

**AMENDED AND RESTATED REGIONAL SOLID WASTE DISPOSAL
AND MEMBERS USE AGREEMENT**

This AMENDED AND RESTATED REGIONAL SOLID WASTE DISPOSAL AND MEMBERS USE AGREEMENT (the "Agreement") is made with an Effective Date, as defined below, by and among the **ROCKBRIDGE COUNTY SOLID WASTE AUTHORITY** (the "RCSWA") now or to-be re-named as the **BLUE RIDGE RESOURCE AUTHORITY** (the "BRRA") as of the Effective Date, the **COUNTY OF ROCKBRIDGE, VIRGINIA** (the "County"), and the **CITY OF LEXINGTON, VIRGINIA** (the "City"), each of which are political subdivisions of the Commonwealth of Virginia.

RECITALS:

WHEREAS, the Rockbridge County Board of Supervisors created the Rockbridge County Solid Waste Authority on January 3, 1991, for the purpose of acquiring, financing, constructing, equipping, operating and maintaining a garbage and refuse collection and disposal system, or systems, including recycling facilities; and,

WHEREAS, the Rockbridge County Solid Waste Authority has also been known as the Solid Waste Authority of Rockbridge County, and real estate has been titled in that name, as well as in various other agreements; and

WHEREAS, on November 13, 1995, the County of Rockbridge, City of Lexington and the City of Buena Vista, entered into an agreement (the "Regional Solid Waste Disposal Agreement) with the said RCSWA for the purpose of establishing a mutually beneficial basis for the use and operation of the County Sanitary Landfill (the "Landfill"); and

WHEREAS, such Agreement was to terminate with the end of the Landfill vertical expansion capacity allowed by the Virginia Department of Environmental Quality (VDEQ) pursuant to the original Permit No. 075 issued in 1972; and

WHEREAS, the County has gained approval of a lateral expansion of the Landfill for a lined cell, with a piggyback overlay and lateral expansion, at the existing Landfill site; and

WHEREAS, the County and the City wish to jointly use the expanded Landfill and to add the City as a new Member of the RCSWA, which will be re-named as the “Blue Ridge Resource Authority” upon the Effective Date; and

WHEREAS, the City has made its proportionate financial contribution to the BRRRA; and

WHEREAS, the Articles of Incorporation of the RCSWA are Amended this date to add the City as a Member and to effectuate the name change; and

WHEREAS, the parties intend through this Amended and Restated Membership Use Agreement to control the supply of Acceptable Waste to be delivered to the Landfill; and

WHEREAS, the purpose for which the BRRRA has been formed is to exercise any and all powers granted by the Virginia Water and Waste Authorities Act (Chapter 51, Title 15.2 Code of Virginia, (1950), as amended (“Act”), including, without limitation, to acquire, finance, construct, operate, manage, and maintain a garbage and refuse collection and disposal system and related facilities.

NOW THEREFORE, for and in consideration of the mutual covenants and conditions set forth herein, the Rockbridge County Solid Waste Authority (now or to-be re-named as the Blue Ridge Resource Authority as of the Effective Date), the County of Rockbridge, and the City of Lexington hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Specific Definitions. The capitalized terms in this Agreement have the following meanings, unless otherwise defined:

"Acceptable Waste" means non-hazardous "municipal solid waste", "industrial waste", "agricultural waste", "construction waste", "brush", and "demolition waste", as defined in the Virginia Waste Management Solid Waste Management Regulations, as amended, (the "SWM Regulations"), and such other wastes as the BRRA shall agree in writing to accept from time to time, subject to such limitations and exclusions as are imposed by Applicable Law and excluding all Unacceptable Wastes (refer to 9 VAC 20-81).

"Act" means the Virginia Water and Waste Authorities Act, §§ 15.2-5100 through 15.2-5159, Chapter 51, Title 15.2 of the Code of Virginia (1950, as amended).

"Annual Budget" means the annual budget of the BRRA as described in Section 5.11.

"Annual Deficit" means any actual deficit at the end of a Fiscal Year consisting of an excess of Operating Costs over Operating Revenues for such Fiscal Year incurred by the Authority acting pursuant to an Annual Budget and any amendments thereto.

"Applicable Law" means any law, regulation, requirement (including but not limited to permit and governmental approval requirements) or order of any local, state or federal agency, court or other governmental body, applicable from time to time to the acquisition, design, construction, equipping, testing, start-up, financing, ownership, possession or operation (including but not limited to closure and post-closure operations) of the Facility or the performance of any obligations under any agreement entered into in connection therewith.

"Articles of Incorporation" means the Articles of Incorporation of the Authority as they may be amended from time to time.

"Authority Default" means any of the events of default described in Section 6.2.

"Bonds" and **"Revenue Bonds"** include notes, bonds, bond anticipation notes, and other obligations of the BRRA for the payment of money.

"Brush" means yard debris, branches or other non-contaminated organic material.

"Bylaws" means the Bylaws of the BRRA, as they may be amended from time to time, which shall not be inconsistent with the Articles of Incorporation or this Agreement.

"Capital Expenditure" means any single expenditure of more than \$5,000 and intended to benefit and be amortized and/or depreciated over more than one (1) accounting period under generally accepted accounting principles.

"Commercial Waste" means any and all Acceptable Waste that is not delivered to the Facility by a Member or Municipal Customer or an individual resident of a Member or Municipal Customer.

"Construction and/or Demolition Waste" ("C & D Waste") means solid waste that is produced or generated during construction, remodeling, repair, or demolition of pavements, houses, commercial buildings, and other structures. C & D Waste includes, but is not limited to, lumber, wire, sheetrock, siding, broken brick, shingles, glass, pipes, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids and garbage are not C & D Waste (refer to 9 VAC 20-81).

"Commercial Customer" means any person or entity who delivers Acceptable Waste to the Facility other than a Member, Municipal Customer or individual resident of a Member or Municipal Customer

"Debt Service Payments" means the payments of principal, premium, if any, and interest required to be made by the BRRRA with respect to the Bonds.

"Designated Hauler" means any person or entity

- (1) who is entitled to deliver Acceptable Waste to the Facility on behalf of a User for a fee paid by the User on a long-term basis and
- (2) who collects Acceptable Waste pursuant to contract with or franchise from the User and is designated as such by the User in writing to the BRRRA.

"Effective Date" means the date as set forth in Section 7.6 below.

"Event of Default" means the events of default set forth in Section 6.2 and 6.3.

"Facility" means the operational area for the Landfill, described and constructed in accordance with the "Part B" applications as approved by the VDEQ Solid Waste Facility Permit 075 and all supporting structures and appurtenances.

"Fiscal Year" means the period from July 1 of one year to June 30 of the following year.

"Garbage" means readily putrescible discarded materials composed of animal, vegetable or other organic matter.

