

**OPERATION, MANAGEMENT AND  
LEASE AGREEMENT**

**New England Waste Services of N.Y., Inc.  
and  
Madison County, New York**

## **OPERATION, MANAGEMENT AND LEASE AGREEMENT**

This **OPERATION, MANAGEMENT AND LEASE AGREEMENT** (this “Agreement”), dated [●] (the “Effective Date”), is made by and between **NEW ENGLAND WASTE SERVICES OF N.Y., INC.**, a domestic corporation with an address of 25 Greens Hill Lane, Rutland, Vermont 05701 (the “Company”), and **MADISON COUNTY, NEW YORK**, a New York State Municipal Corporation, created under Article 9 of the New York State Constitution, with an address of 138 N Court Street, Wampsville, NY 13163 (the “County”).

**WHEREAS**, the County is the owner of certain facilities relative to the collection and management of solid waste and recyclables located within Madison County, New York (the “Facilities”); and

**WHEREAS**, the County did circulate a Request for Proposals pursuant to the provisions of New York General Municipal Law § 120-w for the operation, management and lease of the Facilities and the Company submitted a proposal therefor; and

**WHEREAS**, the County has determined that the proposal submitted by the Company best complies with the request for proposal and it is in the best interests of the County to enter into a contract with the Company.

**NOW, THEREFORE**, in consideration of the representations, warranties, promises, covenants and agreements hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### **1. DEFINITIONS**

For the purpose of this Agreement, the following words and phrases shall have the following meanings:

“Acceptable Waste” shall mean solid waste, as defined in 6 NYCRR § 360.2 or any successor regulations thereto, whether such materials are from residential, commercial, institutional, or industrial sources, municipal solid waste (MSW), BUD Material, construction and demolition debris (C&D), Special Waste as may be allowed by the Permits, and biosolids up to a maximum amount per Year equal to twelve percent (12%) of the amount of Acceptable Waste accepted at the Operating Landfill during such Year (or such higher percentage as may be requested by the Company and approved by County, which approval shall not be unreasonably withheld, conditioned or delayed), but shall not include Excluded Waste. The terms, solid waste, municipal solid waste (MSW), construction and demolition debris (C&D) and biosolids, as used in this Agreement, shall have the meanings given to such terms in 6 NYCRR § 360.2 or any successor regulations thereto.

“Air Space” means the existing or anticipated volumetric capacity of the Operating Landfill or any discrete portion thereof that is available for receipt of Acceptable Waste.

“Annual Permit Capacity” shall mean the annual tonnage limit set forth in the NYSDEC Permit

issued for the Operating Landfill pursuant to 6 NYCRR 363-2 and other applicable law and regulation. For purposes hereof, BUD Materials shall not count against the calculation of Annual Permit Capacity.

“Assigned Contracts” shall mean those contracts assigned by the County to the Company, as identified on **Exhibit [●]**, and shall expressly include all Existing Hauler Contracts.

“Beneficial Use Determination” or “BUD” shall mean products derived from solid wastes, which are approved in advance, in writing, by the NYSDEC for use as daily cover material, landfill or final cover system components or other landfill construction materials, pursuant to the provisions of 6 NYCRR 360.12.

“Closed Landfill Area” shall mean the two (2) County owned closed portions of the Landfill located East of Buyea Road, the first being approximately eight (8) acres in size and operated from 1974-1991 and the second being approximately twenty-five (25) acres in size and operated from 1983-1996, as more particularly shown on the Landfill Boundary map set forth in **Exhibit [●]**.

“Closure” shall mean those acts and activities required by New York State Environmental Conservation Law, and the regulations promulgated thereunder, which result in a permanent cessation of use of a municipal landfill, or portion thereof, including those adopted at 6 NYCRR 363-9, as amended or modified, excluding Post Closure Care.

“Closure and Post-Closure Financial Assurance” shall mean that bond or other surety required pursuant to ECL Article 27, the regulations promulgated thereunder at 6 NYCRR Part 360 and any successor law or regulation, and any other bond or surety required by state or federal law to secure payment of the costs of Closure or Post-Closure Care of the Facilities.

“Commencement Date” shall mean [●] or such earlier date as the Company and the County agree that the Company may take possession of and commence operation of the Facilities.

“Company Affiliate” shall mean any successor, parent, subsidiary or any entity in common ownership with the Company.

“Company-Owned Real Property” shall mean any and all parcels of real property, or interests therein, currently owned or purchased in the future by the Company or any Company Affiliate that are adjacent to and/or adjoin the County-Owned Real Property on which the Facilities are currently or come to be located, which the Company develops or utilizes in whole or in part for solid waste management or related activities as contemplated by the Agreement.

“Convenience Station” shall mean the convenience station to be operated at the Operating Landfill, or such other locations as may be established by the County or the Towns after agreement on cost and terms of use with the Company, for local residential drop off.

“County” shall mean the municipal corporation known as the County of Madison in the State of New York, and depending on the context, the geographic area thereof.

“County-Owned Real Property” shall mean any and all parcels of real property currently owned

or purchased in the future by the County on which the Facilities are currently or in the future come to be located, including, without limitation, the Closed Landfill Area. The County-Owned Real Property does not include any portion of the Company-Owned Real Property.

“CPI” shall mean the Consumer Price Index published by the United States Department of Labor Bureau Statistics, entitled “Garbage and trash collection in U.S. city average, all urban consumers, not seasonally adjusted,” Series number CUUR0000SEHG02.

“CPI Adjustment” shall mean the percentage change in the CPI calculated by comparing the CPI at the beginning of the prior Year to the CPI at the beginning of the upcoming Year.

“Effective Date” shall mean the date this Agreement is executed.

“Equipment” shall mean the equipment used in the operation of the Facilities, as purchased by the Company and listed on **Exhibit [●]**.

“Excluded Waste” shall mean highly flammable substances, Hazardous Waste, liquid wastes, certain pathological and biological wastes, explosives, radioactive waste, oil, petroleum, hydrofracking byproducts or any other waste, to the extent excluded by an applicable environmental law or regulation, or excluded by any of the terms and conditions of any permits, licenses or approvals obtained with respect to the operation of the Facilities. This term shall also include such other waste material which the Company finds, in its sole discretion, to pose an unreasonable risk or danger to the operation or safety of the Facilities or the environment.

“Existing Hauler Contracts” shall mean all those contracts relating to waste collection and disposal made by and between the County and each Permitted Hauler, which provide for the delivery of waste generated in Madison County that is collected by the Permitted Hauler to the Operating Landfill for the specified tipping fee that is in effect on the Commencement Date, as such contracts may in the future be renewed, amended, assigned or modified from time to time.

“Facilities” shall mean the Operating Landfill, MRF and Transfer Station facilities presently operated, or to be owned, constructed, utilized or operated, by the County or the Company, whichever the case may be, in the handling and/or management of solid waste and recyclables, and all improvements and fixtures located thereon or thereat; intended to be all personal, real (including all County-Owned Real Property) and intangible property used or intended to be used in connection with the operation of such facilities, all as described in and the subject of this Agreement; provided, however, that all Facilities (or any portion thereof) located on Company-Owned Real Property shall be owned by and remain an asset of the Company, or its successors and assigns, in perpetuity for so long as the Company, a Company Affiliate or its successors and assigns owns the Company-Owned Real Property on which these improvements are located, without regard to the County’s possible reversionary interest in any improvements located on County-Owned Real Property.

“Force Majeure” shall mean any act, event or condition affecting the Facilities or either party to the extent that it materially and adversely affects the ability of either party to perform or comply with any obligation, duty or agreement required of the party under this Agreement, if such act,

event, or condition is beyond the reasonable control of the party or its agents relying thereon and is not the result of the willful or negligent action, inaction or fault of the party relying thereon, including, without limitation: (a) an act of God, epidemic, landslide, lightning, earthquake, fire, explosion, storm, flood or similar occurrence; (b) an act of public enemy, war, blockage, insurrection, riot, general arrest or restraint of government and people, civil disturbance or disobedience, sabotage or similar occurrence, or other interference by third parties with any solid waste disposal operations or any other duties of the Company or the County; (c) a strike, work slowdown, or similar industrial or labor action; (d) an order or judgment (including, without limitation, a temporary restraining order, temporary injunction, permanent injunction, or cease and desist order) or other act of any federal, state, county or local court, administrative agency or governmental office or body, including, without limitation, such an order or judgment which limits the duration of this Agreement to less than 25 years plus extensions; (e) the denial, loss, suspension, expiration, termination or failure of renewal of any permit, license or other governmental approval required to operate the Facilities which does not result from any negligent or willful act or omission of the party; (f) adoption or change (including a change in interpretation or enforcement) of any federal, state, county or local law, rule, permit, regulation or ordinance after the Effective Date applicable to the parties or the Facilities, adversely affecting any obligations hereunder, including, without limitation, such changes which have an adverse effect on the cost of development, construction, operation or maintenance of the Facilities; (g) the institution of a legal or administrative action, or similar proceeding, by any person, firm, corporation, agency or other entity which delays or prevents any aspect of the development or operation of the Facilities, including, without limitation, comments on or challenges to the consideration or issuance of any permit, license or other approval required to construct or operate the Facilities; or (h) if the Company is for any reason (other than any reason resulting from its negligent or willful act or omission) delayed or barred by governmental or judicial action from collecting all or any part of the fees to be paid under this Agreement, as may be from time to time adjusted, and any other payments that may become due and owing.

“Gas” or “Landfill Gas” shall mean gas, together with all tangible and intangible benefits associated with gas, generated from the Landfill, including, without limitation, the Closed Landfill Area, from existing cells, as well as any new cells or ancillary improvements developed and utilized by the Company or a Company Affiliate, and includes gas produced after expiration or termination of this Agreement from those cells developed and utilized by the Company or a Company Affiliate during the Term of this Agreement to generate such gas.

“Hazardous Waste” shall mean any pollutant, contaminant, chemical, industrial, toxic or other waste that constitutes hazardous waste as defined pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 9601 et. seq, or the New York State Environmental Conservation Law, Article 27, § 27-1301(1), or the regulations adopted thereunder.

“Host Benefit” shall mean payments and benefits provided by the Company to the County, the Town of Lincoln, New York, or the Town of Lincoln, New York, Fire District for Acceptable Waste disposed of or at the Operating Landfill during the Term of this Agreement, and which are described in **Exhibit [●]**.

“In-County Waste” shall mean Acceptable Waste that is generated within the geographic

boundaries of Madison County and delivered to the Operating Landfill for disposal.

“Landfill” means all of the assets and properties used in connection with the Madison County Landfill, including the land within the Landfill Boundary (as shown in **Exhibit [●]**, all buildings, improvements, appurtenances and fixtures located thereon, and all Equipment, Assigned Contracts, licenses and permits, including rights of assignment to the extent assignable, and all other rights, assets and interests, used or held for use in connection with the Landfill.

“Landfill Boundary” means that portion of the County-Owned Real Property that encompasses the Landfill, including the Closed Landfill Area and the Operating Landfill, as more particularly shown on the map set forth in **Exhibit [●]**.

“Materials Recovery Facility” or “MRF” shall mean the County owned recycling facilities and equipment utilized in the operation and support of the Recycling Program.

“Net Revenue” shall mean total revenues received by the Company for the operation of the Energy Project *less* operating expenses *less* interest paid *less* depreciation and *less* taxes.

“NYSDEC” shall mean the New York Department of Environmental Conservation or agency of the government of the State of New York created by Chapter 140 of the Laws of 1970, and having the jurisdiction, powers, and duties described in the Environmental Conservation Laws of the State of New York, or any successor thereto.

“Operating Landfill” shall mean the Landfill, excluding the Closed Landfill Area and those other areas to remain under control of the County, as more particularly shown on the Landfill Boundary map set forth in **Exhibit [●]**, which includes Air Space capacity of approximately [●] million cubic yards, all-encompassing [●] acres, together with the full benefit of all Assigned Contracts, licenses and permits, as assigned or may be assignable, and all other rights, assets and interests, used, or held for use, in connection with the Operating Landfill, which shall include any portion of Company-Owned Real Property, buildings, improvements, cells and appurtenances, and fixtures and Equipment utilized, or held for use, as part of the Operating Landfill.

