

SINGLE STREAM RECYCLABLES PROCESSING AGREEMENT

THIS STREAM RECYCLABLES PROCESSING AGREEMENT (this “**Agreement**”) is entered into this 30th day of March, 2020 (the “**Effective Date**”), by and between _____, (the “**County**”), and RDS of Virginia, LLC, Tax ID number 47-4367116, a Virginia limited liability company, with principal offices located at 623 N Witchduck Rd, Suite 108, Virginia Beach, Virginia (the “**Company**”), with reference to the following facts and circumstances:

RECITALS:

- A. The County collects Material (as defined below) and is authorized by law to enter into agreements with private sector entities involving discarded or waste materials removed from the nonhazardous solid waste stream for recycling and processing as described herein.
- B. The County desires the Company to process and the Company desires to recycle and process recyclables from the County that may be collected and delivered by or on behalf of the County. Recyclables shall be delivered to and received by the Company at our Portsmouth processing facility located at 3325 Frederick Boulevard, Portsmouth Va. from the County operations in accordance with this Agreement.
- C. County or its designees shall be responsible for all transportation costs to get recyclables to the Company in accordance with this agreement.
- D. County acknowledges Company may (but is not obligated to do so) establish a recycling in North Carolina and such processing facility would be closer to County operations than the Portsmouth facility is. Should Company establish a closer facility in North Carolina then County agrees to deliver (or have delivered) material to such facility instead of the Companies Portsmouth facility under the same terms and conditions of this agreement.

E. The County shall use the Company exclusively for Processing of Single Stream Material during the Initial Term of this Agreement and any Extension Term.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Company and the County agree as follows:

1. DEFINITIONS

1.1. Definitions: The following defined terms used in this Agreement shall have the respective meanings set forth below:

“Agreement” shall mean this Recyclables Processing Agreement, including all exhibits hereto, as the same may be amended from time to time.

“County” shall mean the _____ County.

"County Site" shall mean the County's property at (location) or the Transfer Station where recyclables are transferred before being brought to the Company.

“Company” shall mean RDS of Virginia, LLC, a Virginia limited liability company.

"Company Site" shall mean the Company's property at 3325 Frederick Boulevard, Portsmouth Va (unless and until Company established a recycling facility in North Carolina closer to the County), which includes the MRF.

“Environmental Liabilities” shall have the meaning set forth in Section 8 of this Agreement.

“Force Majeure” shall have the meaning set forth in Section 9 of this Agreement.

“Governmental Directive” shall mean any order, administrative decision, rule, regulation, law or other direction by or from any federal, state or local government, County, agency or other body having regulatory authority over the County, the Company or any portion of or activity conducted at the County Site or the Company Site.

“Hazardous Waste” shall mean any material or substance deemed to be harmful to human health or the environment by any law, rule, regulation or ordinance, or any material regulated as a toxic or hazardous waste or substance under any federal, state or local law, regulation, rule or ordinance, including, without limitation, any material or substances regulated pursuant to the federal Clean Air Act and regulations promulgated thereunder, and similar state environmental laws and regulations promulgated thereunder, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended or the Superfund Amendments and Reauthorization Act of 1986, as amended, and regulations promulgated thereunder, and similar state environmental laws and regulations promulgated thereunder, the Solid Waste Disposal Act, as amended, the Resource Conservation and Recovery Act, as amended, and regulations promulgated thereunder, and similar state environmental laws and regulations promulgated thereunder, the Federal Water Pollution Control Act, as amended, and regulations promulgated thereunder, and similar state environmental laws and regulations promulgated thereunder, or asbestos, asbestos containing materials, polychlorinated biphenyls or petroleum products.

“Marketable Recovered Material” means Recoverable Material that, after Processing at the Company Site, is sold on the open market using reasonable efforts. Schedule 1, Table 1-1 describes Marketable Recovered Material, which schedule may be

amended from time to time, with mutual approval from the County and Company, to meet current market conditions.

"Material" shall mean material that is defined below as Recyclable Material and which the County intends to be delivered to the Company Site in accordance with this Agreement.

"MRF" shall mean that certain materials recycling facility or facilities owned and operated by the Company and located at the Company Site.

"Operating Month" shall mean every calendar month during the Term of this Agreement, beginning with March 2020, or the effective date of this agreement, which shall be the date both parties sign.

"Permit" shall mean any permit, authorization, waiver, variance, license, approval or similar order of or from any federal, state or local government, County, agency or any other body having regulatory authority over the County, the Company, or activity conducted by the County or the Company.

"Person" shall mean an individual, a trust, an estate, or a domestic company, a foreign company, a professional company, a partnership, a limited partnership, a limited liability company, a foreign limited liability company, an unincorporated association, or another entity.

"Point of Acceptance" shall mean the location on the Company Site where Material is delivered.