"Garbage and refuse collection and disposal system and related facilities" shall mean the collection and disposal of garbage and refuse, including Recyclable Material, at the Facility but not include the authority to engage in or provide for residential and/or commercial garbage and refuse collection (hauling/delivery) services.

"Hazardous Waste" means (i) "hazardous waste" as the term is defined in the Department of Solid Waste Management (DSWM) Regulations, (ii) "hazardous waste" as such term is defined in the Resource Conservation and Recovery Act, 42 U.S.C. §S6901 et seq. as amended from time to time; and (iii) solid waste that because of its quantity, concentration, or physical, chemical or infectious characteristics may pose or significantly contribute to a substantial present or potential hazard to human health, the Facility, or the environment when treated, stored, transported, or disposed of or otherwise managed.

"Household or Residential Waste" means Acceptable Waste, including garbage or rubbish (such as bottles, cans, clothing, compost, disposables, food packaging, food scraps, newspapers and magazines, and yard trimmings) that originates from private homes, apartments or other residences.

"Landfill" means the permitted (VA DEQ Permit 075) waste boundary, together with compliance monitoring network systems that may be expanded from time to time and operated by the Authority for the disposal of Acceptable Waste.

"Members" means the County of Rockbridge and the City of Lexington, and any additional participating locality or state or local governmental entity accepted as a Member of the BRRRA under the terms of the Act and this Agreement. For purposes of this Agreement, the incorporated Towns of Glasgow and Goshen will be assessed the same Tipping Fees and Other Material fees as the Members but will not hold seats on the BRRRA Board.

"Municipal Customer" means a state or local governmental entity, not a Member, who delivers Municipal Waste originating within the counties of Botetourt, Allegheny, Bath, Augusta, Amherst, Bedford or Nelson (jurisdictions which share a boundary with Rockbridge County) or originating within a city or town lying within said counties or Rockbridge County, except the City of Lexington, the Town of Glasgow and the Town of Goshen, to the Facility under an account with the BRRRA.

"Municipal Waste" means Household or Residential Waste, delivered to the Facility by or on behalf of a Municipal Customer.

"Non-Jurisdictional Commercial Customer" means any person or entity who delivers Commercial Waste originating within the counties of Botetourt, Allegheny, Bath, Augusta, Amherst, Bedford or Nelson (jurisdictions which share a boundary with Rockbridge County) or originating within a city or town lying within said counties or Rockbridge County, except the City of Lexington, the Town of Glasgow and the Town of Goshen, to the Facility under an account with the BRRRA.

"Operating Costs" means all actual costs of the BRRRA properly allocable to acquiring, constructing, equipping, maintaining and operating the Facility and set forth in the Annual Budget, including, but not limited to:

- (1) salaries and fringe benefits of employees;
- (2) utilities, communications, fuel, equipment (including but not limited to trucks and heavy equipment), tools and supplies;

- (3) engineering, testing, and consulting costs for design and operation, testing, monitoring, and closure;
- (4) all costs for compliance with all permit conditions and compliance with Applicable Law, including costs for treatment and disposal of leachate or materials inappropriately disposed or delivered to the Facility;
- (5) Debt Service Payments and lease purchase payments;
- (6) legal costs incurred in connection with the zoning, permitting, financing, operating and defending of the Facility and the BRRA;
- (7) insurance costs and the costs of reserves, bonds, letters of credit, escrows or other financial assurance or allowance for environmental monitoring and assurance, closure, post-closure or for compliance with Applicable Law;
- (8) Capital Expenditures necessary for compliance with Applicable Law, Capital Expenditures necessary for normal maintenance and reasonable periodic expansion of the Facility and Capital Expenditures incurred in connection with Uncontrollable Circumstances;
- (9) purchase and maintenance costs of equipment and maintenance of the Facility;
- (10) all taxes, including but not limited to those on real property, equipment or income, if any;
- (11) all accounting and bookkeeping fees and charges;
- (12) all costs associated with uncollectible accounts;
- (13) all amounts required to be paid by the BRRA to replenish deficits in the Rate Stabilization Fund, or any similar funds created pursuant to the issuance of Bonds.

"Operating Revenues" means all income and revenues derived by the BRRA from the ownership or operation of the Facility, including the receipts of Tipping Fees from the Users, Private Haulers and Customers (but excluding any payments of any Member's Pro Rata Share), and, for purposes of the Agreement, shall include income from the investment of money held by or on behalf of the BRRA.

"Other Material" means any waste designated by the BRRA to be Acceptable Waste but which requires uniform, separated delivery and special handling by the BRRA. Examples include tires, brush, white goods, and electronics.

"Private Hauler" means any person or entity (other than a Member or a Designated Hauler) who disposes of Acceptable Waste at the Landfill, including individuals or entities delivering Household or Residential Waste in privately owned vehicles.

"Pro Rata Share" means that share which is in the same proportion as the rolling average of tonnage attributed to each Member in the annual DEQ Solid Waste Information and Assessment (SWIA) report during the immediately preceding five (5) calendar years. The Pro Rata Share shall only apply in the case that there are insufficient BRRA reserves in the Rate Stabilization Fund (not to include closure/post-closure reserves), to cover any Annual Deficit, meet any financial covenants of BRRA, or as otherwise required by a BRRA lender under the Support Agreement.

"Rate Stabilization Fund" means that certain reserve fund of the BRRA, as set forth in Section 5.10.

"Recyclable Material" means material diverted from the waste stream for separate processing in accordance with the applicable requirements of state and federal law and implementing regulations for the following recyclable items not limited to: Corrugated cardboard, newspapers, dry mixed paper, rinsed glass, and plastic bottles and jars (excluding plastic bags and most rigid plastics, unless prior authorization is provided by the BRRRA), all colors, and rinsed metal cans. bond paper, computer paper, magazines, catalogs, books, bulk mailings, telephone and other directories, carrier stock, and boxboard or chipboard. Mixed paper shall not include wax paper, carbon paper, chemically treated or coated paper that renders paper non-recyclable, or any paper that does not tear. Glass shall include clear, brown, blue and green bottles and jars. Metal cans, excluding specifically any aerosols or those with other unacceptable contents, shall include aluminum, steel, bimetal, and tin cans. Plastic bottles shall exclude automotive product, herbicide, and pesticide containers, unless all contents are removed and containers triple-rinsed, per federal guidelines. Recyclable Material shall be substantially clean, dry, and generally free from unacceptable contamination. Any material deemed unacceptable by reason of its composition or content will not be accepted or may be rejected. In order to qualify as a Recyclable Material, the material must be subject to being processed or reprocessed to recover as a usable product or is regenerated to a usable form.

"Start-Up Date" means the date the Facility is prepared to receive Acceptable Waste under the VDEQ Permit 075 as approved in 2016.

"Support Agreement" means that Support Agreement dated August 17, 2017 between the County, City, SWA, and VRA.

"Tipping Fee" means the per-ton fee payable to the BRRRA for the disposal of Acceptable Waste.

