IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

TWO DOGS, INC. d/b/a BUBBA ANNIE'S Plaintiff, v. WASTE CONNECTIONS, INC. *et al.*, Defendants.	C.A. No.: 6:19-cv-02660-DCC

DEFENDANTS' MOTION TO DISMISS AND COMPEL ARBITRATION
OR, IN THE ALTERNATIVE, TO DISMISS CLASS ALLEGATIONS

Defendants Waste Connections US, Inc. and Waste Connections of South Carolina, Inc.[1] move the Court for an Order dismissing the First Amended Complaint filed by Plaintiff Two Dogs, Inc. d/b/a Bubba Annie's under Federal Rules of Civil Procedure 12(b)(3) and 12(b)(6). This motion is made on the grounds that (1) Two Dogs is required to arbitrate any dispute pursuant to its written agreement with Waste Connections of South Carolina, Inc.; and (2) Two Dogs' purported class action allegations are barred by the class action waiver provision of the same written agreement. The motion is based on the memorandum of law, including attached exhibits, filed herewith; the Court's record in this matter; and any additional argument that may be presented to the Court.

[*Signature block appears on the following page*.]

[1] Waste Connections, Inc. has not been served with process or appeared in this action, and does not join this motion.

Respectfully submitted,

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November 20, 2019

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MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AND COMPEL ARBITRATION OR, IN THE ALTERNATIVE, TO DISMISS CLASS ALLEGATIONS

INTRODUCTION AND SUMMARY OF THE CASE

This lawsuit should be dismissed because Two Dogs agreed to arbitrate any disputes and waived any class action claims, and these agreements bar this lawsuit. Two Dogs and Waste Connections of South Carolina, Inc. ("Waste Connections") (collectively, "Parties") entered a simple waste management service agreement in June 2015. Compl., ¶ 10. Two Dogs now alleges that Waste Connections breached the agreement over the following 33 months by improperly inflating its rates and fees. *Id.*, ¶¶ 14-17. This allegation is incorrect, and Waste Connections will disprove it if and when the time comes. But Waste Connections must be allowed to do so in the forum the Parties chose for resolving their disputes: one-on-one arbitration, without class claims. The Parties agreed to resolve disputes this way – including *all* of their contractual disputes, past, present, and future – when they renewed and revised their contract in February 2018, during the pendency of the original term of the 2015 agreement. The Court must give effect to the Parties' agreement to resolve disputes in this manner.

STATEMENT OF FACTS

Two Dogs and Waste Connections have done business together since at least 2015. *See* First Amended Complaint ("Complaint"), ¶ 10. Two Dogs runs a restaurant in Greer, S.C., and Waste Connections collects the restaurant's solid waste multiple times per week and lawfully disposes of it. *Id.*, ¶ 15. The Parties signed a contract for these services in June 2015 for an auto-renewing three-year term. *Id.*, ¶ 10; *see* Exhibit A (June 2015 agreement). The Parties renewed and revised the contract in February 2018, before the original three-year term was complete.[1] *See* Exhibit B (February 2018 agreement).

[1] As explained in the argument below, the precise timing of these two contracts, while not dispositive, is relevant, and Two Dogs makes an easily-disprovable incorrect statement in its Complaint on this point. Two Dogs asserts that the February 2018 agreement was created "at the

The February 2018 contract renewal did not substantively alter the Parties' existing arrangement, with three notable exceptions: the contract term was reset and extended from three to five years, *id.* at Art. II; the frequency of waste removal service was increased from two to three days per week with a corresponding rate increase, *id.* at 1 ("SERVICES AND RATES"); and the Parties added a mandatory arbitration provision and an affirmative bar on class action claims. *Id.* at Art. XVII.[2]

The February 2018 agreement is presently in force between the Parties, having superseded the prior 2015 agreement, and is the only document governing the Parties' present contractual relationship. The February 2018 agreement contains a strong merger clause:

> This Agreement represents the entire understanding and agreement between the parties hereto concerning the matters described herein and supersedes any and all prior or contemporaneous agreements, whether written or oral, that may exist between the parties regarding the same.

Ex. B, Art. XVI.

The mandatory arbitration provision in the February 2018 agreement provides:

> Except for Excluded Claims (as defined below), any controversy or claim (collectively "Claims") arising out of or relating to this

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end of the term of the 2015 contract" and that "the first contractual relationship ended and the parties subsequently began a new contractual relationship." Compl., § IV.A.i. The contracts themselves tell a different story: The 2015 agreement was executed on June 15, 2015 with a three-year term; the February 2018 agreement was executed not quite three months before the expected end of the original three-year term on June 14, 2018. Ex. A; Ex. B. The February 2018 agreement therefore did not succeed a completed prior contract, as Two Dogs asserts; it replaced the prior contract *during its term*. While minor, this point is nevertheless significant, and Two Dogs' obviously incorrect statement is telling. *See infra*, at 13 n.10.

[2] The Court may consider the two relevant contracts, the June 2015 and February 2018 agreements, even though Two Dogs did not attach them to its Complaint. *See Bui v. ADT LLC*, No. 2:13-cv-126, 2013 WL 3967112, *1 n.1 (D.S.C., Aug. 1, 2013) (citing *Am. Chiropractic Ass'n v. Trigon Healthcare, Inc.*, 367 F.3d 212, 234 (4th Cir. 2004)). Both contracts are referred to in the Complaint. *Id.* Both contracts, and particularly the February 2018 agreement, are integral to Two Dogs' claims – the 2015 agreement is the subject of those claims and the 2018 agreement governs their posture – and are therefore properly considered by the Court here. *Id.*

> Agreement, or the breach hereof, shall be resolved by mandatory binding arbitration before a single arbitrator administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules (collectively "Rules"), and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Ex. B, Art. XVII.[3] The arbitration language here – governing "any controversy or claim arising out of or relating to this Agreement" – is considered particularly strong by federal and state courts. *See infra*, at § I.C.1.

The class action bar in the February 2018 agreement provides:

> The parties hereto agree that any and all Claims, whether in arbitration or otherwise, must be brought in a party's individual capacity, and not as a plaintiff or class member in any purported class, consolidated, collective or representative proceeding. Accordingly, Customer hereby waives any and all rights to bring any Claim as a plaintiff or class member in any purported class, consolidated, collective or representative proceeding.

Id. A new breach of contract dispute – based on a current *or* prior contract – is a "controversy or claim" between the Parties (*i.e.*, a "Claim"), and Two Dogs agreed in 2018 not to file class actions against Waste Connections over such disputes. That includes newly-alleged breaches of both the 2015 and 2018 agreements. Two Dogs nevertheless filed this proposed class action on September 19, 2019, alleging breaches of both contracts. In the face of Waste Connections' motion to dismiss that action on the basis of the arbitration and class-action bars in the 2018 contract, ECF 7, Two Dogs amended its complaint to narrow its class-action claims to the 2015 agreement alone.[4] ECF 12. But the Parties' February 2018 agreement bars those claims too.

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[3] The "Excluded Claims" are not relevant here. Ex. B., Art. XVII.

[4] Two Dogs acknowledges the existence of the February 2018 agreement ("In 2018… the parties entered into a subsequent agreement") but also claims to have been "wholly unaware" of the same contract when this lawsuit was filed. Compl., § IV.A.i. Two Dogs received a copy of the February 2018 agreement when it was originally executed, and as a commercial business, Two Dogs is responsible for knowing the contents of its contracts. *See, e.g.*, *York v. Dodgeland*

ARGUMENT

The Parties agreed in February 2018 to arbitrate all of their disputes stemming from their contractual relationship for waste management service, including disputes over past conduct. They also agreed to waive and bar class action claims, whether in arbitration or in court. The Court must therefore compel individual arbitration. Moreover, the class action waiver in the Parties' agreement is even broader than the arbitration clause, governing *any* dispute between the Parties, even those outside their contractual relationship. Accordingly, even if the Court retains parts of Two Dogs' claims for litigation in court, such claims cannot be litigated as a class action, and Two Dogs' class allegations must be dismissed.[5]

I. Two Dogs' claims must be arbitrated, as the Parties agreed to do.

For almost a century, the Federal Arbitration Act has required the stay of judicial proceedings involving issues covered by written arbitration agreements. *Choice Hotels Int'l, Inc. v. BSR Tropicana Resort, Inc.*, 252 F.3d 707, 709 (4th Cir. 2001) (citing FAA, 9 U.S.C.A. § 3 (West 1999)). Furthermore, where *all* the issues presented in a lawsuit are arbitrable, dismissal is the proper remedy. *Id.* at 709-10 (citing *Alford v. Dean Witter Reynolds, Inc.*, 975 F.2d 1161, 1164 (5th Cir. 1992)). In the Fourth Circuit, a motion to dismiss based on an arbitration provision or other forum selection clause must be brought under Fed. R. Civ. P. 12(b)(3) for

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of Columbia, Inc., 749 S.E.2d 139, 146 (S.C. Ct. App. 2013) (holding that "a party who signed a contract is deemed to have read and understood 'the effect' of the contract") (affirming trial court's grant of motion to compel arbitration).

