

**FORM OF CONTRACT  
BASE BID  
FORM CD-1  
AGREEMENT  
OPERATION OF THE HUNTERDON COUNTY SOLID WASTE TRANSFER  
STATION AS A MERCHANT FACILITY, INCLUDING TRANSPORTATION,  
DISPOSAL OF SOLID WASTE, AND THE PROVISION OF A DISPOSAL SITE AND  
THE OPERATION OF THE HUNTERDON COUNTY RECYCLING CENTER**

THIS AGREEMENT is entered into December 4, 2018, by and between:

THE COUNTY OF HUNTERDON  
Administration Building  
71 Main Street  
P.O. Box 2900  
Flemington, New Jersey 08822

(referred to in this Agreement as the "County")

and

**Waste Management of New Jersey, Inc.**  
**107 Silva Street**  
**Ewing NJ 08628**

(referred to in this Agreement as "Contractor")

WHEREAS, on October 11, 2018, the County of Hunterdon accepted Bid Proposals for the operation of a Solid Waste Transfer Station as a Merchant Facility and the operation of the Hunterdon County Recycling Center, located in the Township of Clinton. Waste Management of New Jersey Inc. was one of the firms which submitted a proposal pursuant to the County's request; and

Whereas, the County has reviewed all of the proposals and determined that it is in the public interest to accept the proposal of Contractor as the highest responsible proposer for the services selected. The County wishes to enter into an Agreement with Contractor for the

purposes of operating the Transfer Station as a Merchant Facility and the operation of the Hunterdon County Recycling Center, providing an ultimate disposal site and disposing of the waste/recyclable material which is generated through the Facility for up to a five (5) year period with a six month extension; and; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree as follows:

ARTICLE 1  
CONTRACT

1.1 The Contract consists of this written Agreement and the following Attachments. The Contract is based upon the County's Request for Bids dated August 9, 2018.

ATTACHMENTS

<u>Exhibit</u>	<u>Title</u>
A	County's August 9, 2018, Request for Bids
B	Contractor's Proposal dated October 11, 2018.
B-1	Modifications, if any, to Exhibit A N/A
C	(Reserved) N/A
D	Insurance Certificate(s) - Liability; Fire/Casualty
E	Guarantee and Performance Bond
F	Affirmative Action Language and Certificates
G	Business Registration Certificate
H	Proforma Operating (Profit and Loss) Statement

1.2 All of the Attachments are part of this Agreement and are incorporated by reference. The Contractor must comply with all of the terms, covenants and conditions of Exhibit A, whether they are specifically referred to, or highlighted in this Agreement.

1.3 It is impossible for the County to compare thoroughly all statements which the Contractor made in its Proposal, Exhibit B, with the Bid Documents, Exhibit A. It is for that reason that the County required the Contractor as a part of its Bid to identify specifically

in its Bid any exceptions it was taking to the Bid Documents (Attachment 4T). The Contractor's performance will be in strict and entire conformity with Exhibit A. No exception taken by the Contractor in its Bid Proposal, or any statement in the Contractor's Bid Proposal which is contrary to the Bid Specification or any other contract document, has been or will be accepted by the County, unless it is set forth specifically on Exhibit B-1 and initialed by the County, as being accepted under this Contract. By signing this contract, the Contractor agrees to perform in strict accordance and conformity with the Bid Documents.

1.4 To the extent that any present law, rule or regulation, including those imposed by the New Jersey State Department of Environmental Protection, impose requirements on Contractor, as the Operator of the Transfer Station, a hauler, or disposal contractor, in excess of those stated in this Agreement, such legal requirements will control Contractor's obligations and will be considered a term, covenant and condition of this Agreement.

1.5 This Agreement includes the services advertised in Exhibit A for Base Bid only. The County shall transmit to the Contractor written confirmation that the Contractor's Base Bid has been accepted and that the County declines to pursue to Alternate prior to the execution of this Agreement.

## ARTICLE 2 OPERATION

2.1 The Operational Objective ("Objective") is to accept, handle and transfer all of Hunterdon County's solid waste requirements and to operate a solid waste and recycling Transfer Station as a Merchant Facility (the "Facility"), on the site located in Clinton Township, Hunterdon County, New Jersey (referred to in this Agreement as the "Site") and transport and provide a disposal site for all solid waste and recycling generated through the transfer station for

up to a sixty (60) month term. This Objective will be accomplished in accordance with the County's Request for Bid Proposals (Exhibit A). Contractor will accomplish the Operational Objective, subject to the terms, covenants and conditions of this Agreement, at its sole cost and expense.