"Ton" or "ton" means a unit of weight equal to 2,000 pounds.

"Unacceptable Waste" means waste which the Facility is precluded by Applicable Law from accepting, including, without limitation, liquid waste including gasoline, kerosene or waste oil, infectious or medical wastes, hazardous wastes, batteries, oil-based paint, explosives, waste as proscribed by applicable federal, state or local law or regulations, or waste otherwise prohibited by the BRRRA.

"Uncontrollable Circumstance" means any act, event or condition, whether affecting the Facility, any User or the BRRRA, that materially interferes with the acquisition, design, construction, equipping, start-up, operation, ownership or possession of the Facility or other performance required hereunder, if such event or condition is beyond the reasonable control, and not the result of willful action, of the party relying thereon as justification for any nonperformance, including but not limited to an act of God, hurricane, tornado, storm, flood, landslide, earthquake, fire, explosion, or other casualty, war, blockade, insurrection, riot, the order or judgement of any local, state, or federal court, administrative agency or governmental officer or body, a strike, lockout or other similar labor action, or the loss of or inability to obtain utility services, including water, sewer, fuel oil, gasoline, electric power, or communications.

“User” or “Users” means any Member, including residents of such Member, Commercial Customer, Municipal Customer, or Non-Jurisdictional Commercial Customer, utilizing any portion of the Facility.

“User Default” means any of the events of default described in Section 6.3.

Section 1.2 Terms Generally.

Whenever the context may require, any pronoun which is used in this Agreement shall include the corresponding masculine, feminine and neuter forms, and the singular shall include the plural and vice versa. Unless otherwise noted, the words “include”, “includes” and “including” which are used in this Agreement shall be deemed to be followed by the phrase “but not limited to” or “without limitation”. The words “agree”, “contracts”, “approval” and “consent” which are used in this Agreement shall be deemed to be followed by the phrase “which shall not be unreasonably withheld or unduly delayed” except as may otherwise be specified. For purposes of this Agreement, charges will be rounded to the nearest hundredth of one dollar and percentages will be rounded to the nearest hundredth of a percentage point; 5 or greater shall be rounded up, and less than 5 shall be rounded down.

ARTICLE II TERM OF AGREEMENT

Section 2.1 Term.

This Agreement shall become effective upon its execution, subject to the terms and conditions contained herein, and shall be effective and the BRRA shall have existence for a term of Twenty-five (25) years unless further extended pursuant to the provisions of the Act, provided that the BRRA and this Agreement shall in any event continue until adequate closure and post-closure obligations and responsibilities with respect to the Landfill have been met, including payment in full of all Bonds. Members covenant and agree to undertake in good faith and in a

timely manner all actions necessary to effect the purposes of the Articles of Incorporation and this Amended Agreement.

Section 2.2 Amendments. The BRRRA and Members covenant and agree that, except as stated herein, the terms, conditions and requirements contained in this Agreement shall apply equally to each Member and further covenant and agree that this Agreement and the Articles of Incorporation shall not be amended or changed in any way without the consent of the BRRRA and the consent of the governing body of each Member.

ARTICLE III **REGIONAL AUTHORITY**

Section 3.1 Creation/Voting Representation. The existing Rockbridge County Solid Waste Authority shall be re-named as the Blue Ridge Resource Authority as of the Effective Date with Rockbridge County and the City of Lexington as Members. The Board of the BRRRA shall consist of seven (7) Directors, with five (5) Directors appointed by the County Board of Supervisors, and two (2) Directors appointed by the Lexington City Council. Directorship eligibility specifically includes all members of the County Board of Supervisors, all members of Lexington City Council, and the Lexington City Mayor.

Section 3.2 Purpose. The purpose of the BRRRA shall be to exercise any and all powers granted by the Virginia Water and Waste Authorities Act (Chapter 51, Title 15.2 Code of Virginia (1950), as amended (“Act”), including without limitation to acquire, finance, construct, equip, operate, manage and maintain the regional solid waste and recycling processing and disposal facilities through post closure care. Any other duties or undertakings in the future shall be addressed in a separate agreement or amendment to this Agreement, and the Articles of Incorporation if necessary. The BRRRA shall:

3.2.1 Meet on a monthly basis.

3.2.2 Establish a quorum as a majority of the Directors of the BRRR Board for an official meeting, with at least one Director appointed by the City of Lexington present, and establish as a rule that a majority vote of those present at the meeting is required in order to take action on any given matter coming before the BRRR Board, except that in the event that no Director appointed by the City of Lexington is present for a second consecutive meeting, the BRRR Board may take action on any given matter by majority vote of those Directors present.

3.2.3 Appoint an Executive Director of the BRRR who shall oversee all operations of the Landfill and report directly to the BRRR Board, as well as provide reasonable staff support to the Solid Waste Advisory Committee. The acting Executive Director of the RCSWA shall continue to act as Executive Director for the BRRR until such time as a new Executive Director is appointed by majority vote of the BRRR Board.

3.2.4 Establish a Solid Waste Advisory Committee, consisting of the BRRR's Executive Director, the Rockbridge County Administrator, the Lexington City Manager, and one additional staff member each, from the County and the City, or their respective designees.

3.2.5 Adopt ByLaws for its governance and procedures, but any provision contained therein purporting to amend or change this Agreement or the Articles of Incorporation shall be automatically void.

3.2.6 Adopt an annual budget.

3.2.7 Retain independent legal counsel to represent the BRRR.

Section 3.3 Ownership and Location. The real property, on which the Facility is sited, is comprised of approximately 318 acres located in the County of Rockbridge, South River Magisterial District, east of the Norfolk & Western Railroad right-of-way and west of Virginia

Roads 631 (Old Buena Vista Road) and 704 (Middle Road), and at the southern terminus of Route 831 (Landfill Road), herein referred to as the “Landfill Property”. The Landfill Property will be owned, and the Facility will be operated, by the BRRRA.

Section 3.4 Assets. Upon the Effective Date, any land, improvements, personal property, equipment or cash assets of the Rockbridge County Solid Waste Authority shall be carried over to the re-named BRRRA.

Section 3.5 Liabilities. Upon the Effective Date, the BRRRA shall retain responsibility for all Operating Costs, expenses, obligations, liabilities, debts, Bonds, and lease-purchase agreements of the Rockbridge County Solid Waste Authority. Except as may be specifically provided herein all existing contracts and agreements to which the RCSWA is a party shall remain in effect as to the BRRRA including the applicable provisions of the 1995 Solid Waste Agreement pertaining to compliance, closure/post-closure, and financial assurances for the existing Landfill under the original DEQ Permit No. 075, but which shall be administered by the BRRRA.