"Processing" shall mean the process of separating a particular material from other material and processing it so that it may be used again as a new material.

“Processing Fee” shall mean the fee paid by the County to the Company, or by the Company to the County, for Single Stream Material delivered to the Company by the County for processing, as set forth in the Process Fee/Rebate column of Table 2-2 attached hereto (with the negative numbers in such column representing rebate to be paid by the Company to the County).

"Recoverable Material" shall mean that portion of Material that is able to be Processed so that it may be used again as a new material, as more specifically described in Schedule 1 of this Agreement as it may be amended from time to time.

"Receiving Time" shall mean the times that the Company Site is open for operation which shall be not less than the following: 8:00 am to 4:00 pm, Monday through Friday, inclusive, except for New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, and Christmas Day.

"Rejected Material" shall mean all Unacceptable Material that is rejected by the Company.

"Residue" shall mean that portion of Material that remains after Processing and designated for landfill disposal.

"Scales" shall mean the scales at the County's scale house located near the vehicle entrance at the County Site.

“Single Stream Material” shall mean the material set forth in Schedule 1 Table 1-1 attached to this Agreement, as may be modified upon mutual agreement of the parties, which materials are received by the County as mixed material loads and have not been separated by type of material before being received by the County, which may include a certain amount of Residue, as defined herein.

“Term” shall have the meaning set forth in Section 5.

"Transfer Station/Recycling Facility" shall mean the County's facility located at the County's Site that is used as a transfer and relay point for solid waste or Material transferred to another facility for disposal or processing.

"Unacceptable Material" shall mean any Material which is not allowed under applicable law to be subject to Processing by the Company including any Hazardous Waste and any material the disposal or Processing of which would violate applicable federal or state laws, rules, regulations, permits or requirements.

“Waste” or “Waste Material” means Material to be disposed of at a Landfill or otherwise properly disposed of, specifically including Residue and Rejected Material.

“Waste Disposal Costs” means all direct costs incurred by the Company for the disposal of Waste Material.

2. DELIVERY, PROCESSING, AND ANALYSIS OF MATERIAL

2.1 Processing Obligation. The Company agrees to Process all Recoverable Material made available by the County. The County is not obligated to supply any minimum amount of Material or Recoverable Material to Company under this Agreement and the County however the County shall use the Company exclusively for Processing of Recyclable Material during the Initial Term of this Agreement and any Extension Term. The parties agree that title to and all risk of loss and liabilities of any kind arising from or associated with the Material shall pass to and be borne solely by the Company at the time such Material comes into the Company's possession at the Point of Acceptance.

2.2 Commencement of Deliveries. Delivery of Material to and acceptance of Material at the Company Site under this Agreement shall commence on March 30th, 2020.

2.3 Receipt of Material; Title; Nonacceptance.

2.3.1 Material Delivery. The County shall, during the Term, cause to be delivered to the Company at the Point of Acceptance all Recyclable Material that is within the County's control or collected by County contractors on behalf of the County. County shall designate Company as the recycling processing facility for any bids, proposals, solicitations or other County work for the materials that the Company accepts for recycling.

2.3.2 Material not Accepted. The Company may refuse to accept Hazardous Waste or loads containing in excess of 12% of Material that (i) would constitute Residue or (ii) is Unacceptable Material. Company shall notify the County within two (2) hours of any such failure to accept, stating the date and the time of rejection and the reason for such failure to accept and County will have the option to correct the problem before receiving any charge backs.

2.4 Weighing Material; Records; Testing of Scales.

2.4.1 Weighing Material. The Company and the County shall each be responsible for operating and maintaining in good condition their respective truck scales and associated equipment.

2.4.2 Records. The County shall maintain accurate weigh scales records for the purposes of determining the total weight of Material leaving the County Site and shall keep detailed daily records of the same. Company shall provide a copy of this record each month to the County for billing purposes. If County has a dispute with any part of the monthly invoice County shall pay the part of the invoice not in dispute and Company and County will address concerns regarding such disputed

items. Invoices shall assume to be accepted by the County and not in dispute within twenty one (21) days after receipt.

2.5 Recoverable Material. The Company shall achieve as high a level of recovery of Recoverable Material from the stream of Material delivered to the Company's site as possible using the Company's machinery installed and designed for this purpose.