[5] In this Court, a defendant may move to dismiss class allegations under Rule 12(b)(6). *See Besley v. FCA US, LLC*, No. 15-cv-01511, 2016 WL 109887, *5 (D.S.C., Jan. 8, 2016) (citing *Bryant v. Food Lion, Inc.*, 774 F. Supp. 1484, 1495 (D.S.C. 1991)). A defendant may also move to strike class allegations under Rule 12(f). *See County of Dorchester v. AT&T Corp.*, __ F. Supp. 3d __, 2019 WL 3802699, *2 (D.S.C., Aug. 13, 2019) (citing *Bryant*, 774 F. Supp. at 1495)). In both cases, the Rule 12(b)(6) standard applies. *Id.* A court should dismiss class allegations where the defendant shows, on the face of the complaint, that a class cannot be certified upon any discoverable facts. *Id.* As set forth below, this standard is met here.

improper venue. *See Aggarao v. MOL Ship Mgmt. Co., Ltd.*, 675 F.3d 355, 365 n.9 (4th Cir. 2012) (citing *Sucampo Pharm., Inc. v. Astellas Pharma, Inc.* 471 F.3d 544, 550 (4th Cir. 2006)). Here, as in *Choice Hotels*, all issues are subject to arbitration and so Two Dogs' lawsuit must be dismissed in its entirety under Rule 12(b)(3).

A. Arbitration is favored under both federal and South Carolina law.

The Supreme Court has repeatedly emphasized its "healthy regard for the federal policy favoring arbitration" and has explained that the FAA "establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability." *Long v. Silver*, 248 F.3d 309, 316 (4th Cir. 2001) (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25, (1983)). "[T]he heavy presumption of arbitrability requires that when the scope of the arbitration clause is open to question, a court must decide the question in favor of arbitration." *Id.* (quoting *Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co.*, 867 F.2d 809, 812 (4th Cir. 1989)). A party's request to arbitrate must be granted "unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *Id.* (quoting *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582-83 (1960)).

Dismissal in this case is warranted under both state and federal law, which intersect when courts evaluate arbitration agreements. Federal law controls because the FAA's purpose and effect is to "create a body of federal substantive law of arbitrability, applicable to any arbitration agreement" within the scope of the statute. *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 24. The FAA is a "congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary." *Id.* The protection

of the FAA is available to a litigant wrongfully haled into court when four elements are present: (1) a dispute; (2) a written agreement with an arbitration provision purporting to cover the dispute; (3) interstate commerce; and (4) a failure to arbitrate. *Galloway v. Santander Consumer USA, Inc.*, 819 F.3d 79, 84 (4th Cir. 2016) (citing *Rota-McLarty v. Santander Consumer USA, Inc.*, 700 F.3d 690, 696 n.6 (4th Cir. 2012)). Here, as in most cases where arbitration clauses are litigated, the element of whether an arbitration clause governs the dispute is the sole issue in dispute.[6]

State-law principles of contract interpretation also apply, and also compel arbitration. *See Galloway*, 819 F.3d at 85; *see also Bowser v. Burns Chevrolet Cadillac, Inc.*, No. 16-1551-TLW, 2017 WL 10810029, *2 (D.S.C., May 3, 2017) (Wooten, C.J.) (citing *Arrants v. Buck*, 130 F.3d 636, 640 (4th Cir. 1997)) (collecting South Carolina cases). *See also Cape Romain Contractors, Inc. v. Wando E., LLC*, 747 S.E.2d 461, 466-67 (S.C. 2013) ("There is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration.") (quotations omitted). *See also Zabinski v. Bright Acres Assocs.*, 553 S.E.2d 110, 118 (S.C. 2001) ("[U]nless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered"); *Towles v. United HealthCare Corp.*, 524 S.E.2d 839, 846 (S.C. Ct. App. 1999) ("[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration").

[6] The existence of (1) a dispute in this case, over (3) a transaction with a relationship to interstate commerce, that (4) Two Dogs has failed to arbitrate, will not be meaningfully contested. *See Galloway*, 819 F.3d at 84.

B. The Parties agreed in February 2018 to arbitrate their disputes, including disputes over past conduct in their commercial relationship.

Two Dogs is violating the mandatory arbitration provision in the Parties' February 2018 agreement by bringing this lawsuit.

As case after case in this jurisdiction has made clear, the language of the Parties' February 2018 arbitration provision is a "particularly comprehensive" formulation of the typical arbitration clause. *Greenville Hosp. Sys. v. Employee Welfare Ben. Plan for Employees of Hazelhurst Mgmt. Co.*, 628 Fed. Appx. 842, 846 (4th Cir. 2015) (evaluating substantively identical arbitration clause and affirming dismissal); *see also infra*, § I.B.1. Specifically, the Parties agreed in February 2018 to arbitrate any disputes "arising out of or relating to" their ongoing waste management service arrangement. Ex. B, Art. XVII. Two Dogs now alleges that Waste Connections breached the Parties' waste management service agreement. The arbitration provision facially applies.

Two Dogs attempts to extract its claims from this arbitration agreement by narrow pleading. In its original complaint in this case, Two Dogs alleged an ongoing breach of contract beginning in 2015 and continuing into the present. In amending that complaint, Two Dogs does not alter or withdraw its allegations substantively, but as a matter of pleading, confines them to the time period before the February 2018 agreement. But the broad language of the February 2018 arbitration agreement applies to Two Dogs' claims even so: under South Carolina and Fourth Circuit law, where parties with a straightforward contractual relationship agree to arbitrate their disputes using language like the Parties used in the February 2018 agreement, the parties are agreeing to arbitrate *all* of their disputes within the scope of their relationship, not just disputes that arise under the particular contract containing the arbitration clause. This type of arbitration clause *includes disputes arising over past contracts and past conduct.* Here, the

Parties' February 2018 arbitration clause applies to *all* disputes arising within their commercial waste management relationship – including the claims in this case, which involve a dispute about recent conduct under the Parties' substantively identical June 2015 predecessor contract.

1. The Parties' arbitration clause governs Two Dogs' claims because the clause is "particularly comprehensive" under federal and state law.

As a threshold matter, the arbitration clause at issue here is a sweeping one: the Fourth Circuit has repeatedly characterized identical language – applying arbitration to "any controversy or claim arising out of or related to" the agreement containing the provision – as "broad" and "capable of an expansive reach." *See, e.g., Am. Recovery Corp. v. Computerized Therm. Imag., Inc.*, 96 F.3d 88, 93 (4th Cir. 1996) (citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 398 (1967)).[7] "Even before we apply the presumption in favor of arbitration… we start here with a particularly comprehensive agreement to arbitrate." *Greenville Hosp. Sys.*, 628 Fed. Appx. at 846. South Carolina cases characterize this language the same way. *See Carlson v. S.C. State Plastering, LLC*, 743 S.E.2d 868, 874 (S.C. Ct. App. 2013) (quoting *Landers v. FDIC*, 739 S.E.2d 209, 213-14 (S.C. 2013) (citing *Prima Paint Corp.*, 388 U.S. 395)).

The critical phrase is "related to."[8] The Fourth Circuit has held that in interpreting the language at issue here – a dispute "arising out of or relating to" the parties' contract – it is "immaterial" whether the dispute in question actually arises out of the contract containing the arbitration clause; the arbitration provision applies if the dispute merely "relates to" that contract,

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[7] *See also Drews Distributing, Inc. v. Silicon Gaming, Inc.*, 245 F.3d 347, 350 (4th Cir. 2001) (citing *Prima Paint Corp.*, 388 U.S. at 398; *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 416 n.3 (4th Cir. 2000); *J.J. Ryan & Sons v. Rhone Poulenc Textile, S.A.*, 863 F.2d 315, 321 (4th Cir. 1988)).

[8] By contrast, an arbitration clause that merely covers disputes "arising under the Agreement" or "arising hereunder" are "relatively narrow as arbitration clauses go." *Am. Recovery Corp.*, 96 F.3d at 93.

even if it arises under a different contract. *See Drews Distributing*, 245 F.3d at 350 (reversing district court and compelling arbitration of breach of "letter" contract and related claims where arbitration provision was found only in subsequent, non-identical "distributor" contract) (citing *Kvaerner ASA v. Bank of Tokyo-Mitsubishi, Ltd.*, 210 F.3d 262, 265 (4th Cir. 2000) (affirming that arbitration provision in construction agreement applies to action for breach of separate construction financing guaranties)). An agreement to arbitrate disputes "related to" a contract is expansive; it is made between parties that want to arbitrate their disputes in any aspect of their business relationship, not litigate them.

2. The Parties intended to arbitrate Two Dogs' entire claims because the claims bear a "significant relationship" to the Parties' 2018 contract.