“Out-of-County Waste” shall mean Acceptable Waste that is generated outside of the geographic boundaries of Madison County and delivered to the Operating Landfill for disposal. For the purposes hereof, Out-of-County Waste shall exclude, and the Company shall not be permitted to dispose at the Operating Landfill, Acceptable Waste (other than construction and debris and Special Waste, which shall be permitted hereunder) from the New York counties of Bronx County, Kings County, New York County, Queens County and Richmond County. For avoidance of doubt, this exclusion shall not apply to C&D waste and Special Waste from these Counties.

“Permit” shall mean the document evidencing the current or future approval of the construction and/or operation of the Operating Landfill and related Facilities issued by the NYSDEC pursuant to 6 NYCRR 360, 361,363, or other applicable provision.

“Permitted Hauler” shall mean those commercial haulers permitted by the County to do business in Madison County, New York pursuant to Local Law # 3 of 2004 and who enjoy the right to

deliver In-County Waste to the Operating Landfill.

“Post Closure Care” shall mean those acts and activities that are required for post-closure care of a municipal landfill, or portion thereof, including, without limitation, monitoring, reporting and maintenance, as set forth in the relevant environmental statutes and regulations, including, without limitation, 6 NYCRR Part 360, as they may be amended from time to time, or any Permits and agreements between the Company and the NYSDEC.

“Recycling Program” shall mean all of the equipment, buildings (including the MRF) and Assigned Contracts associated with the County’s existing recycling program.

“Remaining Constructed Air Space” shall mean that portion of the Annual Permit Capacity constructed or under construction, by the Company, but unused, at the expiration or earlier termination of this Agreement.

“Reserved Capacity” shall mean 60,000 TPY of In-County Waste, which shall be adjusted annually by the Company based on the change in the County's population, but, in no event, shall such amount be less than 60,000 TPY.

“Special Waste” shall mean any discarded waste material other than those which are typically found in household, commercial or municipal refuse, including, without limitation, materials such as industrial waste of a nonhazardous nature, institutional waste of a nonhazardous nature, contaminated soil of a nonhazardous nature, residue from incineration, processing wastes, short paper fiber, biosolids, sludge, grit, treated medical waste and asbestos, or waste which requires special or exceptional handling or approval from NYSDEC, but shall not include Excluded Waste.

“State” shall mean the State of New York.

“Tipping Fee” shall mean the per ton monetary charge(s) for disposal of Acceptable Waste at the Operating Landfill.

“Ton(s)” shall mean 2,000 pounds.

“TPY” shall mean Tons per Year.

“Transfer Station” or “Transfer Stations” shall mean each of the three (3) transfer stations, located on County-Owned Real Property in the Towns of Cazenovia, Hamilton and Sullivan, and the Convenience Station, each of which is used to receive and consolidate solid waste and recyclables for purposes of transportation for disposal and processing to the Operating Landfill and MRF.

“Year” shall mean a calendar year commencing on the Commencement Date (and each anniversary of the Commencement Date thereafter) and ending on the day before the next succeeding Commencement Date (or, in the case of the final year of this Agreement, ending upon the date of expiration or earlier termination of this Agreement in accordance with terms and conditions hereof).

## **2. TERM**

This Agreement shall be effective as of the Effective Date, and shall continue until expiration or earlier termination of the lease granted to the Company herein. The County hereby leases the Facilities to the Company for an initial term, commencing on the Commencement Date, and continuing for twenty-five (25) years (the “Term”) thereafter, all on the terms and conditions as more fully set forth herein, and subject to the option to extend the Term as provided in this Agreement. For avoidance of doubt, the Company’s rights and obligations set forth in this Agreement related to the Company’s operation, management and lease of the Facilities, and the maintenance of the Closed Landfill Area, shall not commence until the Commencement Date.

## **3. LEASE PAYMENTS**

3.1 The Company shall, commencing on the Commencement Date, pay to the County, as an annual lease payment in consideration for the terms and condition set forth herein, and in lieu of all taxes and special assessments, including without limitation, property and school taxes, Seven Hundred and Nine Thousand Dollars (\$709,000.00) per Year (the “Lease Payments”). The annual Lease Payment shall be due and payable for each Year of the Term of this Agreement, in advance, on the Commencement Date, and each anniversary of the Commencement Date thereafter. The final Lease Payment shall be prorated for the final Year based on the number of days this Agreement is in effect for such Year as compared to the total number of days in such Year.

3.2 The Company shall also pay, on the Commencement Date, a one-time fee, in consideration of unused Air Space that, as of the Commencement Date, is available for any existing (constructed) cells located in the Operating Landfill, the sum of Five Million Three Hundred Thousand Dollars (\$5,300,000.00). This payment shall be made on the Commencement Date.

3.3 All payments shall be made by wire or automated clearing house (ACH) transfer to an account designated by the County from time to time or, at the Company’s discretion, by Company check to the County’s address set forth for the delivery of notices under this Agreement.

## **4. HOST BENEFITS**

In addition to the payments set forth in Section 3, and in consideration for the potential impacts of this Agreement, and the operation of the Facilities, the Company agrees to provide to the County, the Town of Lincoln, New York and the Town of Lincoln, New York Fire District, certain Host Benefits, as more particularly described on the attached **Exhibit [C]**.

## **5. PERMIT COMPLIANCE AND MODIFICATION**

5.1 It is the intent of the parties that, upon the Commencement Date, the Company shall take possession of the Facilities, and commence operation of the Facilities in accordance with all existing Permits. In particular, the Company shall operate the Facilities in strict accordance with the annual capacity limitations of existing Permits, and shall accept all In-County Waste delivered during the course of each Year at Tipping Fees, as set forth in Section 9.



5.2 Notwithstanding the foregoing, it is the intent of the parties to pursue a modification of the existing Permit issued for the Landfill pursuant to 6 NYCRR 360 and 363-4 to increase the Annual Permit Capacity of the Landfill under such conditions as may be determined after review under the State Environmental Quality Review Act (SEQRA, ECL Article 8 and applicable regulation) and the procedures of 6 NYCRR 360, 363, 617, and 621. Prior to the Commencement Date, to the extent required by applicable law, the parties shall jointly make application to the NYSDEC for a modification of the existing Permit to operate the Landfill to reflect the County as Owner and the Company as operator of the Operating Landfill. Thereafter, within one hundred and eighty (180) days following the Commencement Date, the parties shall jointly make application to the NYSDEC for a modification of the existing Permit to modify the Permit to increase the Annual Permit Capacity at the Operating Landfill to 310,000 TPY of Acceptable Waste (excluding BUD Material), to remove the daily tonnage limits at the Operating Landfill (or convert such limitation to a quarterly restriction), and to make such other modifications as the parties deem necessary and advisable, in accordance with the terms of this Agreement and all applicable law and regulation (the "Permit Modification"). The County shall express its intent to serve as lead agency under SEQRA for the Permit Modification and expects to issue a positive declaration and direct the preparation of an Environmental Impact Statement.

5.3 Notwithstanding receipt of the Permit Modification, the Company hereby agrees that, prior to acceptance of Acceptable Waste (excluding BUD Material) at the Operating Landfill in excess of 240,000 TPY (the "Final Tonnage Increase"), the Company shall develop a comprehensive Fill Management and Community Impact Plan ("FMCIP") to provide for a graduated increase in the quantities of Acceptable Waste (excluding BUD Material) to be accepted at the Operating Landfill in excess of 240,000 TPY, and the prevention and the mitigation of adverse impacts on the community surrounding the Operating Landfill as a result of such increase. The FMCIP shall set forth the criteria the Company must establish prior to implementation of the Final Tonnage Increase, which is agreed herein to be as described in **Exhibit [●]**, and shall address fill management, leachate generation, litter and odor concerns, and traffic and road impacts, including the designation and dissemination of a truck route for Out-Of-County haulers. The Company shall not be permitted to implement the Final Tonnage Increase until the County has approved the FMCIP, which approval shall not be unreasonable withheld, conditioned or delayed.

5.4 Within thirty (30) days following the date that all Permits deemed necessary by the Company to authorize the Permit Modification shall become final, binding and non-appealable by operation of law, the Company shall pay to the County a permit success fee equal to Four Million Seven Hundred Thousand Dollars (\$4,700,000.00).

5.5 Within one hundred and eighty (180) days following the County's approval of the FMCIP, the Company shall pay to the County an additional permit success fee equal to Three Million Three Hundred Thousand Dollars (\$3,300,000.00).

5.6 The Company shall reimburse the County for engineering and legal fees incurred by the County in connection with the County's obligations associated with the Permit Modification, in an amount not to exceed One Hundred Thousand Dollars (\$100,000.00), payable from time to time upon expenditure and submission of backup documentation.

## **6. EQUIPMENT; ASSIGNED CONTRACTS**

The Company, or a Company Affiliate, having inspected and being fully informed as to the age, operating history and physical condition of the Equipment, shall, on the Commencement Date, purchase, and the County shall deliver title and a bill of sale for, all Equipment for the sum of Three Million Four Hundred Thousand Dollars (\$3,400,000.00). The County shall maintain ownership of all equipment used in the operation of the Landfill not specifically described in **Exhibit [B]**. Any sales tax relating to the purchase of Equipment shall be paid by the Company. On the Commencement Date, the County shall also deliver to the Company an assignment of contracts, conveying to the Company for the duration of the Term of this Agreement all of the County's right, title and interest in and to the Assigned Contracts (**Exhibit [A]**).

## **7. RECYCLING PROGRAMS**

7.1 The Company shall, during the Term of this Agreement, operate a Recycling Program utilizing the County MRF operations, as more particularly described and set forth on **Exhibit [●]**.

7.2 The County shall, during the Term of this Agreement, continue to offer electronic waste collection to County residents at the LOJO Technology Building in the City of Oneida, New York, as administered by the County as of the Effective Date (the "Electronic Waste Collection Program"). The Company shall reimburse the County for certain costs and expenses associated with Electronic Waste Collection Program, as described in **Exhibit [C]**.

## **8. TRANSFER STATIONS**

The Company shall, during the Term of this Agreement, operate the Transfer Stations, which shall accept and transport waste and recyclables to the Operating Landfill and MRF for disposal and processing, respectively. Days and hours of operation of the Transfer Stations are included in **Exhibit [●]**. The County and the Company shall meet annually to discuss days and hours of operation, which may be adjusted upon mutual agreement of the parties.

## **9. LANDFILL TIPPING FEES FOR ACCEPTABLE IN-COUNTY WASTE**

9.1 For the period beginning on the Commencement Date, and continuing for a period of five (5) Years, the Tipping Fees charged by the Company for In-County Waste delivered to the Operating Landfill by any Permitted Hauler who is a party to an Existing Hauler Contract with the County shall be no greater than the fees stipulated in such Contract. Thereafter, on the fifth anniversary of the Commencement Date, and continuing through the remaining term of this Agreement, the Tipping Fees charged by the Company for In-County Waste delivered to the Operating Landfill by Permitted Haulers who are parties to an Existing Hauler Contract shall be no greater than any Tipping Fee charged by the Company to County residents or Permitted Haulers who are not parties to an Existing Hauler Contract, as set forth in Section 9.2.

9.2 For the period beginning on the Commencement Date, and continuing for a period of five (5) Years, the Tipping Fees charged by the Company for In-County Waste delivered to the Operating Landfill by County residents and Permitted Haulers who are not parties to an Existing

Hauler Contract shall be no greater than \$88.00/ton. Thereafter, on the fifth anniversary of the Commencement Date, and continuing through the remaining term of this Agreement, the Tipping Fees charged by the Company for In-County Waste delivered to the Operating Landfill by County residents and Permitted Haulers who are not parties to an Existing Hauler Contract shall be no greater than \$88.00/ton, as escalated on such fifth anniversary of the Commencement Date and on each subsequent anniversary of the Commencement Date thereafter by a CPI Adjustment.

9.3 For the period beginning on the Commencement Date, and continuing for a period of five (5) Years, the price for punch cards for County residents to dispose of Acceptable Waste at the Facilities shall be \$15 per 5 – 33 gallon bags (or volumetric equivalent of construction and debris). Thereafter, on the fifth anniversary of the Commencement Date, and continuing through the remaining term of this Agreement, the price for punch cards for County residents to dispose of Acceptable Waste at the Facilities shall be no greater than \$15 per 5 – 33 gallon bags (or volumetric equivalent of construction and debris), as escalated on such fifth anniversary of the Commencement Date and on each subsequent anniversary of the Commencement Date thereafter by a CPI Adjustment.

