**LANDFILL HOST AGREEMENT**

THIS LANDFILL HOST AGREEMENT (this “**Agreement**”), dated as of [●], 2023 (“**Effective Date**”), is by and between RUSSELL COUNTY, VIRGINIA, a body politic and political subdivision of the Commonwealth of Virginia (the “**County**”), and [THE NOVA COMPANY OF VIRGINIA][[1]](#footnote-2), a [●] corporation (“**Company**”). The County and the Company may each hereinafter be referred to individually as a, “**Party**” or collectively as, the “**Parties**”.

WHEREAS, Company owns that certain real property located within the County of Russell, Virginia, which is more particularly described on Exhibit A attached hereto (the “**Property**”);

WHEREAS, the Company desires to construct a landfill on the Property (the “**Landfill**”), which shall be for the disposal of solid non-hazardous waste; and

WHEREAS, the Parties desire to enter into this Agreement to set forth the terms and conditions that will govern the operation of the Landfill.

NOW, THEREFORE, in consideration of the mutual obligations and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

1. **Operation of the Landfill, As required by VDEQ**.
2. Conditions. Prior to commencing development and construction of the Landfill:
   1. Company shall submit to the County an electronic copy of Part A of the VDEQ Permit package (the “**Package**”) containing:
      1. a list of **Governmental Authorizations** required for the Landfill (collectively, the “**Required Authorizations**”), and a schedule indicating when each such item is expected to be obtained;
      2. If required by VDEQ, a list of professionals, contractors, and other advisors engaged (or expected to be engaged) by the Company to assist in the development of the Landfill;
      3. plans and specifications for the development of the Landfill, which shall include, (A) a site plan and working drawings and specifications setting forth work to be done with respect to the development of the Landfill, which shall comply with all Governmental Requirements.;
      4. a traffic study, if required by VDEQ, which shall include detailed analyses of anticipated travel routes and the impact of the Landfill on traffic volume in the surrounding area, provided by a qualified person or company;
      5. studies by qualified persons addressing the impact of impoundments, and the proximity of mine shafts, at or near the Landfill site;
      6. Company’s plans, per VDEQ regulations, for monitoring, detecting, collecting, storing, and transporting leachate at the Landfill, and monitoring groundwater, which shall comply with VDEQ Regulations; provided a facility capable of storing leachate as required by VDEQ permit (the “**Leachate Storage Facility**”);
      7. a closure plan, which shall comply with the requirements of VDEQ Regulation
   2. Company shall apply for and obtain all Required Authorizations, including, without limitation, a new solid waste permit from the Virginia Department of Environmental Quality (“**VDEQ**”), pursuant to the requirements of § 10.1-1408.1 of the Code of Virginia (1950) (the “**Permit**”). Prior to submitting an application for the Permit to VDEQ, Company will provide an electronic copy of such application to the County..
   3. Company shall obtain, at its sole cost and expense, the following insurance coverages (collectively, the “**Required Insurance Policies**”):
      1. Commercial general liability insurance with limits of at least $1,000,000 per occurrence and $2,000,000 in the aggregate;
      2. Workers' compensation and employer's liability insurance covering Company’s employees that perform services in connection with the Landfill in an amount no less than statutory requirements, with employer's liability limits of at least: (A) $1,000,000 each accident for bodily injury by accident, (B) $1,000,000 each employee for bodily injury by disease, and (C) $1,000,000 policy limit for bodily injury by disease;
      3. Automobile liability insurance covering owned, hired, and non-owned vehicles, with a limit of at least $1,000,000 each accident;
      4. Environmental insurance with a limit of at least [$1,000,000]; and
      5. Umbrella liability insurance (iv) with a limit of at least $5,000,000.

The County shall be named as an additional insured with respect to each Required Insurance Policy. All insurance shall be obtained from companies acceptable to the VDEQ and require at least thirty (30) days advance notice to VDEQ of an intention to cancel the policy. Company shall deliver to the VDEQ evidence of such insurance and evidence of renewal or replacement policies no later than ten (10) days before the expiration thereof.

