

AMENDED AND RESTATED SOLID WASTE TRANSPORT  
AND DISPOSAL AGREEMENT

WHEREAS, Georgia Laws 1989, Section 8 (20), pp. 3546, 3552 authorizes the Board of Commissioners of Carroll County, Georgia (hereinafter the “**County**”) to provide for services established under Article IX, Section II, Paragraph III of the 1983 constitution of the State of Georgia; and

WHEREAS, Article IX, Section II, Paragraph III(a)(2) of the 1983 Constitution authorizes the County to provide garbage and solid waste collection and disposal; and

WHEREAS, **ETC OF GEORGIA, LLC**, (hereinafter, “**Contractor**”) is permitted to operate a Subtitle D Municipal Solid Waste Landfill and Construction Demolition Debris Landfill (Permit No.:115-008D(SL)) located at Grady Road in Rockmart, Georgia in Polk County (hereinafter the “**Landfill**”); and

WHEREAS, prior to the Effective Date, County and Contractor were party to a Solid Waste Services Agreement dated in 2007 (the “**Prior Agreement**”); and

WHEREAS, County and Contractor desire to amend, restate and supersede the Prior Agreement in its entirety; and

WHEREAS, in consideration of the mutual benefits and consideration accruing to each of the parties hereto and for the benefit of the citizens of the entire County, which benefits are hereby expressly acknowledged, Carroll County, Georgia, hereby contracts with the Contractor for the following purposes; and

NOW THEREFORE, the parties hereto mutually agree as follows:

Section 1. Representations. The Contractor represents and warrants to the County that the Contractor is a Georgia limited liability company, with its principal office located at 316 Grady Road, Rockmart, Georgia 30153; that the Contractor is authorized by its articles of organization, operating agreement, or a resolution of its members or managers, to execute and deliver this Agreement; and that the Contractor is in good standing with all certifications, licenses, and in compliance with all permits that are required by the State of Georgia. The County and the Contractor shall collectively be referred to as the “Parties.”

Section 2. Scope of Services. Contractor agrees to the following:

(a) To accept, transport, and dispose of all County municipal solid waste (hereinafter the “**MSW**”) that is Acceptable Waste, as defined in Section 7, from the County’s Simonton Mill Road Transfer Station (the “**Transfer Station**”) to the Landfill on a reasonable schedule set by the Transfer Station in a timely, efficient, environmentally safe manner. Contractor acknowledges that the amount of MSW will vary on a daily, weekly, monthly, and seasonal basis. Contractor commits to provide transportation capacity to the County for 80,000 tons annually provided that Contractor will not be required to accept in excess of 350 tons in any

given day. The tonnage is an estimate based on historical and projected volumes and not a guarantee from the County. The County acknowledges and agrees to the foregoing, including the requirement that all MSW received at the Transfer Station shall be available to Contractor hereunder.

(b) To furnish all necessary labor and perform all work to satisfy the requirements in Section 2(a) above. Contractor shall furnish all necessary vehicles, fuel, lubricants, equipment, tools, materials, and any other items required to satisfy the requirements in Section 2(a) above. In addition, Contractor shall meet or exceed the following specifications:

(1) Furnish transfer vehicles that are top loading tandem axle, non-compaction, and self-unloading, with manually or hydraulically operated top covers; all transfer vehicles should have top covers sufficient to prevent blowing of material in route to the Landfill and must be watertight to prevent leakage during transport.

(2) Furnish regular trailers, not walking floor trailers, and a spot truck with an air fifth wheel for use by the County.

(3) All vehicles used by Contractor at the Transfer Station shall be compatible with the design of the loadout area of the Transfer Station. All vehicles heights shall be coordinated with applicable building door heights and overhead clearances. All vehicles shall comply with all applicable local codes, state laws, and federal requirements.

Section 3. Independent Contractor. The transport and disposal to the Landfill shall be performed by the Contractor as an independent contractor and under the sole supervision, management, direction and control of the Contractor in accordance with the terms and conditions of this Agreement, and as such the Contractor, its officers, agents and employees, are not entitled to any employment benefits from the County. Contractor will maintain full responsibility for the payment of Worker's Compensation, unemployment compensation, and Employer's Liability Insurance, as well as other taxes with respect to its officers, agents and employees in their performance under this Agreement.