## **10. LANDFILL TIPPING FEES FOR OUT-OF-COUNTY WASTE**

The Company may establish such tipping fees for Out-of-County Waste as it deems prudent.

## **11. WASTE CONTROL ORDINANCES OR LOCAL LAWS**

The parties acknowledge and agree that former section 4(c) of current County Local Law Number 3 of 2004 was inconsistent with the acceptance of Out-of-County Waste at the Operating Landfill, and that such acceptance is central to the purposes of this Agreement. The County hereby represents, warrants and covenants that, prior to execution of this Agreement, the County has repealed section 4(c) of current County Local Law Number 3 of 2004 to authorize the acceptance of Out of-County Waste at the Operating Landfill. In the event that such action fails to become final, binding and non-appealable by operation of law, or is otherwise subsequently challenged and declared null and void, so long as such event is not caused by a Material Breach by the County, the Company shall have the right to terminate this Agreement under Section 27.1.2.1, and to all of the remedies arising therefrom. The County hereby reserves the right, solely in its own discretion but subject to Section 12.4, to amend, modify or repeal such other provisions of County Local Law Number 3, as may be deemed necessary and in the best interest of the County.

## **12. COOPERATION**

12.1 The County shall cooperate and support the Company in constructing, operating, using, maintaining, upgrading, expanding or closing the Facilities, including the Operating Landfill, as contemplated in this Agreement, including, without limitation, obtaining regulatory approvals in connection with the foregoing, and shall undertake all reasonable steps to accomplish the same; provided, however, that it shall be the Company's responsibility to prepare permit applications, conduct geologic and engineering studies, and to pay any consultants that might be necessary in relation to the same. The County shall, among other things, execute at the Company's request, all documents, and will further undertake to the extent not violative of law any steps requiring local

legislation or resolution, in order to comply with its obligation under this Section.

12.2 The County hereby appoints the Company as its agent or, alternatively, grants the Company a limited power of attorney (to the extent permissible by law), to file documents, execute documents, submit permit applications, consult with the NYSDEC and other governmental authorities, represent the County in front of the NYSDEC and other governmental authorities, and represent the County at any public hearings and other further proceedings, in each case, that is required by the Company for the construction, operation, use, maintenance, upgrade, expansion or closure of the Facilities, including Operating Landfill, as contemplated in this Agreement.

12.3 In the event that the County fails to cooperate with and support the Company's efforts to construct, operate, use, maintain, upgrade, expand or close the Facilities, including the Operating Landfill, as contemplated in this Agreement, or unreasonably withholds such cooperation and support, the Company shall have the right to declare such an event a Material Breach of this Agreement and, upon failure of the County to cure such Material Breach under Section 26.5, shall have the right to terminate this Agreement and seek liquidated damages under Section 27.

12.4 Without limiting the foregoing, in the event that the County adopts or enacts any new, or enforces any existing, local law, ordinance, resolution or policy, that has a material adverse impact on the rights of the Company to construct, operate, use, maintain, upgrade, expand or close the Facilities, including the Operating Landfill, as contemplated in this Agreement, including, without limitation, the re-enactment of, or the adoption or enactment of a local law similar to, Section 4(c) of County Local Law Number 3 of 2004, all of the rights provided to the Company under this Agreement shall be deemed vested rights, which shall be protected and excluded from the operation of any such local law, ordinance, resolution or policy. Alternatively, in such event, the Company shall also have the right to declare such event a Material Breach of this Agreement and, upon failure of the County to cure the such Material Breach under Section 26.5, shall have the right to terminate this Agreement and seek liquidated damages under in Section 27. Nothing in this Section; however, shall prevent the County from enforcing any existing local laws, ordinances, resolutions or policies, or adopting or enacting any new local laws, ordinances, resolutions or policies, that regulate public health, safety or welfare in a reasonable manner that does not materially or unreasonably interfere with the rights provided to the Company's hereunder. If, however, the County is required by a state or federal statute of statewide applicability to adopt or enact any local law, ordinance, resolution or policy that does have a material adverse impact on the rights provided to the Company hereunder, then the Company's rights shall not be deemed to be vested and the Company shall have no right to declare a Material Breach of this Agreement, but the parties shall renegotiate the terms of this Agreement affected thereby.

### **13. FACILITIES OPERATION**

13.1 The County hereby grants to the Company during the Term of this Agreement an exclusive lease, franchise, license and privilege to operate and utilize the Facilities, including, but not limited to:

13.1.1 The right to take possession of, occupy and have exclusive use of all Facilities; and

13.1.2 The right to all revenue and income generated by or at the Facilities.

13.2 The Company agrees to limit the annual tonnage of Acceptable Waste (excluding BUD Material) received at the Operating Landfill to the Annual Permit Capacity and the FMCIP, as applicable.

13.3 The County agrees to assist with all federal, state and local agencies to obtain the issuance, modification and amendment of all permits requested by the Company, consistent with the terms and conditions set forth in this Agreement, and to otherwise assist the Company in obtaining and maintaining such permits during the Term of this Agreement. The parties shall use good faith and due diligence in obtaining permits and any modifications or amendments thereto.

13.4 The County shall not, during the Term of this Agreement, directly or indirectly, engage in (whether as an owner, operator, consultant, proprietor, partner, investor or otherwise), or have any ownership interest in, or participate in the financing, operation, management or control of, any firm, corporation, business, municipal, governmental or quasi-governmental entity that engages in, solid waste or recyclable materials management within the County.

13.5 The Company agrees to accept only Acceptable Waste at the Operating Landfill. The Company may accept Out-of-County Waste at the Operating Landfill, to the extent consistent with the annual capacity limits of the then effective Permit, but, in no case, to the exclusion or rejection of In-County Waste. In furtherance of the foregoing, during the Term of this Agreement, the Company hereby agrees to provide for the acceptance at the Operating Landfill of In-County Waste up to the Reserved Capacity, and to use commercially reasonable efforts to give priority for the acceptance at the Operating Landfill of additional In-County Waste in excess of the Reserved Capacity. If the Company accepts Out-Of-County Waste to the exclusion of the Reserved Capacity, then the Company shall, at Company's cost and expense, dispose, or cause the disposal, of the Reserved Capacity at a third-party site, and shall indemnify the County from all costs, expenses or other damages incurred or sustained by the County as a result such action.

13.6 The Company shall be responsible for the removal of Excluded Waste from the Operating Landfill, which provision shall not limit the Company's right of recourse against the transporter or generator of the Excluded Waste. The Company shall have the right to detain and inspect the contents of all vehicles which are delivering waste to the Operating Landfill to ensure that Excluded Waste is not being delivered to the Operating Landfill. The Company shall have the right to refuse or reject such Excluded Waste in its sole discretion or, if not detected prior to entering the Operating Landfill, the Company shall have the right to remove the Excluded Waste and ensure its proper disposal, all at the hauler's expense. The Company shall have the right to ban haulers from disposing at the Operating Landfill until such time as the expenses for reimbursement for the removal of the Excluded Waste are paid to the Company. The Company shall have the right to ban any and all Permitted Haulers who violate the rules governing the Operating Landfill after consultation with the County, and with the County's consent, which consent shall not be unreasonably withheld, conditioned or delayed.

13.7 The Company shall not be responsible for the transportation or delivery of waste by or on behalf of the residents of Madison County. The Company shall also not be responsible for the

transportation or redelivery of any waste, including, without limitation, Excluded Waste, that was improperly delivered, subject to and in accordance with the terms of this Agreement. The Company shall; however, be responsible for the transportation of waste from the Transfer Stations once waste is received there. The Company shall also adopt policies and procedures at the Operating Landfill to require persons delivering Acceptable Waste to the Operating Landfill to utilize preferred routes that are determined in consultation with the County.

13.8 The Company agrees to finance, design, engineer and construct expansions of the Operating Landfill to the extent permitted, pursuant to market forces and demand. The Company guarantees that the design and construction of the expansions will meet or exceed any and all state requirements pertaining to municipal solid waste landfills in New York State.

13.9 The Company shall have the right to construct at the Facilities, including the Operating Landfill, such buildings or other fixed resources as it deems necessary for the operation of the Facilities, including, but not limited to, recycling facilities, garages and other construction in the 'Company's sole option. The County shall have the right to review and approve all such buildings and other fixed resources, the cost of which is in excess of \$1,000,000.00, which approval shall not be unreasonably withheld, conditioned or delayed. Any such work shall be undertaken subject to the following additional conditions which the Company covenants to observe and perform:

13.9.1 No such work shall be undertaken until the Company shall have procured and paid for, so far as the same may be required from time to time, all permits and authorizations of governmental authorities having jurisdiction, and the County agrees to join in the application, and cooperate, for such permits or authorizations, whenever the action is necessary.

13.9.2 The Company shall protect the adjacent property against damage resulting from the performance of any work and shall indemnify and hold the County harmless from and against all liens or liability in any way arising out of the performance of the work or the furnishing of labor, services, materials, supplies, equipment, or power in connection therewith.

13.9.3 The Company shall give the County written notice of its intent to begin any such work, after obtaining all necessary governmental permits and authorizations, not later than thirty (30) days prior to the date of commencement of such work, to allow the County to post appropriate notices of non-responsibility.

13.9.4 All work shall be done promptly and in a good and workmanlike manner and in compliance with all applicable laws of any governmental authorities.

13.9.5 In addition to the insurance coverage referred to in Section 32, workmen's compensation insurance covering all persons employed in connection with the work and with respect to whom death or injury claims could be asserted against the County, the Company or the Landfill, shall be maintained by the Company or the Company's contractors, at their sole cost and expense, at all times when any work is in process in connection with any improvement, change, alteration or demolition and replacement. All such insurance shall be obtained and kept in force as otherwise provided in Section 32.

13.10 The Company shall have full and exclusive control, both physical and managerial, of the Facilities from the Commencement Date, subject only to the express limitations of the Agreement. The Company shall be responsible for the day-to-day operation of the Facilities, including, but not limited to, weighing of materials, processing recyclables, marketing recyclables for sale, testing waste for nature and consistency, preparation of waste for disposal, cell construction, disposal of waste, preparing and applying daily interim and final cover, construction of temporary roads and other temporary access, installation and monitoring of ground water wells, maintenance and operation of a leachate collection system, and disposal of leachate.

13.11 The Company shall be responsible for providing and maintaining all necessary resources for the receiving and handling of Acceptable Waste to be disposed of at the Operating Landfill and for all recyclables to be processed at the MRF, including:

13.11.1 All engineering services necessary for the design, construction and operation of the Operating Landfill and the MRF;

13.11.2 The maintenance of office facilities and personal property;

13.11.3 The employment of personnel;

13.11.4 All services incidental to operation of the Operating Landfill and the MRF, including security, accounting, legal, fire prevention and pollution control; and

13.11.5 The marketing of recyclable materials for sale.

13.12 The Company shall weigh all vehicles containing waste/recyclables to be delivered to the Operating Landfill, utilizing scales approved by the State of New York. The Company shall at least once per Year test the accuracy of the scales, and thereafter promptly correct any deficiencies identified during such tests. The County, or its authorized representative, shall, at the County's expense, also have the right to test such scale once per Year; provided, however, that such test is conducted at reasonable times and do not unreasonably interfere with Facilities' operations.

13.13 The Company shall have the right to operate the Operating Landfill and MRF at hours of its choosing in compliance with the then effective Permit. For avoidance of doubt, however, maintenance and construction of the Operating Landfill may take place outside of such operating hours, subject to any governmental permits and authorizations.

13.14 The County shall have the right to inspect the Facilities during reasonable business hours in order to ensure that the provisions of this Agreement are being complied with, that Acceptable Waste is being received at the Operating Landfill, and that the Operating Landfill and related Facilities are being operated in conformity with all applicable local, State and federal laws.