1. Construction.
   1. Company shall not commence construction of the Landfill (the “**Construction**”) until a VDEQ permit has been approved.
   2. Company shall conduct the Construction in accordance with the plans and specifications set forth in the VDEQ Permit Package.
   3. Company shall at all times comply with all applicable Governmental Requirements with respect to the Construction, including all required permitted plans, authorizations, and conditions applicable to Construction.
   4. During the Construction, Company shall permit the County access to the Landfill site, and the County shall have the right to designate a representative (the “**Landfill Liaison**”) to review compliance with (i) the plans and specifications set forth in the Package and conditions applicable to the Construction (collectively, the “**Construction Requirements**”). The County may, upon notice to Company from time to time, appoint a successor Landfill Liaison.
2. **Operations; Host Fee**.
   1. Authorization to Operate; Compliance with Laws.
      1. Subject to the compliance of the VDEQ Permit requirements, the Company shall be permitted to operate the Landfill as a sanitary landfill in accordance with the Virginia Waste Management Act (the “**Act**”) (Va. Code §§ 10.1-1400, et seq.) and the Virginia Solid Waste Management Regulations (the “**Regulations**”) (9 Va. Admin Code §§ 20-81-10, et. seq.).
      2. Company shall at all times during the Term operate the Landfill in compliance with all Governmental Requirements.
   2. Acceptable Waste.
      1. The Landfill may accept **Municipal Solid Waste**, **Industrial Waste**, **Construction Waste**, **Demolition Waste**, **Debris Waste**, and any other waste approved by VDEQ (collectively, “**Acceptable Wastes**”).
      2. Company shall notify the Landfill Liaison prior to submitting any request to VDEQ for approval of **Special Waste**.
      3. Fly ash will be accepted at the Landfill and shall be managed in compliance with the Permit and Governmental Requirements.
   3. Unacceptable Waste.
      1. Company shall not accept for disposal in the Landfill any of the following (collectively, “**Unacceptable Wastes**”):
      2. Any material that is not allowed by VDEQ permit.
      3. Any material the disposal of which would violate the Permit or Governmental Requirements;
      4. Any **Hazardous Waste**; or
      5. Any nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923); or
   4. Screening; Removal of Unacceptable Wastes.

* + 1. Company shall be responsible for screening of all wastes delivered to the Landfill to determine (i) whether the waste is Acceptable Waste or Unacceptable Waste; and (ii) as applicable, the appropriate disposition within the Landfill. If deemed reasonably necessary by the Company, Company may use sensors to assist this determination.
    2. In the event Unacceptable Wastes are deposited in the Landfill, Company shall promptly remove or cause to be removed the Unacceptable Waste from the Landfill and cause the same to be disposed of in accordance with all Governmnetal Requirements. Company may charge the person responsible for delivering such Unacceptable Wastes for the cost of removal of such wastes, so long as Company posts conspicuous signs warning of such charges.
  1. Weighing and Scales.
     1. All vehicles entering and leaving the Landfill to dispose of waste shall be weighed.
     2. All waste delivered by rail will be weighed by rail carrier and the company may use railroad weights for payments.
     3. Company will operate scales at the Landfill entrance or at such other location as may be determined by Company to ensure the proper weighing of loads being delivered to the Landfill. Scales will be of a type and quality customarily used in the industry and shall be properly maintained and operated by Company. Company shall report scale weights to the County on a monthly basis and make scale weights available for review by the County at the Landfill during normal business hours upon reasonable notice.
     4. Notwithstanding the foregoing, trucks owned by Company and other regular users shall not need to be weighed upon leaving if the vehicle tare weights are known. Such trucks must be weighed at least annually to check these weights.
  2. Volume and Capacity.
     1. The daily waste volume accepted for disposal in the Landfill will be determined by the Permit.
     2. Company may increase the daily volume, provided that the Company is maintaining, in its reasonable judgement, (i) continued compliance with the Permit and Regulations with respect to the operation of the Landfill, (ii) continued compliance with timely payments as required by Section 2.7 hereof.
  3. Host Fee:
     1. Company will pay to the County a host fee (“**Host Fee**”) per ton for each ton of waste disposed of in the Landfill. The Host Fee shall be calculated as provided on Schedule A hereto on a monthly basis, and payment shall be made to the County as specified in Section 2.7(c).
     2. Company shall pay the Host Fee to the County within thirty (30) days after the end of each month during the **Term**. Such payment shall be made in accordance with the County’s directions, which the County may, by written notice to Company, change from time to time.
     3. Beginning for the calendar year in which occurs the third anniversary of the approval of the Permit or the calendar year when waste is first accepted at the Landfill, whichever is later, Company will guarantee a minimum Host Fee payment to the County of one hundred thousand dollars ($100,000) per year for the term of this Agreement (the “**Minimum Host Fee**”), irrespective of the volume of waste has been received at the Landfill. If the sum of the monthly payments of the Host Fee do not equal the Minimum Host Fee in a given year, Company shall pay the difference between the Minimum Host Fee and the sum of such monthly payments to the County by January 30th of the following year. Notwithstanding the foregoing, Company shall not be liable for the minimum Host Fee payment in the event Company is prevented from accepting waste volume into the Landfill due to actions, rulings or decisions of any Governmental Authority, unless such action, ruling, or decision is based on Company’s violation of any Governmental Requirement or Required Authorization. All Minimum Host Fees paid to County will be recoupable from Host Fees in excess of the Minimum Host Fee during the following five (5) years. The obligation of the Company to pay Host Fees, including Minimum Host fees shall terminate when waste is no longer being received at the Landfill.

