

## Municipal Joinder Agreement

### Will be Exhibit C to the Master Waste Supply Agreement

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

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

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

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

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

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

WHEREAS, the MRC and Fiberight have entered into a Development Agreement dated as of February 4, 2015, setting forth general business terms under which Fiberight proposes to

develop, construct, maintain and operate a facility utilizing its technology to accept and process MSW (the "Facility"); and

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

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

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

WHEREAS, the MRC and Fiberight have executed a Master Waste Supply Agreement dated as of [\_\_\_\_\_, 2015] that, among other things, establishes a common set of terms and conditions pursuant to which interested Maine municipalities and other public and private entities are expected to make long-term commitments for delivery of MSW to the Facility, which commitments would be memorialized through execution of Municipal Joinder Agreements in the form of this Agreement; and

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

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

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

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

ARTICLE 1  
DEFINITIONS

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

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

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

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

**"Delivery Assessment Reserve Fund"** shall mean the reserve fund created by the MRC pursuant to Section 3.3 as a reserve against payment of assessments to Fiberight for failure of the Joining Members to meet the aggregate annual delivery requirement prescribed under the Master Waste Supply Agreement.

**"Departing Municipalities"** shall mean Charter Municipalities that elect not to become Joining Members.

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

**"Equity Charter Municipalities"** shall mean those Charter Municipalities holding a limited partnership interest in the PERC Partnership.

**"Estimated Delivery Amount"** shall mean the estimated quantity of Acceptable Waste to which Joining Member has agreed pursuant to Section 3.03(b).

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

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

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

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

**"Master Waste Supply Agreement"** means the proposed waste supply agreement between the MRC and Fiberight on substantially the terms set forth in the form of agreement

attached to this Agreement as **Exhibit A**.

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

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

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

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

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

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

## ARTICLE 2 TERM

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

**2.2 Right to Terminate.** Notwithstanding receipt of a notice from Joining Member exercising a right to an Extension Term, the MRC shall have the right at the end of the Initial

Term or any applicable Extension Term, to terminate this Agreement by written notice to the Joining Member, which notice shall be given not later than nine (9) months prior to the expiration of the then current Term. Such notice of termination shall not be valid unless the MRC is simultaneously providing valid notices of termination to all Joining Members.

**ARTICLE 3**  
**DELIVERY OF WASTE**

**3.1 Delivery.** Joining Member hereby agrees to become a Joining Member of the MRC, as defined in the Master Waste Supply Agreement and, beginning on the Commercial Operation Date and continuing through the Term of this Agreement, to deliver, or cause to be delivered, to the Facility under the Master Waste Supply Agreement on an exclusive basis all Acceptable Waste generated within its borders and the collection and disposition of which is under its control. Joining Member (a) shall comply with the conditions of delivery set forth in Exhibit E of the Master Waste Supply Agreement; and (b) shall not deliver, or cause to be delivered, Unacceptable Waste.

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

Joining Member agrees that, to the extent that Acceptable Waste under its control is diverted to facilities other than the Facility for reasons other than those permitted hereunder, Joining Member shall pay to the MRC, upon receipt of an invoice, an MSW Diversion Charge in the amount of the sum of (a) the product of the diverted tons of Acceptable Waste and the Tipping Fee that would have been paid in respect of the diverted tons had they been delivered to the Facility; plus (b) Joining Member's pro rata share of any penalty billed to MRC by the Company as a consequence of such diversion.

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

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

(b) Joining Member, after consultation with the MRC and consistent with such guidelines as may be established from time to time by the MRC, has agreed that it is reasonable to estimate that its annual deliveries to the Facility will be at least \_\_\_\_\_ tons of Acceptable Waste per Contract Year (the "Estimated Delivery Amount"), which will be its estimated annual contribution to the aggregate delivery requirement of the MRC. Joining Member agrees to the foregoing Estimated Delivery Amount and acknowledges that it is reasonable in light of historical MSW deliveries by the Joining Member to PERC (and/or such other waste disposal facility as may have been utilized by Joining Member), forecasted changes in MSW generation (net of anticipated waste reduction efforts), delivery patterns, diversion, and management through methods permitted by this Agreement or not under the control of Joining Member.