#### **14. CLOSURE AND POST CLOSURE CARE OF THE OPERATING LANDFILL**

14.1.1 The Company shall, during and after the Term of this Agreement, be responsible for the performance of all Closure and Post Closure Care of all areas, phases and cells of the Operating

Landfill (a) exhausted by the County prior to the Term of this Agreement, or (b) exhausted by the Company during the Term of this Agreement. In the event this Agreement shall expire or earlier terminate prior to the exhaustion of any area, phase or cell, then the Company shall not perform such Closure and Post Closure Care with respect to such partially exhausted area, phase or cell, but shall, instead, reimburse to the County a proportionate share of the costs to the County to perform such Closure and Post Closure Care based on the percentage of capacity the Company filled of that particular area, phase or cell. If, however, prior to the expiration or earlier termination of this Agreement, the County elects by written notice to the Company to, as of the date of such expiration or termination, cease operation of the Landfill, then the Company shall, following such expiration or termination, be responsible for the performance of all Closure and Post Closure Care of all areas, phases and cells of the Operating Landfill, irrespective of whether any such area, phase or cell is, at that time, exhausted by either party. Notwithstanding the foregoing, if this Agreement is earlier terminated by either party under Section 27, then the Company shall, at the election of the terminating party, either perform the Company's obligations under this Section or reimburse the County for the cost to the County to perform such obligations.

14.2 The Company shall, on or before the Commencement Date, apply to the NYSDEC to replace, and as soon as approved by the NYSDEC shall replace, the Closure and Post-Closure Financial Assurance that has been put in place by the County for the Landfill. The Company's Closure and Post-Closure Financial Assurance shall comply with all applicable laws, and may be of a type of security different from, and may be in an amount greater, than the County's Closure and Post-Closure Financial Assurance. Any County funds set aside or otherwise encumbered by the County's Closure and Post-Closure Financial Assurance shall immediately, upon the Company's Closure and Post-Closure Financial Assurance becoming effected, be released to the County and the Company shall have no claim thereto.

14.3 The County hereby grants to the Company all rights, including all access rights, during and after the Term of this Agreement, that are necessary or convenient for the Company to comply with its obligations under this Section to provide Closure and Post-Closure Care.

## **15. CLOSED LANDFILL AREA**

15.1 The Company, on behalf of the County, shall (a) during the Term of this Agreement, and (b) if prior to expiration (but not earlier termination by either party) of this Agreement the County elects by written notice to the Company to, as of the date of such expiration, cease operation of the Landfill, then also after the Term of this Agreement, perform, at the Company's cost and expense, Post Closure Care and general maintenance of the Closed Landfill Area; provided, however, that all liabilities arising from the Closed Landfill Area, including, but not limited to, obligations for additional remediation shall remain with the County throughout the Term of this Agreement and in perpetuity thereafter. If, however, this Agreement is terminated by either party, including, without limitation, by reason of a Material Breach, then the Company's obligations under this Section shall cease and terminate as of the date of such termination. The County hereby grants to the Company all rights, including all access rights, during and after the Term of this Agreement, that are necessary or convenient for the Company to comply with its obligations under this Section

15.2 The County agrees to hold and save harmless, indemnify and defend the Company from



any and all claims, actions, suits, judgments, proceedings, liabilities, obligations, losses, and damages, amounts paid in settlement, interest, costs and expenses (including reasonable attorney's fees, court costs and other out-of-pocket expenses incurred in investigating, preparing or defending the foregoing) resulting from the operation of the Closed Landfill Area or the disposal of solid waste of any sort at the Closed Landfill Area, whether such liability arises by the operation of law or out of a wrongful act or neglect of the County or otherwise, except to the extent such damage or claim arising out of the negligent acts or omission of the Company. In the event that the Company shall sustain damage or be forced to defend a lawsuit or claim, the County shall hold harmless, indemnify and defend the Company to the extent of any losses, costs or liabilities incurred, including, without limitation, fines, penalties, disbursements or reasonable attorney fees.

15.3 The indemnification provisions set forth herein shall survive the expiration or earlier termination of this Agreement.

## **16. HOUSEHOLD HAZARDOUS WASTE PROGRAM**

The County shall, during the Term of this Agreement, continue to offer a household hazardous waste collection program (the "HHW Program"). The County shall also continue to seek grant reimbursements for the HHW Program. The Company shall reimburse the County for certain costs and expenses associated with the HHW Program, as described in **Exhibit [C]**.

## **17. LANDFILL GAS TO ENERGY**

17.1 The Company shall have the right during the Term of this Agreement to develop a landfill gas to energy project utilizing the Landfill Gas ("Energy Project").

17.2 The County hereby grants, transfers, assigns and conveys to the Company for use at the Energy Project, and in exchange for and for so long as the Company makes the payments described in this Section, an exclusive right, title and interest in and to any and all Landfill Gas generated from the Landfill (including, without limitation, Landfill Gas from the Closed Landfill Area, Operating Landfill, County-Owned and the Company-Owned Real Property) from cells in existence as of the Commencement Date and all new cells (or portions thereof) developed and utilized/filled by the Company in the future, including post-termination Gas. As consideration for such Landfill Gas, the Company shall, on the first day of each Year, pay to the County twenty percent (20%) of the Net Revenues received by the Company for the operation of the Energy Project in the preceding Year. If, during the Term of this Agreement, the Company shall not develop the Energy Project, this grant of right to Landfill Gas shall terminate and be of no further force and effect without any further action on behalf of the County or the Company.

17.3 At or before the expiration or termination of this Agreement, if the Company shall develop the Energy Project, the County and the Company shall enter into a lease, pursuant to which, the County shall lease to the Company, the Energy Project (or the portion thereof owned by the County), including, without limitation, that portion of the County-Owned Real Property that includes the Energy Project and any infrastructure that is necessary to collect and transfer the Landfill Gas. The lease shall (a) require the Company to indemnify and hold the County harmless for any and all claims, actions, suits, judgments, proceedings, liabilities, obligations, losses, and

damages, amounts paid in settlement, interest, costs and expenses (including reasonable attorney's fees, court costs and other out-of-pocket expenses incurred in investigating, preparing or defending the foregoing) incurred or suffered by the County for any act or omission of the Company, its agents, licensees, or invitees, related to the Energy Project (b) require the Company to provide insurance of types and in amounts satisfactory to the County at its sole discretion; (c) be for an initial term that is the longest term permissible by law, and shall include an option to renew at the Company's discretion for at least one renewal term equal to the length of the initial term; and (d) shall have an annual rent of One Dollar (\$1.00) for the initial term and any renewal terms.

17.4 The Company shall develop and construct the Energy Project in accordance with all applicable laws, rules and regulations. Unless the components of the Energy Project are determined to be Type II Actions under SEQRA, the construction of all such components shall be preceded by a full evaluation under SEQRA by the County as lead agency to the extent authorized by law, including the preparation of an environmental impact statement, if required.

## **18. USE AND COMPLIANCE WITH LAW**

18.1 The Facilities shall, during the Term of this Agreement, be kept by the Company in substantial order and repair outside and inside at its sole cost and expense, and the Company shall, during such time and in the performance of its obligations hereunder, comply with all applicable orders, regulations, rules and requirements of every kind and nature, now and hereinafter in effect, of any federal, state, municipal or other governmental authority having the power to enact, adopt, impose or require the same, whether they be usual or unusual, ordinary or extraordinary or whether they or any of them relate to environmental requirements or otherwise, and the Company shall pay all costs and expenses incidental to such compliance and shall indemnify and hold harmless the County from all expenses and damages by reason of any notices, orders, violations or penalties filed against or imposed upon the Facilities, or against the County as owner thereof because of the failure of the Company to comply with this covenant.

18.2 Notwithstanding the foregoing, the Company shall have the right, at its own cost and expense, to contest or review by legal proceedings the validity or legality of any law, order, ordinance, rule, regulation, direction, or certificate of occupancy and during such contest the Company may refrain from complying therewith provided that the County will not be subjected to criminal prosecution thereby and, that if requested to do by the County, the Company shall furnish to the County a bond in form and amount reasonably satisfactory to the County guaranteeing to the County compliance by the Company with such law, order, ordinance, rule or regulation.

## **19. SUBCONTRACTING**

In addition to the other powers granted to the Company by the County in this Agreement, it is expressly acknowledged and agreed that, in the exercise of the dominion and control of the Facilities, the Company will be free, without restriction, to subcontract out those services that it deems appropriate in its sole discretion, including, but not limited to: Closure, Post-Closure Care, transportation of waste from the Transfer Stations, or such other services that the Company deems necessary; provided, however, that, the Company shall not be permitted to subcontract to third parties its primary obligation to manage the Facilities, as contemplated in this Agreement, the

Company shall remain primary liable to the County for the performance of such subcontracted services and, to the extent practicable, the Company shall ensure that all subcontractors comply with the Company's obligations set forth in this Agreement related to such services.

## **20. LEACHATE DISPOSAL**

20.1 The County shall maintain in full force and effect, and comply with all of the applicable terms and conditions of, that certain Intermunicipal Wastewater Service Agreement, dated December 31, 2013, by and between the County and the City of Oneida, Madison County, New York (the "City"), pursuant to which, the City agrees to dispose of wastewater from the Landfill and an industrial park located in the County at a City operated waste water treatment plant (the "Intermunicipal Agreement"). The County shall also pay, before delinquency, all amounts due and payable under those certain bonds, issued by the County, to pay for certain pipeline constructed by the County in connection with the Intermunicipal Agreement (the "WWTP Pipeline").

20.2 Notwithstanding the foregoing, the Company shall, on behalf of the County, have all rights granted to, and shall comply with all obligations of, the County under the Intermunicipal Agreement, to the extent such rights and obligations relate the operation and management of Landfill, as contemplated in this Agreement. For avoidance of doubt, the Company shall accept biosolids from the City at the Operating Landfill. The Company and the County shall also, on or before the Commencement Date, jointly develop, and the Company shall, during the Term of this Agreement, perform, a maintenance program for the WWTP Pipeline, which shall include periodic visual inspections, pipeline jetting or cleaning and cameral inspections.

## **21. RECORDS/AUDITS**

21.1 The Company shall keep accurate and true records, books and dates with respect to all Acceptable Waste received at the Operating Landfill and materials processed by the MRF. Accurate books and other records and data of account shall be kept of such business whether payment was made for cash or otherwise and whether or not monies were actually received.

21.2 The County and its agents shall have the right at reasonable times, but in no event more than two (2) times each Year, and on five (5) days prior written notice to the Company, to inspect and examine the accounts, records, books, contracts and other data concerning the gross volume of business conducted under this Agreement to the extent relevant to the calculation of monies due the County or compliance with the Landfill permit. In the event that such inspection and examination shall disclose that there is a material variation between the reports rendered by the Company as aforesaid and the actual gross volume of business, the cost of the County's examination shall be paid for by the Company.

21.3 Any information obtained by the County as a result of the County's examination hereunder shall be deemed confidential and proprietary, whether or not marked "confidential" or "proprietary." The County shall not, without the prior written consent of the Company, or under obligation of law, use or disclose such confidential and proprietary information for any purpose other than the implementation of this Agreement. The County agrees that in the event of the breach of this Section, the Company will not be able to secure adequate relief by an action at law;

therefore, the Company shall have the right, in addition to any other right available to it at law, in equity or otherwise, to specifically enforce this Section and to enjoin any violation or threatened violation of this Section without the necessity of posting a bond or undertaking or proving actual damages. Upon any termination or expiration of this Agreement, the County shall, within a reasonable period of time following a request for same, return all confidential or proprietary information received from the Company under this Agreement or certify to the destruction thereof. Nothing contained in the Agreement, however, shall limit the County's right to use and disclose any such proprietary or confidential information to the extent reasonably required to enforce its rights under this Agreement. In connection with the foregoing, the County hereby agrees that, pursuant to Public Officers Law §§ 85-90, it will treat the confidential and proprietary information discussed herein as proprietary, trade secret and confidential, maintain such information separate from other records and, further, exempt its disclosure to any other person or entity. In the event the County initiates a review of this information, the County shall notify the Company of such review and provide the Company an opportunity to submit a statement supporting its right to the exemption.

21.4 The Company shall not be obligated to hold the books and records for more than seven (7) years, provided there is no material variation as aforementioned.

## **22. NO JOINT VENTURE**

It is further understood and agreed that neither this Agreement, nor the method set forth herein for computing payments to the County, nor any other provision of this Agreement, are intended nor shall ever be construed as to create a co-partnership by and between the County and the Company or make the Company and the County joint venturers, or make the County in any way responsible for debts and/or losses of the Company.