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* 1. Disposal Guarantee. Company guarantees that it will accept **County Waste** at the Landfill; provided, that, Company shall not accept any such waste that constitutes an Unacceptable Waste.
  2. Hours of Operation; Access and Security.
     1. The Landfill shall be open as determined by the VDEQ Permit..
     2. The Landfill shall be open for deliveries of County Waste a maximum of thirteen (13) hours per day, Monday through Friday, and a maximum of ten (10) hours per day on Saturday, but may not accept County waste earlier than 6:00 a.m., nor later than 10:00 p.m. Landfill personnel shall remain onsite as long as necessary following primary disposal hours to complete all necessary daily shut-down tasks.
     3. Access to the Landfill shall be limited to (i) rail car waste access and (ii) controlled public access points by road. The Company shall control such access points with gates (the “**Access Gates**”), and an attendant shall be present at each Access Gate during operating hours to screen incoming waste. The Access Gate attendants shall screen out Unacceptable Waste and vehicles with unauthorized cargo (e.g., by requesting a description of the waste from the operator), and shall turn away those not permitted into the Landfill. In addition, signs shall be conspicuously posted in and around the Landfill informing users of acceptable and Unacceptable Waste.
     4. Company may install and maintain appropriate video security at the Landfill, which shall capture a video record of all entering vehicles. The Company will maintain such video recordings for a reasonable period of time.
     5. Traffic flow shall be regulated by adequate signing in and around the Landfill.
     6. The Parties acknowledge and agree that the primary method of waste delivery at the Landfill may be performed by rail. Company shall ensure that the Landfill is accessible by rail delivery.
  3. Point of Contact. Throughout the Term, Company shall identify and communicate to the County one or more persons to serve as Company’s point of contact for the Landfill (the “**Company POC**”). The Company POC (or his designee, as communicated to the County) shall be available to the Company in the case of an emergency, twenty-four (24) hours per day, seven (7) days per week.
  4. Recycling. When the Company determines that doing so would be profitable, Company may construct, permit, and operate a recycling drop-off center at the Landfill (the “**Recycling Center**”) for the recycling of applicable Acceptable Wastes, including newspapers, mixed paper, magazines and catalogs, aluminum cans, steel and tin cans, glass, plastic bottles, metals, and cardboard. The Recycling Center shall be open on the same days and during the same hours as the Landfill. Company shall make arrangements for the recycling of the waste delivered to the Recycling Center. Company shall comply with all Governmental Requirements applicable to the Recycling Center and the recycling of the waste delivered thereto.
  5. Complaints. The County shall provide written notice to Company of public complaints received by the **Board** with respect to the Landfill, and upon receipt of such notices, Company shall give prompt and courteous attention to such complaints.