The Fourth Circuit has repeatedly held that the broad arbitration language used by the Parties mandates arbitration of claims like those at issue here, which are squarely within the Parties' singular contractual relationship. Where, as here, an arbitration clause in a contract applies to "any claim or controversy arising out of, or relating to" that contract, the clause "embraces 'every dispute between the parties having a *significant relationship* to the contract regardless of the label attached to the dispute.'" *Wachovia Bank, N.A. v. Schmidt*, 445 F.3d 762, 767 (4th Cir. 2006) (quoting *Am. Recovery*, 96 F.3d at 93; *J.J. Ryan*, 863 F.2d at 321); *see also Long*, 248 F.3d at 316-17 (holding that "governing standard" is the "significant relationship" test); *Stone v. Wells Fargo Bank, N.A.*, 361 F. Supp. 3d 539, 556 (D. Md., Jan. 17, 2019) (citing "significant relationship" test). This means that the Parties' arbitration clause applies to disputes *outside* the February 2018 agreement, so long as the dispute at issue has a "significant relationship" to the February 2018 agreement. *Am. Recovery*, 96 F.3d at 94 ("[T]he test for an arbitration clause of this breadth is *not whether a claim arose under one agreement or another*,

but whether a significant relationship exists between the claim and the agreement containing the arbitration clause.") (citing *J.J. Ryan*, 863 F.2d at 321) (emphasis added).

The Fourth Circuit applies the "significant relationship" test with a consistent theme: where parties have an arbitration clause within a particular contractual relationship that could foreseeably give rise to certain types of disputes, the court finds a "significant relationship" between the arbitration clause and that type of dispute – and compels arbitration even where the dispute arises outside the contract containing the arbitration clause.[9] For example, in *American Recovery*, the Fourth Circuit held that several business tort and quasi-contract claims bore a "significant relationship" to the parties' general consulting contract, and its arbitration clause, where the disputes were foreseeable in the parties' consulting relationship (*e.g.*, the disputes concerned obligations "that are a logical extension of the services" in the consulting contract or that were previewed in the consulting contract). 96 F.3d at 92-94. In *Long*, the court found a "significant relationship" between decades-old contracts conferring shareholder and employee status on the plaintiff and his later non-contractual claims for financial improprieties related to that shareholder/employment relationship. 248 F.3d at 317-319. In *J.J. Ryan*, the parties had a distribution relationship with an arbitration agreement, but when the relationship later soured and

[9] South Carolina applies the "significant relationship" test too, and the Supreme Court of South Carolina has made the foreseeability theme explicit. In *Aiken v. World Fin. Corp. of S.C.*, 644 S.E.2d 705, 709 (S.C. 2007), the court "refuse[d] to interpret any arbitration agreement as applying to outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings." *Id.* The Court declined to compel arbitration where a customer sued his consumer finance company for intentional torts relating to the misuse of his personal financial information, and articulated its rationale broadly: "To interpret an arbitration agreement to apply to actions completely outside the expectations of the parties would be inconsistent with this goal [of promoting arbitration in a commercially reasonable manner]." *Id.* at 710; *see also Partain v. Upstate Auto. Group*, 689 S.E.2d 602, 605 (S.C. 2010) ("Only where the claim presented was clearly not within the contemplation of the parties will a court decline to enforce an otherwise proper arbitration agreement.") (applying *Aiken*).

disputes arose that did *not* include a claim for breach of the distributor contracts, the Fourth Circuit still found the claims to be within the core of the parties' distribution relationship. *Id.* at 316-22. *See also Drews*, 245 F.3d at 350 ("letter" contract claims arbitrable based on arbitration clause in subsequent "distributor" contract); *Kvaerner* 210 F.3d 262 at 265 (guaranty claims arbitrable based on arbitration clause in construction agreement).

By contrast, where claims arise out of *distinct* contractual relationships, disputes within one relationship may be outside the scope of an arbitration clause in the other. For example, in *Wachovia* the parties had both a financial advisory relationship and a separate lending relationship, so the arbitration clause in the lender contract did not have a "significant relationship" to commercial claims arising out of the advisory contract. 445 F.3d at 769. *See also Newbanks v. Cellular Sales of Knoxville, Inc.*, 548 Fed. Appx. 851, 855 (4th Cir. 2013) (arbitration denied where claims arose out of initial independent-contractor relationship and arbitration clause was contained in contract governing at-will employment relationship).

The "significant relationship" test is dispositive here. The Parties have one simple contractual relationship: waste disposal services. That relationship is governed solely by the February 2018 agreement, which is a renewed and restated version of the near-identical prior agreement. The February 2018 agreement replaced, superseded, and merged with the prior 2015 agreement during the pendency of the 2015 agreement's first term. The February 2018 agreement immediately became the "entire agreement" of the Parties, Ex. B, Art. XVI, and so governed the entirety of their relationship, including how they would resolve all disputes going forward. There is no question that Two Dogs should have anticipated, when it agreed to arbitrate disputes "related to" the contract governing that relationship, precisely this type of dispute – where one party believes the other party has breached the contract over time by charging

excessive fees. Two Dogs' breach of contract claim here is a classic dispute over pricing that any business would foresee when agreeing to arbitrate commercial disputes. Accordingly, Two Dogs' claim is squarely within the scope of the February 2018 arbitration agreement.

Indeed, the 2015 and 2018 agreements are effectively the same agreement in all respects except one: temporal. The February 2018 agreement superseded the June 2015 version, and Two Dogs argues that the arbitration provision cannot apply retroactively. But under Fourth Circuit law, such provisions *do* apply retroactively where the "substantial relationship" test is met. Here, the Parties committed in 2018 to arbitrate future disputes even over past conduct, and that commitment is plainly enforceable under Fourth Circuit law.

3. Where a claim is arbitrable because of its "significant relationship" to an arbitration contract, arbitration also applies retroactively.

Fourth Circuit precedent dictates that where an arbitration clause is sufficiently broad to cover the dispute in question – in this case, because the claim bears a "significant relationship" to the February 2018 agreement; *see supra* – the arbitration clause will apply retroactively. Fourth Circuit and South Carolina courts have compelled arbitration of disputes involving past conduct, including where the past conduct predated the relevant arbitration agreement.

The Fourth Circuit's 2011 decision in *Levin v. Alms and Assocs., Inc.* governs this case in all material respects. The parties in *Levin* were a financial advisory company and its customer; they entered into a service contract beginning in 2004. 634 F.3d 260, 267-69 (4th Cir. 2011). As here, the parties renewed their contract during the course of their contractual relationship, adding an arbitration clause in 2007. *Id.* The customer sued the service provider for breach of contract and other claims in 2009, alleging violations dating back to the early days of the contract in 2004. *Id.* The defendant asked the District Court of Maryland to dismiss the case in favor of arbitration, but the district court dismissed only the claims post-dating the arbitration clause,

retaining the earlier claims on the grounds that the arbitration clause did not apply retroactively. *Id.* at 262.

On appeal, the Fourth Circuit reversed, holding that *all* the claims were within the scope of the 2007 arbitration clause, including those that arose before the arbitration agreement was made. *Id.* at 267-69. The court justified its ruling on multiple grounds. As here, the parties in *Levin* "had an ongoing relationship" – the contractual relationship in *Levin* "was seamlessly renewed on an annual basis," while the Parties here have maintained a similarly seamless relationship while renewing their contract less frequently.[10] *Id.* at 269. As here, the underlying claims in *Levin* "concern[ed] events that [were] 'part and parcel'" of the "long-standing" relationship between the parties and their "ongoing business dealings" – in *Levin*, financial advising; here, waste management. *Id.* (quoting *Hendrick v. Brown & Root, Inc.*, 50 F. Supp. 2d 527, 536 (E.D. Va. 1999) (citing *Zink v. Merrill Lynch Pierce Fenner & Smith*, 13 F.3d 330 (10th Cir. 1993))). Finally, in *Levin*, as here, the scope of the arbitration clause was broad enough to make arbitration of the earlier claims foreseeable to the parties as "part and parcel" of their ongoing commercial relationship. In *Levin*, the arbitration clause covered "any dispute" between the parties, *id.* at 266-67; here it covers disputes "related to" the agreement between the Parties, thereby applying to any dispute with a "significant relationship" to the February 2018

[10] This is the significance of Two Dogs' facially incorrect allegation that the February 2018 agreement was created "at the end of the term of the 2015 contract" and that "the first contractual relationship ended and the parties subsequently began a new contractual relationship." Compl., § IV.A.i. As noted *supra* at n.1, these assertions are easily disproved by a glance at the relevant contract dates; *see* Exs. A & B. Two Dogs makes these incorrect statements in the context of asserting that the Parties' contractual relationship "was not continual or 'seamless'" – an apparent reference to *Levin*. Compl., § IV.A.i. The transition of the 2015 agreement to the near-identical 2018 agreement *during the 2015 contract term* is evidence of the "seamlessness" of the Parties' contractual relationship, and Two Dogs' blatant misrepresentation on this point is evidence that Two Dogs itself recognizes the significance of the issue.

agreement. *See supra*. In both cases, the parties, when they executed their respective arbitration agreements, would have expected future disputes based on past conduct to be included in the broad scope of those agreements. *Id.* Such arbitration provisions are retroactive in the sense that they apply to future disputes that foreseeably involve prior conduct.

