or power of attorney authorizing such action, and each such duly authorized representative to sign below and to set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

In Presence of:

Witness

Individual Principal

In Presence of: Witness

Partnership Principal

Name of Partnership

Attest: [Signature Illegible]

Corporate Secretary

Corporate Principal: Sanifill, Inc./Garnet of Maryland

[Signature Illegible]

President/Controller

Affix Corporate Seal

Witness: [Signature Illegible]

Signature

(Surety): American Home Assurance Company

Karen M. Kellner

Title: Attorney-in-Fact

Affix Corporate Seal

Business Address of Surety: 70 Pine Street, New York, NY 10270.

Bonding Agent's name: Marsh & McLennan, Inc.

Agent's Address: 1000 Louisiana—#4000, Houston, TX 77002.

Approved as to legal form and sufficiency this _____ day of _____ 1996.

Assistant Attorney General

Endorsement "A"

Provided, however, that the Oblige accepts the bond subject to the following conditions and provisions:

1. The bond is for the term beginning August 12, 1996 and ending August 12, 1997
2. The bond may be extended for additional term(s) of twelve (12) months at the option of the surety, by continuation certificate executed by the surety. At no time will the period of exposure under the bonds exceed twelve (12) months. Notification of Non-Renewal shall be given by Certified Mail to the Oblige no later than thirty (30) days prior to the expiration date of the bonds. Failure of the surety to issue a Continuation Certificate or otherwise extend the term, shall not constitute a default under the Performance Bond.
3. In the event of default by the Principal in performance of the contract during the term of the bond, the surety shall be liable only for the loss to the Oblige due to actual excess costs of performance of the contract up to the termination of the term of the bonds. Maximum aggregate liability of the surety is limited to the penal sum of the bond.

4. Any suit under the Performance Bond must be instituted before the expiration of two (2) years from the last day of the term of the Performance Bond and any continuation hereof. If this limitation is made void by any law controlling the contract thereof, such limitation shall be deemed to be amended to equal the minimum period of limitation permitted by such law.

5. The bond is to secure the Principal's obligation as it relates to the Northeast Maryland Waste Authority/Sanifill, Inc.-Garnet of Maryland Bond No. ESD7617301.

The Power of Attorney form from American Home Assurance Co. is not being published in the **Federal Register**. A copy of the consent decree with this page included can be obtained from the Antitrust Division, Documents Group at 325 7th St., N.W., Rm 215, Washington, D.C. 20530 or (202) 514-2481

United States District Court, Northern District of Ohio, Eastern Division

United States of America; State of Ohio; State of Arizona; State of California; State of Colorado; State of Florida; Commonwealth of Kentucky; State of Maryland; State of Michigan; State of New York; Commonwealth of Pennsylvania; State of Texas; State of Washington; and State of Wisconsin, Plaintiffs, v. USA Waste Services, Inc.; Dome Merger Subsidiary; and Waste Management, Inc., Defendants. Civil Action No. 1:98 CV 1616; Judge Aldrich. Filed July 23, 1998.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On July 16, 1998, the United States, and the states of Ohio, Arizona, California, Colorado, Florida, Maryland, Michigan, New York, Texas, Washington and Wisconsin, and the commonwealths of Kentucky and Pennsylvania ("the governments") filed a civil antitrust complaint, which alleges that the proposed acquisitions by USA Waste Services, Inc. ("USA Waste") of Waste Management, Inc. ("WMI") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that in many markets across the country, USA Waste and WMI are the two of the most significant competitors in commercial waste collection, or disposal of municipal solid waste ("MSW") (i.e., operation of landfills, transfer stations and incinerators), or both services.

The Complaint alleges that a combination of USA Waste and WMI would substantially lessen competition in commercial waste collection services in twelve highly concentrated, relevant

geographic markets: Akron, Cleveland and Columbus, Ohio; Allentown and Pittsburgh, Pennsylvania; Denver, Colorado; Detroit, Michigan; Gainesville, Florida; Houston, Texas; Louisville, Kentucky; Portland, Oregon; and Tucson, Arizona.

The Complaint alleges the merger also would substantially lessen competition in disposal of municipal solid waste in seventeen highly concentrated markets: Akron/Canton, Cleveland and Columbus, Ohio; Baltimore, Maryland; Denver, Colorado; Detroit, Flint, and Northeastern Michigan; Houston, Texas; Los Angeles, California; Louisville, Kentucky; Miami, Florida; Milwaukee, Wisconsin; New York, New York; Pittsburgh and Philadelphia, Pennsylvania; and Portland, Oregon.