1. **Environmental and Siting Matters; Leachate Management; Monitoring**.
2. Compliance with VDEQ Regulations. Without limiting the requirements of Section 2.1, Company shall at all times comply with all VDEQ Regulations with respect to the construction, operation, closure, and post-closure monitoring of the Landfill.
3. Buffers and Screening. Company shall ensure that all areas of the Landfill which are used for the disposal of waste shall have buffers and vegetative screening consistent with the site plan delivered as part of the VDEQ Permit:
   * 1. not less than five hundred (500) feet from the nearest residence, church, school or recreational area as of the date of this Agreement;
     2. not less than five hundred (500) feet from any well or spring being used for drinking water as of the date of this Agreement;
     3. not less than one hundred (100) feet from any regularly flowing channel of water as of the date of this Agreement, and
     4. not less than fifty (50) feet from any public road as of the date of this Agreement; provided
     5. unless in each case, VDEQ requires a greater or lesser distance.
4. MonitoringThe Company will monitor water wells adjacent to the Landfill as required by VDEQ Regulations.
5. Litter Control. All Acceptable Waste shall be compacted as soon as practicable after it is unloaded at the Landfill. Cover material shall be applied daily in accordance with the Permit. The working area will be kept as small as practicable to minimize the potential for blowing debris. Litter control will be provided by temporary fencing or cover, if necessary.
6. Site Drainage. Subject to the Permit and other requirements of VDEQ, Company shall:
7. keep all drainage ways at the Landfill free of debris and other obstructions to the flow of water;
8. excavate all sediment ponds as the need arises with the trapped sediment being returned as cover material on the Landfill; and
9. prevent water contaminated with leachate from being discharged from the Landfill to the natural drainage outfalls.
10. Odor Management. As required by VDEQ regulations, Company agrees to take reasonable steps to mitigate odor at and around the Landfill. In the event Company or the County receives any complaints with respect to odor caused by the Landfill, Company acknowledges that any odor complaint received by the County will be immediately reviewed and forwarded to VDEQ by Company if determined by Company to be a valid complaint.
11. Leachate Management. Subject to the Permit and other requirements of VDEQ, the Company shall implement, operate, and maintain a leachate management system. The Leachate Storage Facility shall be sufficient to store leachate for such period as may be required by VDEQ or applicable Governmental Requirements. Under no circumstances shall Company allow untreated leachate to escape the Landfill areas into surrounding surface or ground waters.
12. Groundwater Sampling and Testing. Subject to the Permit and other requirements of VDEQ, the Company shall construct and maintain monitoring wells around the perimeter of the Landfill (and within the buffer areas) with the locations of said wells to be approved by VDEQ prior to their construction. All drilling logs will be retained and made available at the County’s request. Company shall take groundwater samples quarterly and analyze such samples per the parameters established by the VDEQ. Company shall provide this information to the VDEQ and the County, thereby establishing the basis for future and on-going monitoring efforts.
13. Surface Water Sampling and Testing. Subject to the Permit and other requirements of VDEQ, the Company shall construct and maintain monitoring points around the perimeter of the Landfill (and within the buffer areas) with the locations of said points to be approved by VDEQ prior to their construction. All monitoring results will be retained and made available at the County’s request. Company shall take surface water samples quarterly and analyze such samples per the parameters established by the VDEQ. Company shall provide this information to the VDEQ and the County, thereby establishing the basis for future and on-going monitoring efforts.
14. **Reporting and Recordkeeping**.
15. Reporting. Throughout the Term, the Company shall keep records of waste received and the County shall have the right, if requested, to inspect and review the same insofar as they pertain to the operation of the Landfill. The records shall show the type, weight, and volume of waste received; any deviations from the Permit; those parts of the Landfill currently used; records; and copies of all of its inspection reports, monitoring data, and disposal arrangements of rejected or removed loads. Such reports shall be prepared and sent to the County on a quarterly basis.
16. Information Sessions. At the County’s request, but no more than monthly, Company shall meet with the County Manager or its designee to discuss Landfill operations, compliance issues or reports, complaints, resolutions, and other matters requested by the Board. The Company shall meet with the Landfill Liaison as frequently as reasonably necessary for the Landfill Liaison to perform his or her duties, as set forth herein.
17. Notices of Violation. Company shall, within twenty (20) **Business Days** of receipt, notify the County in writing of any notice of violation from VDEQ it receives arising from operation of the Landfill. Subject to any reasonable challenge or appeal, Company shall immediately take steps to comply with any such notice of violation.
18. Annual Report. Company shall prepare and issue to the County an annual report of its Landfill operations showing annual tonnages of wase received at the Landfill. Company shall deliver such report no later than March 1 of each year to the County. The County will hold in confidence and not disclose nor use any such information furnished or disclosed to it without the express written approval of Company, treating such information in such annual reports with the same degree of care and confidentiality with which it treats its own proprietary information. However, such information may be subject to the Freedom of Information Act (“**FOIA**”).
19. **Monitoring and Inspection Rights**.
20. Monitoring and Inspection Rights.
21. The Landfill Liaison’s duties may include monitoring and inspection of waste disposal practices at the Landfill. Subject to reasonable health and safety requirements prescribed by the Company, which may include, without limitation, training, use of protective equipment, and escort by the Company personnel, the Landfill Liaison may have access to the Landfill and all Landfill records during normal working hours. The Landfill Liaison shall not be entitled to review confidential business information, as reasonably identified by the Company, that does not pertain to such duties.
22. Without limiting the foregoing, the Landfill Liaison shall be authorized to do the following:
    1. review waste at the Landfill site and inspect the same;
    2. review work undertaken at the Landfill;
    3. observe the taking of samples required under VDEQ regulations; provided, however, the Company may take any sample of waste, surface water or groundwater without first offering the Landfill Liaison an opportunity to participate in such sampling if determined to be necessary by the Company;
    4. without notice, the Company may take such independent tests of waste, surface water, groundwater; and
    5. review all test results and reports obtained in connection with the Landfill.
23. Regular Meetings. The Company representatives and the Landfill Liaison shall meet on a regular basis, at a time and place mutually agreeable to the Parties, to ensure proper coordination of the Landfill Liaison’s duties.
24. **Maintenance and Repairs; Noise and Lighting**.
25. General Maintenance Responsibilities. Company shall be solely responsible for the performance and expense of all maintenance and repair activities with respect to the Landfill, including all such activities with respect to the facilities, fixtures, and equipment located thereon.
26. Internal Roads. Roads and other passageways within the operating Landfill shall be graded as necessary to maintain smooth, well drained surfaces. During dry periods, these operating roads and passageways shall be sprayed with water if necessary to reduce dust. Company shall be responsible for maintaining such roads and passageways in accordance with this Section 6.2.
27. Noise and Lighting. As required by VDEQ, Company shall take such steps as are necessary to prevent excessive noise levels associated with operations of the Landfill (not including ambient noise) when measured at the property line of the Landfill site (not including the normal sounds of trucks entering the site). Any and all outside lighting shall be designed so that there is no material increase in ambient light conditions when measured at the property line of the Landfill.
28. **Insurance**. Company shall maintain all Required Insurance Policies throughout the Term. From time to time, Company may increase the coverage limits of any Required Insurance Policies as may be necessary to comply with VDEQ regulations.
29. **Financial Assurances; Facility Closure; Post-Closing Monitoring and Maintenance**.
30. Financial Assurances as required by VDEQ.
31. Throughout the Term, Company shall:
    1. maintain a closure bond or other financial assurances in an amount that is sufficient to cover closure costs and post-closure monitoring and remediation costs with respect to the Landfill; and in any event, which is sufficient to meet all requirements set forth by VDEQ;
    2. comply with all financial assurance regulations set forth by VDEQ, including the maintenance of prescribed financial test ratios and/or the payment of funds or provision of other financial assurances;
    3. maintain and, upon request, provide to VDEQ and/or the County, records of Company’s compliance with such financial assurance requirements; and
    4. As required by VDEQ regulations, on an annual basis, permit VDEQ to conduct a review of the sufficiency of such financial assurances; and, in the event VDEQ, as a result of such review, determines that such financial assurances are inadequate, Company shall, within ninety (90) days of such determination, increase its financial assurance mechanism to the satisfaction of VDEQ.