ARTICLE IV **FACILITY CONSTRUCTION AND OPERATION**

Section 4.1 Use of Facility. Except as provided in Sections 4.3 and 4.5 or as otherwise specifically provided herein, the Landfill may only be utilized by Users located within the Member jurisdictions, or by Designated Haulers or Private Haulers, for the delivery of Acceptable Waste or Recyclable Materials originating within the Member jurisdictions. The BRRRA and Members further covenant and agree that the Facility shall not be utilized by any other person or entity without the express prior consent of the BRRRA Board, through approval of a negotiated contract with a Municipal Customer for acceptance of its Acceptable Waste at a specified rate. The BRRRA

shall establish its rates annually for Tipping Fees and Other Material fees for the acceptance of waste delivered by or on behalf of Users.

4.1.1 Notwithstanding any other provision included in this Agreement, and as more fully described in those NonArbitrage Certificate and Tax Compliance Agreements entered into by the BRRRA related to the Bonds (the “Tax Certificates”), the BRRRA shall not enter into any agreements or arrangements with any person or entity engaged in a trade or business that is not a state or local governmental unit or instrumentality thereof, including but not limited to a Service Contract other than an Excluded Service Contract or Qualified Service Contract (as those terms are defined in the Tax Certificates), that would allow Private Business Use (as defined in the Tax Certificates) of the Landfill and related facilities to exceed the Private Business Use Limit (as defined in the Tax Certificates).

Section 4.2 Delivery and acceptance.

4.2.1 Beginning on the Start-Up Date and continuing throughout the term of this Agreement, the BRRRA agrees to accept and dispose of Acceptable Waste delivered by or on behalf of the Members in accordance with the terms of this Agreement for the useful life of the Landfill, and agrees to do so at and through the Facility unless an Uncontrollable Circumstance renders all or a portion of the Facility inoperable. In such case, the BRRRA may and is authorized to provide, by separate agreement between the BRRRA and the Members, for the emergency, temporary disposal of Acceptable Waste in an efficient manner, including disposal at an alternative site or sites. The BRRRA further agrees to use its best efforts to operate the Facility as economically as possible and to maintain a competitive Tipping Fee structure to encourage use of the Facility by Private Haulers and Customers.

4.2.2 Each Member shall have the right to deliver, or cause to be delivered, to the Facility all Acceptable Waste generated within its political jurisdiction. Recyclable Materials generated within each Member's jurisdiction and delivered by the member municipality will be accepted by the BRRA, subject to execution of a separate Recyclable Materials agreement with such Member. For as long as the indebtedness is outstanding under the Bonds, except in the case of an Uncontrollable Circumstance, each Member further agrees to deliver, or cause to be delivered, to the Facility all Acceptable Waste, except Recyclable Materials, which is collected by the Member, collected by a Designated Hauler, or collected by any other waste hauler who collects Acceptable Waste on behalf of the Member, and each Member agrees to do so to provide a constant revenue stream to the BRRA.

4.2.3 Any Member will be fully responsible for all waste that is delivered to the Facility to include but not be limited to, all costs associated with specialized handling of Unacceptable Waste and all closure/post closure care based on the most recent five (5) year tonnage data. Additionally, the BRRA maintains the right to refuse acceptance of any delivery that it deems Unacceptable Waste.

Section 4.3 **Emergency Temporary Use of Facility.** The BRRA and the Members hereby agree that the BRRA may allow emergency, temporary use of the Facility by or on behalf of a locality authorized to be a Municipal Customer (referred to in this section as a "temporary Municipal Customer") for the disposal at the Landfill of only Acceptable Waste which originates within the temporary Municipal Customer's jurisdiction, subject to and upon the following terms and conditions:

4.3.1 The BRRA may enter into reciprocal agreements with temporary Municipal Customers that own or operate solid waste disposal facilities, to receive the other's Acceptable

Waste in the event of an emergency or if another need arises to do so. Reciprocal Tipping Fees shall be negotiated as part of any agreement. All such agreements shall be approved by the BRRA Board.

4.3.2 Each such use shall be subject to prior written approval of the BRRA's Executive Director and the temporary Municipal Customer's compliance with all Applicable Laws, rules, regulations, and procedures, including the BRRA's Operating Rules, regulations and procedures. Any such use expected to exceed thirty (30) days shall be only with specific approval of the BRRA Board at its next regular meeting.

4.3.3 The fees and charges applicable to such emergency use shall be as established in the reciprocal agreement, or default to the then current rate for Municipal Customers.

4.3.4 Under no circumstances shall the BRRA accept or be deemed to have accepted for disposal or title to any Hazardous Waste or Unacceptable Waste.

4.3.5 The temporary Municipal Customer shall be responsible for and shall pay any and all claims, suits, damages, fines, penalties, loss, or liability, including any required cleanup or remediation, for damage to property, death or personal injury of any kind resulting from or arising out of: (i) the operation or presence on BRRA premises by said temporary Municipal Customer, its employees, agents, and contractors; (ii) the delivery to the BRRA's Facility or handling of Hazardous Waste or Unacceptable Waste; or, (iii) any violation of any law, rule, regulation, or procedure.

Section 4.4 New Members. Because the Landfill is a scarce and valuable resource, the Members have a common interest in ensuring that the Landfill is utilized only for the proper disposal of Acceptable Waste, and the BRRA and the Members desire to make the best possible and most efficient use of the Landfill, the Members and BRRA covenant and agree as follows:

4.4.1 No person or entity shall be permitted to utilize the Facility except pursuant to the general terms and conditions of this Agreement.

4.4.2 The total number of Members may be increased by two (2), with each such additional Member being allocated one seat on the BRRRA Board.

4.4.3 Said additional public bodies may join the BRRRA to become Members subject to the following:

4.4.3.1 Evaluation of any prospective new member joining the BRRRA shall be a two-phase process consisting of a screening evaluation by the Solid Waste Advisory Committee, with a recommendation and report to the BRRRA Board to proceed or not proceed to a comprehensive evaluation of a potential member.

4.4.3.1.1 The screening evaluation phase of a prospective new member by the Solid Waste Advisory Committee will include, but not be limited to, review of the prospect's: (i) most recent Comprehensive Annual Financial Report; (ii) solid waste characteristics; (iii) solid waste tonnage records for the immediately preceding five (5) fiscal years; (iv) recycling tonnage for the immediately preceding five (5) fiscal years; (v) relevant local government code, ordinances, and policies; and (vi) solid waste organizational structure and management.

4.4.3.1.2 If the Solid Waste Advisory Committee recommends that the BRRRA Board proceed to a comprehensive evaluation of the prospect and the BRRRA Board approves same by a super majority two-thirds (2/3) vote of all Directors of the BRRRA Board, then the second phase of the evaluation process shall begin. Alternatively, if the Solid Waste Advisory Committee recommends to the BRRRA

Board to not proceed to the comprehensive evaluation phase of the potential new member and the BRRRA Board concurs, then the BRRRA Executive Director shall so notify the potential new member in writing. If the BRRRA Board vote to proceed to the comprehensive evaluation phase is not an approval by super majority two-thirds (2/3) vote of all Directors of the BRRRA Board, then the BRRRA Board should discuss and decide the merits of continuing with evaluating the prospect.