The Fourth Circuit also considered an integration clause in *Levin*, reading it together with the arbitration clause to strengthen the case for retroactive application of the arbitration agreement. 634 F.3d at 267. Here, the same factor applies with even more force: in *Levin*, the integration clause "[did] not specifically state that [the agreement] supersedes others," though it stated that it "encompass[ed] and embodie[d] all terms, understandings and agreements." *Id.* at 267-68. Here, by contrast, the Parties' February 2018 agreement *does* explicitly "supersede[] any and all prior or contemporaneous agreements," thereby displacing the prior 2015 agreement between the Parties. Ex. B, Art. XVI. The Fourth Circuit in *Levin* indicated that this superseding effect alone may make an arbitration clause applicable retroactively.[11] *Id.* at 267-268. This outcome is logical: where parties renew an existing contract and, in the renewed document, select arbitration to resolve their disputes – and where they make clear that the renewed contract is their *entire* agreement, superseding all prior versions of their agreement – they are choosing to arbitrate *all* disputes that arise, over past and present matters. *See, e.g.*, *In re Titanium Dioxide Antitrust Litig.*, 962 F. Supp. 2d 840, 854-55 (D. Md., Aug. 26, 2013)

[11] Although the Sixth Circuit reached a different result in *Security Watch, Inc. v. Sentinel Systems, Inc.*, 176 F.3d 369 (6th Cir. 1999), the court indicated that the outcome may have been different if the serial annual contracts at issue in that case had reflected a fuller ongoing contractual relationship between the parties, rather than a series of term-limited performance targets – and if the annual agreement containing the arbitration clause had contained a full merger clause, like the one the Parties used here in the February 2018 agreement. 176 F.3d at 372-73 & n.3. In other words, *Security Watch* supports Waste Connections' argument, given Waste Connections' facts.

(compelling arbitration retroactively) ("Many of the asserted contracts explicitly state that they apply retroactively or supersede all previous agreements.") (emphasis added). So if a prior version of the contract, by its silence on dispute resolution, implied that disputes would be resolved by judicial process, that arrangement is superseded by the subsequent choice of arbitration to resolve disputes. Any prior right to judicial resolution is superseded and therefore waived. This is what the Parties agreed to in February 2018.

District courts in the Fourth Circuit were applying these principles even before *Levin*. *See, e.g.*, *Moye v. Duke Univ. Health Sys., Inc.*, No. 06-cv-00337, 2007 WL 1652542, at *7 (M.D.N.C., June 5, 2007) (granting motion to compel arbitration of retroactive claims) ("Arbitration is most appropriate for pre-existing claims when the parties have an ongoing contractual relationship and when the contract language does not specifically limit arbitration to future claims.") (citing *Hendrick*, 50 F. Supp. 2d at 536-37); *Jefferson Pilot Life Ins. Co., v. Griffin*, No. 07-cv-0096, 2008 WL 2485598, at *6 (M.D.N.C., June 16, 2008) (same) (evaluating substantively identical arbitration provision). Similar rulings have been issued post-*Levin*. *See, e.g.*, *Klein v. Verizon Commc'n, Inc.*, 920 F. Supp. 2d 670, 681-82 (E.D. Va., Jan. 31, 2013) (granting motion to compel arbitration of retroactive claims) (evaluating merger clause), *rev'd on other grounds*, 674 Fed. Appx. 304 (4th Cir. 2017); *In re Titanium Dioxide Antitrust Litig.*, 962 F. Supp. 2d at 854-55 (same).

South Carolina state appellate courts are in accord. *See, e.g.*, *Vestry and Church Wardens of Church of Holy Cross v. Orkin Exterminating Co., Inc.*, 588 S.E.2d 136, 140-142 (S.C. Ct. App. 2003) (applying one arbitration clause retroactively where claims "substantially relate[d] to the subject matter" of contract with arbitration clause; declining to apply another arbitration clause retroactively where there was "no correlation" between claims and subject

matter of contract with arbitration clause, and no merger clause); *cf. Davis v. KB Home of S.C., Inc.*, 713 S.E.2d 799, 806 (S.C. Ct. App. 2011) (merger clause in later agreement superseded arbitration provision in earlier agreement), *vacated in part on other grounds by Davis v. KB Home of S.C., Inc.*, No. 2011-199587, 2014 WL 2535489 (S.C., Jan. 29, 2014).

This strong line of federal and South Carolina precedent is unequivocal that Two Dogs' claims are subject to the February 2018 arbitration agreement, even though the claims involve a dispute over past conduct. The Parties have had a "seamless" contractual relationship since the time of the earliest allegations in this case, and those allegations are "part and parcel" of that "longstanding" relationship and its "ongoing business dealings." *Levin*, 634 F.3d at 269. The arbitration provision at issue does not specifically limit itself to future claims, and indeed applies to any claim that bears a significant relationship with the Parties' February 2018 agreement – which is their entire and only agreement, superseding all others. There is no question that when the Parties agreed to arbitrate disputes "related" to that agreement in February 2018, commercial claims regarding past breaches of the agreement were well within their foreseeable contemplation. The Parties wanted arbitration, and this Court must now therefore order it.[12]

4. The Parties did not intend to litigate and arbitrate duplicatively.

Two Dogs' original complaint alleged an ongoing course of conduct from June 2015 through the present. When alerted to the arbitration provision in the February 2018 agreement, Two Dogs amended the complaint to remove their claims since that date. *See, e.g.*, Compl.,

[12] Two Dogs has also sued two parent companies, Waste Connections US, Inc. and Waste Connections, Inc., the latter of which has not been served and does not appear here or join this motion. The claims against the parent companies are also subject to arbitration. "When the charges against a parent company and its subsidiary are based on the same facts and are inherently inseparable, a court may refer claims against the parent to arbitration even though the parent is not formally a party to the arbitration agreement." *J.J. Ryan*, 863 F.2d at 320-21.

§ IV.A.i ("Subsequent Contracts With Arbitration Provisions Are Not At Issue And Plaintiff Brings No Claims Under Such Contracts"). But this artful pleading makes an important point: Two Dogs is contending that the Parties *intended* in February 2018 to establish a dual procedure for dispute resolution, with an arbitration process only for disagreements about events occurring after February 2018. But such a bifurcated process – particularly for disputes, like the one originally alleged here, that span both contracts – makes no sense.

The Parties would not have intended to create such a cumbersome and duplicative process. The contract periods before and after February 2018 were indistinguishable as a practical matter, except for a small adjustment in service frequency and price. The Parties certainly anticipated the potential for disputes over the contract, and they would have anticipated that any such disputes might arise over ongoing courses of conduct, including conduct reaching back into the pre-2018 contract period. The Parties would not have wanted such disputes to be simultaneously arbitrated *and* duplicatively litigated in court; their intent was not to waste time and money. They chose arbitration for the same reason everyone does: it is a cheaper and faster method for resolving disputes than litigation. So they chose it for *all* their disputes, over both past and present conduct. Two Dogs' suggestion to the contrary lacks basis and is not credible.

II. Two Dogs' class allegations must be dismissed because they were waived.

Two Dogs' class allegations also fail on independent grounds, because the Parties waived and affirmatively barred class allegations in February 2018 in language even broader than their mandatory arbitration clause. Ex. B, Art. XVII. This fact has two consequences.

First, as explained in the previous section, because the Parties elected to arbitrate their disputes and waived class allegations in all possible forums, the Court can and must compel arbitration on an individual basis. Second, even if any claims survive in this Court in spite of the Parties' arbitration clause, such claims cannot be litigated on a classwide basis, because the

Parties' waiver and rejection of class allegations is absolute and applies to "any controversy or claim" between the Parties. If any part of this case remains before this Court, Two Dogs' class allegations must therefore be dismissed under Rule 12(b)(6). *See Besley*, 2016 WL 109887, at *5 (citing *Bryant*, 774 F. Supp. at 1495).

A. The Parties waived class arbitration, so any order compelling arbitration must compel arbitration on an individual basis only.

The U.S. Supreme Court has held that parties may bindingly waive class arbitration, and the Parties have done so here. The Court must accordingly compel the Parties to arbitrate their claims on an individual basis.

"[A] party may not be compelled under the [FAA] to submit to class arbitration unless there is a contractual basis for concluding that the party *agreed* to do so." *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 684 (2010) (emphasis in original). Where parties affirmatively agree *not* to arbitrate on a class basis, including by waiver, such waivers must be given effect; nothing in federal law or Rule 23 stands in the way. *Am. Exp. Co. v. Italian Colors Rest.*, 570 U.S. 228, 234 (2013) (holding that waiver of class arbitration is permissible); *see also Hayes v. Delbert Servs. Corp.*, 811 F.3d 666, 674 (4th Cir. 2016) ("the [Supreme] Court has upheld arbitration agreements that contain waivers providing that arbitration is to proceed on an individual rather than a class action basis"). Parties may not be compelled to submit to class arbitration even where their arbitration agreement is merely ambiguous about whether they agreed to it. *Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407, 1417 (2019). Class arbitration is "fundamental[ly]" different than individualized arbitration, lacking the standard benefits of arbitration such as "lower costs, greater efficiency and speed[.]" *Id.* at 1416 (quoting *Stolt-Nielsen*, 559 U.S. at 685-687). Parties must unambiguously consent to it. *Id.* at 1417.

Here, the Parties have unambiguously agreed *not* to arbitrate on a class basis:

> The parties hereto agree that any and all Claims, whether in arbitration or otherwise, must be brought in a party's individual capacity, and not as a plaintiff or class member in any purported class, consolidated, collective or representative proceeding. Accordingly, [Two Dogs] hereby waives any and all rights to bring any Claim as a plaintiff or class member in any purported class, consolidated, collective, or representative proceeding.

Ex. B, Art. XVII (emphasis added). Any arbitration must proceed on an individual basis.