2.6 Removal. If Unacceptable Material is delivered to the Company's site by or on behalf of the County, the Company shall be responsible for promptly containing such material, and will promptly notify County of the problem, giving County an opportunity to correct the problem before receiving any chargebacks. County shall have two (2) hours to notify Company of its intention to correct or not correct the problem, unless the Company agrees to a longer time period. If County intends to correct the problem County shall have 24 hours in which to do so, unless the Company agrees to a longer time period. If County decides not to correct the problem, Company will be responsible for removing, transporting and disposing of such Unacceptable Material. Such containment, removal, transport and disposal shall be done in accordance with all applicable laws and regulations and the directions of any regulatory agency with jurisdiction. The Company will bill back the County for removal, transport, and disposal at the commercial waste rate as established and then currently being charged by the Southeastern Public Service Authority (SPSA) for Non-Contract Non-Municipal Customers PLUS \$45 (Forty Five) Dollars per ton for handling and transportation. This rate can be found on the SPSA web site (SPSA.com) currently under Publication and Reports – Tipping Fees and is (as of July 1, 2019) currently \$76 per ton.

2.7 County Inspection of Company Site. The County Executive Director and any County employee, agent and representative of the County designated by the County Executive Director shall be entitled to visit and inspect the Company Site on reasonable notice to the Company, which may be by electronic mail, and for purposes of this section 48 hours advance notice is agreed to constitute reasonable notice.

2.8 If Company believes the average amount of Residue in one truckload of Material delivered to the Company is greater than 12% of such Material, then the Company may notify County of the contamination and County shall have the option of proceeding under section 2.6 – Removal. If the Company believes the average amount of Residue in multiple truckloads over time is greater than 12% of such Material, then the Company may test the Residue percentage (at Company’s expense) in accordance with the Protocol (as defined below) for the purpose of instituting a charge. If Residue is above 12% the County will have the opportunity to clean up the Residue and have the option of having the Protocol test rerun by Company (limit one per month) at the County’s expense (not to exceed \$800 per test). Once Residue is proved to be at 12% or lower through a Residue test the Residue charge will stop. Not more than once every 12 months, the Company may perform a Residue analysis of incoming loads of Material to establish average percent by weight of the amount of Residue in such Material. The County will approve or amend the proposed protocol (the “Protocol”) prior to performance of the Residue analysis, provided, however, that any such amendments shall be commercially reasonable and shall be binding on the Company. An acceptable reference for this Protocol is the following standard: *ASTM D5231-92 (2008) Standard Test Method for Determination of the Composition of Unprocessed Municipal Solid Waste*. One or more County

representatives shall be entitled to observe any residue analysis process which occurs under this Section 2.8 of this Agreement. This section is not intended to require the Company to perform a residue test unless the Company is charging the County for accepting Material nor shall Company be required to reject occasional individual loads that may contain contamination in excess of 12%. However, should Company accept individual loads with more than 12% contamination without rejecting, this shall not be taken as a new specification and Company may reject loads in excess of 12% contamination in the future.

3. SINGLE STREAM RECYCLABLES PROCESSING COSTS AND PAYMENT.

3.1 The County agrees to send payments to Company within 30 days of receipt of a billing invoice for services properly and completely rendered under this Service Agreement, in accordance with Schedule 1-2 attached hereto. Company agrees to send the County such an invoice no more than once per month.

3.2 Company's billing invoice will not be considered by the County to be complete and payable if it fails to include specific information and documentation on the total tonnage of Material processed by Company under this Agreement for each month or other applicable invoice period. Should Company's billing invoice not include the information required by the County the County will notify the Company within 5 working days of the County's receipt of such invoice of specific deficiencies, and for purposes of this Section 3.2 such notice may be made by phone call, fax and/or e-mail to the Company. Should County not so notify Company then Company's invoice shall be considered for payment in accordance with County's standard procedures.

3.3 The County agrees to send payment to the Company so that the Company receives such payment no less than once every 31 days, for total material received each month by the Company (one payment per month), in accordance with Schedule 2 attached hereto.

4. TAXES

4.1 Taxes in General. The Company shall pay or cause to be paid all taxes and assessments arising from or related to its actions under this Agreement or imposed with respect to the Material, including, but not limited to, any leasehold real estate taxes, personal property taxes, business license taxes, excise taxes and sales and use taxes.

4.2 Income Tax. Each party shall be responsible for its respective federal, state and local taxes based upon or measured by its income, and all franchise or other taxes based upon its corporate existence or its corporate right to transact business.

5. TERM.

5.1 Initial Term. The initial term of this Agreement shall be for 5 (five) years and shall commence on the date of this Agreement and shall continue until March 30, 2025, **(the "Initial Term")** unless terminated earlier per this agreement.

5.2 Extension Term. The County shall have and is hereby granted, in accordance with applicable law, the option to extend the term of this Agreement for additional five year periods beyond the expiration of the Initial Term **(the "Extension Term")**, such option to be mutually agreed to and exercised in writing at least 6 months before the expiration of the Initial Term.

6. DISCLAIMER OF WARRANTIES.

6.1 Disclaimer of Warranties. THE PARTIES AGREE THAT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AS TO GOODS OR MATERIALS ARE EXCLUDED FROM THIS TRANSACTION.