According to the Complaint, the loss of competition would likely result in consumers paying higher prices and receiving fewer or lesser quality services for the collection and disposal of waste. The prayer for relief in the Complaint seeks: (1) a judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a permanent injunction that would prevent USA Waste from acquiring control of or otherwise combining its assets with WMI.

At the same time the suit was filed, the governments also filed a proposed settlement that would permit USA Waste to complete its acquisition of WMI, but require it to divest certain waste collection and disposal assets in such a way as to preserve competition in the affected markets. This settlement consists of a Hold Separate Stipulation and Order, proposed Final Judgment, and a letter that outlines defendants' views as to which commercial waste collection routes should be divested and that sets forth the standard by which the governments determined whether routes that serve a given geographic area should be divested under the Judgment.¹

¹ A copy of this correspondence appears in Appendix B. Defendants are required to divest front end loader (FEL) commercial waste collection routes that serve certain geographic areas specified in the Judgment. Since some FEL routes may serve more than one area, the governments agreed to apply a *de minimis* standard for determining whether defendants' routes that serve a given area are subject to divestiture under the Judgment. If a defendant's FEL route obtained 10% or more of its commercial revenues from a geographic area set forth in the Judgment, §§II(D)(1)-(12), in the route's most recent year of operation, defendants must divest the FEL route. Applying this rule in Detroit, for instance, would require defendants to divest any WMI FEL commercial route from which 10 percent or more of its revenues derive from customers located in either the City of Detroit or Wayne County, MI.

Defendants USA Waste and WMI have specifically identified and listed the FEL

The proposed Final Judgment orders USA Waste and WMI to divest commercial waste collection routes in each of the relevant areas in which the Complaint alleges the merger would substantially reduce competition in commercial waste collection services. In addition, the Judgment orders USA Waste and WMI to divest landfills, transfer stations, or disposal rights in such facilities in each of the relevant markets in which the merger would substantially reduce competition in disposal of municipal solid waste. (A summary of the commercial waste collection and waste disposal assets that defendants must divest pursuant to the Judgment appears below in Appendix A.) USA Waste and WMI must complete their divestitures of the waste collection and disposal assets within 120 days, or five days after entry of the Final Judgment, whichever is later.

The Hold Separate Stipulation and Order ("Hold Separate Order") and the proposed Final Judgment ensure that until the divestitures mandated by the Judgment are accomplished, the currently operable waste collection and disposal assets that are to be divested, whether owned by USA Waste or WMI, will be maintained and operated as saleable, economically viable, ongoing concerns, with competitively sensitive business information and decision-making divorced from that of the combined company. USA Waste and WMI will appoint a person or persons to manage the operations to be divested and ensure the parties' compliance with the requirements of the proposed Judgment and Hold Separate Order.

The parties have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify or enforce the provisions of the proposed Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Violation Alleged in the Complaint

A. The Defendants and the Proposed Transaction

USA Waste is the third largest waste collection and disposal firm in the United States. Based in Houston, Texas, it provides waste collection and disposal services throughout the country. In 1997, USA Waste's total operating revenues exceeded \$2.6 billion.

commercial routes they believe must be divested under the Judgment. The governments, however, have not verified defendants' representations.

WMI, based in Oak Brook, Illinois, is the nation's largest waste collection and disposal firm. It also provides waste collection and disposal services throughout the country, often in direct competition with USA Waste. In 1997, WMI had total operating revenues of over \$9 billion.

In March 1998, USA Waste announced its agreement to acquire WMI in a stock transaction worth nearly \$14 billion. This transaction, which would combine two of the nation's largest waste collection and disposal firms and substantially increase concentration in a number of already highly concentrated, difficult-to-enter markets, precipitated the governments' suit.

B. The Competitive Effects of the Transaction

Waste collection firms, or "haulers," contract to collect municipal solid waste ("MSW") from residential and commercial customers; they transport the waste to private and public disposal facilities (e.g., transfer stations, incinerators and landfills), which, for a fee, process and legally dispose of waste. USA Waste and WMI compete in operating waste collection routes and waste disposal facilities.