4.4.3.1.3 The comprehensive evaluation phase shall be performed by both an independent engineering consultant and financial consultant under contract with the BRRRA. The engineering consultant shall analyze the potential member's solid waste and recycling tonnage history to calculate the impact of this additional tonnage on the life of the landfill, and shall make any other recommendations deemed appropriate. The financial consultant shall review all relevant organizational and financial information to determine if this potential member will be of long term benefit to the BRRRA. The engineering and financial consultant reports shall be reviewed and accepted by the Solid Waste Advisory Committee, and then presented to the BRRRA Board with a recommendation to accept or reject the new member. The BRRRA Executive Director shall so notify the potential new member in writing of the BRRRA Board's decision on their membership request, subject to the required governing body approvals addressed hereafter.

4.4.3.1.4 The cost of the consultant reports for the comprehensive evaluation phase shall be borne in full by the potential new member. If the potential member becomes a Member, then the BRRRA Board may authorize reimbursement to the new Member for up to fifty percent (50%) of the consultant costs. If the

potential new member is not approved, no reimbursement will be made by the BRRA.

4.4.3.2 The governing body of the locality wishing to become a Member and the governing bodies of the BRRA and the Members shall by concurrent resolutions or ordinances or by agreement provide for the approval of the joinder of the new Member, hold a public hearing, and submit an application to the Virginia State Corporation Commission, all as set forth more fully in Section 15.2-5112 of the Act.

4.4.3.3 The proposed new member shall make a non-refundable capital contribution at least proportional to the capital contribution made by the other Members. Alternatively, the proposed new Member may pay a higher Tipping Fee for a term not to exceed five (5) years, equivalent to the total amount of the initial capital contribution, including interest paid on current Bonds or borrowings, amortized per ton of solid waste delivered to the Landfill, or a combination of initial capital contribution and dispersed fee adjustment to satisfy this obligation. The capital contribution requirement will be calculated based on cash contributions made by existing Members to date to support all infrastructure, active cells, reserve funds, and all closure/post-closure funds that are currently held in restricted accounts or have been utilized to support activities that are currently operational. The exact capital contribution amount will be determined on a percentage basis after a proper evaluation has been completed to determine the gross tonnage anticipated by the new Member on an annual basis (e.g. Current Member tonnage = 40,000 ton per year; New Member tonnage = 10,000 ton per year; thus, New Member would make up 20% of the

total adjusted annual operational tonnage and must make a non-refundable capital contribution accordingly).

4.4.3.4 The proposed new Member shall execute and deliver an agreement substantially similar to this Agreement as required by the BRRRA and an agreement substantially similar to the Support Agreement.

Section 4.5 Municipal Customers. Municipal Customers may also be considered and permitted by the BRRRA to use the Facility under a contract. Such Municipal Customers shall be subject to all of the conditions in Section 4.4.3, except the provisions contained in Sections 4.4.3.2 and 4.4.3.3.

Section 4.6 Title to Acceptable Waste. Upon the BRRRA's acceptance of any Acceptable Waste, BRRRA shall receive title to such Acceptable Waste. The BRRRA shall never be deemed to have title to Unacceptable Waste unless it specifically represents that it is aware the waste is Unacceptable Waste and it is specifically taking title to the same. Inoperability of BRRRA's scales shall not affect the transfer of title. In the event of any dispute regarding transfer of title, the affected User shall join with the BRRRA in defense of such title.

Section 4.7 Recyclable Material. The City and County agree to continue current recycling efforts to divert as much Recyclable Material from the waste stream as is practicable, subject to extant ability for the BRRRA to process Recyclable Material. Each Member may elect to negotiate a separate Recyclable Material handling agreement with the BRRRA in accordance with Section 4.2.2. The BRRRA and Members understand and agree that each Member shall be responsible for delivery of its Recyclable Material to the Facility.

Section 4.8 Disposal of Unacceptable Waste. The BRRRA maintains the right to refuse acceptance of any delivery that it deems to be Unacceptable Waste. The BRRRA shall notify any

person delivering waste found before discharge into the Facility to contain Unacceptable Waste that the waste cannot be disposed at the Facility. If Unacceptable Waste is disposed of by or on behalf of any User, and time and operations permit, BRRRA shall notify such User and such User shall promptly cause the Unacceptable Waste to be removed from the Facility and disposed of in accordance with Applicable Laws. In the event time and operations do not permit such notice or such User does not promptly remove the Unacceptable Waste, BRRRA may, at its option, cause the same to be removed and disposed of in accordance with Applicable Law and such User shall be liable for the costs thereof. The affected User shall reimburse the BRRRA for the actual costs, expenses, fines, penalties and liability resulting from the deposit of such Unacceptable Waste identified to have been disposed of by such User in the Facility, and, upon submission of satisfactory evidence of such costs, shall pay all such costs within thirty (30) days of an invoice issuance therefor; provided that the BRRRA shall not pay or agree to pay any fine or penalty, or acknowledge any liability unless the affected User is given an opportunity to participate and defend any such action seeking to impose a fine, penalty, or liability.

Section 4.9 Household Hazardous Waste. The BRRRA shall be authorized to sponsor, or to contract with a third party to sponsor, and conduct Household Hazardous Waste Collection Day events at the Facility (or other accessible location) for off-site proper disposal in compliance with all Applicable Law, to allow for participation of Member residents, including the residents of the Towns of Glasgow and Goshen. The share of the total cost to be divided between the Members shall be established based on the percentage participation of the Member's residents in each event.

ARTICLE V
TIPPING FEES; OTHER CHARGES

Section 5.1 **Tipping Fees.** From and after the Start-up Date, BRRA shall charge Tipping Fees for each ton of Acceptable Waste delivered to the Facility and accepted by BRRA for disposal in the Facility. Tipping fees for various classes of Acceptable Waste, such as Brush, may be established if the delivered Waste is uniformly comprised of such. The Tipping Fees shall be established in February of each year and shall typically remain in effect for the entire upcoming fiscal year, unless some exigent circumstance arises necessitating an earlier change. Subject to the terms and conditions of this Agreement, BRRA and Members recognize and agree that there may be numerous separate classes of Users of the Facility including (1) Members, (2) Customers (3) Municipal Customers, and (4) Non-Jurisdictional Commercial Customers, which may have different Tipping Fees for each class. Because the Landfill is a scarce and valuable resource, and Members and BRRA intend to preserve its use to the maximum degree possible, BRRA may establish different higher Tipping Fees for any Users other than the Members who use the Facility. Such fees shall be memorialized in an agreement between the BRRA and Commercial Customers, Municipal Customers, and Non-Jurisdictional Commercial Customers, not including residents of Members, and shall be subject to the private business use restrictions of Section 4.1.1. The term of any agreement shall not be less than one year, except as provided for in Section 4.3. The BRRA Board may approve or deny acceptance of any such agreement at its sole discretion. All Municipal Customer rates will be at least 25% above the approved Member rate except as provided for in Section 5.1.1; all Non-Jurisdictional Commercial Customer rates will be at least 25% above the approved Customer rate. All Users shall be liable for any Tipping Fees payable by their respective Designated Haulers or Private Haulers.