7. REPRESENTATIONS AND WARRANTIES, CERTAIN COMPANY OBLIGATIONS.

7.1 Representations and Warranties of the Company. As a material inducement to the County to enter into this Agreement, the Company represents and warrants that as of the date hereof:

7.1.1 Organization. The Company is duly organized, validly existing and in good standing under the laws of Virginia, is qualified to do business in the Commonwealth of Virginia and in North Carolina and has all requisite corporate power and corporate County to execute and perform its obligations under this Agreement.

7.1.2 County. The execution, delivery and performance of this Agreement have been approved and authorized by all necessary corporate action of the Company.

7.1.3 No Conflict. The execution, delivery and performance of this Agreement will not constitute a violation or breach of the charter, certificate of incorporation, certificate of formation, articles of organization, operating agreement, bylaws or similar document of the Company or of any provision of any material contract, permit, license, agreement or other obligation to which the Company is a party or by which the Company or any of its material assets are bound, or any writ, injunction, decree, or applicable law to which the Company or any of its assets are

subject. The Company is fully qualified and able to perform all of the work described in this Agreement.

7.1.4 No Litigation. There are no pending lawsuits or orders pertaining to or affecting the performance by the Company of its obligations hereunder, nor, to the Company's knowledge, have any such lawsuits or orders been threatened.

7.1.5 No Collusion. This agreement has been made without collusion or fraud by the Company or its representatives. The Company has not offered or received kickbacks or inducement from any office, supplier, manufacturer or subcontractor in connection with this Agreement, and it has not conferred on any public employee having any official responsibility for this transaction, any payment, loan, subscription, advance, deposit of money or anything of more than nominal value, present or promised, unless something of substantially equal or greater value was exchanged.

7.1.6 Company Inspection of County Site. The Company has inspected the County Site and all other surrounding locations and property and is familiar with and accepts the conditions thereof. The Company or its representatives shall be entitled to reinspect County Site on reasonable notice to the Company, which may be by electronic mail, and for purposes of this section 48 hours advance notice is agreed to constitute reasonable notice.

7.1.7 Payment of subcontractors. The Company agrees that if it employs any subcontractor for the provision of any goods or services under this Agreement, the Company will make payment to such subcontractors as follows:

- (a) Within twenty (20) days after receipt of any amounts paid to the Company under this Agreement, (i) pay any subcontractor for its proportionate share of the total

payment received from the County attributable to the work under this Agreement performed by such subcontractor, or (ii) notify the County and the subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment and the reason therefor;

- (b) Provide its federal employer identification number or social security number, as applicable, before any payment is made to the Company under this Agreement; and
- (c) Pay interest at the legal rate or such other rate as may be agreed to in writing by the subcontractor and the Company on all amounts owed by the Company that remain unpaid after twenty (20) days following receipt by the Company of payment from the County for work performed by the subcontractor under this Agreement, except for amounts withheld pursuant to subparagraph a. above. The Company's obligation to pay such interest shall be the Company's sole obligation and shall not be an obligation of the County.
- (d) Include in its contracts with any and all subcontractors the requirements of subsections (a), (b), and (c) above.

7.1.8 Company Standard of Care The Company shall, at its sole cost and expense, conduct all of its actions under this Agreement in accordance with industry standards, in a proper, workmanlike and prudent manner, taking into account any special needs or requirements of the County, and in accordance with all applicable federal, state and local laws, statutes, ordinances, rules and regulations (whether now existing or later enacted) in all material respects, including but not limited to applicable occupational, health and safety laws and regulations and any federal, state or local laws, statutes, ordinances, rules and regulations relating to the Processing, transportation, recycling or disposal of solid waste and Material. The Company agrees that it shall solely bear all costs, risks and liabilities connected with, related to or resulting from all required Permits and permissions related to its rights and responsibilities under this Agreement, and the failure of the Company

to obtain or cause the issuance of any such Permits and permissions. The Company shall develop and implement internal procedures provide for visual inspection of each load of Material delivered to the Company's site. Any suspicious material will be set aside and the Company will be required to remove such Unacceptable Material from the Company Site and properly dispose of the same.

7.2 Laws of the Commonwealth of Virginia. The Company will comply with the general terms and conditions set forth in Exhibit A attached hereto, and with the applicable laws of the Commonwealth of Virginia. If Company establishes a Recycling Facility in the State of North Carolina then Company will comply with the general terms and conditions set forth in Exhibit A attached hereto, and with the applicable laws of the State of North Carolina.

7.3 Company Good Standing. The Company agrees to remain in good standing and qualified to do business within the Commonwealth of Virginia for the Term of this Agreement.

7.4 Representations and Warranties of the County. As a material inducement to the Company to enter this Agreement, the County represents and warrants that as of the date hereof:

7.4.1 County. The County has all requisite power and County to execute and perform its obligations under this Agreement. The execution, delivery and performance of this Agreement have been approved and authorized by all necessary action of the County.