(c) The MRC intends to set aside funds in a reserve fund (the "Delivery Assessment Reserve Fund"). The Delivery Assessment Reserve Fund shall be managed by the MRC Board of Directors which shall have the authority to determine the amount and timing of contributions to the Fund, manage investment of the Fund, and authorize withdrawals from the Fund, all as it deems appropriate in accordance with the terms of this Agreement.

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

(i) First, to the extent that a Delivery Sufficiency Payment is attributable to the fact that one or more Joining Members has not delivered, or cause to be delivered, to the Facility all MSW required to be delivered by it pursuant to the terms of this Agreement, the MRC shall assess each such Joining Member its ratable share of the payment, as determined by the MRC Board of Directors (each a "Delivery Diversion Charge"), and the MRC shall apply the proceeds of such assessment to the payment of the Delivery Sufficiency Payment to which it relates. The MRC acknowledges that the fact that Joining Member has not achieved the

Estimated Delivery Amount in and of itself will not justify imposition of a Delivery Diversion Charge.

(ii) Second, from the Delivery Assessment Reserve Fund.

(iii) Third, to the extent that the proceeds of Delivery Diversion Charges and amounts available in the Delivery Assessment Reserve Fund are not adequate to fully fund a Delivery Sufficiency Payment, the MRC may assess each Joining Member its ratable share of such penalty, as determined by the MRC Board of Directors, which special assessment may, at the option of the MRC, be either collected directly from Joining Members or offset against rebates otherwise payable to Joining Members, and the MRC shall apply the proceeds of such assessments to the payment of the Delivery Sufficiency Payment.

**3.4 Changes in Waste Delivery Patterns.** Joining Member shall not alter the scope of its responsibility for collection, transfer and transportation of MSW originating within its borders as of the Effective Date without providing notice to and receiving the consent of the MRC, which consent may be withheld only if such proposed change in scope would result in a material reduction in the quantity of Acceptable Waste being delivered to the Facility by all Joining Members in the aggregate or in a violation by the Joining Member of its obligation to deliver Acceptable Waste generated within its borders exclusively to the Facility. Joining Member shall give notice of all such planned changes to the MRC prior to implementation. As of the Effective Date, Joining Member shall not, without the prior consent of the Company and prior approval from the MRC, initiate new programs, or significantly and materially expand existing programs, to divert organic components from MSW for management through facilities or programs other than the Facility, but may continue to operate existing programs substantially as operated as of the Effective Date. Notwithstanding the foregoing, Joining Member may institute "pay as you throw" or similar waste reduction programs in its discretion without prior approval from the MRC so long as all MSW generated within its borders and under its control continues to be delivered to the Facility.

**3.5 Unacceptable Waste.** Joining Member shall not deliver Unacceptable Waste to the Facility and shall use reasonable efforts to offer residents local options for disposal of household hazardous waste. Joining Member shall pay its full cost for, and shall indemnify and hold harmless the Company and the MRC and the members, directors, officers and agents or each, from and against any liability, claim or damage arising from delivery of Unacceptable Waste to the Facility by or on behalf of Joining Member.

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

**ARTICLE 4**  
**TIPPING FEES AND REBATES**

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

**4.2 Invoicing.** Joining Member will receive an invoice directly from the Company on a weekly basis setting forth the number of tons of material delivered by or on behalf of Joining Member and accepted at the Facility during the preceding month and the tip fee due in respect of such deliveries. Joining Member shall pay all such invoices directly to the Company within thirty (30) days of receipt unless the calculation thereof has been challenged by the MRC.

**4.3 Rebates.**

(a) Joining Member hereby authorizes the MRC to manage on its behalf rebates payable to it under the Master Waste Supply Agreement. Without limiting the generality of the foregoing, Joining Member acknowledges that the MRC may direct disposition of rebates received from the Company in such manner as the MRC Board may determine to be in the best interests of the Joining Members as a group. Without limiting the generality of the foregoing, the MRC is specifically authorized to offset against rebates otherwise payable to Joining Member (i) any Minimum Delivery Assessment against Joining Member; (ii) amounts designated by the MRC Board to be deposited in the Delivery Assessment Reserve Fund; (iii) any special assessment determined by the MRC Board to be necessary to cover otherwise unfunded liability for payment of shortfall penalties; (iv) other costs attributable to failure of Joining Member to comply with this Agreement as determined by the MRC Board; and (v) costs

occasioned by the delivery by or on behalf of Joining Member of quantities of Unacceptable Waste determined by the MRC Board to be excessive.