Section 4. Term of Agreement. The initial term of this Agreement shall be from July 1, 2022 (the "**Effective Date**") and ending June 30, 2023 subject to automatic renewal as provided in this Section 4. As provided in O.C.G.A. § 36-60-13(a), this Agreement shall terminate absolutely and without further obligation on the part of the County at the close of the fiscal year and at the close of each succeeding fiscal year, should the Agreement not be renewed automatically as set forth in this Section 4. The Agreement will be automatically renewed for up **two (2) additional terms of one (1) year each** unless positive action is taken **by the County** to terminate the Agreement. Thereafter, the Agreement will be automatically renewed for up to three (3) additional one (1) year terms unless positive action is taken by either Contractor or the County to terminate the Agreement. To constitute positive action, the acting party must notify the other party within sixty (60) days prior to the expiration of the Agreement that it intends to terminate the Agreement. The initial term together with any renewal period may be referred to as the "term".

Section 5. Compensation. For the services rendered by the Contractor as hereinabove stated and for and in consideration of the promises flowing between the parties hereinafter stated, the County hereby covenants and agrees to pay the Contractor, and the Contractor agrees to accept, transport, and dispose of the County's MSW at the following rates:

(a) Transport and Disposal fee: **Forty-Six Dollars (\$46.00) per ton** plus any applicable adjustments as set forth in Section 5(b) below.

(b) Adjustments.

(1) CPI: At or around March 30<sup>th</sup> of each year during the term of this Agreement, the transport and disposal fee set forth in Section 5(a) will be determined for the upcoming twelve months by adjusting the per ton price for the current year by a percentage of the change, if any, in the Consumer Price Index of All Urban Consumers (CPI\_U), U.S. city average, all items, as published by the U.S. Department of Labor, Bureau of Labor Statistics. However, the percentage increase from the preceding year will not exceed ten percent (10%).

(2) Fuel/Energy Increase: A fuel/energy haul surcharge in the amount of \$4.15 per load will be added as a separate line item on the invoice for each incremental increase in diesel fuel of \$0.10 above a baseline of \$4.00 per gallon, as published by the Department of Energy's Energy Information Administration, using the Lower Atlantic Region price. The fuel/energy surcharge will be adjusted by the week based on such posted rate for the prior week.

(3) Other Increases: If the rules and regulations governing the waste transport and disposal industry substantially change, the Contractor may no later than March 30<sup>th</sup> request a rate change for the upcoming twelve month period, which the County may approve so long as the request is supported by verifiable resources and the increase covers only the actual financial impact to Contractor.

Section 6. Billing. Contractor will bill the County on the 10<sup>th</sup> of each month and the County will remit by the later of (a) the 15<sup>th</sup> of such month, or (b) five (5) days following the receipt of such bill.

Section 7. Acceptable Waste. Only municipal and commercial solid waste (MSW), the disposal of which is permitted by the permits and licenses held by the Contractor and which is acceptable for disposal at the Landfill shall be acceptable waste for disposal at the Landfill hereunder ("**Acceptable Waste**"). Contractor shall have the right to refuse to accept for transportation and/or disposal any hazardous waste or toxic waste, flammable materials, white goods, old tires, barrels and enclosed containers, etc.

Section 8. Compliance with Laws. The County and the Contractor represent and agree that, in all matters relating to the subject matter of this Agreement, each party is in compliance and will comply with all applicable federal, state, and local laws, regulations, rules and orders in relation to such activities. Each party has and will maintain all required permits and licenses necessary to perform hereunder, and will promptly notify the other, and provide copies,

of all future citations of violations, or other similar notification during the term of this Agreement.

Section 9. Insurance. Within fifteen (15) days following receipt of notice of award, the Contractor shall provide to the Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force the coverage below prior to the start of any work under this Agreement. Contractor agrees to maintain such insurance throughout the duration of the contract. All required insurance coverages must be acquired from insurers with an AM Best rating of A-6 or greater, listed in the Federal Registry of Companies holding Certificates of Authority and Acceptable Sureties on Federal Bonds, and licensed by the Georgia Insurance Department and the Georgia Secretary to do business in the State of Georgia and acceptable to Carroll County. The minimum insurance requirements shall be as follows.

(a) Worker's Compensation: Worker's Compensation per statutory limits established by the State of Georgia and Employer's liability with minimum limits of \$1,000,000/accident, \$1,000,000/disease, and \$1,000,000/disease-policy limit.

(b) Comprehensive General Liability: \$1,000,000 combined single limit coverage with \$2,000,000 (minimum) general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability, Independent Contractor, and Products Liability. The general aggregate limit shall apply to this project. Evidence of Contractual Liability coverage shall be typed on the certificate.

(c) Additional Insured: Carroll County shall be named as an ADDITIONAL INSURED in the Contractor's Comprehensive Liability policy and umbrella policy and endorsed to the policy. Evidence of the Additional Insured endorsement shall be forwarded with the certificate.