1. The Effects of the Transaction on Competition in the Markets for Commercial Waste Collection

Commercial waste collection is the collection of MSW from commercial businesses such as office and apartment buildings and retail establishments (e.g., stores and restaurants) for shipment to, and disposal at, an approved disposal facility. Because of the type and volume of waste generated by commercial accounts and the frequency of service required, haulers organize commercial accounts into special routes, and use specialized equipment to store, collect and transport waste from these accounts to approved disposal sites. This equipment—one to ten cubic yard containers for waste storage, and front-end loader vehicles for collection and transportation—is uniquely well suited to commercial waste collection service. Providers of other types of waste collection services (e.g., residential and roll-off services) are not good substitutes for commercial waste collection firms. In their waste collection efforts, other firms use different waste storage equipment (e.g., garbage cans or semi-stationary roll-off containers) and different vehicles (e.g., rear- or side-load trucks), which for a variety of reasons, cannot be conveniently or efficiently used to store, collect or transport waste generated by

commercial accounts, and hence, are rarely used on commercial waste collection routes. For purposes of antitrust analysis, commercial waste collection constitutes a line of commerce, or relevant service, for analyzing the effects of the merger.

The Complaint alleges, that provision of commercial waste collection services takes place in compact, highly localized geographic markets. It is expensive to ship waste long distances in either collection or disposal operations. To minimize transportation costs and maximize the scale, density, and efficiency of their waste collection operations, commercial waste collection firms concentrate their customers and collection routes in small areas, often limited to metropolitan area. Firms with operations concentrated in distant area cannot easily compete against firms whose routes and customers are locally based. Short distance may significantly limit a distant firm's ability to provide commercial waste collection service as frequently or conveniently as that offered by local firms with nearby routes. Also, local commercial waste collection firms have significant cost advantages over other firms, and can profitably increase their charges to local commercial customers without losing significant sales to firms outside the area.

Applying that analysis, the Complaint alleges that twelve areas—Akron, Cleveland and Columbus, Ohio; Allentown and Pittsburgh, Pennsylvania; Denver, Colorado; Detroit, Michigan; Gainesville, Florida; Houston, Texas; Louisville, Kentucky; Portland, Oregon; and Tucson, Arizona—constitute sections of the country, or relevant geographic markets, for the purpose of assessing the competitive effects of a combination of USA Waste and WMI in the provision of commercial waste collection services. In each of these markets, USA Waste and WMI are two of the largest competitors, and the combined firm would command from 50 to 90 percent or more of total market revenues. These twelve commercial waste collection markets generate from \$2 million to well over \$45 million in annual revenues.

Significant new entry into these markets would be difficult, time consuming, and is unlikely to occur soon. Many customers of commercial waste collection firms have entered into "evergreen" contracts, tying them to a market incumbent for indefinitely long periods of time. In competing for uncommitted customers, market incumbents can price discriminate, *i.e.*, selectively (and temporarily) charge unbeatably low prices to customers

targeted by entrants, a tactic that would strongly discourage a would-be competitor from competing for such accounts, which, if won, may be very unprofitable to serve. The existence of long term contracts and price discrimination substantially increases any would-be new entrant's costs and time necessary for it to build its customer base and obtain efficient scale and route density to become an effective competitor in the market.

The Complaint alleges that a combination of USA Waste and WMI would likely lead to an increase in prices charged to consumers of commercial waste collection services. The acquisition would diminish competition by enabling the few remaining competitors to engage more easily, frequently, and effectively in coordinated pricing interaction that harms consumers. This is especially troublesome in markets where entry has not proved an effective deterrent to the exercise of market power.

2. The Effects of the Transaction on Competition in the Markets for Disposal of Municipal Solid Waste

A number of federal, state and local safety, environmental, zoning and permit laws and regulations dictate critical aspects of storage, handling, transportation, processing and disposal of MSW. MSW can only be sent for disposal to a transfer station, sanitary landfill, or incinerator permitted to accept MSW. Anyone who attempts to dispose of MSW in a facility that has not been approved for disposal of such waste risks severe civil and criminal penalties. Firms that compete in the disposal of MSW can profitably increase their charges to haulers for disposal of MSW without losing significant sales to other firms. For these reasons, there are no good substitutes for disposal of MSW.