(b) The Company shall determine rebates due Joining Member on a quarterly basis as provided in the Master Waste Supply Agreement and shall forward its calculation to Joining Member and the MRC. The MRC shall review and accept or dispute the calculation of rebates due and shall notify Joining Member and the Company of its action.

(c) The Company shall pay rebates for all Joining Members directly to the MRC which shall, after reserving such funds as the MRC Board may deem appropriate, pay to each Joining Member its allocable share of remaining distributable proceeds.

**4.4 Early Commitment Rebate.** [Under Consideration] Joining Members which commit to deliver MSW under the Master Waste Supply Agreement by executing and delivering joinder agreements on or before later of May 1, 2016 or the date of Joining Member's regularly scheduled town meeting, if applicable, shall be entitled to receive a supplemental rebate (the "Early Action Rebate") equal to [] per ton of its Estimated Delivery Amount as of the Commercial Operation Date. The Early Action Rebate, if any, shall be paid no later than ninety (90) days following the Commercial Operation Date.

## ARTICLE 5 AUTHORIZATION TO ACT FOR JOINING MEMBER

**5.1 Contract Management and Authorization to Act.** Joining Member explicitly acknowledges that it is one of a group of municipal and quasi-municipal entities that have become Joining Members for the purpose of collectively managing disposal of MSW under the auspices of the MRC. It further acknowledges that, in order to accomplish that objective in an efficient and effective manner, it hereby is delegating to the MRC authority to manage the disposal of MSW pursuant to this Agreement and the Master Waste Supply Agreement. Without limiting the generality of the foregoing, Joining Member hereby authorizes the MRC to act in its behalf (a) to enforce the obligations and covenants set forth in this Agreement, the Development Agreement, the Master Waste Supply Agreement and the Site Lease; (b) to file and prosecute in its own name and/or in the name of Joining Member permit applications relating to this Agreement or the Project; (c) prosecuting or otherwise participating in administrative and court proceedings in its own name and/or in the name of Joining Member related to the Project; (d) review and acceptance of tip fees, rebates and other payments to the MRC and/or Joining Members; (e) administration of the receipt, application and distribution of rebates and other payments including the establishment and funding of such reserve funds as the MRC Board may

deem appropriate from time to time; (f) negotiate and enter into in the name of and on behalf of Joining Member and other Joining Members contracts related to the transportation, management and disposition of MSW including, without limitation contracts related to the transportation and bypass of waste and the disposition of non-processibles and residuals.

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

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

**ARTICLE 6**

**TRANSPORTATION, BYPASS AND DISPOSITION OF UNACCEPTABLE WASTE**

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

**6.2 Disposition of Bridge Capacity and Bypass Waste.** Joining Member acknowledges that the MRC has entered into an agreement for disposal of the following waste streams at a Back-up Facility (the Crossroads Landfill) if needed as of April 1, 2018:

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

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

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

(c) Joining Member agrees to cooperate and consult with the MRC to implement delivery of Bridge Capacity Waste and Bypass Waste to the Crossroads Landfill. Joining Member shall pay the Tipping Fee with respect to Bypass Waste as if it were Acceptable Waste delivered to the Facility. Joining Member shall pay tipping fees with respect to Bridge Capacity Waste to the Back-up Facility in accordance with the agreement for management of Bridge Capacity Waste as directed by the MRC. Joining Member shall arrange transportation to, and pay transportation costs for, delivery of Bridge Capacity Waste to the Back-up Facility. The MRC agrees to cooperate and consult with the Joining Members to implement arrangements that avoid or minimize additional transportation costs to the Joining Member.

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

**6.3 Disposition of Unacceptable Waste.** Joining Member shall not deliver Unacceptable Waste to the Back-up Facility, agrees to pay the full cost to the Back-up Facility of managing deliveries of Unacceptable Waste delivered by or on behalf of the Joining Member, and shall indemnify the MRC, its members directors, officers and agents against any such costs.