7.4.2 No Conflict. The execution, delivery and performance of this Agreement will not constitute a violation or breach of the charter of the County or of any provision of any material contract, permit, license, agreement, or other obligation to which the County is a party or by which the County or any of its material assets are subject.

7.4.3 No Litigation of Adverse Rights. There are no pending or threatened lawsuits or orders pertaining to or affecting the performance by it of its obligations hereunder.

7.4.4 Governance. All persons making up the governing body of the County are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with all relevant federal, state and local laws, ordinances or other regulations with which the County is obligated to comply.

7.4.5 Term. The term of this Agreement does not extend beyond any applicable limitation imposed by all relevant federal, state and local laws, ordinances or other regulations with which the County is obligated to comply or other relevant constitutional, organic or other governing documents and applicable law.

8. INDEMNITY AND INSURANCE

8.1 General Indemnification

8.1.1 To the extent allowed by applicable law, each party shall indemnify and hold the other party and its successors and assigns harmless from and against all liabilities, damages, losses, costs and expenses suffered or paid as a result of any and all claims, demands, suits, penalties, causes of action, proceedings, judgments, Governmental Directives, administrative and judicial orders and liabilities

assessed, incurred and sustained by or against the County or Company and its successors, assigns, employees, contractors and agents with respect to or arising out of any breach by that party of its warranties, representations, covenants or agreements hereunder.

8.1.2 To the extent allowed by applicable law, each party shall indemnify, defend and hold harmless the other party and its affiliates and the employees, officers, directors and agents from and against all liability, claims, suits, losses, damages, costs and demands on account of personal injury, including death of any person, or property damage, sustained by any person or entity arising out of or connected with the performance of this Agreement where such injury, death or damage is caused or alleged to have been caused, in whole or in part, by the acts or omissions of that party or its subcontractors or their respective employees, officers, directors and agents.

8.2 Environmental Hazards.

8.2.1 For the purpose of this Section 8.2, the term “**Environmental Liabilities**” means all damages, fines, costs, losses, penalties, liabilities and expenses (including, but not limited to, reasonable settlement costs, attorney's fees, costs of investigation, characterization or remediation, or court costs) arising out of demands, proceedings, judgments, directives, claims, suits, causes of action, awards of damages (including natural resource damages), orders and decrees (including cease and desist, compliance and clean-up orders, remedial actions or corrective or preventative actions, whether sought or issued by judicial or administrative bodies or through public or private action), either at law or in equity

(including strict liability), arising or alleged to have arisen from the presence or existence in, on, under or about the Site or any adjoining property (including, without limitation, the surface or ground water on or under any such property) of any Hazardous Waste (as defined below), the emission of any harmful material, hazardous air pollutant or Hazardous Waste into the atmosphere, or any environmental condition which poses a substantial present or threatened hazard to human health or the environment, or which is subject to regulation under any federal, state or local environmental law, regulation, rule or ordinance, whether such substance or condition exists or is discovered before or after the date of this Agreement.

8.2.2 To the extent allowed by applicable law, each party shall defend, indemnify and hold harmless the other party and its affiliates and each of their respective officers, directors, employees, agents, contractors and subcontractors from and against any and all Environmental Liabilities, including personal injury of any type to any person (including any employee or agent of the other party or its subcontractors) or damage of any type to any property (including, without limitation, the expense of clean-up or other corrective or preventative action at or remediation of the Company Site or the County Site or lands or water adjacent thereto) arising or alleged to have arisen by reason of any act or failure to act of that party or its employees, agents and representatives.

8.3 Failure to Defend Action. Should the County or the Company be entitled to indemnification under Sections 8.2.1 or 8.2.2 hereof as a result of a claim by a third

party, and the Company or the County fails to assume the defense of such claim, the County or the Company shall, at the expense of the other party, contest or settle such claim. No such contest need be made, and settlement or full payment of any such claim may be made (with the other party remaining obligated to indemnify the County or the Company under Sections 8.2.1 or 8.2.2 hereof), if in the written opinion of the County's or the Company's counsel, such claim is meritorious.

8.4 Survival of Indemnity. The provisions of this Section 8 shall survive completion of the services hereunder or termination, cancellation, or expiration of this Agreement, and such provisions shall apply to the full extent permitted by law.

8.5 Insurance. At all times during the Term, the Company shall secure and maintain in effect a comprehensive automobile liability insurance policy including coverage for non-owned and hired vehicles in an amount of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, a broad form comprehensive coverage or commercial general liability policy or policies of public liability insurance including contractual liability coverage in an amount of not less than Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, and a policy of worker's compensation/ employer's liability insurance in an amount required by Title 65.2 of the Code, which shall provide coverage for third-party liabilities. Company's insurance policies shall name the County as an additional insured. Certificates of insurance evidencing the required coverage shall be provided to the County before the County commences delivery of Material to the Company Site under this Agreement. All policies of insurance required herein shall be written in

form, and by insurance companies licensed to conduct the business of insurance in Virginia and shall carry the provision that the insurance will not be cancelled or materially modified without thirty days (30) prior written notice to the County.