Finally, only this Court, not an arbitrator, can determine whether the Parties' February 2018 arbitration clause permits class arbitration. *Del Webb Cmtys., Inc. v. Carlson*, 817 F.3d 867, 873 (4th Cir. 2016). Accordingly, if the Court compels arbitration here, the Court's order must *specify* that the arbitration cannot include class allegations.

B. The Parties' agreement bars class actions in court litigation too.

The Parties agreed not to bring class actions "in arbitration or otherwise," so even if this Court allows any of Two Dogs' claims to proceed in litigation, such claims may proceed only as individual actions. The Parties' class-action waiver in all forums was mutual and is binding.

In South Carolina, the ability of a plaintiff to attempt to pursue a case as a class action is waivable by contract, just as a right to a jury trial is waivable. *See The Gates at Williams-Brice Condo. Assoc. v. DDC Constr., Inc.*, 792 S.E.2d 240, 300-01 (S.C. Ct. App. 2016) (enforcing jury-trial and class-action waivers), *vacated on other grounds by* 420 S.C. 181 (S.C. 2017); *see also Beach Co. v. Twillman, Ltd.*, 566 S.E.2d 863, 866 (S.C. Ct. App. 2002) (citing *N. Charleston Joint Venture v. Kitchens of Island Fudge Shoppe, Inc.*, 416 S.E.2d 637, 638 (S.C. 1992)) ("A party may waive the right to a jury trial by contract."). The law is the same at the federal level. *See, e.g., Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (2018) (upholding contract provision waiving plaintiff's ability to pursue case as a class action).

Here, the Parties waived and affirmatively barred class actions when they renewed their contract in February 2018, and they did so in language so broad that it undeniably governs any

possible dispute, whether over past or present claims. *B.L.G. Enterprises, Inc. v. First Fin. Ins. Co.*, 514 S.E.2d 327, 330 (S.C. 1999) ("The court's duty is limited to the interpretation of the contract made by the parties themselves regardless of its wisdom or folly[.]") (quotations omitted). That language is broader even than the language the Parties used for their arbitration clause, so it bars class actions even if this Court determines that the Parties' arbitration agreement does not apply. Specifically, the Parties agreed that "any controversy or claim" between them would proceed on an individual basis, not as a class action. They did so by agreeing that "any and all Claims, whether in arbitration or otherwise, must be brought in a party's individual capacity, and not as a plaintiff or class member in any purported class," where "Claims" are defined as "any controversy or claim," with no qualification.[13] Ex. B, Art. XVII (emphasis added). If the Parties had intended to bar only *class arbitration*, and permit class actions on non-arbitrable claims in court, they would not have defined "Claims" so broadly, and would not have included the phrase "whether in arbitration or otherwise" in the class-action bar. Such language would have been not only superfluous, but the opposite of what the Parties meant.

The scope of the class-action waiver is therefore of the maximum possible breadth. While the Parties agreed to arbitrate any disputes arising out of or related to their particular waste management contractual relationship, they agreed to bar *any* class actions between them – even regarding disputes that could arise between the Parties outside that particular relationship, *e.g.*, the kind of disputes that can arise between any businesses in a community, or against any waste management company. Such an action, if brought by Two Dogs against Waste Connections, might be outside the scope of the Parties' arbitration clause, but it would still be within the scope

[13] The common and generally-understood definition of the word "claim" itself is broad and all-encompassing. *See Black's Law Dictionary* (11th ed. 2019) ("The assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional").

of the class action bar. The two provisions are both very broad, but not identically so, and the class action waiver governs Two Dogs' claims even if the arbitration provision does not.

The greater breadth of the class-action waiver is also what makes it apply retroactively even if the Court finds that the arbitration provision does not. As set forth *supra*, parties can agree to arbitrate or otherwise limit future claims even for past conduct, and the Parties did so here. But even if the Court finds that the Parties' 2018 arbitration clause does not do so, the class action waiver limits both past and future claims, for the reasons explained in *Levin*. Specifically, a merger clause – even a weaker one than here, as in *Levin* – makes a broad waiver of judicial rights (in *Levin*, a clause referencing "all disputes"; here "any controversy or claim") "applicable retroactively." *Levin*, 634 F.3d at 267-68. Judicial waivers other than arbitration clauses may apply retroactively too, where the scope of the waiver merits it. *See, e.g.*, *Trainor v. Qwest Gov. Servs., Inc.*, No. 18-cv-1557, 2019 WL 3459231, at *7-8 (E.D. Va., July 31, 2019) (striking jury demand based on retroactive jury waiver).

Accordingly, even if any of Two Dogs' claims survive in this Court, they cannot be litigated as a class. In such an instance, Two Dogs' class allegations must be dismissed under Rule 12(b)(6) as waived.

CONCLUSION

This is a contract case, and the terms of the contract control. The Parties expressly and plainly agreed to broad, retroactive arbitration terms covering this pricing dispute and similarly disavowed class actions regarding any dispute between the Parties. Federal and South Carolina state courts, led by the U.S. Supreme Court, have emphatically favored arbitration, enforcement of arbitration agreements, and waivers of class actions for commercial disputes. This lawsuit should be dismissed on these multiple grounds.

Waste Connections requests oral argument on this motion.

Respectfully submitted,

/s/H. Sam Mabry III

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Counsel for Defendants
Waste Connections US, Inc. and
Waste Connections of South Carolina, Inc.

November 20, 2019

EXHIBIT A

SITE INFORMATION

ACCOUNT #	328307
SITE NAME	BUBBA AND ANNIES
CONTACT NAME	
ADDRESS	1 PELHAM ROAD AND HWY
CITY	GREER
STATE ZIP	SC 29651
EMAIL ADDRESS	
TELEPHONE	864-297-0007
FACSIMILE	

BILLING INFORMATION

BILLING NAME	BUBBA AND ANNIES
CONTACT	
ADDRESS	996 BATESVILLE ROAD
CITY	GREER
STATE ZIP	SC 29651
TELEPHONE	864-297-0007
FACSIMILE	

WASTE CONNECTIONS INC.

Connect with the Future

Customer Service Agreement

WASTE CONNECTONS OF THE CAROLINAS
1010 ROGERS BRIDGES RD. DUNCAN, SC 29334
800.228.9234 FAX: 864.879.3203

WASTE CONNECTIONS OF SOUTH CAROLINA INC dba WASTE CONNECTIONS OF THE CAROLINAS HEREINAFTER REFERRED TO AS THE "COMPANY"

By: Nikki Thompson
(AUTHORIZED SIGNATURE)

Title: Customer Service

SALES REP: SIC CODE: 0 LF CODE: SURCHARGE: FUEL FEES EFFECTIVE DATE: 6/15/2015

SERVICE DESCRIPTION	TYPE ACCOUNT	SERVICE PRICE	QUANTITY	OTHER
ADMINISTRATIVE FEE - COMM	COMMERCIAL	4.00	1.00	
FL 8 YD 2X WK 1	COMMERCIAL	230.12	1.00	

The undersigned individual signing this agreement on behalf of Customer acknowledges that he or she had read and understands the terms and conditions of this Agreement and that he or she had the authority to sign the Agreement on behalf of the Customer.

By: Karen Tracy Title: G.M.
(AUTHORIZED SIGNATURE)

Bubba Annie's 6/15/2015
CUSTOMER NAME (PLEASE PRINT) DATE OF AGREEMENT

COMMENTS

Agreement Null and Void IF business is sold, closed or moves outside of WCI territory; RATE GUARANTEED FOR 12 MONTHS.

Upon receipt of this signed agreement Waste Connections will issue a credit for one month's service (up to $250).

Please sign where indicated and return in the enclosed self-addressed envelope. If you should have any questions, please call Nikki @ 864-662-0009.

THANK YOU!

TERMS AND CONDITIONS

ARTICLE I
SERVICES RENDERED

Customer grants to Contractor the exclusive right to collect and dispose of all of Customer's Waste Materials (as defined below) and agrees to make payments to Contractor as described herein, and Contractor agrees to furnish the services and equipment specified above, all in accordance with the terms of this Agreement.

ARTICLE II
TERM

THE INITIAL TERM (THE "INITIAL TERM") OF THIS AGREEMENT IS THIRTY-SIX (36) MONTHS FROM THE EFFECTIVE SERVICE DATE SET FORTH ON THE FIRST PAGE OF THIS AGREEMENT, WHICH IS THE DATE CONTRACTOR'S EQUIPMENT IS DELIVERED TO CUSTOMER'S LOCATION OR SERVICE UNDER THIS AGREEMENT COMMENCES, WHICHEVER IS EARLIER. THIS AGREEMENT SHALL AUTOMATICALLY RENEW FOR SUCCESSIVE THIRTY-SIX (36) MONTH TERMS (EACH A "RENEWAL TERM" AND TOGETHER WITH THE INITIAL TERM, THE "TERM") THEREAFTER UNLESS EITHER PARTY GIVES WRITTEN NOTICE OF TERMINATION BY U.S. CERTIFIED OR REGISTERED MAIL, POSTAGE PRE-PAID AND RETURN RECEIPT REQUESTED, TO THE OTHER PARTY AT LEAST SIXTY (60) DAYS PRIOR TO THE TERMINATION OF THE INITIAL TERM OR ANY RENEWAL TERM. ANY SUCH NOTICE SHALL BE SENT TO THE OTHER PARTY'S ADDRESS SET FORTH ON THE FIRST PAGE OF THIS AGREEMENT, OR ANY CHANGE OF ADDRESS COMMUNICATED IN WRITING BY THE OTHER PARTY DURING THE TERM OF THE AGREEMENT. A RENEWAL TERM SHALL BECOME EFFECTIVE (THEREBY EXTENDING THE THEN-CURRENT TERM) UPON EITHER PARTY'S FAILURE TO GIVE NOTICE OF TERMINATION WITHIN THE TIME PERIOD SET FORTH ABOVE.