(b) Throughout the Term the Company shall maintain financial assurances as determined by VDEQ Regulations, to assure compliance with the Company’s obligations under this Agreement. The financial assurances shall be certified by an entity or an institution approved by the VDEQ. In the event that any federal or state agency or authority shall require Company to maintain a bond for the Landfill during the Term, the Company may submit financial assurance as required by VDEQ for satisfaction of such requirements.

1. Landfill Closure. As required by VDEQ regulations, Company shall conduct the closure of the Landfill (the “**Closure**”) in compliance with all applicable Governmental Requirements. Company shall provide its closure plan (as may be reasonably amended to comply with applicable Governmental Requirements or take into consideration any changes permitted hereunder) to the County no less than one (1) year prior to the anticipated closure of the Landfill.
2. Post-Closure. Following the Closure, Company shall comply with all post-closure requirements set forth in the Permit or otherwise required by VDEQ Regulations.
3. **Additional Covenants**. Company agrees as follows:
4. The Company shall not maintain or operate the Landfill in such a manner as to pose a substantial present hazard to human health or the environment.
5. Company shall not, without notice to the County, permit any significant change in the manner and scope of operation of the Landfill which may require new or additional permit conditions or safeguards to protect the public health and environment.
6. **Term**.
7. Term. This Agreement shall become effective upon execution and shall remain in effect until waste is no longer accepted at the Landfill and notice is given to the County under Section 8.2, unless sooner terminated by agreement of the Parties (the “**Term**”). The Parties acknowledge that the closure period for the Landfill pursuant to the Act and Regulations will extend the Term beyond the closure of the Landfill. Notwithstanding the foregoing, this Agreement shall not be effective until the Parties reach an agreement to all local taxes applicable to the Landfill and its operation by the Company.
8. Notice. As required by the Permit, Company will notify the County, in writing, prior to ceasing acceptance of waste at the Landfill.
9. **Representations and Warranties**. Company represents and warrants to the County, as of the date hereof and throughout the Term, as follows:
10. Organization. Company is duly organized, validly existing and in good standing as a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ under the laws and regulations of the Commonwealth of Virginia.
11. Authorization. Company has the full right, power, and authority to enter into this Agreement and to perform its obligations hereunder, and the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action.
12. Beneficial Ownership. The **Owners**, collectively, own one hundred percent (100%) of the beneficial ownership (whether directly or indirectly) of Company.
13. Binding. When executed and delivered by Company, this Agreement will constitute the legal, valid, and binding obligation of Company, enforceable against such party in accordance with its terms.
14. Compliance. Company is in compliance with, and shall operate the Landfill and perform its obligations hereunder in compliance with the Permit and all applicable VDEQ Regulations.
15. Personnel. Company will operate the Landfill using personnel of required skill, experience, and qualifications and in a professional manner and shall devote adequate resources to meet its obligations under this Agreement.
16. No Convictions. No key personnel of Company has been convicted of any of the following crimes, which are punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction in the past 5 years; or has been adjudged by an administrative agency or a court of competent jurisdiction to have committed a material violation of any **Environmental Laws** of the United States, the Commonwealth of Virginia or any other state.
17. **Events of Default; Remedies; Indemnification**.
18. Events of Default.
    1. Each of the following events or conditions shall constitute an “**Event of Default**” by the company:
       1. Company fails to pay, within ninety (90) Business Days of the date due, any amount, due to the County hereunder, including, without limitation, or Host Fees,;
       2. any representation, warranty, certification or other statement of fact made by Company herein proves to have been false as of the date made;
       3. Company fails to perform or observe any material covenant, term, condition, or agreement contained in this Agreement, and such failure continues unremedied for a period of ninety (90) Business Days after written notice to Company;
       4. there is commenced against Company in a court of competent jurisdiction any case, proceeding or other action of a nature referred to in Section 12.1(a)(v) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged, unstayed or unbonded for sixty (60) days;
       5. Company takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in Section 12.1(a)(v) or Section 12.1(a)(vi); or
       6. Company is generally not, or is unable to, or admits in writing its inability to, pay its debts as they become due.
       7. Notify the VDEQ of such Event of Default.
19. Remedies. Each Party to this Agreement acknowledges and agrees that in the event of a breach by such Party of any of its obligations under this Agreement the other party may pursue any remedy available at law or equity; provided, however, no such remedy shall include any consequential, exemplary or punitive damages.
20. Indemnification.
    1. Company hereby agrees to indemnify and hold harmless the County from all claims, demands and actions, legal or equitable, costs, liabilities and expenses (including court costs and reasonable attorney’s fees) (collectively, the “**Costs**”) that arise from or in connection with any breach of any covenant, representation, or warranty provided hereunder, or otherwise in connection with this Agreement or the County’s enforcement thereof. As used herein, the term Costs shall not include any consequential, exemplary or punitive damages.
    2. Company further agrees to indemnify and hold harmless the County from any action brought by any third party seeking damages for any reason as a result of the Landfill, including personal injury, property taking, or property damage. However, Company shall not be liable for Costs arising out of willful acts or omissions of the County, its officers, agents, employees, or representatives, or breaches of any express representation, warranty or covenant by the County contained in this Agreement.