## **23. REPRESENTATIONS AND WARRANTIES OF THE COUNTY**

23.1 The County represents and warrants to the Company as of the Effective Date as follows:

23.1.1 The County is a county in the State of New York with full legal right, power and authority to enter into and to fully and timely perform its obligations under this Agreement.

23.1.2 The County is duly authorized to execute and deliver this Agreement and this Agreement constitutes a legal, valid binding obligation of the County and enforceable against the County in accordance with its terms.

23.1.3 Neither the execution or the delivery by the County of this Agreement nor the performance by the County of its obligations in connection with the transactions contemplated hereby or the fulfillment by it of the terms and conditions hereof (a) conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to it or (b) materially conflict with, violates or results in a breach or default of any term or condition of any order, judgment or decree or any agreement or instrument to which the County is a party or by which the County or any of its properties or personal property are bound.

23.1.4 No approval, authorization, order, consent, declaration, bid, registration or filing with any federal, state or local governmental authority or referendum of voters which has not been obtained is required for the valid execution and delivery by the County of this Agreement or the performance by the County of its obligations hereunder.

23.1.5 There is no action, suit or proceeding at law or in equity before or by any Court or governmental authority pending or threatened against the County in which an unfavorable decision, ruling or finding would materially adversely affect the performance by the County of its obligations hereunder or other transaction contemplated hereby or that in any way would materially adversely affect the validity and enforceability of this Agreement.

23.1.6 The County knows of no facts which would prevent, limit or restrict the granting of permits for the Annual Permit Capacit(ies) contemplated hereunder from the NYSDEC or that would limit the same.

23.1.7 There are no contracts or agreements whereby any person, firm or entity has any right over the Facilities.

23.1.8 All Assigned Contracts are in good standing and there is no default thereunder that is continuing, nor is there any circumstance that would constitute a default to the knowledge of the County, nor will a default occur by virtue of assignment of the same to the Company.

23.2 The County covenants as follows:

23.2.1 None of the constructed buildings, structures and improvements that are subject to this Agreement encroach on adjoining real estate;

23.2.2 All constructed buildings, structures and improvements that are subject to this Agreement are located and constructed in conformance with all setback lines, easements and other restrictions recorded in the public records;

23.2.3 The improvements located on the County-Owned Real Property are not the subject of any official complaint or notice of violation of any applicable zoning ordinance, use ordinance, building code, certificate of occupancy or similar rule, regulation or permit and no such violation is known to exist;

23.2.4 None of the Facilities are subject to a security interest, mortgage, deed of trust, lien, encumbrance or similar interest which would prevent the culmination of this Agreement and the County owns fee simple good insurable title to the County-Owned Real Property; and

23.2.5 None of the representations or warranties made by the County herein and in the exhibits hereto and other information and material delivered by the County to the Company contains any untrue statement of material fact or omits any material fact necessary in order to make the statements contained herein and therein not misleading.

## **24. REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

24.1 The Company represents and warranties to the County as of the Effective Date as follows:

24.1.1 The Company is a domestic corporation duly incorporated, validly existing and authorized to do business under the laws of the State of New York with full legal right, power and authority to enter into and fully and timely perform its obligations under this Agreement;

24.1.2 The Company has duly authorized, executed and delivered this Agreement, and this Agreement constitutes a legal, valid and binding obligation enforceable against the Company in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or similar laws affecting creditors' rights generally or by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or law);

24.1.3 Neither the execution or delivery by the Company of this Agreement, nor the performance by the Company of its obligations in connection with the transactions contemplated hereby, nor the fulfillment of the terms and conditions hereof (a) conflicts with, violates or results in a breach of any law or governmental regulation applicable to it or (b) materially conflicts with, violates or results in a breach or default of any term or condition of any order, judgment or decree or any agreement or instrument to which the Company is a party or which the Company or any of its properties or personal property are bound;

24.1.4 No approval, authorization, order, consent, declaration, registration or filing with any federal, state or local governmental authority which has not been obtained is required for the valid execution and delivery by the Company of this Agreement or the performance by the Company of its obligations hereunder; and

24.1.5 There is no action, suit or proceeding at law or in equity before or by any court or governmental authority pending or threatened against the Company to the best of the Company's knowledge, in which an unfavorable decision, ruling or finding would materially and adversely affect the performance by the Company of its obligations hereunder or any other transaction contemplated hereby or that in any way would materially adversely affect the validity or enforceability of this Agreement.

## **25. SURVIVAL OF WARRANTIES, REPRESENTATIONS AND COVENANTS**

All representations and warranties made herein or in any Exhibit annexed hereto or in any instrument or document delivered by or on behalf of any party pursuant to this Agreement shall extend for the duration of this Agreement, as it may be extended, regardless of what investigations the parties may have made before or after the closing, except those representations and warranties which are expressly waived by the party benefiting therefrom. Nothing herein contained shall require any party to waive such representation and warranty.

## **26. DEFAULT/REMEDIES**

26.1 An "Event of Default" shall mean an event of default, as identified in Sections 26.2 and

26.3, that is not cured pursuant to the terms of Section 26.5.

26.2 Events of Default by the County.

26.2.1 A breach by the County of a material provision of this Agreement; or

26.2.2 Any representation of the County relied upon by the Company was false when made.

26.3 Events of Default by the Company.

26.3.1 A breach by the Company of a material provision of this Agreement; or

26.3.2 Any representation of the Company relied upon by the County was false when made.

26.4 Remedies for Default.

26.4.1 If an Event of Default occurs, the non-defaulting party shall promptly provide to the defaulting party notice of such Event of Default. The non-defaulting party shall have the right, after five (5) days has elapsed from the date of receipt by the defaulting party of the default notice, to cure, but shall not have the obligation or duty to cure, such Event of Default, and all costs of such cure shall, upon demand, be due and owing from the defaulting party to the non-defaulting party, and may be offset against any sums due or which may become due to the defaulting party from the non-defaulting party under this Agreement. The non-defaulting party shall use its best efforts to employ an economically reasonable method of curing any such Event of Default.

26.4.2 If an Event of Default occurs that is not cured in the manner allowed hereunder, in addition to any right the non-defaulting party may have under Section 27 to seek termination of this Agreement, the non-defaulting party shall have the right, enforceable by arbitration under Section 37, to take whatever action it may have the right to take at law, in equity or otherwise that it deems necessary or desirable, including, without limitation, the right to specifically enforce the performance of any covenant or obligation of the defaulting party under this Agreement or the right to seek recovery of all damages suffered by the non-defaulting party as a result thereof.

26.5 Each party shall, upon the occurrence of an Event of Default, either:

26.5.1 Cure the Event of Default within ninety (90) days of receipt of written notice from the non-defaulting party; or

26.5.2 Continuously demonstrate within such cure period that it is actively and continuously pursuing a course of action which can reasonably be expected to lead to a curing of the Event of Default (the ninety (90) day period will be extended for so long as the defaulting party is actively and continuously pursuing such a course); provided, however, that:

26.5.2.1 If the Event of Default is the failure of any party to pay the other party any sum or due amount required to be paid when due hereunder, then the cure shall consist of payment which will be made within fifteen (15) days of written demand from the non-defaulting

party, together with interest accruing at the legal rate from the date the payment was due;

- 26.5.2.2 If the Event of Default is that the Company has materially failed to limit the processing or disposal of Acceptable Waste at the Operating Landfill to that allowed to be processed or disposed of at the Operating Landfill by this Agreement, or that the Company has unreasonably rejected In-County Waste from processing or disposal at the Operating Landfill, then the cure shall consist of the immediate action to remedy these practices within thirty (30) days or such additional time as may be reasonably necessary to cure, provided that the Company is actively and continuously pursuing a course of action that will reasonably lead to a curing of the default.

## **27. TERMINATION**

27.1 This Agreement may only be terminated:

27.1.1 By mutual written agreement of the parties;

27.1.2 By the Company upon written notice to the County, if:

27.1.2.1 Any legal proceeding, governmental decision, including, without limitation, any NYSDEC decision with respect to the Permit Modification, or governmental investigation that results in an unfavorable law, ordinance, rule, regulation, judgment, order, decision, decree, stipulation or injunction that materially interferes with the Company's ability to engage in the construction, operation, use, maintenance, upgrade, expansion or closure of the Facilities, including the Operating Landfill, as contemplated in this Agreement, and, as it relates to any legal proceeding or investigation, there is no finding of culpability, illegality, or wrongdoing on the part of Company;

27.1.2.2 Any material portion of the Facilities, including the Operating Landfill, is condemned, or is destroyed or damaged by fire or otherwise, unless such destruction or damage is either (a) caused by the negligent acts or omissions of Company or (b) can be repaired or replaced using insurance proceeds available from the insurance policies required to be carried by the Company hereunder to a condition such that the destroyed or damaged Facilities can be utilized by the Company in the manner contemplated herein, in which event, the Company shall repair or replace such Facilities, as applicable;

27.1.2.3 The County shall commit an Event of Default that materially interferes with the Company's ability to engage in the construction, operation, use, maintenance, upgrade, expansion or closure of the Facilities, including the Operating Landfill, as contemplated in this Agreement, including, without limitation, an Event of Default under Section 12, which is not cured in accordance with Section 26.5; or

27.1.2.4 Upon the Company's exercise of its termination rights as provided in Sections 11 and 42.



27.1.3 By the County upon written notice to the Company, if:

27.1.3.1 The Company shall commit an Event of Default by violating a material obligation of the Company under Sections 9 or 18, which is not cured in accordance with Section 26.5; or

27.1.3.2 The Company is dissolved, or is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, or takes the benefit of any insolvency act, or a permanent receiver or trustee or custodian is appointed for the Company's property and such proceeding shall not be dismissed or stayed or such receivership or trusteeship or custodianship vacated or stayed within one hundred twenty (120) days after such institution or appointment.

Any Event of Default described in Sections 27.1.2.3 and 27.1.3.1 shall be deemed to be a "Material Breach" under this Agreement. For avoidance of doubt, all defaults not expressly deemed to be a Material Breach may only be enforced by arbitration, as contemplated in Sections 26.4.2 and 37, and shall not give any rights to either party to terminate this Agreement. Any disputes over the interpretation of "materiality" under this Section shall be subject to arbitration.

27.2 Effect of Expiration or Termination.

27.2.1 Upon expiration of this Agreement, or upon termination of this Agreement by either the Company or the County for any reason, the Company shall, at the County's option and upon receipt from the County, and only upon receipt from the County, of payment for any Equipment still in use by the Company at the Landfill in an amount equal to the then fair market value of such Equipment as of the date of such expiration or termination, transfer to the County the Equipment, free and clear of all liens and encumbrances.

27.2.2 Upon termination of this Agreement by the County for any reason, the Company's rights and interests in the Facilities, including the Operating Landfill, shall immediately cease on the termination date, and the Company shall on such termination date surrender and quit the premises and pay to the County all Lease Payments and other payments due to the County under this Agreement that accrued prior to the date of such termination.

27.2.3 Upon termination of this Agreement by the Company for any reason other than a Material Breach by the County prior to the issuance by the NYSDEC of any final, binding and non-appealable Permit Modification, (a) the Company shall not be required to make any payments to the County under this Agreement that did not accrue prior to such termination, and (b) the County shall pay to the Company on the date of such termination liquidated damages in an amount that reimburses the Company for (i) a proportionate share of the Lease Payments made by the Company to the County in the Year of termination based on the number of days the Agreement will not be in effect as compared to the total number of days in the terminating Year, *plus* (ii) all sums paid by the Company to the County for Air Space under Section 3 and Equipment under Section 6. In such event, upon receipt of such payments, the Company shall convey back to the County all right, title and interest the Company may then have in the Equipment and the Assigned Contracts. If, however, such termination occurs after the issuance by the NYSDEC of a final, binding and non-

appealable Permit Modification, then (y) the Company shall not be required to make any payments to the County under this Agreement that did not accrue prior to such termination, and (z) the County shall pay to the Company on the date of such termination liquidated damages equal to the sum of (i) an amount that reimburses the Company for all costs and expenses incurred by the Company to design, develop and construct any Remaining Constructed Air Space, including, without limitation, permitting costs, engineering costs, legal costs and construction costs, *plus* (ii) an amount equal to that portion of the permit success fees paid by the Company to the County under Section 5 for the Air Space then remaining in the Operating Landfill as compared to the Air Space remaining in the Operating Landfill as of the date of issuance of the Permit Modification.