Disposal of MSW tends to occur in highly localized markets.² Disposal

² Though disposal of municipal solid waste is primarily a local activity, in some densely populated urban areas there are few, if any, local landfills or incinerators available for final disposal of waste. In these areas, transfer stations are the principal disposal option. A transfer station collects, processes and temporarily stores waste for later bulk shipment by truck, rail or barge to a more distant disposal site, typically a sanitary landfill, for final disposal. In such markets, local transfer stations compete for municipal solid waste for processing and temporary storage, and sanitary landfills may compete in a broader regional market for permanent disposal of area waste.

The Complaint in this case alleges that in three relevant areas—New York, NY; Baltimore, MD; and Philadelphia, PA—transfer stations are the principal method for disposal of MSW. In other markets (*e.g.*, Miami, Louisville, Akron, Cleveland and Columbus), distant landfills may compete with local disposal facilities (incinerators or landfills)

costs are a significant component of waste collection services, often comprising 40 percent or more of overall operating costs. It is expensive to transport waste significant distances for disposal. Consequently, waste collection firms strongly prefer to send waste to local disposal sites. Sending a vehicle to dump waste at a remote landfill increases both the actual and opportunity costs of a hauler's collection service. Natural and man-made obstacles (*e.g.*, mountains and traffic congestion), sheer distance and relative isolation from population centers (and collection operations) all substantially limit the ability of a remote disposal site to compete for MSW from closer, more accessible sites. Thus, waste collection firms will pay a premium to dispose of waste at more convenient and accessible sites. Operators of such disposal facilities can—and do—price discriminate, *i.e.*, charge higher prices to customers who have fewer local options for waste disposal.

For these reasons, the Complaint alleges that, for purposes of antitrust analysis, seventeen areas—Akron/Canton, Cleveland and Columbus, OH; Baltimore, MD; Denver, CO; Detroit, Flint, and Northeastern Michigan; Houston, TX; Los Angeles, CA; Louisville, KY; Miami, FL; Milwaukee, WI; New York, NY; Pittsburgh and Philadelphia, PA; and Portland, OR—are relevant geographic markets for disposal of municipal solid waste. In each of these markets, USA Waste and WMI are two of only a few significant competitors. Their combination would command from over 50 to well over 90 percent of disposal capacity for municipal solid waste, in markets that generate annual disposal revenues of from \$10 million to over \$200 million annually.

Entry into the disposal of municipal solid waste is difficult. Government permitting laws and regulations make obtaining a permit to construct or expand a disposal site an expensive and time-consuming task. Significant new entry into these markets is unlikely to occur in any reasonable period of time, and is not likely to prevent exercise of market power after the acquisition.

In each listed market, USA Waste's acquisition of WMI would remove a significant competitor in disposal of

through the use of transfer stations. Regional landfills also compete for permanent disposal of waste from these areas. In some areas, however, the proposed Final Judgment requires defendants to divest transfer stations because such divestitures may aid in the competitive viability of a companion landfill, the divestiture of which, the governments believe, is essential for effective relief.

municipal solid waste. With the elimination of WMI, market incumbents will no longer compete as aggressively since they will not have to worry about losing business to WMI. The resulting substantial increase in concentration, loss of competition, and absence of reasonable prospect of significant new entry or expansion by market incumbents likely ensure that consumers will pay substantially higher prices for disposal of MSW, collection of commercial waste, or both, following the acquisition.

III. Explanation of the Proposed Final Judgment

The relief described in the proposed Final Judgment will eliminate the anticompetitive effect of the acquisition in commercial waste collection in and disposal of MSW from the relevant markets by establishing new, independent and economically viable competitors in each affected market. The proposed Final Judgment requires USA Waste and WMI, within 120 days after the filing of the Complaint in this matter, or five days after notice of the entry of this Final Judgment by the Court, whichever is later, to sell certain commercial waste collection assets ("Relevant Hauling Assets") and disposal assets ("Relevant Disposal Assets") as viable, ongoing businesses to a purchaser or purchasers acceptable to the United States, in its sole discretion, after consultation with the relevant state. The collection assets to be divested include front-end loader commercial waste collection routes, trucks and customer lists. The disposal assets to be divested include landfills, transfer stations, disposal rights in such facilities, and certain other assets (e.g., leasehold and renewal rights in the particular landfill or transfer station, garages and offices, trucks and vehicles, scales, permits, and intangible assets such as landfill or transfer station-related customer lists and contracts).