ARTICLE III
WASTE MATERIALS

Contractor shall acquire title to the Waste Materials when they are loaded into Contractor's truck. Title to and liability for any Excluded Waste shall remain with Customer and Customer expressly agrees to defend, indemnify and hold harmless Contractor from and against any and all damages, penalties, fines, liabilities and costs (including reasonable attorneys' fees) resulting from or arising out of the deposit of Excluded Waste in Contractor's trucks, containers or other equipment. Customer agrees to comply with any description of and/or procedures with respect to removal of contaminants or preparation of recyclable materials set forth above. In the event that any recyclable materials furnished to Contractor by Customer are due to presence of contaminants rejected by a potential purchaser or otherwise are determined by Contractor not to be resalable or to have a reduced resale value, Contractor may, in addition to its other remedies, require Customer to pay Contractor, as liquidated damages and not as a penalty, the charges incurred by Contractor (plus overhead and profit) for hauling, processing and/or disposal of such materials and for the reduction in resale value of such materials.

ARTICLE IV
TITLE

Contractor shall acquire title to the Waste Materials when they are loaded into Contractor's truck. Title to and liability for any Excluded Waste shall remain with Customer and Customer expressly agrees to defend, indemnify and hold harmless Contractor from and against any and all damages, penalties, fines, liabilities and costs (including reasonable attorneys' fees) resulting from or arising out of the deposit of Excluded Waste in Contractor's trucks, containers or other equipment. Customer agrees to comply with any description of and/or procedures with respect to removal of contaminants or preparation of recyclable materials set forth above. In the event that any recyclable materials furnished to Contractor by Customer are, due to presence of contaminants, rejected by a potential purchaser or otherwise are determined by Contractor not to be resalable or to have a reduced resale value, Contractor may, in addition to its other remedies, require Customer to pay Contractor, as liquidated damages and not as a penalty, the charges incurred by Contractor (plus overhead and profit) for hauling, processing and/or disposal of such materials and for the reduction in resale value of such materials.

ARTICLE V
PAYMENTS

Customer agrees to pay Contractor on a monthly basis for the services and/or equipment furnished by Contractor in accordance with the charges and rates provided for herein. Payment shall be made by Customer to Contractor within the period of time set forth on the first page of this Agreement. Contractor may impose and Customer agrees to pay a late fee as determined by Contractor for all past due payments, and interest on all past due payments at the rate of one and one-half percent (1_%) per month, provided that no such late fee or interest charge shall exceed the maximum rate allowed therefor by applicable law. Customer will pay Contractor's standard recycling services and equipment charge set forth above (irrespective of changing commodity values). Customer shall continue to provide, and Contractor shall continue to collect, recyclable materials from Customer in accordance with the terms of this Agreement for the Term hereof notwithstanding changing commodity values.

ARTICLE VI
RATE ADJUSTMENTS

Customer agrees that the rates charged by Contractor hereunder shall be increased from time to time to adjust for increases in the Consumer Price Index. Because disposal, fuel, materials and operations costs constitute a significant portion of the cost of Contractor's services provided hereunder, Customer agrees that Contractor may increase the rates hereunder proportionately to adjust for any increase in such costs or any increases in transportation costs due to changes in location of the disposal facility. Customer agrees that Contractor may also proportionately pass through to Customer increases in the average weight per container yard of Customer's Waste Materials, increases in Contractor's costs due to changes in local, state or federal rules, ordinances or regulations applicable to Contractor's operations or the services provided hereunder, and increases in taxes, fees or other governmental charges assessed against or passed through to Contractor (other than income or real property taxes). Contractor may only increase rates for reasons other than those set forth above with the consent of Customer. Such consent may be evidenced orally, in writing or by the practices and actions of the parties.

ARTICLE VII
SERVICE CHANGES AND AMENDMENTS

Changes to the type, size and amount of equipment, the type or frequency of service, and corresponding adjustments to the rates, may be made by agreement of the parties, evidenced orally, in writing or by the practices and actions of the parties, without affecting the validity of this Agreement and this Agreement shall be deemed amended accordingly. This Agreement shall continue in effect for the Term provided herein and shall not be affected by any changes in Customer's service address if any new service address is located within Contractor's service area. Should Customer change its service address to a location outside Contractor's service area, Customer may cancel the Agreement upon 30 days' written notice to Contractor. Any other amendment to this Agreement not otherwise expressly provided for herein shall be made in writing and signed by both parties.

ARTICLE VIII
RESPONSIBILITY FOR EQUIPMENT

Any equipment furnished hereunder by Contractor shall remain the property of Contractor; however, Customer acknowledges that it has care, custody and control of the equipment while at Customer's location and accepts responsibility for all loss or damage to the equipment (except for normal wear and tear or for loss or damage resulting from Contractor's handling of the equipment) and for its contents. Customer agrees not to overload (by weight or volume), move or alter the equipment, and shall use the equipment only for its proper and intended purpose. Customer agrees to indemnify, defend and hold harmless Contractor, its employees and agents against all claims, damages, suits, penalties, fines, liabilities and costs (including reasonable attorneys' fees) for injury or death to persons or loss or damage to property arising out of Customer's use, operation or possession of the equipment. Customer agrees to provide unobstructed access to the equipment on the scheduled collection day. If the equipment is inaccessible so that the regularly scheduled pick-up cannot be made, Contractor will promptly notify Customer and afford Customer a reasonable opportunity to provide the required access; however, Contractor reserves the right to charge an additional fee for such inaccessibility and/or delay or any additional collection service required by Customer's failure to provide such access. The word "equipment" as used in this Agreement shall mean all containers used for the storage of Waste Materials, and such other on-site devices as may be specified on the first page of this Agreement.

ARTICLE IX
DAMAGE TO PAVEMENT

Customer warrants that Customer's pavement, curbing or other driving surface or any right of way reasonably necessary for Contractor to provide the services described herein are sufficient to bear the weight of all of Contractor's equipment and vehicles reasonably required to perform such services. Contractor will not be responsible for damage to any such pavement, curbing, driving surface or right of way, and Customer agrees to assume all liabilities for any such damage, which results from the weight of Contractor's vehicles providing service at Customer's location.

ARTICLE X
LIQUIDATED DAMAGES AND ATTORNEYS' FEES

In the event Customer terminates this Agreement prior to the expiration of its Term other than as a result of a breach by Contractor or Contractor terminates this Agreement for Customer's breach (including nonpayment), Customer agrees to pay to Contractor all past due sums plus, as liquidated damages, a sum calculated as follows: (a) if the remaining Term under this Agreement is six (6) or more months, the average of Customer's most recent six (6) monthly charges multiplied by six (6); or (b) if the remaining Term under this Agreement is less than six (6) months, the average of Customer's most recent six (6) monthly charges multiplied by the number of months remaining in the Term. If the Term has not yet run for six (6) months, the average of Customer's monthly charges to date shall be used. Customer expressly acknowledges that in the event of an unauthorized termination of this Agreement, the anticipated loss to Contractor in such event is estimated to be the amount set forth in the foregoing liquidated damages provision and such estimated value is reasonable and is not imposed as a penalty. In the event Customer fails to pay Contractor all amounts which become due under this Agreement (including any liquidated damages, late fees and interest assessed thereon), or fails to perform its obligations hereunder, and Contractor refers such matter to an attorney, Customer agrees to pay, in addition to all past due sums, any and all costs incurred by Contractor as a result of such action, including, to the extent permitted by law, reasonable attorneys' fees.

ARTICLE XI
BREACH, SUSPENSION AND TERMINATION FOR CAUSE

If during the Term of this Agreement either party shall be in breach of any provision of this Agreement, the other party may suspend its performance hereunder until such breach has been cured or terminate this Agreement; provided, however, that no termination of this Agreement shall be effective until the complaining party has given written notice of such breach to the breaching party and the breaching party has failed to cure such breach within ten (10) days after its receipt of such notice. Upon any such failure to cure, the complaining party may terminate this Agreement by giving the breaching party written notice of such termination, which shall become effective upon receipt of such notice.

ARTICLE XII
ASSIGNMENT

Customer shall not assign this Agreement without the prior written consent of Contractor, which shall not be unreasonably withheld.

ARTICLE XIII
OPPORTUNITY TO PROVIDE ADDITIONAL SERVICES

Contractor values the opportunity to meet all of Customer's non-hazardous waste collection and disposal needs. Customer will provide Contractor the opportunity to meet those needs and to provide, on a competitive basis, any additional non-hazardous waste collection and disposal services during the Term of this Agreement.