**ARTICLE 7**  
**DISPOSITION OF EXISTING ASSETS**  
**ADMINISTERED BY THE MRC**

If Joining Member is a current member of the MRC and a Charter Municipality currently delivering MSW to PERC pursuant to the Existing PERC Contracts, the provisions set forth in **Exhibit B** shall govern the disposition of assets of Joining Member and other Charter Municipalities upon expiration of the Existing PERC Contracts.

**ARTICLE 8**  
**INDEMNIFICATION**

**8.1 Indemnification by Joining Member.** Joining Member agrees to defend, indemnify, and hold harmless the MRC, each other Joining Member, and their respective members, directors, elected officials, officers, agents and employees against any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, resulting directly or indirectly from any failure by Joining Member to perform fully, in any respect, its obligations under this Agreement.

**8.2 Indemnification by MRC.** The MRC agrees to defend, indemnify, and hold harmless Joining Member, its elected officials, officers, agents, and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, resulting directly or indirectly from (i) any willful or negligent act or omission by the MRC, its directors, officers, agents, employees (including duly authorized volunteers), contractors, or anyone acting on the MRC's behalf; and (ii) any failure by the MRC to perform fully, in any respect, its obligations under this Agreement.

**8.3 Notice.** A Party asserting a right to indemnification under this Article VII (the "Indemnified Party") shall give to the other Party (the "Indemnifying Party") written notice of the commencement of any legal action or other circumstance which may give rise to a claim for indemnification hereunder within ten (10) days of receipt of written notice by it of commencement of a legal action and within thirty (30) days of learning of any other circumstances giving rise to a claim for indemnification; provided, however, that failure to so notify the Indemnifying Party shall discharge it from its indemnification obligation hereunder only if and to the extent that it has been prejudiced thereby. The Indemnified Party shall afford to the Indemnifying Party access to all records and information relating to such claim, facts and circumstances (except those matters privileged under applicable state or federal law or rules of evidence) reasonably necessary to permit the Indemnifying Party to evaluate the merits of such claim or the accuracy of such facts and circumstances. Upon receipt of notice, the Indemnifying Party may elect to participate in or, if it acknowledges its obligation to indemnify, assume defense of, such action at its own expense and with counsel of its own choosing. The Indemnified Party shall not settle or compromise any claim with respect to which indemnification is sought without the prior written consent of the Indemnifying Party which consent may not be unreasonably withheld or delayed. Notwithstanding that the Indemnifying Party may have assumed defense of an indemnified claim, the Indemnified Party shall have the right, at its sole expense, to retain its own counsel to participate in such defense.

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

**8.5 Resolution of Dispute as to Indemnification.** Any dispute relating to indemnification may, at the election of either Party, be resolved through the dispute resolution procedure contemplated by Section 14.5 of this Agreement.

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

**8.7 Limitation of Liability.** Notwithstanding the provisions of this Article VIII, Neither Party shall be liable to the other for any incidental, indirect, or consequential damages arising out of the performance or breach of this Agreement.

**8.8 No Waiver of Immunities.** Nothing in this Agreement shall constitute a waiver or diminution by Joining Member or the MRC of any immunities or statutory limitations on liability.

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

## ARTICLE 9 ASSIGNMENT

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

**9.2 Assignment by the MRC.** Notwithstanding the provisions of Section 9.1, the MRC may, after consultation with the Joining Members, assign its rights under this Agreement to a successor entity formed for the purpose of assuming the obligations and mission of the MRC. Any other attempt by the MRC to assign, transfer, or pledge this Agreement, whether in whole or in part, to any person without the prior written consent of the MRC shall be null and void.

## ARTICLE 10 EVENTS OF DEFAULT; TERMINATION

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

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

(b) The MRC or any permitted assignee shall (a) file, or have filed against it a petition which is not dismissed within sixty (60) days, in bankruptcy, reorganization or similar proceedings

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

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

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

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

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

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

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

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

**10.4 Remedies.** Unless otherwise provided by Law, any right or remedy provided for herein shall not be considered as the exclusive right or remedy of the non-defaulting Party, and such right or remedy shall be considered to be in addition to any other right or remedy allowed by Law. Without limiting the generality of the foregoing, Joining Member acknowledges that the MRC and the other Joining Members are relying on its commitment to deliver Acceptable Waste originating within its borders to the Facility under the Master Waste Supply Agreement and that breach of that obligation would cause irreparable damage to the MRC and the other Joining

Members for which monetary damages would not provide an adequate remedy. Accordingly, in the event of such a breach, in addition to such other remedies as may be available to the MRC at law or in equity, Joining Member expressly acknowledges that the MRC shall be entitled to specific performance of the delivery obligations of Joining Member hereunder.