9. FORCE MAJEURE

9.1 Definition. "Force Majeure" shall mean any cause or causes which wholly or partly prevent or delay the performance of obligations arising under this Agreement and which are not reasonably within the control of the nonperforming party, and shall include, without limitation, an act of God, nuclear emergency, explosion, fire, epidemic, landslide, lightning, earthquake, public health emergency, flood or similar cataclysmic occurrence, an act of the public enemy, war, blockage, embargo, insurrection, riot, civil disturbance, equipment breakdown, act of terrorism, strike, labor dispute, lockout or other labor disturbance or the lack of market for collected and processed recyclable materials.

9.2 Burden of Proof. The burden of proof as to whether an event or Force Majeure has occurred shall be upon the party claiming an event of Force Majeure.

9.3 Effect of Force Majeure. If either party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure event, that party shall be excused from whatever performance is affected by the Force Majeure event to the extent so affected, provided that:

9.3.1 The nonperforming party, as soon as possible after the occurrence of the inability to perform due to a Force Majeure event, provides written notice to the other party of the particulars of the occurrence, including an estimation of its expected duration and probable impact on the performance of its obligations

hereunder, and continues to furnish timely regular reports with respect thereto during the period of Force Majeure;

9.3.2 The nonperforming party shall exercise all reasonable efforts to continue to perform its obligations hereunder and to remedy its inability to so perform;

9.3.3 The nonperforming party shall provide the other party with prompt notice of the cessation of the event of Force Majeure giving rise to the excuse from performance; and

9.3.4 No obligation of either party that arose prior to the occurrence of the event of Force Majeure shall be excused as a result of such occurrence.

10. DEFAULT

10.1 The Company's Default. The Company shall be in default hereunder in the event that the Company (a) shall fail to pay any sums due the County hereunder on or before the due date for such payment; (b) shall fail to perform any material obligation under this Agreement, and such failure continues for a period of thirty (30) days after written notice of such nonperformance but if the Company commences within thirty (30) days after such notice and thereafter proceeds in good faith to make efforts to cure such failure, the Company shall be in default only if such failure is not cured within such longer period as may be reasonably necessary to cure the same; (c) shall be adjudicated a bankrupt; (d) shall file or have filed against it a petition in bankruptcy, reorganization or similar proceedings under the bankruptcy laws of the United States; (e) shall have a receiver, permanent or temporary, appointed by a court of competent County for it or on its behalf; (f) shall request the appointment of a receiver; (g) shall make a general assignment for the

benefit of creditors; (h) shall have its bank accounts, property or receivables attached and such attachment proceedings are not dismissed within a ninety (90) day period; or (i) shall dissolve or liquidate. Notwithstanding the foregoing, the Company shall not be in default as a result of or for following a Governmental Directive, and the Company shall have no liability whatsoever to the County as a result of or for following, a Governmental Directive.

The County's Default. The County shall be in default hereunder in the event that the County (a) shall fail to perform any material obligation under this Agreement, and such failure continues for a period of thirty (30) days after written notice of such nonperformance but if the County commences within thirty (30) days after such notice and thereafter proceeds in good faith to make efforts to cure such failure, the County shall be in default only if such failure is not cured within such longer period as may be reasonably necessary to cure the same; (b) shall file or have filed against it a petition in bankruptcy, reorganization or similar proceedings under the bankruptcy laws of the United States; (c) shall have a receiver, permanent or temporary, appointed by a court of competent County for it or on its behalf; (d) shall request the appointment of a receiver; (e) shall make a general assignment for the benefit of creditors; or (f) shall have its bank accounts, property or receivables attached and such attachment proceedings are not dismissed within a ninety (90) day period. Notwithstanding the foregoing, the County shall not be in default as a result of or for following a Governmental Directive, and the County have no liability whatsoever to the Company as a result of or for following, a Governmental Directive.

11. TERMINATION; OTHER REMEDIES

11.1 Termination by the County. The County may terminate this Agreement by giving written notice to the Company upon the occurrence of an event of default by the Company specified in Section 10.1.

11.2 Termination by the Company. The Company may terminate this Agreement by giving written notice to the County (i) upon the occurrence of an event of default of the County specified in Section 10.2

11.3 Other Remedies. Termination of this Agreement by either party pursuant to this Section 11 or any payment made under this Agreement shall not preclude any party from pursuing any additional available remedies against the other party at law or in equity for breach or default by such party under this Agreement and termination of this Agreement shall not be a prerequisite or precondition to pursuing any such remedies. Such remedies shall include, but shall not be limited to, a decree in favor of the non-breaching party compelling specific performance by the other party or the restraint by injunction of any actual or threatened breach of any material obligation of the other party under this Agreement.