ARTICLE XIV
EXCUSED PERFORMANCE

Except for the payment of amounts owed hereunder, neither party hereto shall be liable for its failure to perform or delay in its performance hereunder due to contingencies beyond its reasonable control including, but not limited to, strikes, riots, compliance with laws or governmental orders, inability to access a container, fires, inclement weather and acts of God, and such failure shall not constitute a breach under this Agreement. For the avoidance of doubt, however, a law or government order, ordinance or award establishing an exclusive franchise or similar right for a service provider in Contractor's service area shall not excuse Customer's performance hereunder.

ARTICLE XV
BINDING EFFECT

This Agreement is a legally binding contract on the part of Contractor and Customer and their respective heirs, successors and permitted assigns, in accordance with the terms and conditions set out herein.

ARTICLE XVI
ENTIRE AGREEMENT AND GOVERNING LAW

This Agreement represents the entire understanding and agreement between the parties hereto concerning the matters described herein and supersedes any and all prior or contemporaneous agreements, whether written or oral, that may exist between the parties regarding the same. This Agreement shall be governed by the laws of the State in which Customer's service locations listed on the first page of this Agreement are situated, without regard to conflicts of law provisions.

ARTICLE XVII
CUSTOMER MASTER SERVICE AGREEMENTS

If Customer and Contractor or any of their respective parent companies or affiliates enter into a Master Service Agreement concerning the Waste Materials, and in the event of a conflict between the Master Service Agreement and this Agreement, the terms of this Agreement shall control, except to the extent the Master Service Agreement specifically references a provision of this Agreement, which reference shall include any applicable Article or Section reference, and the parties specifically express their intent in the Master Service Agreement to amend such provision.

EXHIBIT B

WCI OF SC - GREENVILLE
1010 Rogers Bridge Rd, Duncan, South Carolina 29334-9749
P:(864) 801-1436 F:

SERVICE AGREEMENT
#00054919

SERVICE LOCATION

Customer Name	BUBBA ANNIES
Customer Name 2	
Address	1 PELHAM ROAD AND HWY 14
City, State, Zip	GREER, SC, 29651
Contact	NONE PROVIDED BUBBA ANNIES
Phone	(864) 297-0007
Email	bubbaannies@hotmail.com

BILLING INFORMATION

Customer Name	BUBBA ANNIES
Customer Name 2	
Address	996 BATESVILLE ROAD
City, State, Zip	GREER, SC, 29651
Contact	NONE PROVIDED BUBBA ANNIES
Phone	(864) 297-0007
Email	bubbaannies@hotmail.com

SERVICES AND RATES

Effective Date: 2/22/2018

Type	Quantity	Bin Size	Service Frequency	Service Type	Price
Recurring	1.00	8 Yard	3XW	FL 8 YD 3X WK 1	$350.00
On Call	1.00			EXTRA PICK UP - COMM	$70.00

ADDITIONAL COMMENTS

PAYMENT TERMS

The undersigned individual signing this Agreement on behalf of Customer acknowledges that he or she has read and understands the terms and conditions of this Agreement and that he or she has the authority to sign the Agreement on behalf of the Customer. **TERMS: NET 10 DAYS.** State and local taxes, government franchise fees (if applicable), administrative fees, fuel surcharges and environmental fees also apply. Container relocation, container removal and seasonal restarts will be provided at additional costs.

The service agreement is for 60 months and the renewal period is for 60 months.

Customer Agreement

Authorized Signature	Karen Frady
Printed Name	Karen Frady
Title	SERVICE
Date	02/22/2018

Representative Information

Printed Name	Ryan Mathis
Title	Sales Representative
Date	02/22/2018

ARTICLE I
SERVICES RENDERED

Customer grants to Contractor the exclusive right to collect and dispose of all of Customer's Waste Materials (as defined below) and agrees to make payments to Contractor as described herein, and Contractor agrees to furnish the services and equipment specified above, all in accordance with the terms of this Agreement.

ARTICLE II
TERM

THE INITIAL TERM (THE "INITIAL TERM") OF THIS AGREEMENT IS 60 MONTHS FROM THE EFFECTIVE SERVICE DATE SET FORTH ON THE FIRST PAGE OF THIS AGREEMENT, WHICH IS THE DATE CONTRACTOR'S EQUIPMENT IS DELIVERED TO CUSTOMER'S LOCATION OR SERVICE UNDER THIS AGREEMENT COMMENCES, WHICHEVER IS EARLIER. THIS AGREEMENT SHALL AUTOMATICALLY RENEW FOR SUCCESSIVE 60 MONTHS TERMS (EACH A "RENEWAL TERM" AND TOGETHER WITH THE INITIAL TERM, THE "TERM") THEREAFTER UNLESS EITHER PARTY GIVES WRITTEN NOTICE OF TERMINATION BY U.S. CERTIFIED OR REGISTERED MAIL, POSTAGE PRE-PAID AND RETURN RECEIPT REQUESTED, TO THE OTHER PARTY AT LEAST NINETY (90) DAYS PRIOR TO THE EXPIRATION OF THE INITIAL TERM OR ANY RENEWAL TERM. ANY SUCH NOTICE SHALL BE SENT TO THE OTHER PARTY'S ADDRESS SET FORTH ON THE FIRST PAGE OF THIS AGREEMENT, OR ANY CHANGE OF ADDRESS COMMUNICATED IN WRITING BY THE OTHER PARTY DURING THE TERM OF THE AGREEMENT. A RENEWAL TERM SHALL BECOME EFFECTIVE (THEREBY EXTENDING THE THEN-CURRENT TERM) UPON EITHER PARTY'S FAILURE TO GIVE NOTICE OF TERMINATION WITHIN THE TIME PERIOD SET FORTH ABOVE. NOTWITHSTANDING THE FOREGOING, CUSTOMER AGREES THAT IT SHALL NOT PROVIDE ANY SUCH NOTICE OF TERMINATION IF CONTRACTOR MEETS COMPETITIVE OFFERS MADE BY THIRD PARTIES IN WRITING FOR SIMILAR SERVICES AFTER CONTRACTOR'S REVIEW THEREOF PURSUANT TO ARTICLE XIII BELOW.

ARTICLE III
WASTE MATERIALS

The waste materials to be collected and disposed of by Contractor pursuant to this Agreement consist of all solid waste (including recyclable materials) generated or collected by Customer at the locations specified on the first page of this Agreement (the "Waste Materials"); provided, however, that the term Waste Materials specifically excludes and Customer agrees not to deposit in Contractor's equipment or place for collection by Contractor any radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, toxic or hazardous material as defined by applicable federal, state or local laws or regulations ("Excluded Waste"). Customer agrees to comply with any description of and/or procedures with respect to removal of contaminants or preparation of recyclable materials as reasonably provided by Contractor. In the event that any recyclable materials furnished to Contractor by Customer are, due to presence of contaminants, rejected by a recycling facility or otherwise are determined by Contractor not to be resalable or to have a reduced resale value, Contractor may, in addition to its other remedies, require Customer to pay Contractor, as liquidated damages and not as a penalty, the charges incurred by Contractor (plus overhead and profit) for hauling, processing and/or disposal of such materials and for the reduction in resale value of such materials. Contractor shall deliver properly prepared recyclable materials furnished to Contractor by Customer to a recycling facility owned and/or operated by Contractor or an affiliate of Contractor or a third party that Contractor understands will recycle the materials ("Third Party Facility"); provided, however, that Contractor shall not be responsible for and has not made any representation to Customer regarding the ultimate recycling of such recyclable materials by a Third Party Facility.

ARTICLE IV
TITLE

Contractor shall acquire title to the Waste Materials when they are loaded into Contractor's truck. Title to and liability for any Excluded Waste shall remain with Customer and Customer expressly agrees to defend, indemnify and hold harmless Contractor from and against any and all damages, penalties, fines, liabilities and costs (including reasonable attorneys' fees) resulting from or arising out of the deposit of Excluded Waste in Contractor's trucks, containers or other equipment.

ARTICLE V
PAYMENTS

Customer agrees to pay Contractor on a monthly basis for the services and/or equipment furnished by Contractor in accordance with the rates, charges and fees provided for herein ("Charges"). Payment shall be made by Customer to Contractor within the period of time set forth on the first page of this Agreement. Contractor may impose and Customer agrees to pay a late fee as determined by Contractor for all past due payments, and interest on all past due payments at the rate of one and one-half percent (1½%) per month, provided that no such late fee or interest charge shall exceed the maximum rate allowed therefor by applicable law. Customer will pay Contractor a standard recycling services and equipment charge set forth above (irrespective of changing commodity values). Customer shall continue to provide, and Contractor shall continue to collect, recyclable materials from Customer in accordance with the terms of this Agreement for the Term hereof notwithstanding changing commodity values.