27.2.4 Upon termination of this Agreement by the Company at any time as a result of a Material Breach by the County prior to the issuance by the NYSDEC of a final, binding and non-appealable Permit Modification, (a) the Company shall not be required to make any payments to the County under this Agreement that did not accrue prior to such termination, and (b) the County shall pay to the Company on the date of such termination liquidated damages equal to the sum of (i) Twenty Million Dollars (\$20,000,000.00), *plus* (ii) an amount that reimburses the Company for (1) a proportionate share of the Lease Payments made by the Company to the County in the Year of termination based on the number of days the Agreement will not be in effect as compared to the total number of days in the terminating Year, *plus* (2) all sums paid by the Company to the County for Air Space under Section 3 and Equipment under Section 6. If, however, such termination occurs after the issuance by the NYSDEC of a final, binding and non-appealable Permit Modification, then (y) the Company shall not be required to make any payments to the County under this Agreement that did not accrue prior to such termination, and (z) the County shall pay to the Company on the date of such termination liquidated damages equal to the sum of (i) Twenty Million Dollars (\$20,000,000.00), *plus* (ii) an amount that reimburses the Company for all costs and expenses incurred by the Company to design, develop and construct any Remaining Constructed Air Space, including, without limitation, permitting costs, engineering costs, legal costs and construction costs, *plus* (iii) an amount equal to that portion of the permit success fees paid by the Company to the County under Section 5 for the Air Space then remaining in the Operating Landfill as compared to the Air Space remaining in the Operating Landfill as of the date of issuance of the Permit Modification.

27.2.5 In furtherance of the foregoing, the parties hereby acknowledge and agree that, due to the unique nature of the damages that would be sustained by the Company upon the occurrence of an event that grants to the Company a right to terminate this Agreement, including reputational losses suffered by the Company, it is difficult or impossible to determine with precision the amount of damages that would be or might be incurred by the Company as a result thereof. The parties therefore acknowledge and agree that (a) it would be impractical and extremely difficult to fix the actual damages to the Company upon the occurrence of such an event, including, without limitation, a Material Breach by the County of this Agreement, (b) any sums that would be payable under this Agreement in such circumstances are stipulated by the Parties to be in the nature of liquidated damages and not a penalty, and are acknowledged and agreed to be fair, reasonable and appropriate, and (c) such payment represents a reasonable estimate of compensation for the losses that may reasonably be anticipated from occurrence of such an event, including, without limitation, a Material Breach by the County of this Agreement, and shall, without duplication, be the sole and exclusive measurement of monetary damages for occurrence of such events.

27.2.6 In the event of any expiration or termination by either party of this Agreement for any reason, neither the County nor a third party shall operate the Facilities, including the Operating Landfill, unless a new Closure and Post-Closure financial assurance mechanism is posted and the Company's Closure and Post-Closure financial assurance is released to the extent it relates to any capacity to be used or filled after the termination date by the County or any other party.

27.2.7 Upon any termination of this Agreement in accordance with this Section, the Company shall surrender and quit the premises and, except for those rights and obligations expressly stated in this Agreement, or otherwise intended to, survive such termination, neither party shall have any further rights or obligations with respect to the other party under this Agreement.

## **28. STRICT PERFORMANCE**

The failure of either party to insist on the strict performance of any of the terms, covenants and provisions of this Agreement or to exercise any option herein contained shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition, provision or option. In addition to the other remedies provided in this Agreement, each party shall be entitled to a restraint by injunction of the violation or attempted or threatened violation of any of the terms, covenants, conditions or provisions of this Agreement.

## **29. OPTION TO EXTEND AGREEMENT**

The Agreement may, to the extent permitted by applicable law, be extended for up to an additional twenty five (25) year period upon mutual agreement of the Parties. The parties hereby agree to convene no earlier than five (5) years, and no later than three (3) years, prior to the expiration of the Term of this Agreement, to review the County's future plans for the Landfill, and to consider a possible extension to the Term of this Agreement to provide for the continued operation of the Landfill. Any such extension shall require the payment by the Company to the County of an option payment, in an amount mutually agreed to by the parties and, to the extent an expansion of the Landfill is then contemplated by the parties, may provide for the development of such expansion prior to the expiration of the Term of this Agreement.

## **30. LANDFILL ADVISORY COMMITTEE**

Following the Commencement Date, the Company and the County shall establish a committee (the "Landfill Advisory Committee") to meet at times to be determined by the committee to discuss strategic issues relating to the Facilities, including the Operating Landfill. The Committee shall consist of [five (5)] members, [two (2)] to be chosen by the County [(one of whom will be a resident of the Town of Lincoln)], [two (2)] to be chosen by the Company one (1) to be chosen by the Town, all of whom will serve at the pleasure of the appointing party. Minutes of these meetings shall be kept by a member designated by the Committee and forwarded to the Company, the Town of Lincoln Supervisor, the Chairman of the Madison County Board of Supervisors and the Madison County Administrator. The discussions, recommendations and proceedings of the Landfill Advisory Committee are advisory only and shall not modify, abridge or in any way change the terms of this Agreement.

### **31. EMINENT DOMAIN**

The County agrees to waive any rights that it might have to acquire the leasehold, or title as the case might be, to all, or any portion of, the Facilities and agrees to cooperate with the Company in opposing any effort by any other governmental body to exercise its rights, if any, of eminent domain. Notwithstanding the foregoing, in the event an award is made, it shall be apportioned between the County and the Company on the basis of the value of the Company's leasehold, or operating contract, including any extensions, but subject to the County's reversionary interest.

### **32. INSURANCE**

The Company covenants and agrees to procure and keep in force and effect at all times during the Term of this Agreement, with the premiums paid, general liability, fire and workers compensation insurance insuring both the County and the Facilities, excluding the Closed Landfill Area, in the amounts set forth in in **Exhibit [●]**, insuring against loss issued by solvent insurance companies authorized and licensed to issue such policies in the State of New York. It shall be the County's responsibility to provide insurance for the Closed Landfill Area and to name the Company as an added insured on said policy to the extent of the County's coverage.

### **33. COVENANT OF QUIET ENJOYMENT**

The County covenants and agrees that the Company, upon observing and keeping the covenants, agreements and stipulation of this Agreement on its part to be kept, shall lawfully, peacefully and quietly hold, occupy and enjoy (or operate, as the case might be) said Facilities, during the Term of this Agreement and any extensions thereto without hindrance, objection or molestation.

### **34. ASSIGNMENT**

This Agreement may be assigned by the Company to any entity controlling, controlled by, or under common control with the Company. No other assignment by the Company shall be allowed without the express written consent of the County.

### **35. THIRD PARTY USE OF COUNTY-OWNED REAL PROPERTY**

The Company shall not grant to any third party a right to use any County-Owned Real Property leased to the Company hereunder for any purpose, including for agricultural purposes, without the prior written consent of the County, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that the Company may renew or extend an Assigned Contract providing for such rights without such consent so long as the material terms remain the same.

### **36. CUMULATIVE REMEDIES**

The specified remedies to which either party may resort under the terms of this Agreement are not exclusive of any other remedies or means of redress at law, in equity or otherwise to which such party may be lawfully entitled in case of any breach or threatened breach by the other party of any

provision or provisions of this Agreement.

**37. DISPUTE RESOLUTION**

If a dispute of any kind or nature between the parties arises out of or in connection with this Agreement, including, without limitation, as to the negotiation, existence, construction, validity, interpretation or meaning, performance, nonperformance, enforcement, operation, breach, continuance, or termination thereof, the Company’s president (or other similar officer), and the County’s administrator, or individuals designated by such president (or officer) or administrator, shall, first, endeavor for a period of at least thirty (30) days to resolve it equitably through good faith negotiations, and, if that fails, the parties shall submit such dispute to final and binding arbitration pursuant to the then existing Commercial Arbitration Rules of the American Arbitration Association. Notice of the demand for arbitration shall be filed in writing with the other party and with the American Arbitration Association. The award rendered shall be final and judgment and the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. For avoidance of doubt, under the terms of this Agreement, no suit at law or in equity shall be instituted by either party except to enforce the award of the arbitrator. The parties agree that all arbitration arising out of or under this Agreement shall be Madison County, New York.

**38. CAPTIONS AND HEADINGS**

Captions and headings throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision or of the scope or intent of this Agreement nor in any way affect this Agreement.

**39. MODIFICATIONS**

This Agreement cannot be changed orally, but only by agreement in writing signed by the party against whom enforcement of the change, modification or discharge is sought or by its duly authorized agent.

**40. NOTICES**

All notices or other communications to be given hereunder shall be in writing and be given by personal delivery or certified United States mail, return receipt requested, properly addressed as follows:

To the County:

To the Company :

With a copy to: Casella Waste Systems, Inc.  
25 Greens Hill Lane  
Rutland, VT 05701  
Attn: Office of General Counsel

#### **41. FORCE MAJEURE**

In the event that the County or the Company is rendered unable, wholly or in part, by an event of Force Majeure to carry out any of the obligations under this Agreement, then the obligations of the party affected by the Force Majeure may be suspended during the continuation of the event of Force Majeure, but for no longer a period. At any time that either party intends to rely upon an event of Force Majeure to suspend obligations as provided in this section, the affected party shall notify the other party to this Agreement as soon as reasonably practical describing in reasonable detail the circumstances of the event of Force Majeure. Notice shall again be given when the effect of the event of Force Majeure has ceased.

#### **42. SEVERABILITY**

In the event that 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 illegality or unenforceability shall not effect any other provisions of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein; provided, however, that it is the intention of the parties that in lieu of such term, clause or provision that is held to be invalid, illegal or unenforceable, there should be added by mutual agreement as a part of this Agreement a term clause or provision as similar in terms to such illegal, invalid or unenforceable term, clause or provision as may be possible, valid, legal and enforceable. Notwithstanding the above, if the term of this Agreement is held to be invalid, illegal or unenforceable in any respect, then the term of this Agreement shall automatically be the maximum valid and legal term allowed by applicable common or statutory law. In the event that the term held to be invalid, illegal or unenforceable prevents the operation of the Facilities, including the Operating Landfill, by the Company, as contemplated herein, and the term may not be amended to allow such operation, the Company may, at its option, terminate this Agreement.

#### **43. SUSPENSION AND EXTENSION**

In the event the disposal of Acceptable Waste in the Operating Landfill is delayed by judicial or legal action taken by parties other than the County or the Company, or that the effectuation of the material terms of this Agreement is delayed by such action, this Agreement shall be extended by the period of such delay, whether such delay was caused by court order or by the litigation process.

#### **44. CONSTRUCTION**

Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms, corporations, or other entities. The terms “herein”, “hereunder”, “hereto”, “hereof” and any similar terms, shall refer to this Agreement; the term “heretofore” shall mean before the date of adoption of this Agreement. Unless the context otherwise requires, references herein to Articles, Sections, Schedules and Exhibits shall mean the Articles and Sections of, and Schedules and Exhibits attached to, this Agreement. This Agreement is the result of joint negotiations and authorship and no part of this Agreement shall be construed as the product of any one of the parties hereto.

**45. ENTIRE AGREEMENT**

This Agreement constitutes the entire Agreement between the County and the Company, and cancels and supersedes all prior negotiations, representations, understandings and agreements, either written or oral, between such parties with respect to the subject matter hereof. No changes, amendments, alterations, or modifications to this Agreement shall be effective unless in writing and signed by the parties hereto.

**46. COUNTERPARTS**

This Agreement may be executed in two (2) counterparts, each of which will be considered an original.

**47. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the Laws of the State of New York.

**48. BINDING EFFECT**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and/or assigns.

**49. AUTHORITY OF PARTIES**

The individuals who have executed this Agreement on behalf of the respective parties expressly represent and warrant that they are authorized to sign on behalf of such entities for the purpose of duly binding such entities to this Agreement.