Section 5.1.1 The BRRA may consider entering a longer term agreement with a Municipal Customer subject to the following minimum qualifications:

- (1) guaranteed minimum annual tonnage
- (2) term is no less than three years and not to exceed six years

A one percent (1%) discount will be applied to the initial rate surcharge for each year of the agreement term. (Example: Six (6) year Term Agreement would result in a 19% surcharge above the base Member rate prospectively).

The BRRA Board may approve or deny acceptance of any such longer term agreement at its sole discretion.

Section 5.2 Recyclable Material Fees. The BRRA agrees to provide Recyclable Material handling services for Members. Recognizing that Members collect and transport Recyclable Materials differently, each Member will execute a separate agreement with the BRRA which credits that Member with any revenues associated with any sale of such Materials, and passes on any costs associated with processing, secondary transport, and disposal. The BRRA agrees to seek the most cost effective handling methods and destinations possible on behalf of the Members.

Section 5.3 Rates, Fees and Charges Established. Tipping Fees, and all other rates, fees and charges except Pro Rata Share provided for in Section 5.9 hereof, shall be fixed by the BRRA Board following public hearing, at least annually in February of each year for the following fiscal year beginning July 1st, for each separate class of User and type of waste. Notice of public hearing on the proposed schedule of rates, fees and charges shall be provided to the governing body of each Member, and shall be published, at least six (6) days apart, in a newspaper having general circulation within the jurisdictions of the Members, with the second notice being published at least

fourteen (14) days before the date fixed in such notice for the public hearing. In any event, the fixing of rates, fees and charges shall comply with Section 15.2-5136 of the Act.

Section 5.4 Payments; Liability of Users. The BRRA shall maintain records for the amounts payable by each User under this Agreement. All amounts payable hereunder shall be invoiced on a monthly basis unless otherwise indicated. Amounts invoiced shall be due thirty (30) calendar days after the invoice date. Each invoice shall list all deliveries made during the applicable period and all information on the related weight records, to include delivery date, waste type and tonnage. Each of the Users set forth in Section 5.1 above shall be billed directly by the BRRA and shall be responsible for payment in full; each User shall also be responsible for collection of any fees which may be due to the User from a third party. Each Member shall be responsible for payment of any Tipping Fees or other charges assessed for delivered Acceptable Waste by or on behalf of its residents, including its Designated Haulers, and the collection of such charges from its residents, if applicable.

Section 5.5 Payment for Out-of-Hours Deliveries. The BRRA may charge such amounts as it deems appropriate for pre-arranged deliveries at times other than the Facility's normal hours of operation.

Section 5.6 Late Payment. Any amount payable under this Agreement by Users that is not paid when due in accordance with this Agreement shall bear interest compounded monthly at the lesser of (i) 10% or (ii) the highest rate allowed by law.

Section 5.7 Invoice Dispute. In the event of any disputed invoice, the User shall be liable for and pay the invoiced amount. Should investigation of the issue reveal overpayment by the User to the BRRA, the BRRA shall reimburse the User for the aggregate amount of the overpayment within thirty (30) days.

Section 5.8 Equitable Charges. The BRRRA and Members covenant and agree that Members and/or their Designated Haulers shall be charged the same Tipping Fees for use of the Facility, except as otherwise specifically provided in this Agreement. Subject to the foregoing, Users shall pay to BRRRA the Tipping Fees set forth in the fee schedule adopted by the BRRRA in accordance with the Act and this Agreement. The BRRRA may establish fees for Other Material as defined by the rules and procedures promulgated by the BRRRA. **Section 5.9 Obligation to Pay Pro Rata Share.**

5.9.1 Subject to the terms and conditions of this Agreement and the Support Agreement, in the event that reserves, including planned use of the Rate Stabilization Fund, are not sufficient to pay any Annual Deficit, or the Rate Stabilization Fund does not meet any minimum balance required under BRRRA financial covenants, then each Member shall pay to the BRRRA, or such other person or entity as the BRRRA may designate, its Pro Rata Share of any Annual Deficit not less than thirty (30) days after the date of written request from the BRRRA. Every year the Pro Rata Share will be evaluated and established as of July 1 for the following year. The BRRRA shall compute each Member's Pro Rata Share in accordance with this Section and the Support Agreement and send notice to each Member of its Pro Rata Share within thirty (30) days after the close of each Fiscal Year. Each Pro Rata Share shall be the proportionate obligation of each Member to pay the Annual Deficit calculated as defined in Section 1.1 of this Agreement.

5.9.2 The obligation of each Member to make payments of its Pro Rata Share under this Section shall be subject to and contingent upon the provisions of Section 5.9.3 and appropriations being made for such purpose by the governing body of the Member. The payments due from each Member, for Tipping Fees, Pro Rata Share, or other charges, shall be deemed amounts due for services provided by the BRRRA during the preceding Fiscal Year.

5.9.3 Nothing in this Section or this Agreement or the Support Agreement shall constitute a pledge of the full faith and credit of any Member under any provisions of its charter or the Constitution of Virginia or a bond or debt of any Member within the meaning of any provision of the Constitution of Virginia or such Member's charter. Subject to the provisions of this Agreement, the obligations of each Member to make payments under this Section and to observe and perform all other covenants and agreements under this Agreement are unconditional, irrespective of any rights of set-off, recoupment, or counterclaim that any Member may have, jointly or individually, against the BRRA.

Section 5.10 Surplus Revenue, Rate Stabilization Fund. The Members recognize that long term financial planning requires dedication of periodic annual surplus revenue to future expenditures in support of capital improvements, operations, and closure/post closure obligations. Accordingly, the BRRA shall establish a "Rate Stabilization Fund" to be held by the BRRA in a separate and segregated account, restricted for financial accounting purposes. Within 30 days of the end of each Fiscal Year, or at any time necessary to meet the BRRA's financial covenants, the BRRA shall approve allocation of any such surplus revenue to the Rate Stabilization Fund.

Section 5.11 Books and Records. The BRRA shall maintain all books, records and accounts necessary to record all matters affecting the Tipping Fees or other amounts payable by or to Users and the BRRA under this Agreement. All such books, records and accounts shall be maintained in accordance with generally accepted accounting principles; shall accurately, fairly and in reasonable detail reflect all BRRA's dealings and transactions under this Agreement; and shall be sufficient to enable those dealings and transactions to be audited in accordance with generally accepted accounting principles. Within one hundred eighty (180) days after the close of each Fiscal Year, the BRRA shall deliver to each Member a comprehensive annual financial report

accompanied by a certificate of an independent certified public accountant, including, among other things, a statement of the financial position of the BRRA at the end of such Fiscal Year, a statement of Operating Revenues and Operating Costs under this Agreement, and the amount, if any, of the Annual Deficit. All such books, records, and accounts shall be available for inspection and photocopying by any Member on reasonable notice so that it can verify Tipping Fees or other amounts payable under this Agreement. All such books, records and accounts shall be kept by the BRRA for at least six years (or longer period if required by Applicable Law).