ARTICLE VI
RATE ADJUSTMENTS

Customer agrees that the Charges shall be increased from time to time to adjust for increases in the Consumer Price Index. Because disposal, fuel, materials and operations costs constitute a significant portion of the cost of Contractor's services provided hereunder, Customer agrees that Contractor may increase the Charges to account for any increase in such costs or any increases in transportation costs due to changes in location of the disposal facility. Customer agrees that Contractor may also increase the Charges to account for increases in the average weight per container yard of Customer's Waste Materials, increases in Contractor's costs due to changes in local, state or federal rules, ordinances or regulations applicable to Contractor's operations or the services provided hereunder, and increases in taxes, fees or other governmental charges assessed against or passed through to Contractor (other than income or real property taxes). Contractor may increase Charges for reasons other than those set forth above with the consent of Customer. Such consent may be evidenced orally, in writing or by the practices and actions of the parties. In the event Contractor adjusts the Charges as provided in this Article VI, the parties agree that this Agreement as so adjusted will continue in full force and effect. Customer acknowledges and agrees that adjustments to the Charges might not be directly associated with increased costs of servicing Customer's specific account; rather, adjustments to the Charges might be based upon overall costs and expenses incurred by Contractor on a regional or national basis.

ARTICLE VII
SERVICE CHANGES AND AMENDMENTS

Changes to the type, size and amount of equipment, the type or frequency of service, and corresponding adjustments to the rates, may be made by agreement of the parties, evidenced orally, in writing or by the practices and actions of the parties, without affecting the validity of this Agreement and this Agreement shall be deemed amended accordingly. This Agreement shall continue in effect for the Term provided herein and shall not be affected by any changes in Customer's service address if any new service address is located within Contractor's service area. Should Customer change its service address to a location outside Contractor's service area, Customer may cancel the Agreement upon thirty (30) days' written notice to Contractor. Any other amendment to this Agreement not otherwise expressly provided for herein shall be made in writing and signed by both parties.

ARTICLE VIII
RESPONSIBILITY FOR EQUIPMENT

Any equipment furnished hereunder by Contractor shall remain the property of Contractor; however, Customer acknowledges that it has care, custody and control of the equipment while at Customer's location and accepts responsibility for all loss or damage to the equipment (except for normal wear and tear or for loss or damage resulting from Contractor's handling of the equipment) and for its contents. Customer agrees not to overload (by weight or volume), move or alter the equipment, and shall use the equipment only for its proper and intended purpose. Customer agrees to indemnify, defend and hold harmless Contractor, its employees and agents against all claims, damages, suits, penalties, fines, liabilities and costs (including reasonable attorneys' fees) for injury or death to persons or loss or damage to property arising out of Customer's use, operation or possession of the equipment. Customer agrees to provide unobstructed access to the equipment on the scheduled collection day. If the equipment is inaccessible so that the regularly scheduled pick-up cannot be made, Contractor will promptly notify Customer and afford Customer a reasonable opportunity to provide the required access; however, Contractor reserves the right to charge an additional fee for such inaccessibility and/or delay or any additional collection service required by Customer's failure to provide such access. The word "equipment" as used in this Agreement shall mean all containers used for the storage of Waste Materials, and such other on-site devices as may be specified on the first page of this Agreement.

ARTICLE IX
DAMAGE TO PAVEMENT

Customer warrants that Customer's pavement, curbing or other driving surface or any right of way reasonably necessary for Contractor to provide the services described herein are sufficient to bear the weight of all of Contractor's equipment and vehicles reasonably required to perform such services. Contractor will not be responsible for damage to any such pavement, curbing, driving surface or right of way, and Customer agrees to assume all liabilities for any such damage, which results from the weight of Contractor's vehicles providing service at Customer's location.

ARTICLE X
LIQUIDATED DAMAGES AND ATTORNEYS' FEES

In the event Customer terminates this Agreement prior to the expiration of its Term other than as a result of a breach by Contractor or Contractor terminates this Agreement for Customer's breach (including nonpayment), Customer agrees to pay to Contractor all past due sums plus, as liquidated damages, a sum calculated as follows: (a) if the remaining Term under this Agreement is six (6) or more months, the average of Customer's most recent six (6) monthly charges multiplied by six (6); or (b) if the remaining Term under this Agreement is less than six (6) months, the average of Customer's most recent six (6) monthly charges multiplied by the number of months remaining in the Term. If the Term has not yet run for six (6) months, the average of Customer's monthly charges to date shall be used. Customer expressly acknowledges that in the event of an unauthorized termination of this Agreement, the anticipated loss to Contractor in such event is estimated to be the amount set forth in the foregoing liquidated damages provision and such estimated value is reasonable and is not imposed as a penalty. In the event Customer fails to pay Contractor all amounts which become due under this Agreement (including any liquidated damages, late fees and interest assessed thereon), or fails to perform its obligations hereunder, and Contractor refers such matter to an attorney, Customer agrees to pay, in addition to all past due sums, any and all costs incurred by Contractor as a result of such action, including, to the extent permitted by law, reasonable attorneys' fees.

ARTICLE XI
BREACH, SUSPENSION AND TERMINATION FOR CAUSE

If during the Term of this Agreement either party shall be in breach of any provision of this Agreement, the other party may suspend its performance hereunder until such breach has been cured or terminate this Agreement; provided, however, that no termination of this Agreement shall be effective until the complaining party has given written notice of such breach to the breaching party and the breaching party has failed to cure such breach within ten (10) days after its receipt of such notice. Upon any such failure to cure, the complaining party may terminate this Agreement by giving the breaching party written notice of such termination, which shall become effective upon receipt of such notice.

ARTICLE XII
ASSIGNMENT

Customer shall not assign this Agreement without the prior written consent of Contractor, which shall not be unreasonably withheld.

ARTICLE XIII
OPPORTUNITY TO PROVIDE ADDITIONAL SERVICES; RIGHT OF FIRST REFUSAL

Contractor values the opportunity to meet all of Customer's Waste Materials collection, disposal and recycling needs. Customer will provide Contractor the opportunity to meet those needs and to provide, on a competitive basis, any additional Waste Materials collection, disposal and recycling services during the Term of this Agreement. Customer also grants Contractor a right of first refusal to match any offer Customer receives (or makes) related to the provision of services to Customer similar to those covered hereunder upon expiration or termination of this Agreement for any reason, and Customer shall give Contractor prompt written notice of any such offer and a reasonable opportunity (but in any event at least five (5) business days from receipt of such notice) to respond to it.

ARTICLE XIV
EXCUSED PERFORMANCE

Except for the payment of amounts owed hereunder, neither party hereto shall be liable for its failure to perform or delay in its performance hereunder due to contingencies beyond its reasonable control including, but not limited to, strikes, riots, compliance with laws or governmental orders, inability to access a container, fires, inclement weather and acts of God, and such failure shall not constitute a breach under this Agreement. For the avoidance of doubt, however, a law or government order, ordinance or award establishing an exclusive franchise or similar right for a service provider in Contractor's service area shall not excuse Customer's performance hereunder.

ARTICLE XV
BINDING EFFECT

This Agreement is a legally binding contract on the part of Contractor and Customer and their respective heirs, successors and permitted assigns, in accordance with the terms and conditions set out herein.

ARTICLE XVI
ENTIRE AGREEMENT; GOVERNING LAW; AND SEVERABILITY

This Agreement represents the entire understanding and agreement between the parties hereto concerning the matters described herein and supersedes any and all prior or contemporaneous agreements, whether written or oral, that may exist between the parties regarding the same. This Agreement shall be governed by the laws of the State in which Customer's service locations listed on the first page of this Agreement are situated, without regard to conflicts of law provisions, except that Article XVII shall be governed by the Federal Arbitration Act (9 U.S.C. sections 1 et seq.). If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and the invalid, illegal, or unenforceable provision shall be modified only to the extent necessary to make it enforceable.

ARTICLE XVII
BINDING ARBITRATION AND CLASS ACTION WAIVER

Except for Excluded Claims (as defined below), any controversy or claim (collectively "Claims") arising out of or relating to this Agreement, or the breach hereof, shall be resolved by mandatory binding arbitration before a single arbitrator administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules (collectively "Rules"), and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The following controversies and claims are not subject to mandatory binding arbitration (collectively, "Excluded Claims"): (A) either party's claims against the other in connection with bodily injury, real property damage or Excluded Waste; and (B) Contractor's claims against Customer to collect past due Charges or liquidated damages.

The parties hereto agree that any and all Claims, whether in arbitration or otherwise, must be brought in a party's individual capacity, and not as a plaintiff or class member in any purported class, consolidated, collective or representative proceeding. Accordingly, Customer hereby waives any and all rights to bring any Claim as a plaintiff or class member in any purported class, consolidated, collective or representative proceeding.

This agreement to arbitrate Claims and waiver of class actions rights is governed by the Federal Arbitration Act (9 U.S.C. sections 1 et seq.) and evidences a transaction in interstate commerce. Notwithstanding anything to the contrary herein or in the Rules, this Article shall not be severable from this Agreement in any case in which the dispute to be arbitrated is brought as a class, consolidated, collective or representative action, and only a court, and not an arbitrator, may adjudicate any contention that any portion of this Article is unenforceable, void or voidable.

ARTICLE XVIII
CUSTOMER MASTER SERVICE AGREEMENTS

If Customer and Contractor or any of their respective parent companies or affiliates enter into a Master Service Agreement concerning the Waste Materials, and in the event of a conflict between the Master Service Agreement and this Agreement, the terms of this Agreement shall control, except to the extent the Master Service Agreement specifically references a provision of this Agreement, which reference shall include any applicable Article or Section reference, and the parties specifically express their intent in the Master Service Agreement to amend such provision.