2.2 Exhibit B is the proposal which Contractor submitted to the County. It sets forth Contractor's plan for accomplishing the Objective. The attachment of Exhibit B does not mean that the obligation of Contractor to provide services, material, equipment and, or, personnel is limited to the outline indicated in Exhibit B. To the extent necessary, Contractor will change its manner and method of operation, at its sole cost and expense, in any respect necessary to insure the accomplishment of the stated Operational Objective. These changes will be accomplished at no cost to the County during the initial contract term.

2.3.1 The base contract term sixty (60) month operational term will begin on December 14, 2018. This contract will terminate on December 13, 2023. Contractor will extend the term of this Contract for any period up to six (6) months without any change in price, while the County follows the lawful procurement process for a new contract. Contractor will cooperate fully with any subsequent Contractor who provides similar services to the County during the period of transition.

2.3.2 The County also reserves the right to terminate the contract without reason within the original term of the contract with a six month written notice to the Contractor. In the event of an early termination, the Contractor shall be entitled to only those expenses incurred during the actual reduced time frame.

2.4 All services, material or equipment provided or used by Contractor to accept, handle and transfer solid waste, operate the Transfer Station and transport and dispose of

the Waste Types pursuant to this Agreement shall be provided, used, and supplied in accordance with Exhibit A, and will comply with all applicable Federal, State and local laws, rules and regulations.

2.5 Contractor warrants and represents that it, and/or its New Jersey subsidiaries or affiliates, has obtained all licenses, permits and approvals necessary to conduct the operation, including, but not limited to those required by the New Jersey Department of Environmental Protection. Contractor will file with the County duplicate copies of all applications, or filings with any regulatory or governmental entity.

### ARTICLE 3 WASTE TYPES

3.1.1 Subject to the provisions below governing ID 27 Waste, Contractor will, once waste is tipped on the transfer floor, assume all responsibility for handling, transfer, transportation and disposal of the Waste Types, set forth in the Certificate of Approved Registration and Engineering Design Approval issued by the Department of Environmental Protection dated October 14, 1983, as modified since then, which are:

<u>I.D.</u>	<u>WASTE</u>
10	Municipal (Household, Commercial and Institutional)
13	Bulky Waste
13C	Construction and Demolition waste
23	Vegetative Waste
25	Animal and Food Processing Waste
27	Industrial Waste

Contractor also assumes all environmental responsibility for ultimate disposal. This provision is designed to protect the County and to define the relationship between the County and Contractor. By agreeing to this provision, Contractor does not waive its rights to make claims against third parties.

3.1.2. In regard to I.D. 27 Waste, Contractor will accept responsibility for, handle, transfer and dispose of the waste after the generator has obtained all applicable legal approvals in accordance with New Jersey DEP regulations and the regulations of the State to which it is being transported.

3.2 Contractor will handle all Waste Types in a lawful manner calculated not to create an unreasonable risk of harm to the public health or the environment.

3.3 Once Contractor permits waste to be tipped onto the floor, it has certain responsibilities as outlined in Article 4, Paragraph 4.3 of this Contract and the provision of Exhibit A. In no event is Contractor obligated to accept, handle, transfer and/or dispose of any Hazardous Waste, unless it has permitted it to be tipped at the station.

3.4 "Hazardous Waste" means:

(a) Any material or substance which, by reason of its composition or characteristics, is (i) toxic or hazardous waste as defined in (A) either the Solid Waste Disposal Act 42 U.S.C. Section 2605(e), or any laws of similar purpose or effect, and any rules, regulations or policies promulgated thereunder, or (ii) special nuclear or by-products materials within the meaning of the Atomic Energy Act of 1954; and

(b) Any other materials which the New Jersey Department of Environmental Protection or any governmental agency or unit having appropriate jurisdiction shall determine from time to time is ineligible for disposal at the Transfer Station and/or alternative disposal sites, whether by reasons of being harmful, toxic or dangerous or otherwise.

3.5 Before accepting Waste at the Transfer Station, Contractor shall require that it contain appropriate labeling, placarding, marking, manifests or other such documentation required by New Jersey or Federal law or by Hunterdon County. Upon notice to the County, the

Contractor may impose such additional conditions as it deems reasonably necessary, to insure that all haulers utilizing the transfer station are disposing of only those Waste Types permitted under the applicable permit. Contractors will cooperate with the County to insure that all vehicles contain any labeling, decals or authorizations required by the County.

#### ARTICLE 4 WASTE DISPOSAL SITE

4.1.1 The County has accepted the Contractors' proposal for furnishing an ultimate disposal site (hereinafter referred to as "Contractor's Disposal Site") for all Hunterdon County waste, pursuant to the requirements of Exhibit A. Contractor will, in addition to operating the Transfer Station Facility, provide to the County and guarantee for the full five (5) year term an ultimate disposal site or sites for all waste generated in Hunterdon County which is presented for disposal at the Facility.