If USA Waste and WMI cannot accomplish the divestitures within the prescribed time, the Final Judgment provides that, upon application of the United States, the Court will appoint a trustee to complete the divestiture of each relevant disposal asset or relevant hauling asset not sold. The proposed Final Judgment provides that the assets must be divested in such a way as to satisfy the United States, in its sole discretion, after consultation with the relevant state, that the assets can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in waste collection or disposal that can compete effectively in the relevant area. Defendants must take all

reasonable steps necessary to accomplish the divestitures, and shall cooperate with bona fide prospective purchasers and, if one is appointed, with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that USA Waste and WMI will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestitures. At the end of six months, if the divestitures have not been accomplished, the trustee and the parties will make recommendations to the Court which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendant.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of

the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants USA Waste and WMI. The United States could have brought suit and sought preliminary and permanent injunctions against USA Waste's acquisition of WMI. The United States is satisfied, however, that defendants' divestiture of the assets described in the Judgment will establish, preserve and ensure viable competitors in each of the relevant markets identified by the governments. To this end, the United States is convinced that the proposed relief, once implemented by the Court, will prevent USA Waste's acquisition of WMI from having adverse competitive effects.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States v. Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."³ Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977-1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also, *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not

breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.⁴

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)." ⁵

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: July 22, 1998.

Respectfully submitted,

Anthony E. Harris,

Illinois Bar No. 1133713. U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307-6583.

Appendix A—Summary of Waste Disposal and Collection Assets That Must be Divested Under the Proposed Final Judgment

II. Waste Disposal Assets

The proposed Final Judgment (§§ II(C)(1) and (2), IV and V) requires USA Waste and WMI to divest certain "relevant disposal assets." In general, this means, with respect to each landfill or transfer station, all tangible assets, including the garage and related facilities; offices; landfill-related or transfer station-related assets including capital equipment, trucks and other vehicles, scales, permits, and supplies, and all intangible assets of the landfill or transfer station, including landfill-related or transfer station-related customer lists, contracts, and accounts, or options to purchase any adjoining property. The list of disposal

facilities that must be divested includes properties and permits in the following locations, under the listed terms and conditions:

A. Landfills and Airspace Disposal Rights

1. Akron/Canton, OH

WMI's Countrywide R&D Landfill, located at 3619 Gracemont Street, SW, East Sparta, OH 44626 (known as the "Countrywide Landfill");

2. Columbus, OH

USA Waste's Pine Grove Landfill, located at 5131 Drinkle Road, SW, Amanda, OH 43102;

3. Denver, CO

USA Waste's Front Range Landfill, located at 1830 County Road 5, Erie, CO 80516-8005; and at purchaser's option, a two-year waste supply agreement that would require defendants to dispose of a minimum of 150 tons/day of waste at the Front Range Landfill, at disposal fees to be negotiated between purchaser and defendants;

4. Detroit, MI

USA Waste's Carleton Farms Landfill, located at 28800 Clark Road, New Boston, MI, subject to two conditions, viz, USA Waste's obligations to (1) dispose of ash from the Greater Detroit Resource Recovery Center's incinerator at a separate monofill cell on this site pursuant to an existing contract, and (2) dispose of waste from the Greater Detroit Resource Recovery Center's bypass transfer station at this landfill, until defendants transfer such obligation to another landfill, which they shall use their best efforts to accomplish expeditiously;

5. Flint, MI

USA Waste's Brent Run Landfill, located at Vienna Road, Montrose Township, Genesee County, MI;

6. Houston, TX

(1) USA Waste's Brazoria County Landfill, located at 10310 FM-523, Angleton, TX 77515; and

(2) Airspace disposal rights at WMI's Security Landfill, located at 19248 Highway 105E, Cleveland, TX, or WMI's Atascocita Landfill, located at 2020 Atascocita Road, Humble, TX, or both, pursuant to which defendants will sell to one or more purchasers rights to dispose of at least 3.0 million tons of waste, over a ten-year period.

7. Los Angeles, CA

USA Waste's Chiquita Canyon Landfill, located at 29201 Henry Mayo Drive, Valencia, CA 91355;

8. Louisville, KY

USA Waste's Valley View Landfill, located at 9120 Sulphur Road, Sulphur, KY 40070;

9. Miami, FL

Airspace disposal rights at USA Waste's Okeechobee Landfill, controlled by a subsidiary of USA Waste, and located at 10800 NE 128th Avenue, Okeechobee, FL 34972, pursuant to which defendants will sell a total of 4.3 million tons of airspace, over a 20-year time period, to one or more purchasers.