(c) Defense of Third Party Claims. Any Party making a claim for indemnification under this Section 12.3 (an “Indemnitee”) shall notify the indemnifying Party (an “Indemnitor”) of the claim in writing promptly after receiving written notice of any action, lawsuit, proceeding, investigation or other claim against it (if by a third party), describing the claim, the amount thereof (if known and quantifiable), and the basis thereof; provided that the failure to so notify an Indemnitor shall not relieve the Indemnitor of its obligations hereunder except to the extent that (and only to the extent that) such failure shall have caused the damages for which the Indemnitor is obligated to be greater than such damages would have been had the Indemnitee given the Indemnitor prompt notice hereunder. Any Indemnitor shall be entitled to participate in the defense of such action, lawsuit, proceeding, investigation or other claim giving rise to an Indemnitee’s claim for indemnification at such Indemnitor’s expense, and at its option (subject to the limitations set forth below) shall be entitled to assume the defense thereof by appointing counsel reasonably acceptable to the Indemnitee to be the lead counsel in connection with such defense; provided further that, prior to the Indemnitor assuming control of such defense it shall first (i) verify to the Indemnitee in writing that such Indemnitor shall be fully responsible (with no reservation of any rights) for the entirety of all liabilities relating to such claim for indemnification and that it will provide full indemnification (whether or not otherwise required hereunder) to the Indemnitee with respect to such action, lawsuit, proceeding, investigation or other claim giving rise to such claim for indemnification hereunder and (ii) enter into an agreement with the Indemnitee in form and substance satisfactory to the Indemnitee which agreement unconditionally guarantees the payment and performance of any liability which may arise with respect to such action, lawsuit, proceeding or investigation; and provided further, that:

* + - 1. the Indemnitee shall be entitled to participate in the defense of such claim and to employ counsel of its choice for such purpose; provided that the fees and expenses of such separate counsel shall be borne by the Indemnitee (other than any fees and expenses of such separate counsel that are incurred prior to the date the Indemnitor effectively assumes control of such defense which, notwithstanding the foregoing, shall be borne by the Indemnitor);
      2. the Indemnitor shall not be entitled to assume control of such defense and shall pay the fees and expenses of counsel retained by the Indemnitee if (A) the claim for indemnification relates to or arises in connection with any criminal proceeding, action, indictment, allegation or investigation; (B) the Indemnitee reasonably believes an adverse determination with respect to the action, lawsuit, investigation, proceeding or other claim giving rise to such claim for indemnification would be detrimental to or injure the Indemnitee’s reputation or future business prospects; (C) the claim seeks an injunction or equitable relief against the Indemnitee; (D) upon petition by the Indemnitee, the appropriate court rules that the Indemnitor failed or is failing to vigorously prosecute or defend such claim; or (E) the Indemnitee reasonably believes that the Loss relating to such claim for indemnification could exceed the maximum amount that such Indemnitee could then be entitled to recover under the applicable provisions of this Section 12.3; and
      3. if the Indemnitor shall control the defense of any such claim, the Indemnitor shall obtain the prior written consent of the Indemnitee before entering into any settlement of a claim or ceasing to defend such claim if, pursuant to or as a result of such settlement or cessation, injunctive or other equitable relief will be imposed against the Indemnitee or if such settlement does not expressly and unconditionally release the Indemnitee from all Liabilities with respect to such claim, with prejudice.