4.1.2 Contractor will provide a solid waste disposal outlet or outlets for as much of the Hunterdon County's solid waste requirements as is necessary. The County is not obligated to guarantee Contractor with any minimum amount of waste to be disposed of at Contractor's Disposal Sites.

4.2.1 Contractor will dispose of the solid waste, both processible and non-processible, at: **Grand Central Sanitary Landfill, Fairless Landfill and Recycle America/Greenstar/Waste Management Recycling of New Jersey, LLC**

4.2.2 Contractor warrants and represents to the County that it owns the disposal facilities or it has a contract or contracts with the Facilities, which contracts provide for the acceptance of all waste directed to them for the full five (5) year term of this Agreement.

4.2.3 Contractor warrants and represents that Contractor's Disposal Sites

collectively have existing permitted available capacity of the size necessary to accept for disposal all of the waste contemplated under this Agreement, are Resource Recovery Facilities or double lined state-of-the-art landfills and meet all applicable State, local and Federal statutes, rules and regulations governing their operation, including Subtitle D of Federal statutes.

4.2.4 Contractor also warrants and represents that Contractor's Disposal Sites collectively may accept this waste without violating any existing law, rule or regulation of the State where they are located, including limitations on the volume of out-of-locality or out-of-State waste to be accepted.

4.2.5 Contractor will provide and be responsible for the ultimate disposal of the waste called for in this Agreement, at its sole cost and expense, for the prices stated herein without any adjustment in price because of the unavailability of any projected disposal site at any time during the term of this Agreement.

4.2.6 Contractor warrants and represents that it knows of no act or condition or pending event, including pending or anticipated action by any third party or governmental entity, including any suit, proceeding or investigation, either administrative or judicial, pending or threatened against either it or the landfills or facilities which it proposes to use, which could or would result in the Contractor's Disposal Sites not being available or the Facilities collectively not being available to satisfy its obligations under this Agreement for the full five (5) year term.

4.3 Contractor assumes responsibility for all waste once it is tipped on the transfer floor, including environmental responsibility for ultimate disposal. It is the Contractor's and not the County's responsibility to insure that all waste accepted at the transfer station is acceptable waste. Contractor has the right, if permitted by law, at its expense, to return the waste to the tipping vehicle before Contractor handles the waste or to take such other action to protect



itself, as permitted by law. This provision is designed to make it clear that resolution of a situation and the associated costs are Contractor's responsibilities, not the County's. By agreeing to this provision Contractor does not waive its rights or claims against third parties.

4.4.1 If, for any reason, prior to the expiration of the term of this Agreement, the disposal outlets proposed by Contractor become unavailable for disposal of waste for any reason, Contractor warrants and represents that it has other available disposal sites or options and will transport all Hunterdon County's generated waste to those sites without any price adjustment to the County. No event of Force Majeure excuses performance under this Agreement.

## ARTICLE 5 PROVISION OF RECYCLING SERVICES

5.1 The Contractor will operate the recycling center and receive Acceptable Recyclable Materials Monday through Friday, 7:00 a.m. until 4:30 p.m. and Saturdays from 7:00 a.m. until 1:00 p.m.

5.2 Contractor will accept Acceptable Recyclable Materials from individual residents, small businesses, solid waste transporters, and recycling programs from municipalities, schools, and governments (Generators).

5.3 Acceptable Recyclable Materials are set forth on Exhibit C, which is attached. Contractor assumes sole responsibility for accepting materials. In the event that the Contractor accepts materials which do not meet these specifications, Contractor shall be responsible for disposing of unacceptable materials or arranging for the return of the unacceptable materials to the Generator. Contractor may charge the party who delivered such materials with the costs of disposal.

5.4 Generators will bring their vehicles to the recycling center and the

Contractor will accept Acceptable Recyclable Materials. Commercial vehicles will be accepted in another location of the recycling area designated by the Contractor. Contractor shall use reasonable efforts to not accept materials which cannot be disposed of under the Agreement. Materials not meeting the Specifications of Schedule D may be rejected in whole or in part by the Contractor.

5.5 Upon acceptance of the recycled materials by the Contractor, the Contractor assumes title of the collected materials and shall bear all responsibility for the marketing, transportation and disposal of all materials. Recyclable materials will not remain at the site more than five (5) days.

5.6 Contractor shall transport and dispose of Acceptable Recyclable Materials at its sole cost and expense and the County shall be compensated as set forth in Article 4 of the Agreement.

5.7 Contractor is responsible for insuring compliance with all environmental laws and regulations.

5.8 Contractor shall accept deliveries from private individuals in private vehicles.

5.9 The Contractor will provide the County on a quarterly basis, a report of the recycling activity at the Recycling center and the subsequent marketing of the collected materials. The report will include the tonnage delivered to the Facility over the period, the ultimate recycling disposal site and amount of unacceptable waste either disposed of or returned to the generator.