³ 119 Cong. Rec. 24598 (1973). See, *United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See, H.R. 93-1463, 93rd Cong. 2d Sess. 8-9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

⁴ *United States v. Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); see *United States v. BNS, Inc.*, 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States v. Gillette Co.*, 406 F. Supp. at 716. See also *United States v. American Cyanamid Co.*, 719 F.2d at 565.

⁵ *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) quoting *United States v. Gillette Co.*, *supra*, 406 F. Supp. at 716; *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky 1985).

10. Milwaukee, WI

USA Waste's Kestrel Hawk Landfill, located at 1989 Oakes Road, Racine, WI 53406; and WMI's Mallard Ridge Landfill, located at W. 8470 State Road 11, Delavan, WI 53115;

11. New York, NY/Philadelphia, PA

WMI's Modern Landfill & Recycling, located at 4400 Mt. Pisach Road, York, PA 17402, and known as the "Modern Landfill";

12. Northeast Michigan

USA Waste's Whitefeather Landfill, located at 2401 Whitefeather Road, Pinconning, MI; and Elk Run Sanitary Landfill, located at 20676 Five Mile Highway, Onaway, MI;

13. Pittsburgh, PA

WMI's Green Ridge Landfill, located at 717 East Huntington Landfill Road, Scottsdale, PA 15683 (variously known as the "Green Ridge Landfill," the "Y&S Landfill," or the "Greenridge Reclamation Landfill");

14. Portland, OR

USA Waste's North WASCO Landfill, located at 2550 Steele Road, The Dalles, OR 97058; and

B. Transfer Stations, Disposal Rights and Throughput Agreements

1. Akron/Canton, OH

Throughout disposal rights of a maximum of 400 tons/day of waste, for a ten-year time period, at WMI's Akron Central Transfer Station, located at 389 Fountain Street, Akron, OH, under the following terms and conditions;

(a) The purchaser (or its designee) can deliver waste to the Akron Central Transfer Station for processing and, at the purchaser's option, load the processed waste into the purchaser's (or its designee's) vehicles for disposal;

(b) For each purchaser of such disposal rights (or its designee), defendants must commit to operate the listed Akron Central Transfer Station's gate, scale house, and disposal area under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Ohio, except as to price and credit terms;

2. Baltimore, MD

Disposal rights of at least 600 tons of waste/day, pursuant to which defendants will sell to one or more purchasers rights to dispose, for a five-year time period, under the following terms and conditions:

(a) The purchaser(s) or its designee(s) may dispose of waste at any one or any combination of the following facilities, as specified in its purchase agreement: Southwest Resource Recovery Facility (known as "Baltimore RESCO" or "BRESO"), located at 1801 Annapolis Road, Baltimore, MD 21230; Baltimore County Resource Recovery Facility, located at 10320 York Road, Cockeysville, MD; Western Acceptance Facility, located at 3310 Transway Road, Baltimore, MD; or Annapolis Junction Transfer Station, located at 8077 Brock Bridge Road, Jessup, MD 20794. If more than one person purchases the disposal rights, the minimum daily disposal rates, and

the total of all purchasers' maximum disposal amounts at all facilities specified shall be no less than 600 tons/day;

(b) For each purchaser of disposal rights (or its designee), defendants must commit to operate the listed Baltimore, MD area facilities' gates, scale houses, and disposal areas under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Maryland, except as to price and credit terms;

3. Cleveland, OH

At purchaser's option, either USA Waste's Newburgh Heights Transfer Station, located at 3227 Harvard Road, Newburgh Heights, OH 44105 (known as the "Harvard Road Transfer Station"); or all of WMI's right, title and interest in the Strongsville Transfer Station, located at 16099 Foltz Industrial Parkway, Strongsville, OH; provided, however, that the City of Strongsville, owner of the transfer station, approves such sale or assignment. Defendants will exercise their best efforts to secure the assignments to the purchaser of all their rights, title and their interests in the Strongsville Transfer Station, and in the event the purchaser selects Strongsville, defendants will not reacquire any right, title or interest in the Strongsville transfer station. If the contract is not assigned defendants will enter into a disposal rights agreement with the purchaser (or purchasers), which will provide, in effect, that the purchaser(s) will enjoy all disposal rights and privileges now enjoyed by defendants at the Strongsville Transfer Station, and that defendants will operate the facility's gate, scale house, and disposal areas under terms and conditions no less favorable than those provided to defendants' own vehicles or to the vehicles of any municipality in Ohio, except as to price and credit terms;