1. **Miscellaneous**.
2. Further Assurances. Each Party shall, upon the reasonable request of the other Party, execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.
3. Relationship. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.
4. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by email if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third (3rd) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the addresses indicated below (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 13.3).

*If to Company*: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

*If to the County*: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

1. Interpretation. For purposes of this Agreement, (a) the words "include," "includes," and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections, Schedules, and Exhibits refer to the Sections of, and Schedules and Exhibits attached to this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.
2. Entire Agreement. This Agreement, together with all Schedules and Exhibits and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.
3. Assignments. Without first notifying the county in writing the Company may not assign, transfer, or delegate any or all of its rights or obligations under this Agreement, including by operation of law, **Change of Control**, merger, or a sale of substantially all of Company’s assets. Any assignment, transfer, or other conveyance shall include the Company’s right, title and interest in and to the Landfill and an assignment of its rights, and obligations under this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.
4. No Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.
5. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.
6. Amendments. This Agreement may be amended, modified, or supplemented only by an agreement in writing signed by each Party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
7. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
8. Governing Law; Jurisdiction; Attorney Fees. This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Virginia without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Virginia or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the Commonwealth of Virginia. Any legal suit, action, or proceeding arising out of or related to this Agreement shall be instituted exclusively in the federal courts of the United States located in the Western District of Virginia, Abingdon Division, or the courts of the Commonwealth of Virginia located in the County of Russell, Virginia, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court. If any action, suit, or other legal or administrative proceeding is instituted or commenced by either Party hereto against the other Party arising out of or related to this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing Party.
9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
10. **Definitions**. The following terms have the meanings specified or referred to below:
11. “**Access Gates**” shall have the meaning set forth in Section 2.09(c).
12. “**Act**” shall have the meaning set forth in Section 2.1(a).
13. “**Acceptable Wastes**” shall have the meaning set forth in Section 2.2(a).
14. “**Agreement**” shall have the meaning set forth in the preamble.
15. “**Board**” means the Russell County Board of Supervisors.
16. “**Business Day**” means a day other than a Saturday, Sunday, or other day on which commercial banks in Richmond, Virginia are authorized or required by Law to be closed for business.
17. “**Change of Control**” means a transaction or a series of transactions in which the individuals who constitute the Owners cease for any reason to own, directly or indirectly, fifty percent (50%) or more of the outstanding equity interests of Company.
18. “**Closure**” shall have the meaning set forth in Section 8.2.
19. “**Company**” shall have the meaning set forth in the preamble.
20. “**Company POC**” shall have the meaning set forth in Section 2.10.
21. “**Construction Requirements**” shall have the meaning set forth in Section 1.2(d).
22. “**Construction Waste**” means solid waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction Wastes include, but are not limited to lumber, wire, sheetrock, 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 Construction Wastes.
23. “Costs” shall have the meaning set forth in Section 12.3.
24. “**County**” shall have the meaning set forth in the preamble.
25. “**County Collection Site**” shall mean each waste collection site and/or transfer center owned by the Counties, may be amended from time to time as each County establishes or decommissions each collection site or transfer center.
26. “**County Waste**” means all Acceptable Wastes generated by or on behalf of the County, including the agencies, departments and other entities staffed primarily by employees of such counties, public schools located in such counties, and institutions administered and funded by the such counties, including jails, parks and playgrounds, and placed for curbside collection. County Waste shall also include all Acceptable Wastes collected and picked up at each County Collection Site.
27. “**Debris Waste**” means wastes resulting from land-clearing operations. Debris Wastes include, but are not limited to stumps, wood, brush, leaves, soil, and road spoils.
28. “**Debtor Relief Laws**” means the Bankruptcy Code and all other liquidation, bankruptcy, assignment for the benefit of creditors, conservatorship, moratorium, receivership, insolvency, rearrangement, reorganization or similar debtor relief laws of the US or other applicable jurisdictions in effect from time to time.
29. “**Demolition Waste**” means that solid waste that is produced by the destruction of structures and their foundations and includes the same materials as construction wastes.