12. ASSIGNMENT BY COMPANY AND THE COUNTY

12.1 Neither party may assign or transfer its rights and obligations under this Agreement except with the express written consent of the other party, such consent shall not be unreasonably withheld, as long as the person or entity to whom an assignment is made shall agree to the terms and conditions stated herein this agreement.

12.2 The provisions of this Agreement and the respective rights and obligations of the Company and the County hereunder shall be binding upon, and shall inure to the benefit of, their respective successors and permitted assigns.

13. COOPERATION AND INSPECTION OF DOCUMENTS.

13.1 The Company and the County (to the extent permissible by law) shall cooperate with each other at all times during the term of this Agreement in carrying out their duties and exercising their rights hereunder, facilitating the performance of obligations hereunder and efficiently operating their facilities. Without limiting the generality of the foregoing, the Company and the County shall consult with each other on a regular basis concerning any problems that each may be having in performing its obligations hereunder, and possible solutions for such problems.

13.2 Records of the Company (including all writings, recordings, and data stored by any means, whether physical, electronic, digital or otherwise) related to this Agreement shall be subject to County review, audit and/or reproduction and shall be open to inspection by the County or any designated County representative or service provider (including engineers, accountants and attorneys) during normal working hours or at such times as are mutually agreed upon by the parties, to the extent necessary to adequately permit evaluation and verification of any payments or claims submitted to or by the County pursuant to this Agreement, provided however, the County shall not be permitted to reproduce any records of the Company that are reasonably considered to be confidential or proprietary or be protected by the attorney-client privilege. Records of the amount of Material processed under this Agreement, regarding funds received by the Company for

Marketable Recovered Material or otherwise relevant to the Company's obligations to the County under this Agreement are agreed to be confidential, proprietary or protected by the attorney-client privilege for purposes of this Agreement. The Company shall maintain its books and records related to the performance of this Agreement in accordance with the following minimum requirements: (a) the Company shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of two (2) years, or for any longer period required by law, from the date of termination or completion of this Agreement and (b) any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time, during regular business hours, upon written request by the County at the Company's address indicated for receipt of notices in this Agreement. Such documents shall be returned to the Company upon completion of any audit or inspection.

14. MISCELLANEOUS

14.1 Notices and Payments. Any notice, request, demand, statement or payment provided for in this Agreement shall be in writing and, except as otherwise provided herein, shall be sent to the parties hereto at the following addresses:

the Company:

RDS of Virginia, LLC
623 N Witchduck Road
Suite 108
Virginia Beach, VA 23462
Attn: Joe Benedetto
Telephone: (757) 454-5793

with a copy to:

Todd Preti
MPO
2901 South Lynnhaven Road
Suite 120
Virginia Beach, VA 23452

the County:

(Address)

with a copy to:

(Attorney address if applicable)

Such notices, etc. shall be deemed to have been given and received upon receipt as evidenced by a U.S. Postal Service receipt for Certified Mail or evidence of delivery by a private delivery service such as FedEx or UPS. Either party may change the address to which notices, etc. are to be sent by written notice to the other party.

- 14.2 Complete Agreement. This Agreement is intended by the parties to constitute a final, complete and exclusive expression of their agreement on the subject matter hereof, and shall not be changed, modified, discharged or extended, except by subsequent amendment in writing signed by both parties.
- 14.3 Waiver. The waiver by either the Company or the County of any failure on the part of the other party to perform any of its obligations under this Agreement shall not be construed as a waiver of any future or continuing failure or failures, whether similar or dissimilar thereto.
- 14.4 Applicable Law; Venue. This Agreement shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising

with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Agreement shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia. Any and all suits for any claims or for any and every breach or dispute arising out of this Agreement shall be brought or maintained in the appropriate court of competent jurisdiction in the City of Virginia Beach, Virginia or in the Federal District Court for the Eastern District of Virginia.

- 14.5 Attorneys Fees. In the event that either party brings an action to enforce the terms and conditions of this Agreement or relating to this Agreement or to declare its rights hereunder or for specific performance or injunctive relief, the prevailing party in such action, trial, or appeal shall be entitled to have its reasonable attorney's fees and costs, as fixed by the court, to be paid by the losing party.
- 14.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.
- 14.7 Partial Invalidity. If any term or provision of this Agreement, or the application thereof to any person or circumstance, becomes invalid or is found to be unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held unenforceable, shall not be affected thereby, and each other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
- 14.8 No Partnership, Joint Venture or Third Party Liability. This Agreement shall not be interpreted or construed to create the relationship of principal and agent, an

association, joint venture, or partnership between the parties or to impose any partnership obligation or liability upon either party, and this Agreement shall not be construed as being for the benefit of third parties for any purpose, including, without limitation, establishment of any type of duty, standard of care, or liability with respect to third parties. Neither party shall have any right, power or County to enter in any agreement or undertaking for, or act on behalf or, or to act as of be an agent or representative of, or to otherwise bind, the other party, each party being an independent Company.