Section 5.12 **Annual Budget.** The BRRA shall adopt and provide to the Members, on or before each May 1st, its annual budget for the upcoming Fiscal Year ("Annual Budget"). The Annual Budget for such Fiscal Year shall include an itemized accounting of each expenditure and revenue category including but not limited to: (revenues) anticipated revenues from all known sources, and (expenditures) debt service payments, lease payments, operating costs and closure/post closure reserve costs. The BRRA shall also provide Operating Costs and Operating Revenues for the then current Fiscal Year.

Section 5.13 **Financial Assurance.** The Members will provide full cooperation and financial assistance, if necessary, to the BRRA to comply with VAC Regulations, including but not limited to, the Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities, currently enumerated in Title 9, Agency 20, Chapter 10, et. seq., of the Virginia Administrative Code and including but not limited to the Closure and Post closure requirements currently enumerated as 9 VAC20-70, et seq.

ARTICLE VI
DEFAULT AND TERMINATION

Section 6.1 Remedies for Default; Limitations on Termination.

6.1.1 In the event of the breach by any party of an obligation under this Agreement, the right to recover damages or to be reimbursed will ordinarily constitute an adequate remedy. The parties hereto agree that as long as any Bonds remain unpaid or their payment has not been provided for, no party may terminate its obligations under this Agreement.

6.1.2 The BRRA may refuse to accept any Acceptable Waste that is delivered by a User if such User fails to pay any amount due hereunder until the amount, and any late payment interest, has been paid, if the BRRA has mailed a written notice of the failure to pay the amount due under this Agreement to such User at the address to which invoices are sent by certified mail, accompanied by a copy of the invoice for the unpaid amount.

6.1.3 The parties hereto acknowledge that, in the event of any Event of Default, the non-defaulting party shall be entitled to recover, to the extent proven in a court of law, all of their respective damages, excluding incidental, consequential, and punitive damages, caused by such Event of Default. The parties hereto agree that damages for any such Event of Default may include, without limitation: (i) amounts payable under this Agreement (including, without limitation, Tipping Fees); (ii) (iii) interest from the date of payment on any amounts borrowed or required to be advanced in connection with such Event of Default, including interest on amounts paid to mitigate damages or prevent a default from arising under any agreement relating to the Facility or its operations; (iv) increased Operating Costs, (vi) reduction of available funds for closure/post closure care, mitigation and monitoring costs/reserves; and (vii) reimbursement for all reasonable expenses and costs, including the fees and expenses of its counsel, incurred in

connection with any proceeding brought to recover such damages or to enforce the provisions of this Agreement. To the extent permitted by Applicable Law, the parties hereto hereby waive the right to trial by jury in any action or proceeding brought to enforce, construe or recover damages for any breach of this Agreement.

Section 6.2 Events of Default by BRRRA. The following shall constitute an Event of Default by the BRRRA ("Authority Default"):

6.2.1 The BRRRA's persistent or repeated failure or refusal substantially to fulfill any of its material obligations to any Member in accordance with this Agreement unless such failure or refusal shall be excused or justified by an Uncontrollable Circumstance or a default by a User hereunder; provided, however, that no such failure or refusal shall constitute an Authority Default unless and until:

6.2.1.1 Such Member has given written Notice to BRRRA stating that in its opinion a particular default or defaults (described in reasonable detail in such notice) exist that does or will, unless corrected, constitute a material breach of this Agreement by the BRRRA and that will in the Member's opinion give the Member a right to reimbursement or to recover damages under this Agreement, or after all outstanding Bonds or borrowings have been paid or their payment provided for, a right to terminate its obligations hereunder, unless such default is corrected within a reasonable period of time, and

6.2.1.2 BRRRA has neither corrected such default nor initiated reasonable steps to correct it within a reasonable period of time (which shall in any event be not less than forty-five (45) days from the date of receipt of the notice given pursuant to section 6.2.1.1); provided that if the BRRRA has commenced to take reasonable steps to correct

such default within such reasonable period of time, it shall not constitute an Authority Default for as long as the BRRRA is continuing to take reasonable steps to correct it.

6.2.2 In the event the BRRRA maintains that no default exists, the provisions of Section 6.6 shall apply, which shall be non-binding.

Section 6.3. Events of Default by Member. Each of the following shall constitute an Event of Default by a Member ("Member Default"):

6.3.1 The failure by a Member to pay any amount under this Agreement within 60 days after receipt of written invoice therefor or the failure by any Member to appropriate the funds necessary or required to meet its obligations under this Agreement; or,

6.3.2 The failure or refusal by a Member to fulfill any of its obligations to BRRRA in accordance with this Agreement unless such failure or refusal is excused or justified by an Uncontrollable Circumstance; provided that no such failure or refusal shall constitute an Event of Default unless and until:

6.3.2.1 The BRRRA has given prior written Notice to such Member stating that a particular default or defaults (described in reasonable detail in such notice) exist which does or will, unless corrected, constitute a material breach of this Agreement on the part of the Member and which will in BRRRA's opinion give it a right to reimbursement, recover damages or refuse service under this Agreement for cause under this Section unless such default is corrected within a reasonable period of time, and

6.3.2.2 Such Member has neither corrected such default nor initiated reasonable steps to correct it within a reasonable period of time (which in any event shall not be less than forty-five (45) days from the date of the Notice given pursuant to section 6.3.2.1); provided that if the Member has 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 Member is continuing to take reasonable steps to correct it, unless such default creates an emergency situation which may endanger public health or safety, threaten the environment or endanger the continued operation of the Landfill, in which case an Event of Default shall be deemed to have occurred if such default is not corrected within ten (10) days or less.

6.3.3 In the event that the Member maintains that no default exists, the provisions of Section 6.6 shall apply, which shall be non-binding.

Section 6.4. Termination on Default. After all outstanding Bonds or borrowings have been paid or their payment provided for and they are no longer considered outstanding, a Member, after giving an additional forty-five (45) days' written Notice to all parties, may terminate this Agreement with respect to itself upon the occurrence of an Authority Default to the extent permitted by Applicable Law. The termination of this Agreement by any Member shall not terminate this Agreement as to any other Member. The proper exercise of the right of termination shall be in addition to and not in substitution for, such other remedies, whether damages or otherwise, of the party exercising the right of termination.