**ARTICLE 11**  
**OTHER PROVISIONS**

**11.1 Force Majeure.** In the event either Party is rendered unable, wholly or in part, by a Force Majeure to carry out any of its obligations under this Agreement, and provided that such party is using reasonable business efforts to resume performance at the earliest practicable time, then the obligations of such Party, to the extent affected by such a Force Majeure, shall be suspended during the continuance of the Force Majeure but no longer. Any time that a Party intends to rely upon a Force Majeure to excuse or suspend its obligations hereunder, such Party shall notify the other Party as soon as is reasonably practicable, describing in reasonable detail the circumstances of the Force Majeure. Notice shall again be given when the effect of the Force Majeure has ceased.

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

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

**11.4 Consultation.** In the event of a Force Majeure under the Master Waste Supply Agreement, promptly upon receipt of a Force Majeure Plan, the MRC shall inform and consult with the Joining Members whether to accept, accept a modified version of, accept subject to dispute, or not accept such Force Majeure Plan, and shall indicate the projected impact of implementing the proposed Force Majeure Plan on future Tipping Fees and Rebates. In the event of an Event of Default under the Master Waste Supply Agreement or the Site Lease, the MRC shall inform the Joining Members of such default and of the actions proposed to be taken by the MRC in response thereto. Joining Member shall accept and abide by decisions of MRC Board of Directors with respect to any such default or Force Majeure.

**11.5 Change In Law.** Joining Member shall notify the MRC, and the MRC shall notify

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

**11.6 Relationship of Parties.** Nothing in this Agreement is intended or should be construed in any manner as creating or establishing a partnership or joint venture between the Parties. Except as otherwise provided herein, neither Party shall have the authority to contractually bind the other Party. No employees or agents of one Party shall be deemed the employees or agents of the other Party for any purpose.

**11.7 Waiver.** The failure of either Party to take action with respect to any breach of any term, covenant, or condition contained in this Agreement shall not be deemed to be a waiver of such term, covenant, or condition. Any waiver by either Party of any breach of any term, covenant, or condition contained in this Agreement shall be effective only if in writing and shall not be deemed to be a waiver of any subsequent breach of the same, or of any other term, covenant, or condition contained in this Agreement.

**11.8 Dispute Resolution.**

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

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

(c) If the Parties cannot resolve the dispute informally within fourteen (14) days of such written notice, the Parties shall submit the dispute to non-binding mediation by a neutral and otherwise qualified mediator reasonably acceptable to both parties within fourteen (14) days following the expiration of the time period for informal negotiations. In the event that the Parties fail to agree upon a mediator within such 14 day period, either Party may request that a mediator be appointed through the American Arbitration Association in accordance with its commercial arbitration rules. The Parties shall attempt in good faith to resolve the dispute through mediation for a period not to exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. Each Party may decide in its sole discretion whether to participate in mediation beyond the 60 day period or any agreed upon extension.

(iv) In the event that the dispute is not resolved after the end of the period for mediation, either Party may submit the dispute to arbitration to be conducted under the commercial arbitration rules of the American Arbitration Association. Arbitration shall be initiated by the



\_\_\_\_\_  
Attention: \_\_\_\_\_

Email: \_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

**11.19 Third Party Beneficiary.** Company shall be a third party beneficiary of the

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

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

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

*[Signature page follows.]*

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

**MUNICIPAL REVIEW COMMITTEE**

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

Name:

Title:

**JOINING MEMBER**

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

Name:

Title:

**List of Exhibits**

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

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October 9, 2015  
PRELIMINARY DRAFT  
FOR DISCUSSION PURPOSES ONLY**

**Exhibit A  
Master Waste Supply Agreement**

**Exhibit B**

**Disposition of Equity Reserve Funds and Partnership Interests**

**[1 thru 3 below are all under consideration]**

**1. Tip Fee Stabilization Fund.** The MRC presently administers a reserve account (the "Tip Fee Stabilization Fund") in the amount of approximately \$24,000,000 for the benefit of the Charter Municipalities. In anticipation of termination of the Existing PERC Contracts, and at such time as the MRC Board may deem appropriate, the MRC shall dispose of the Tip Fee Stabilization Fund as follows:

(a) first, to pay to Charter Municipalities that do not elect to become Joining Members ("Departing Municipalities") their allocable share of the Fund as determined by the MRC Board;

(b) second, to fund MRC expenditures as contemplated by the Master Waste Supply Agreement and this Agreement including, without limitation, acquisition of the Site and development of related infrastructure;

(c) third, to provide initial funding for the Delivery Assessment Reserve Fund in such amount as the MRC Board may determine to be appropriate;

(d) fourth, to fund such additional reserve accounts in connection with the Project as the MRC Board may determine to be necessary or prudent to address unforeseen circumstances; and

(e) fifth, to distribute the balance to the remaining Charter Municipalities pro rata on such basis as the MRC Board may determine to be fair and equitable.

**2. Operating Fund and Operating Budget Stabilization Fund.** The MRC also presently administers an Operating Fund and an Operating Budget Stabilization Fund (collectively, the "Operating Funds"). It is anticipated that amounts remaining in these Funds will be nominal at the time of termination of the Existing PERC Contracts. In anticipation of such termination, and at such time as the MRC Board may deem appropriate, the balance remaining in the Operating Funds will be deposited in a new operating fund to fund operation of the MRC beyond termination of the Existing PERC Contracts.

**3. Debt Service Reserve Fund.** The MRC presently has a right to receive funds in a reserve account (the "Debt Service Reserve Fund") in the amount of approximately \$1,333,333 which is pledged in support for existing PERC Partnership senior financing and which is held for the benefit of the Equity Charter Municipalities. Provided that funds remain in the Debt Service

Reserve Fund, upon release of that fund by the PERC Partnership's senior lender, the MRC shall distribute any funds remaining in the Debt Service Reserve Fund within sixty (60) days of their release to the Equity Charter Municipalities their allocable share of the Fund to be determined by the MRC Board based on tonnage delivered by each Charter Municipality during the term of the financing to which the Debt Service Reserve Fund relates.

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

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

- 1.0 Execution of the Joinder Agreement
  - Contact information for administrator of the Agreement
  - Signed original version of the Agreement
  - Evidence to confirm proper authorization and execution of the Agreement (e.g., minutes recording action by the appropriate legislative authority; sworn statement by the Town Clerk, etc.)
  - Legal opinion on enforceability of the Agreement and delegation of authority by municipal counsel (or acceptance of a blanket legal opinion from Eaton Peabody)
  
- 2.0 Baseline information on Joining Members
  - Value for estimated annual minimum deliveries in tons per year, with description of geographic area (municipal boundaries or other designations) to which the value applies. Identify sources of municipal waste from separate authorities (e.g., schools) and confirm they are included.
  - Description of method for MSW collection and delivery as of the Effective Date (including vehicle or container type and capacity, and whether municipal or private), and method for directing deliveries to the Facility
  - List of MSW diversion and materials recycling programs sponsored by the Municipality as of the Effective Date, including organics diversion programs
  
- 3.0 Joining Member preference items
  - Interest in regional approach to transfer or haul to the Hampden Facility
  - Preferred bypass arrangements: direct to Facility or direct to Crossroads Landfill
  - Interest in delivery of source-separated recyclables or clean wood or brush
  - Interest in technical assistance in deciding whether to sustain or discontinue a recycling program
  - Interest in regional approach to management of tires and other Unacceptable Wastes, and textiles and other potential Residual Wastes
  
- 4.0 Specific authorization for the MRC by Equity Charter Municipalities
  - Delegate to the MRC the authority to manage the financial assets allocated to the Joining Member in the MRC Tip Fee Stabilization Fund, the MRC Operating Budget Stabilization Fund, the MRC Operating Fund and the Debt Service Reserve Fund, by distribution to the Equity Charter Municipality; by transfer to a reserve fund to

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support the Joinder Agreement, Master Waste Supply Agreement or Site Lease; or for expenditure to meet an obligation set forth in the Joinder Agreement, Master Waste Supply Agreement or Site Lease.

- Delegate to the MRC authority to establish terms for Departing Municipalities, if any