- 14.9 Captions. The captions of the various sections and subsections of this Agreement are for convenience and reference only and shall not limit or define any of the terms and provisions hereof.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have set their hands as of this ____ day of June,
2019.

COUNTY

By: _____

Name: _____

Title: _____

RDS OF VIRGINIA, LLC

By: _____

Name: Joseph A Benedetto III

Title: President

SCHEDULE 1

RECOVERABLE AND MARKETABLE RECOVERED MATERIAL STANDARDS

1. Recoverable Material

Recoverable Material shall be those materials specified in Table 1-1. The Company is encouraged to accept and recover additional materials where this can result in reducing the Waste disposed of by the County. The Company and the County may mutually agree to modify the Recoverable Material list in Table 1-1 based upon prevailing market conditions in an effort to maximize Marketable Recovered Material Revenues for the project. Any revisions to Table 1-1 shall be documented as an amendment to this Schedule 1.

**Table 1-1
Recoverable Material**

Commodity Category	Recoverable Material
Fiber	Cardboard (OCC), newspaper, magazines, catalogs, glossy inserts & pamphlets, cereal boxes, detergent, gift and snack boxes (Boxboard), printer paper, junk mail, catalogs, telephone books, copy paper and all other office paper without wax liners
Glass	Glass food & beverage containers (brown, clear or green) Household Glass Only
Plastics	PET (#1) containers, HDPE (#2) containers (natural & pigmented) – Household Plastic Only
Metals	Aluminum food & beverage containers, tin/steel cans, no larger than 5” by 12”. No other types of metal are accepted. Household Metals Only.
Clean Separate Cardboard (OCC #11)	Clean Cardboard with less than 2% contamination collected and brought to the RDS facility.

Table 1-2: Processing Fees/Rebates

Cardboard (Cardboard ONLY collected separately)

Clean Cardboard – Clean Cardboard with less than 2% contamination collected and brought to the RDS facility. Rebate paid based on the ISRI (Yellow Sheet) Southeast High Side for OCC Grade #11 less \$55 dollars a ton processing fee. This can be a pay or a charge.

Single Stream with Glass (all items above collected together)

<i>If the **ACR Price Index is:</i>				<i>Process Fee/Rebate</i>
Less Than	*76.37			\$94.00/ton (charge)
at least	\$76.38	but not more than	\$81.37	\$89.00/ton (charge)
at least	\$81.38	but not more than	\$86.37	\$81.00/ton (charge)
at least	\$86.38	but not more than	\$96.37	\$75.00/ton (charge)
at least	\$96.38	but not more than	\$106.37	\$65.00/ton (charge)
at least	\$106.38	but not more than	\$114.37	\$50.00/ton (charge)
at least	\$114.38	but not more than	\$124.37	\$35.00/ton (charge)
at least	\$124.38	or higher		\$20.00/ton (charge)

Single Stream with Zero Glass (all items above except glass collected together)

<i>If the **ACR Price Index is:</i>				<i>Process Fee/Rebate</i>
Less Than	*76.37			\$74.00/ton (charge)
at least	\$76.38	but not more than	\$81.37	\$69.00/ton (charge)
at least	\$81.38	but not more than	\$86.37	\$61.00/ton (charge)
at least	\$86.38	but not more than	\$96.37	\$55.00/ton (charge)
at least	\$96.38	but not more than	\$106.37	\$45.00/ton (charge)
at least	\$106.38	but not more than	\$114.37	\$30.00/ton (charge)
at least	\$114.38	but not more than	\$124.37	\$15.00/ton (charge)
at least	\$124.38	or higher		\$0.00/ton

NOTES:

* This number changes annually on July 1, beginning July 1, 2020, on a percentage basis to reflect the percentage change in the CPI for All Urban Consumers (CPI-U) South Area, All Items. Based on the new calculated amount of this number marked by*, the remainder of the schedule will be increased or decreased in the same dollar amount. For example, if the original amount of \$76.37 set forth above is changed to \$76.87 to reflect the annual change in the applicable CPI, then the following line will be changed to read "at least \$76.88 but not more than \$81.87", the amounts in the next line will be changed to \$81.88 and \$86.87, and so forth.

** The ACR (Average Commodity Revenue) Price Index, an example of which is attached hereto, will be provided to the County every month and be used to calculate the processing fee or rebate for that month. RDS will provide this information to the County.