Subject to the terms and conditions of this Agreement, if any Member fails to pay its Tipping Fees or fails to pay its Pro Rata Share, whether or not due to failure to appropriate, such Member shall remain liable for such amounts and shall continue to be bound by this Agreement.

Section 6.5. Survival of Certain Rights and Obligations. This Agreement shall remain in full force and effect as long as any outstanding Bonds or borrowings remain unpaid or their payment has not been provided for. Thereafter, this Agreement may be terminated, but no termination of this Agreement shall limit or otherwise affect the rights and obligations of any

party that have accrued before the date of such termination. Additionally, all obligations of Members with regard to any Unacceptable Wastes and closure/post closure/mitigation costs shall survive the termination of this Agreement.

Section 6.6. Resolution of Disputes. The parties agree that should any unresolved question arise between the BRRRA and a Member who is a signatory to this Agreement, it shall be resolved as follows:

6.6.1 If the amount in dispute is less than Three thousand dollars the Executive Director of the BRRRA shall resolve the issue. If the amount in dispute is in excess of One Hundred thousand dollars or if the matter in dispute does not involve a monetary amount the parties may seek redress from any of the Circuit Courts of the 25th Judicial Circuit of the Commonwealth of Virginia.

6.6.2 For all amounts in dispute that involve an amount between Three thousand dollars and One Hundred thousand dollars:

6.6.2.1 If as to engineering, then by a majority of a committee of three, composed of an engineer appointed by the BRRRA, an engineer appointed by the Member affected, and an independent engineer, to be chosen by the foregoing two; provided, however, should the first two appointees not be able to select the third appointee within thirty (30) days following the date of appointment of the last of the first two appointees, then and in that event, application for appointment of the third arbitrator shall be made to the Circuit Court judges of the 25th Judicial Circuit of the Commonwealth of Virginia which shall appoint the third arbitrator.

6.6.2.2 If as to accounting, then by a majority of a committee of three, composed of the Chief Financial Officer of the affected Member, the BRRRA's Chief Financial Officer, and an independent certified public accountant, to be chosen by the foregoing two; provided, however, should the first two appointees not be able to select the third appointee within thirty (30) days

following the date of appointment of the last of the first two appointees then application for appointment of the third arbitrator shall be made to the Circuit Court judges of the 25th Judicial Circuit of the Commonwealth of Virginia which shall appoint the third arbitrator.

6.6.2.3 If as to a general dispute, not falling under sections 6.6.1 or 6.6.2 above, then by a majority of a committee of three, composed of the Executive Director of the BRRRA, the chief executive officer of the Member affected, and an independent chief executive officer of a locality or solid waste authority, to be chosen by the foregoing two; provided, however, should the first two appointees not be able to select the third appointee within thirty (30) days following the date of appointment of the last of the first two appointees, then and in that event, application for appointment of the third arbitrator shall be made to the Circuit Court judges of the 25th Judicial Circuit of the Commonwealth of Virginia which shall appoint the third arbitrator.

6.6.2.4 In each case, the cost of the independent individual shall be borne equally by the affected Member and the BRRRA.

6.6.3 Notwithstanding the above, the parties may fashion an alternative dispute resolution mechanism for a specific dispute if all of the parties to this Agreement agree in writing to such alternative dispute resolution mechanism.

Section 6.7 Real Property Distribution Upon Termination. In the event that any Member terminates this Agreement and exits the BRRRA for any reason, or in the event that the BRRRA is dissolved, the BRRRA shall convey to Rockbridge County, at no cost to the County, all of the real property then owned by the BRRRA, lying outside the permitted Facility area, should the County elect to accept it. Should Rockbridge County choose not to accept the real property upon termination and exit from the BRRRA by a Member, it shall not constitute a waiver of the right to accept said real property in the event of a future or subsequent termination, exit or dissolution.

ARTICLE VII
MISCELLANEOUS

Section 7.1 **Severability of Invalid Provisions.** If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or section had not been contained in it.

Section 7.2 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, will be an original, and the counterparts taken together will constitute one and the same instrument.

Section 7.3 **Governing Law.** This Agreement will be governed by the laws of the Commonwealth of Virginia.

Section 7.4 **Amendments.** This Agreement may be amended or modified only by written instrument agreed to and executed by all of the parties hereto.

Section 7.5 **Notices.** All notices, certificates, requests or other communications (“Notice”) required to be given under this Agreement shall be deemed to have been given, if in writing, and (i) deposited in the United States Mail, certified or registered, return receipt requested, with postage prepaid, (ii) by a commercial overnight courier that guarantees next day delivery and provides a receipt, (iii) delivered by hand against a written receipt, and addressed as specified below, or as any party hereto may from time to time designate by giving written Notice thereof to all other parties. Any Notice shall be effective only upon delivery. Rejection or refusal to accept, or the inability to deliver because of a changed address of which no Notice was given shall not affect the validity of Notice given in accordance with this Section.

To the BRRA: Executive Director

Blue Ridge Resource Authority
225 Landfill Road
Buena Vista, VA 24416

With a copy to: General Counsel
Susan A. Waddell, Esq.
GUYNN & WADDELL, P.C.
415 S. College Avenue
Salem, VA 24153

To the County: Rockbridge County Administrator
Rockbridge County Administration Center
150 South Main Street
Lexington, VA 24450

With a copy to: Rockbridge County Attorney
Rockbridge County Administration Center
150 South Main Street
Lexington, VA 24450

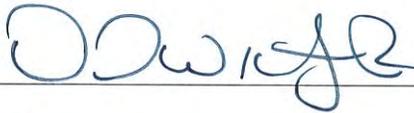
To the City: Lexington City Manager
Lexington City Hall
300 East Washington Street
Lexington, VA 24450

With a copy to: Lexington City Attorney
Laurence A. Mann
MANN, VITA & ELROD, P.L.L.C.
JORDAN HOUSE
15A East Nelson Street
Lexington, Virginia 24450

Section 7.6 Effective Date. This Agreement shall become effective as of the latter of the dated dates of the Certificates from the Virginia State Corporation Commission approving joinder of the City of Lexington and amendment of the Articles of Incorporation.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date above written.

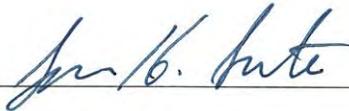
ROCKBRIDGE COUNTY
SOLID WASTE AUTHORITY

By: 

Its: Chairman

Date of Approval: August 28, 2017

ATTEST:

By: 

Its: Secretary

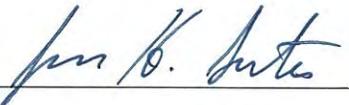
COUNTY OF ROCKBRIDGE, VIRGINIA

By: 

Its: Chairman

Date of Approval: August 28, 2017

ATTEST:

By: 

Its: Clerk

CITY OF LEXINGTON, VIRGINIA

By: Frank W. Friedman Frank W. Friedman

Its: Mayor

Date of Approval: 8-17-17

ATTEST:

By: [Signature]

Its: Clerk