(d) Business Automobile Liability: \$1,000,000 Combined Single Limit (Owned, non-owned and hired).

(e) Umbrella coverage in the amount of at least \$5,000,000 shall provide as additional coverage to all underlying liability policies. This policy may be written as a "Form Following Excess" policy.

(f) Cancellation: A thirty (30) day notice of cancellation or non-renewal in writing shall be furnished by the Contractor's insurance carrier(s) or insurance agent(s) to the County Finance Director, 323 Newnan Street, Room 200, Carrollton, Georgia 30117.

Section 10. Indemnification. The Contractor shall indemnify and hold harmless the County from any and all losses, damage, suits, liabilities, fines, penalties and expenses including reasonable attorney's fees (each a "Loss", and together "Losses"), arising out of any claim for loss of or damage to property or injuries or death of persons, or monetary liability or penalties arising out of CERCLA, SARA and/or any other federal or state statute and administrative regulation governing the collection, treatment, handling and/or disposal of hazardous waste, and resulting from arising out of Contractor's provision of services under this Agreement, from

materials deposited in the Landfill by parties other than the County, and from design, engineering and operation of the Landfill. As between the County and the Contractor, the Contractor shall assume responsibility and liability for any damage, loss, or injury, including death, of any kind or nature whatever to person or property, including employees and property of the County, caused by or resulting from any error, or omission of the Contractor, or the negligent act of the Contractor or its subcontractors or any of their officers, agents, servants, or employees, arising from the performance of the work under this Agreement. The Contractor shall indemnify, and hold harmless the County and all of its officers, agents, servants, or employees from and against any and all Losses to which the County or any of its officers, agents, servants, or employees may be put or subjected by reason of any such damage, loss, or injury. Notwithstanding any of the foregoing, Contractor will not be required to provide indemnification in the event any of the foregoing Losses arise out of the County's negligence or willful misconduct.

Section 11. Performance Bond. A performance bond shall be required by Contractor in the amount of \$2,250,000 in a form subject to the reasonable approval of the county attorney. The bonding company must be authorized to do business by the Georgia Secretary of State and by the Georgia Insurance Department and authorized the placement of the bond for the purposes under this Agreement. An original/certified copy of the Bonding Company's Certificate of Authority must be attached to the bond. The Certificate of Authority may be obtained from the Georgia Insurance Department Bonding Company must have a minimum AM Best rating of A-6 or higher. Bonding Company must be listed in the Department of the Treasury's publication of companies holding Certificates of Authority as acceptable surety on Federal Bonds and as acceptable reinsuring companies. (Department Circular 570), as amended). The performance bond shall be returned to the county attorney within fifteen days of Contractor's execution of the Agreement. If this Agreement is renewed, the performance bond shall be due to the county attorney no later than January 15<sup>th</sup> of the calendar year.

Section 12. When Performance Excused. The parties will be excused from this obligation by the impossibility of performance beyond the control of the party affected, including but not limited to, acts of God, acts of war, rebellions, riots, civil disturbance, or sabotage, or in damage resulting therefrom; fires, floods, explosions, accidents or mechanical breakdowns not caused by negligence of the Contractor; strikes or other labor disputes. When performance by the party is affected by any of the above causes, it shall give written notice thereof to the other party as soon as is reasonably practicable, and shall proceed with due diligence to remove such cause. In the event that the Landfill is the cause of impossibility, the Contractor's contingency plan for disposal shall control and the MSW shall be transported and disposed of in compliance with the Contingency Plan identified in Contractor's response to the RFP for Solid Waste Transport and Disposal. If the Contingency Plan is acted upon for a continuous period of greater than 30 days, the parties agree to negotiate a new rate. If no agreement can be negotiated, Section 15 of the Agreement shall control.

Section 13. Termination.

(a) County reserves the right to terminate this Agreement without the consent of the Contractor on the ground of nonperformance by the Contractor in the event Contractor

fails to cure a material deficiency in its performance hereunder within thirty (30) days following written receipt of notice of the deficiency from the County or, in the event the deficiency is a type that cannot reasonably be cured within such thirty (30) day period, Contractor will have begun to cure such deficiency and will be diligently pursuing a cure during such thirty (30) day period.

(b) Contractor reserves the right to terminate this Agreement without the consent of the County on the ground of nonperformance by the County in the event the County fails to cure a material deficiency in its performance hereunder within thirty (30) days following written receipt of notice of the deficiency from Contractor or, in the event the deficiency is a type that cannot reasonably be cured within such thirty (30) day period, the County will have begun to cure such deficiency and will be diligently pursuing a cure during such thirty (30) day period.

Section 14. Assignment.