4. Columbus, OH

WMI's Reynolds Road Transfer Station, located at 805 Reynolds Avenue, Columbus, OH 43201;

5. Detroit, MI

WMI's Detroit Transfer Station, located at 12002 Mack Avenue, Detroit, MI 48215;

6. Houston, TX

USA Waste's Hardy Road Transfer Station, located at 18784 East Hardy, Houston, TX;

7. Louisville, KY

USA Waste's Popular Level Road Transfer Station, located at 4446 Poplar Level Road, Louisville, KY;

8. Miami, FL

All USA Waste's right, title, and interest in the Reuters Transfer Station Rights, as conveyed to Chambers Waste Systems of Florida, a subsidiary of USA Waste, pursuant to the Final Judgment in *United States v. Reuter Recycling of Florida, Inc.*, 1996-1 Trade Cas. (CCH) ¶ 71,353 (D.D.C. 1996);

9. New York, NY

(a) WMI's SPM Transfer Station, located at 912 east 132nd Street, Bronx, NY 10452, and all rights and interests, legal or otherwise, that WMI now enjoys, has had or made use of out of the SPM Transfer Station, to deliver

waste by truck to rail siding at the Oak Point Rail Yard in the Bronx, NY, and at the Harlem River Yards facility, located at St. Ann's and Lincoln Avenues at 132nd Street, Bronx, NY 10454;

(b) All rights, title, and interest in USA Waste's pending application to construct and operate a waste transfer station located at 2 North 5th Street, Brooklyn, NY 11211 (known as the "Nekboh Transfer Station"); and

(c) USA Waste's All City Transfer, located at 246-252 Plymouth Street, Brooklyn, NY 11202; and

(d) WMI's Brooklyn Transfer Station, located at 485 Scott Avenue, Brooklyn, NY 12222, but only in the event that USA Waste's Nekboh Transfer Station has not been licensed or permitted to accept waste within one year from the date of entry of the Final Judgment; and

10. Philadelphia, PA

USA Waste's Girard Point Transfer Station, located at 3600 South 26th Street, Philadelphia, PA 19145; and USA Waste's Quick Way Inc. Municipal Waste Transfer Station, located at SE Corner, Bath and Orthodox Streets, Philadelphia, PA 19137, subject to the conditions that (1) the existing City of Philadelphia waste contract is transferred to a WMI transfer station, which defendants must use their best efforts to accomplish, and (2) until such transfer is effected, USA Waste will be granted throughput capacity at the Quick Way Transfer Station to handle this contract.

II. Commercial Waste Collection Assets

The Final Judgments also orders USA Waste and WMI to divest certain commercial waste collection assets. Those assets primarily include, capital equipment, trucks and other vehicles, containers, interests, permits, used to service customers along the routes, in the following locations:

A. Akron, OH

USA Waste's and American Waste Corporation's front-end loader truck ("FEL") commercial routes that serve Summit County, Ohio;

B. Allentown, PA

WMI's FEL commercial routes that serve the cities of Allentown and Northampton and Lehigh County, PA;

C. Cleveland, OH

WMI's FEL commercial routes that serve the City of Cleveland, portions of Cuyahoga, and very limited portions of Geauga and Lake County, Ohio;

D. Columbus, OH

WMI's FEL commercial routes that serve Franklin County, Ohio;

E. Denver, CO

USA Waste's FEL commercial routes that serve the City of Denver, and Denver and Arapahoe County, CO;

F. Detroit, MI

WMI's FEL commercial routes that serve the City of Detroit, and Wayne and limited portions of Oakland and Macomb County, MI;

G. Houston, TX

WMI's FEL commercial routes that serve the City of Houston, the Dickinson area, and Harris County, TX;

H. Louisville, KY

USA Waste's FEL commercial routes that serve the City of Louisville and Jefferson County, KY;

I. Pittsburgh, PA

WMI's FEL commercial routes that serve Allegheny County and Westmoreland County, PA, and the garage facility (real estate and improvements) located at the Y&S Landfill;

J. Portland, OR

WMI's FEL commercial routes that serve the City of Portland, OR;

K. Tucson, AZ

USA Waste's FEL commercial routes that serve the City of Tucson and Pima County, AZ; and

L. Gainesville, FL

WMI's FEL commercial routes that serve Alachua County, FL.