*[Signature Page to Follow]*

**IN WITNESS WHEREOF**, the parties have placed their signatures and seals.

**MADISON COUNTY, NEW YORK**

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

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

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

Date: \_\_\_\_\_

**NEW ENGLAND WASTE SERVICES  
OF N.Y., INC.**

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

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

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

Date: \_\_\_\_\_



## LIST OF EXHIBITS

- EXHIBIT A – Reserved
- EXHIBIT B – Equipment
- EXHIBIT C – Host Benefits
- EXHIBIT D – Landfill Boundary
- EXHIBIT E – FMCIP Criteria
- EXHIBIT F – Recycling Program
- EXHIBIT G – Transfer Station Schedule
- EXHIBIT H – Insurance

## **EXHIBIT A - RESERVED**

This Exhibit will consist of contractual agreements in effect between Madison County and service providers and commercial permit holders which are necessary to the operation and management of the County Landfill and which are assigned by the County to the Company to assist in transition. The agreements will be identified and included within this Exhibit after:

- i) execution and/or extension of the agreements through 2024 and such other period as the agreement may provide and
- ii) Notice of Assignment has been given by the County to the other party.

**EXHIBIT B**  
EQUIPMENT

PART II  
PROPOSAL PRICING PAGES  
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**Equipment Pricing Form – Page 1**

<u>Description</u>	<u>Model</u>	<u>Model Year</u>	<u>Hours</u> (as of 8/16/23)	<u>Proposed Price (\$)</u>
<b>Major Equipment (&gt;\$100,000)</b>				
Trash Compactor 1 – rebuilt in 2011	CAT 816F	1997	9,105	\$ 70,000
Trash Compactor 2 – rebuilt in 2022	CAT 816K	2019	3,857	\$ 305,000
Crawler/Dozer (Soil/Stipping)	CAT D6XE	2022	220	\$ 477,900
Crawler/Dozer (Workingface) – rebuilt in 2018/undercarriage 2021	CAT D6RII	2005	11,193	\$ 38,250
Crawler/Dozer (Cover/Sideslopes)	CAT D5K	2020	555	\$ 155,000
Crawler/Dozer (Backup-open ROPS)	JD 550	2005	3,455	\$ 27,000
Wheel Loader (Tipfloor)	CAT 950M	2022	2,427	\$ 270,000
Wheel Loader (OPS)	CAT 930M	2021	1,288	\$ 195,750
Excavator Volvo (Scrap Metal/Soil)	EC250E	2022	398	\$ 250,000
Excavator John Deere (OPS/Tires)	JD 250G	2015	5,112	\$ 52,650
Rolloff Truck Western Star	4900SF	2014	204,580 miles / 10,176 hours	\$ 76,500
Rolloff Truck - International	HX620	2022	22,758 miles / 1,055 hours	\$ 201,410
Rolloff Truck - Mack	64BR	2021	100,719 miles / 5,304 hours	\$ 167,550
Roller/Soil Compactor	IR SD115D	1996	2,522	\$ 9,900
Off Road Dump Truck – Volvo	A25G	2022	231	\$ 351,000
Off Road Dump Truck – John Deere	250D	2007	4,851	\$ 38,250
Water Truck - Freightliner	FL80	1999	6,478 miles / 1,542 hours	\$ 7,725
Dump Truck - Autocar	ACL64F	1994	52,609 miles / 5,972 hours	\$ 12,225
Yard Waste Grinder	FECON	1996	1,948 (estimated)	\$ 10,000

Signature:  Company Name: New England Waste Services of N.Y., Inc.

**THIS PAGE MUST BE SIGNED AND RETURNED WITH YOUR PROPOSAL OR YOUR PROPOSAL WILL BE DECLARED INFORMAL!**

PART II  
PROPOSAL PRICING PAGES  
Page 6 of 7

**Equipment Pricing Form – Page 2**

<u>Description</u>	<u>Model</u>	<u>Model Year</u>	<u>Hours</u> (as of 8/16/23)	<u>Proposed Price (\$)</u>
<b>Other Equipment (&lt; \$100,000)</b>				
Skid Steer Loader (Ham TS)	Bobcat 763G	2000	1,361	\$ 10,000
Skid Steer Loader (Res TS)	Bobcat S570	2020	392	\$ 21,600
Skid Steer Loader (Sul TS)	Bobcat S175	2003	2,575	\$ 8,100
Skid Steer Loader (Caz TS)	Bobcat S185	2005	4,610	\$ 7,875
Skid Steer Loader (OPS)	Bobcat 564	2022	153	\$ 44,010
Tractor/Brush Hog (New Holland)	NH PS110	2022	89	\$ 52,200
Mower - Ventrac	4520Z	2022	198	\$ 22,050
Mower - Zero Turn	Ferris	2006	515	\$ 2,970
Front Mower	Ferris	2011	1,013	\$ 5,850
Mower - Tractor/Rider	JD X595		1,350	\$ 4,050
Posi-Shell Applicator / Trailer	LSC Envir.	2017	343	\$ 33,250
Site Utility Vehicle	JD 6x4	2010	1,374	\$ 4,050
14,000# Deck over Trailer	Brimar	2013	N/A	\$ 5,700
10,000# Dump Trailer	Cross Country	2011	N/A	\$ 3,800
3735- PU Crew Cab w/ Plow	D2500	2018	20,980 miles	\$ 31,550
1107 - Pickup Truck w/ Plow	F-250	2018	31,752 miles	\$ 29,425
4595 - Pickup Truck (Enforcement)	F-150	2014	67,861 miles	\$ 14,850
Landfill Litter Fence Skids (5)	Coastal	2021	N/A	\$ 1,782
Landfill Litter Fence Skids (5)	Metta	2023	N/A	\$ 1,782
Open Container - HD C&D Box (2)	Wastequip	2018	N/A	\$ 7,410
Octagon Compactor (MSW-Black) (2)	Wastequip	2019	N/A	\$ 7,410
Open Container - HD C&D Box (4)	Wastequip	2019	N/A	\$ 14,820
Recycling A-Frame (2)	Wastequip	2019	N/A	\$ 14,820
Recycling A-Frame (4)	Wastequip	2021	N/A	\$ 19,760
Recycling A-Frame (2)	Wastequip	2022	N/A	\$ 9,880
Open Container - HD C&D Box (2)	Wastequip	2022	N/A	\$ 9,880
Recycling A-Frame (2)	Wastequip	2023	N/A	\$ 12,350
Older Roll-off Containers (38)	Misc.	2016 and earlier	N/A	\$ 106,444


Signature:  Company Name: New England Waste Services of N.Y., Inc.

**THIS PAGE MUST BE SIGNED AND RETURNED WITH YOUR PROPOSAL OR YOUR PROPOSAL WILL BE DECLARED INFORMAL!**

PART II  
PROPOSAL PRICING PAGES  
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**Equipment Pricing Form – Page 3**

<u>Description</u>	<u>Model</u>	<u>Model Year</u>	<u>Hours</u> (as of 8/16/23)	<u>Proposed Price (\$)</u>
<b><u>Madison County MRF Equipment</u></b>				
International Baler	TR-10-50	2016	17,140	\$ 55,350
Container Sorting Station		1990	N/A	\$ 5,000
Paper Sorting Station		1990	N/A	\$ 5,000
Misc. Conveyor Lines		1990	N/A	\$ 5,000
Vestil Verticle Baler		1990	N/A	\$ 2,399
New Holland Skid-Loader	NH L318	2023	253	\$ 42,750
Doosan Forklift (Full-Cab)	25 Series	2022	923	\$ 30,690
Doosan Forklift (Full-Cab)	25 Series	2017	1,706	\$ 16,830
Doosan Forklift (Open - ROPS)	25 Series	2017	952	\$ 16,830
Andella Glass Breaker System	AGB 06	2005	N/A	\$ 3,825
Ferrous Conveyor and Magnet		1990	N/A	\$ 5,000

Signature:  \_\_\_\_\_ Company Name: New England Waste Services of N.Y., Inc.

***THIS PAGE MUST BE SIGNED AND RETURNED WITH YOUR PROPOSAL OR YOUR PROPOSAL WILL BE DECLARED INFORMAL!***

## **EXHIBIT C**

### **HOST BENEFITS**

#### **1. HOST BENEFITS: COUNTY**

1.1 Commencing on the Commencement Date, and continuing for the Term of this Agreement, the Company shall pay to the County the following host community payments:

1.1.1 An annual host community payment, the first payment of which shall be due in the second Year of this Agreement, equal to Two Dollars and Fifty Cents (\$2.50), escalated annually by a CPI Adjustment, per ton of Out-Of-County Waste (excluding BUD Material) accepted by the Company at the Operating Landfill during the immediately preceding Year.

1.1.2 An annual host community payment, the first payment of which shall be due in the second Year of this Agreement, in an amount necessary to reimburse the County for all reasonable costs and expenses incurred by the County in the immediately preceding Year for third party engineering services to verify that the Company's operation of the Facilities, including the Operating Landfill, comply with the terms and conditions of this Agreement, in an amount not to exceed Ten Thousand Dollars (\$10,000.00).

1.1.3 An annual host community payment, the first payment of which shall be due and payable in the second Year of this Agreement, in an amount necessary to reimburse the County for expenses incurred by the County in the immediately preceding Year with respect to the administration of the Electronic Waste Program, in an amount not to exceed Forty Five Thousand Dollars (\$45,000.00).

1.1.4 An annual host community payment, the first payment of which shall be due and payable in the second Year of this Agreement, in an amount necessary to reimburse the County for expenses incurred by the County in the immediately preceding Year with respect to the administration of the HHW Program, in an amount not to exceed Ten Thousand Dollars (\$10,000.00).

1.2 Commencing on the Commencement Date, and continuing for the Term of this Agreement, the Company shall provide to the County the following host community benefits:

1.2.1 The Company shall, for each Year during the Term of this Agreement, collect, transport and accept at the Operating Landfill up to 100 TPY of municipal solid waste and construction and demolition debris generated at the County complex located at 137 Court St., Wampsville, New York, at no charge.

1.2.2 The Company shall, for each Year during the Term of this Agreement, accept at the Operating Landfill from each of the fifteen (15) Towns within Madison County, and the City of Oneida in Madison County, up to 10 TPY per municipality of municipal solid waste and construction and demolition debris delivered by such municipality to

the Operating Landfill, at no charge.

- 1.2.3 The Company shall, for each Year during the Term of this Agreement, accept at the Facilities (a) all yard waste from County residents, (b) up to 200 TPY of yard waste from the County, including the County Highway Department, and (c) up to a total aggregate amount of 100 TPY of yard waste from the fifteen (15) Towns within Madison County and the City of Oneida in Madison County, at no charge.
- 1.2.4 The Company shall continue to accept at residential drop offs and the MRF in-county generated recyclables from County residents and Permitted Haulers at no charge. For avoidance of doubt, however, the Company may charge for out-of-county recyclables.
- 1.2.5 The Company shall pay the County to obtain from a qualified third party provider, on a date mutually agreed to by the County and the Company, a needs assessment associated with the County's future waste disposal needs, in an amount not to exceed One Hundred Thousand Dollars (\$100,000.00).
- 1.2.6 The Company may, in its discretion, make contact with and offer to property owners of all real property abutting the Operating Landfill the opportunity to be reimbursed by the Company for all County, town, school district and special ad valorem real property taxes levied, assessed or imposed upon or against the abutting property in exchange for such property owner's good faith cooperation with the Company's reasonable and prudent operation of the Operating Landfill. No such agreement shall constitute a modification of any assessment of taxes by the County or any other governmental authority.
- 1.2.7 The Company shall contribute Twenty-Four Thousand Dollars (\$24,000.00) per Year for the Madison County Scholarship Fund to be established and administered by the County for the benefit of County residents.
- 1.2.8 The Company shall establish the Madison County Internship Program in conjunction with the County for the benefit of County residents.
- 1.2.9 The Company shall assist the County with residential recycling outreach and education.

## **2. HOST BENEFITS: TOWN OF LINCOLN**

2.1 Commencing on the Commencement Date, and continuing for the Term of this Agreement, the Company shall pay to the County for the benefit of (and to be paid by the County to) the Town of Lincoln, New York, the following host community payments:

- 2.1.1 A one-time host community payment, due and payable on the Commencement Date, in the sum of One Hundred Thousand Dollars (\$100,000.00).
- 2.1.2 An annual host community payment, commencing on the first anniversary of the Commencement Date, equal to Seventy-Five Thousand Dollars (\$75,000.00).