30. “**Effective Date**” has the meaning set forth in the preamble.
31. “**Environmental Laws**” means all present and future Laws relating to pollution or protection of human health, wildlife, natural resources, or the environment (including ambient air, surface water, groundwater, land surface, or subsurface strata) including such laws governing or regulating the use, generation, storage, removal, remediation, recovery, treatment, handling, transport, disposal, control, c, discharge of, or exposure to, Hazardous Materials. Without limiting the generality of the foregoing, Environmental Laws include the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, et seq., the Clean Air Act, 42 U.S.C. Sections 7401, et seq., the Safe Drinking Water Act, 42 U.S.C. Section 300f, et seq., the Occupational Safety and Health Act, 29 U.S.C. Chapter 15, et seq. relating to Hazardous Materials, the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251, et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Section 136, et seq., and the River and Harbors Appropriation Act, 33 U.S.C. Section 403, et seq., and all regulations adopted thereunder and all state and local analogs. In addition to the foregoing, Environmental Laws also means and includes all voluntary cleanup programs and brownfields programs under federal, state, or local law and all requirements imposed by any Environmental Permit.
32. “**Event of Default**” shall have the meaning set forth in Section 12.1(a).
33. “**FOIA**” shall have the meaning set forth in Section 4.4.
34. “**Governmental Authorities**” means any and all federal, state, county, city, town, other municipal corporation, governmental or quasi-governmental board, agency, authority, department, or body having jurisdiction over the Landfill.
35. “**Governmental Authorizations**” means the permits, licenses, variances, entitlements, approvals, and other actions that, under Governmental Requirements applicable to the Landfill, have been or must be issued, granted, or taken by Governmental Authorities in connection with the Landfill.
36. “**Governmental Requirements**” means building, zoning, subdivision, traffic, parking, land use, environmental, occupancy, health, accessibility for disabled, and other applicable laws, statutes, codes, ordinances, rules, regulations, requirements, and decrees of any Governmental Authority pertaining to the Landfill. This term shall include the conditions or requirements of Governmental Authorizations. In the event that any conflict exists between any Governmental Requirements and the Regulations, the Regualtions shall prevail.
37. "**Hazardous Materials**" means any substance, chemical, material, or waste now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," within the meaning of, or regulated or addressed under, any Environmental Law. Without limiting the generality of the foregoing, Hazardous Materials includes: petroleum and petroleum products and compounds containing them or derived from them, including gasoline, diesel fuel, oil, and other fuels; pesticides and herbicides; radon; carcinogenic materials; explosives; flammable materials; infectious materials; corrosive materials; mutagenic materials; radioactive materials; polychlorinated biphenyls ("PCBs"), and compounds containing them; lead and lead-based paint ("LBPs"); asbestos or asbestos containing materials ("ACMs") in any form that is or could become friable; underground or aboveground storage tanks, whether empty or containing any substance; and any medical products or devices, including those materials defined as "medical waste" or "biological waste" under relevant statutes or regulations pertaining to any Environmental Law.
38. “**Host Fee**” shall have the meaning set forth in Section 2.8(a).
39. “**Industrial Waste**” means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.
40. “**Landfill**” shall have the meaning set forth in the recitals.
41. “**Landfill Liaison**” shall have the meaning set forth in Section 1.2(d).
42. “**Leachate Storage Facility**” shall have the meaning set forth in Section 1.1(a)(vi).
43. “**Minimum Host Fee**” shall have the meaning set forth in Section 2.7(d).
44. “**Municipal Solid Waste**” means that waste that is normally composed of residential, commercial, and institutional solid waste and residues derived from combustion of these wastes.
45. “**Owners**” means [●].[[2]](#footnote-3)
46. “**Package**” shall have the meaning set forth in Section 1.1(a).
47. “**Party**” or “**Parties**” shall have the meaning set forth in the preamble.
48. “**Permit**” shall have the meaning set forth in Section 1.1(b).
49. “**Property**” shall have the meaning set forth in the recitals.
50. “**Recycling Center**” shall have the meaning set forth in Section 2.11.
51. “**Regulations**” shall have the meaning set forth in Section 2.1(a).
52. “**Required Authorizations**” shall have the meaning set forth in Section 1.1(a)(i).
53. “**Required Insurance Policies**” shall have the meaning set forth in Section 1.1(c)
54. “**Term**” shall have the meaning set forth in Section 10.1.
55. “**Unacceptable Wastes**” shall have the meaning set forth in Section 2.3(a).
56. “**VDEQ**” shall have the meaning set forth in Section 1.1(b).

[*Signature page follows.*]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

[**THE NOVA COMPANY OF VIRGINIA**][[3]](#footnote-4)

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**RUSSELL COUNTY, VIRGINIA**

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Legal entity name/place of incorporation to be confirmed. [↑](#footnote-ref-2)
2. To list the individual beneficial owners of Company (including any parent entity). [↑](#footnote-ref-3)
3. Legal entity name/place of incorporation to be confirmed. [↑](#footnote-ref-4)