Appendix B

Correspondence Between with Counsel for USA Waste Services, Inc. and Dome Merger Subsidiary and Counsel for the United States, dated July 14, 1998.

July 14, 1998.

By Facsimile

Anthony E. Harris, Esq.,
Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Washington, DC 20530

Re: USA Waste Services, Inc. acq. of Waste Management, Inc.

Dear Tony: The purpose of this letter is to set USA Waste Services, Inc.'s ("USA Waste") and Waste Management, Inc.'s ("Waste Management") understanding of the front-end loader routes that are to be divested by pursuant to Section I D of the Stipulation and Hold Separate Order and Section II D of the Proposed Final Judgment that are to be filed with the Court in this matter (collectively "the Consent Decree"). USA Waste's and Waste Management's agreement to enter into the Consent Decree is based on this understanding.

I have listed below, for each area described in the Consent Decree, all of the front-end loader routes operated by the company whose routes will be divested that generated at least ten percent (10%) of their revenues in the area in the most recent year of operation. The only exception is Waste Management of Pittsburgh route 226, which we agreed will not be divested. It is the defendants' understanding that these routes are all those that need to be divested pursuant to the terms of the Final Judgment.

Akron/Canton, OH

Akron Hauling routes 70, 90-92, 94, 96 and 97.

Allentown, PA

Waste Management of Allentown routes A60-62, A64 and A65.

Cleveland, OH

Waste Management of Ohio—Cleveland routes F01, F04-F10, 17 and 18.

Columbus, OH

Waste Management of Ohio—Columbus routes 001-019.

Denver, CO

USA Waste of Colorado routes 1301-1308, 6320-6322, 6326-6328, 7317-7320, 1398, 1399 and 6399.

Detroit, MI

Waste Management North Detroit routes 901-915.

Waste Management—Metro Detroit routes 003, 005, 006, 010, 015 and 017.

Efficient Sanitation in Clinton Twp. route 003 serving Macomb.

Houston, TX

Waste Management of Houston routes 702-724.

Waste Management of Southeast Texas—Dickinson routes 2-4.

Louisville, KY

USA Waste Services of Kentucky routes 514, 515, 526-528, 574 and 576.

Pittsburgh, PA

Waste Management of Pittsburgh routes 227-231.

Waste Management of Laurel Valley routes 200 and 202-205, as well as the garage at the Y&S Landfill.

Portland, OR

Waste Management of Oregon routes 201, 203, 204, 206 and 207.

Tucson, AZ

USA Waste of Arizona, Inc. Tucson District routes 301-305 and 391.

Gainesville, FL

Alachua Waste Management routes G-20 and G-12.

The United States and each of the Relevant States, as defined in the Final Judgment and Hold Separate Order, have agreed only that all front-end loader routes of the designated company that generated (10%) or more of the revenues in the most recent year of operation in an area described in the Consent Decree (with the exception of Pittsburgh route 226 referenced above) are to be divested pursuant to its terms. The United States and each of the Relevant States have not, at this stage, verified USA Waste's and Waste Management's representations as to which

individual routes must be divested under the Consent Decree.

Sincerely yours,

James R. Weiss,

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Neal R. Stoll,

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Acknowledged for United States of America:

Anthony E. Harris

United States District Court, Northern District of Ohio, Eastern Division

United States of America; State of Ohio; State of Arizona; State of California; State of Colorado; State of Florida; Commonwealth of Kentucky; State of Maryland; State of Michigan; State of New York; Commonwealth of Pennsylvania; State of Texas; State of Washington; and State of Wisconsin. Plaintiffs, v. USA Waste Services, Inc.; Dome Merger Subsidiary; and Waste Management, Inc., Defendants. Civil Action No. 1:98 CV 1616; Judge Aldrich.

Certificate of Service

I, Anthony E. Harris, hereby certify that on July 16, 1998, I caused copies of the foregoing Competitive Impact Statement to be served on plaintiffs—the states of Ohio, Arizona, California, Colorado, Florida, Maryland, Michigan, New York, Texas, Washington and Wisconsin, and the commonwealths of Kentucky and Pennsylvania—and defendants USA Waste Services, Inc., Dome Merger Subsidiary, and Waste Management, Inc., by mailing a copy of the pleading first-class, postage paid, to a duly authorized legal representative of those parties as follows:

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