2.1.3 An annual host community payment, the first payment of which shall be due and payable in the second Year of this Agreement, equal to Eight five Cents (\$0.85), escalated annually by a CPI adjustment, per ton of Out-Of-County Waste (excluding BUD Material) accepted by the Company at the Operating Landfill during the immediately preceding Year.

### **3. HOST BENEFITS: TOWN OF LINCOLN FIRE DISTRICT**

3.1 Commencing on the Commencement Date, and continuing for the Term, the Company shall pay to the County for the benefit of (and to be paid by the County to) the Town of Lincoln, New York, Fire District, the following host community payments:

3.1.1 An annual host community payment, the first payment of which shall be due and payable in the second Year of this Agreement, equal to Twenty-Five Cents (\$0.25), escalated annually by a CPI Adjustment, per ton of Acceptable Waste (excluding BUD Material) accepted by the Company at the Operating Landfill during the immediately preceding Year.

### **4. MISCELLANEOUS**

4.1 Each annual host community payment to be paid to the County under this Exhibit shall be due and payable within thirty (30) days following the applicable Commencement Date; provided, however, that, in no event shall any host community payment to be made to the County in reimbursement of County costs and expenses shall be due and payable until thirty (30) days after the County has provided the Company with a demand therefore, together with supporting documentation. Each annual payment or benefit calculated based on a Year (as defined in the agreement) shall be reduced proportionately for the final Year of the Term of this Agreement based on the number of days this Agreement is in effect for such Year as compared to the total number of days in such Year.

**EXHIBIT D**

LANDFILL BOUNDARY



LEGEND	
	MADISON COUNTY LANDFILL PROPERTY LINE
	LIMIT OF ACTIVE LANDFILL/LANDFILL UNDER CONSTRUCTION
	LIMIT OF CLOSED LANDFILL
	LIMIT OF PERMITTED LANDFILL CELLS (NOT YET CONSTRUCTED)
	APPROXIMATE LOCATION OF PARCEL TO REMAIN UNDER CONTROL OF MADISON COUNTY

IT IS A VIOLATION OF THE NEW YORK STATE EDUCATION LAW, ARTICLE 145 § 7209 SPECIAL PROVISIONS, FOR ANY PERSON, UNLESS THEY ARE ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER, ARCHITECT, LANDSCAPE ARCHITECT, OR LAND SURVEYOR, TO ALTER AN ITEM IN ANY WAY, IF AN ITEM BEARING THE STAMP OF A LICENSED PROFESSIONAL IS ALTERED. THE ALTERING PROFESSIONAL SHALL STAMP THE DOCUMENT AND INCLUDE THE NOTATION "ALTERED BY" FOLLOWED BY THEIR SIGNATURE, THE DATE OF SUCH ALTERATION, AND A SPECIFIC DESCRIPTION OF THE ALTERATION.

REVISIONS

MADISON COUNTY DEPARTMENT OF SOLID WASTE AND SANITATION  
MADISON COUNTY LANDFILL  
**OVERALL SITE PLAN**  
MADISON COUNTY, NEW YORK  
TOWN OF LINCOLN

Project: Dec 15, 2023, 8:22PM  
Z:\BL-Vault\02\180217\02-1271-4823-8827-9905C4054147\03025000-3025999\3025044\154112 Lease Boundary Figure (0\_3025044).dwg  
Checked by: JGS  
Drawn by: JMB2  
Designed by: JMB2  
In charge of: JMB2

**Barton & Loguidice**  
443 Electronics Parkway  
Liverpool, NY 13088  
NYS CERTIFICATE #  
0018246, 020588, 019903,  
019905, 020336

Date	DECEMBER 2023
Scale	1" = 300'
Sheet Number	1
Project Number	154.112.023

## **EXHIBIT E**

### **FILL MANAGEMENT AND COMMUNITY IMPACT PLAN CRITERIA**

The criteria the Company must establish prior to acceptance by the Company at the Operating Landfill of Acceptable Waste (excluding BUD Material) in excess of 240,000 TPY (the “Final Tonnage Increase”) is as follows:

#### **Assessment of Traffic Patterns and Intersections**

The Company shall, at its sole cost and expense, obtain a traffic study assessing the impacts associated with the Final Tonnage Increase on traffic flow and level of service (“LOS”) for roads and critical intersections serving the Operating Landfill. LOS is a qualitative measure used to relate the quality of motor vehicle traffic service and is used to analyze roadways and intersections by categorizing traffic flow and assigning quality levels of traffic based on performance measures like vehicle speed, density, congestion, etc. Prior to implementation by the Company of the Final Tonnage Increase, the Company shall either (a) provide to the County a traffic study showing nominal or no notable impact on LOS of the Final Tonnage Increase or (b) show evidence of implementation by the Company of those mitigation efforts identified in such study to minimize the impacts on LOS of the Final Tonnage Increase to a minimal or no notable impact.

#### **Landfill Odors**

Based on recent Tier II emissions testing at the Landfill, the Landfill remains well under the NSPS thresholds. Therefore, the site is not subject to monthly well field maintenance and quarterly surface scans. After receipt of the Permit Modification, the Company shall perform monthly well field monitoring and quarterly surface emission scans in accordance with appropriate protocols to assess the operation of the Operating Landfill’s gas collection and conveyance system. Prior to implementation by the Company of the Final Tonnage Increase, the Company shall provide evidence to the County that the quarterly surface scans show no more than three (3) locations with emissions greater than 500 ppm for the four (4) consecutive quarters prior to such implementation.

#### **Regulatory Compliance**

Keeping the Operating Landfill in compliance with all applicable laws, rules and regulations is imperative to a well-run operation. Prior to implementation by the Company of the Final Tonnage Increase, there shall not have been any consent orders or regulatory fines issued to the Company associated with any violation by the Company of any law, rule or regulation applicable to the operation of the Operating Landfill in the six (6) month period prior to such implementation.

## **EXHIBIT F**

### **RECYCLING PROGRAM**

The following items are included in the Recycling Program offered to County residents and businesses through acceptance at the MRF and the Transfer Stations operated by the Company:

- Cardboard (for example: shipping boxes, cereal boxes/boxboard, egg cartons, paper towel and toilet paper rolls)
- Paper (for example: office paper, newspaper, paper bags, magazines, junk mail)
- Plastic Bottles, Jugs, Tubs, & Lids (for example: plastic drink bottles, milk jugs, yogurt cups, tubs and lids, shampoo bottles, laundry detergent, etc.)
- Metal Cans (for example: soda and beer cans, soup and vegetable cans, foil)
- Glass Bottles & Jars (for example: beer bottles, other beverage bottles, pickle jars, etc.)

The Company will accept Ag Plastics – only at the MRF

The Company will assist the County to update recycling education information on an on-going basis as needed.

## EXHIBIT G

### TRANSFER STATIONS

The Company will operate the following Transfer Stations for Madison County residents only. Recycling Program material will be accepted at the Transfer Stations at no charge to County residents. Waste will be accepted at the Transfer Stations based on the punch card fee system.

- 1. Buyea Road Transfer Station (6666 Buyea Road, Canastota, NY):** Open a minimum of 5 days per week; days and hours to be determined by the Company.
- 2. Hamilton Transfer Station (7638 Cranston Road, Hamilton, NY):** Open a minimum of 2 days per week; days and hours to be determined by the Company.
- 3. Sullivan Transfer Station (7480 Bolivar Road, Chittenango, NY):** Open a minimum of 2 days per week; days and hours to be determined by the Company.
- 4. Cazenovia Transfer Station (3422 Constine Bridge Road, Cazenovia, NY):** Open a minimum of 2 days per week; days and hours to be determined by the Company.

Items Accepted at each of the Transfer Stations and managed by the Company:

- MSW: 1 punch up to a 33-gallon bag size
- C&D: 1 punch up to a 33-gallon bag size (or equivalent volumetric quantity)
- Mattress or Box Spring: King/Queen - 3 Punches; Full - 2 Punches; Twin - 1 Punch
- Tires: 1 punch per passenger vehicle tire; 2 punches for oversized tires
- Recycling Program Materials: No charge
- Yard Waste: No charge for residents
- Scrap Metal: No charge
- Other Bulky Waste (i.e. sofa, furniture, etc): Punches based on item size

## EXHIBIT H

### INSURANCE

The Company shall purchase and maintain insurance of the following types with coverage and limits of liability with an insurance carrier qualified and admitted to do business in New York State. The Insurance carrier must have at least an A- (excellent) rating by A. M. Best.

- 1) Commercial General Liability (CGL) coverage with limits of Insurance of not less than \$5,000,000 each occurrence and \$10,000,000 annual aggregate (Umbrella or Excess Liability policies may be used to achieve these limits).
  - a) The CGL coverage shall include a general aggregate limit and such general aggregate shall apply separately to each location.
  - b) CGL coverage shall be written on ISO Occurrence form CG 00 01 04/13, or a substitute form, providing equivalent coverage and shall cover liability arising from premises, operations, independent contracts, products-completed operations, XCU (explosion, collapse & underground coverage), personal & advertising injury and, where applicable, any work within fifty (50) feet of a railroad. **There shall be no exclusions to contractual liability for employee injuries (i.e. labor law exclusions)**
  - c) County and all other parties required by the County shall be included as additional insureds. Coverage for the additional insureds shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by, or provided to, the additional insureds. Coverage for these additional insureds shall include completed operations.
  - d) Company shall maintain CGL coverage for itself and all additional insureds for the duration of the Agreement.
  
- 2) Automobile Liability
  - a) Automobile liability with combined single limits of at least \$5,000,000 (Umbrella or Excess Liability policies may be used to achieve this limit).
  - b) Business auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
  - c) County and all other parties required of the County shall be included as additional insureds on the auto policy. Coverage for these additional insureds shall be on a primary and non-contributing basis.
  - d) Policy shall contain an MCS-90 endorsement.
  
- 3) Commercial Umbrella
  - a) Umbrella limits must be at least \$10,000,000 occurrence limit.
  - b) Umbrella coverage must include as additional insureds all entities that are additional insureds on the Commercial General Liability and Automobile Liability policies.
  - c) Umbrella coverage for such additional insureds shall apply as primary and non-contributing before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by, or provided to, the additional insured other than the CGL, Auto Liability and Employers Liability coverages maintained by the Company.

- 4) Workers Compensation and Employers Liability
  - a) Statutory New York limits apply for Employers Liability.
- 5) Disability Benefits-New York State Statutory Requirements.
- 6) Pollution/Environmental Liability with a limit of \$10,000,000 per occurrence and \$15,000,000 aggregate. County and all other parties required of the County shall be included as additional insureds. Coverage for the additional insureds shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by, or provided to, the additional insureds.
- 7) Professional/Errors & Omissions Liability with a limit of \$10,000,000 per claim and \$10,000,000 aggregate.
- 8) Property Insurance - Company shall, throughout the term of this Agreement and any extensions thereof, secure and pay for special cause of loss (All Risk) property insurance for the building(s) and other improvements and betterments to the building(s). Coverage shall be on a replacement cost basis, with such comprehensive endorsements and in such amounts as County may deem reasonably necessary and shall show the Company and the County as the insured thereon. Company shall ensure the insurance remains in force throughout the Term of this Agreement and provide the County with copies of any policies or a certificate of insurance evidencing such coverage. The policies shall be in form and content required by the County and shall be issued by an insurance carrier qualified and admitted to do business in New York. The policy shall contain a clause that the insurer will not cancel, materially modify, or fail to renew the insurance without first giving the County thirty (30) days prior written notice.

In addition to the requirements for the building as noted above, Company will be responsible for insurance to cover their owned equipment, furniture, fixtures, inventory, and other personal property while at the property owned by the County. The County will not be responsible for any damage to the Company's property while it is located at the Premises.

#### **Waiver of Subrogation**

Company waives all rights against the County and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability, professional liability, pollution/environmental liability, or workers compensation and employers' liability insurance maintained per requirements stated above.

#### **Certificate Language**

Each certificate showing each policy to be in force and endorsed as to show "Madison County, and its officers, agents, servants and employees are included as additional insureds as their interest may appear but only to the extent that they are contractually obligated to be so named."