(a) The County agrees and acknowledges that Contractor has assigned those duties and responsibilities related to transportation of the Acceptable Waste from the Transfer Station to the Landfill to Atomic Transport, LLC, so long as the Contractor's assignee fully complies with its duties and responsibilities. The Contractor, however, may not shift insurance and indemnity responsibilities to the Contractor's assignee.

(b) Any further assignment is prohibited by either party without prior written consent of the other party. Such consent shall not be unreasonably withheld.

Section 15. Dispute Resolution. Any dispute arising under this Agreement that cannot otherwise be amicably resolved shall be resolved by litigation in the courts of Carroll County, Georgia.

Section 16. Modifications; Entire Agreement. This Agreement may be changed or modified in writing and signed to all parties. Otherwise, this Agreement, together with any attachments hereto, constitutes the sole and entire Agreement between the parties. This writing contains the entire Agreement, including by reference the Contractor's Response to Proposal for Solid Waste Transport and Disposal that is contained within the official records of the County, between the Parties and all oral agreements or understandings are incorporated herein. This Agreement shall not be altered, changed or amended except in writing signed by all parties hereto. This Agreement amends, restates and supersedes the Prior Agreement in all respects, provided; however, all obligations of the Contractor to indemnify the County pursuant to any prior agreement(s) shall survive in accordance with their terms.

Section 17. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Section 18. Governing Law. This Agreement and all transactions contemplated hereby, shall be governed by, construed and enforced in accordance with the laws of the State of Georgia.

Section 19. Severability. Should any provision of this Agreement or application thereof to any person or circumstance be held invalid or unenforceable, the remainder of this Agreement, or the application of such provision, to any person or circumstance, other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the full extent permitted by law.

Section 20. Notices. All notices, demands, or requests required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been properly given or served and shall be effective on (a) being deposited in the United States mail, postage prepaid and registered, or certified with return receipt requested, or (b) when delivered by hand, or (c) on the first business day after being deposited into the custody of a nationally recognized overnight delivery service such as FedEx or UPS, (c) when sent by electronic mail, (except as otherwise provided herein, any notice sent by electronic mail shall also be sent the same day by either hand-delivery, overnight mail or overnight delivery service); in each instance addressed to such party at the address specified below, or to such other address as any party may from time to time designate by written notice in writing to the other party:

(a) Carroll County: Chairman, Carroll County Board of Commissioners  
323 Newnan Street, Room 200  
Carrollton, Georgia 30117  
Attention: Chairman  
Email: mmorgan@carrollcountyga.com  
droberts@carrollcountyga.com

With copy to: Director of Solid Waste  
34 Horsley Mill Road  
Carrollton, Georgia 30117  
Email: jdost@carrollcountyga.com

(b) Contractor: ETC of Georgia, LLC  
Attention: RVP  
316 Grady Road  
Rockmart, Ga 30353  
(770) 748-8276  
(770) 748-5524 (fax)  
Email: emcaden@gflenv.com

Section 21. Binding Effect. This Agreement constitutes the entire understanding between the parties and shall be binding upon all parties hereto, their successors, heirs, representatives and assigns. In the event that either party enters into an agreement to sell or transfer all, or substantially all of its equity interests, property or assets, or the Landfill, to a third

party, the buyer under said Agreement shall be required to assume all of the selling party's rights and obligations hereunder.

Section 22. Contractor covenants and agrees to make available to the Finance Director of the County or his/her designee, upon reasonable request, its books and records for inspection by appropriate County officials concerning charges, fees, costs, and services under this Agreement.

Section 23. Within sixty (60) days after expiration of this Agreement, County and Contractor shall make final reconciliation of all bills, vouchers, and payment for the prior contract period. Such reconciliation shall include submission by Contractor of validated invoices and other associated records as reasonably requested by County.

*[The next page is the signature page.]*



IN WITNESS WHEREOF, the parties hereto, acting by and through their duly authorized officers, have hereunto set their seals in multiple copies, each of which shall be considered an original, on the day and year first above written.

**BOARD OF COMMISSIONERS  
OF CARROLL COUNTY, GEORGIA**

By: \_\_\_\_\_  
Michelle Morgan, Chairman  
Board of Commissioners

ATTEST: \_\_\_\_\_  
Deputy Clerk

(COUNTY SEAL)

APPROVED BY:

\_\_\_\_\_  
Jacqueline Dost, Director of Solid Waste

(Signatures continue on the following page)

(Signatures continued from previous page.)

**ETC OF GEORGIA , LLC**

By: \_\_\_\_\_(SEAL)

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

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

By: \_\_\_\_\_(SEAL)

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

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