5.10 Contractor shall maintain the recycling center, the site and facilities, and be responsible for all waste and clean up in accordance with the same standards and to the same

extent as required by its affiliate, Waste Management of New Jersey, Inc., under its Agreement to operate the Solid Waste Transfer Station.

## ARTICLE 6 QUALIFICATIONS

6.1 Contractor warrants and represents that it has the background, training and experience to conduct the operation (including transportation and disposal) and has the necessary permits to operate the transfer station from the Department of Environmental Protection and any other governmental entity which has jurisdiction over the transfer station, and its operation.

## ARTICLE 7 FINANCIAL TERMS

7. The Contractor will pay the County for the right to operate the Facility.

7.1 The Contractor will pay a monthly Operating Privilege Fee to the County in the amount of \$1,666.67 by the 5<sup>th</sup> day of each and every month. In addition, the Contractor will pay the County by the fifth day of each and every month \$2.00 per ton Premium for each ton handled at the Facility.

7.1.1 The Total Operating Privilege Fee during the five (5) year term is \$100,000.00.

7.1.2 In the event that the Contractor is more than five (5) days late in making the payments required, the Contractor shall be in default under this Agreement and the County will have all of the rights and remedies set forth in Article 20 of this Agreement. In addition, the Contractor shall pay interest at the rate of 12% per annum on all sums which are late. The Contractor shall also pay a late payment charge of five (5%) of the monthly payment.

7.1.2.1 In the event of default the balance of the Total Operating Privilege Fee of \$100,000.00 will be accelerated and due immediately.

7.2 Based upon the Contractor's Bid the County has established an initial tipping fee of \$81.00 per ton. The Contractor warrants and represents that its request for the establishment of an initial tipping fee was made in good faith and designed to provide the Contractor with a reasonable rate of return in connection with the Project based upon the risks which the Contractor is assuming. The tipping fee is based upon the Contractor's pro forma Operating Statement for its first year of operation. A copy of the pro forma Operating Statement is attached as Exhibit H.

7.2.1 At any time during the term of the Agreement, the Contractor may petition the County for an increase in the rate to be charged. Such petition shall be accompanied by detailed financial information sufficient for the County to make a lawful determination that a rate increase is warranted. Such financial information shall include an Actual Profit and Loss Statement for the Contractor's Operation since the last time the tipping fee was modified and an Audited Financial Statement for the period in question. The County may also make reasonable requests for additional information.

7.2.2 The County, at its discretion, may set a rate in excess of the Contractor's requested rate under the following circumstances:

.1 The Contractor's Operating Privilege Payment and per ton Premium payments set forth in Paragraph 7.1 are not sufficient to cover the County's operating costs; or

.2 If the volumes of waste which the Contractor processes through the station exceed 50,000 tons per year, the County may adjust the tipping fee by an amount not to exceed 15% of the Contractor's requested rate to cover current or projected costs of the County.

7.2.3 If during the term of the Agreement, the State of New Jersey or the BPU modifies the regulatory scheme in a manner such that the County no longer has the ability

to set rates, the Contractor shall petition the lawfully designated Board or Agency for rate relief. If the rate relief is not granted then the Contractor can terminate this contract on six months notice to the County which is designed to provide sufficient time for the County to follow bidding requirements to obtain a new Operator.

7.3 Contractor will be responsible for the complete operation and administration of all financial aspects of the transfer station. Contractor will be responsible for:

i. Maintaining accurate books and records sufficient to determine any amounts of waste disposed of by various users, and the dates of disposal, and the payments made or to be made for the disposal.

ii. Establishing such policies and procedures as may be necessary to insure payment of the fee by any user, consistent with a tariff approved by the Department of Environmental Protection on October 26, 1994. Any credit terms shall be granted to all qualified haulers on a non-discriminatory basis. Contractor has the ultimate responsibility for collection of the tipping fee. Contractor will be responsible for any financial loss due to failure to maintain or enforce credit practices.

7.4 Contractor shall keep accurate and complete records of all haulers and quantities of solid waste disposed of, checked in or marketed through the Transfer Station. The Operator will use the Operator's computer system and generate the reports indicated in Schedule E of Exhibit A and such further reports as the computer program may be capable of generating as reasonably required by the County.

7.5 Contractor will pay a fixed rate of **\$2.00** per ton to the County of Hunterdon for all comingled Acceptable Recyclable Materials delivered to and accepted at the County's Recycling Management Area located at the Transfer Station Facility, regardless of

origin. The rebate will be applicable to all source-separated recyclables - single stream, cardboard, newspapers, and commingled containers.

#### ARTICLE 8 LIMITATION ON OTHER BUSINESS PRODUCTS

8.1 Contractor may use the site for other lawful purposes in accordance with the terms of this Agreement provided those uses are not inconsistent with the Stated Objectives.

8.2 The Contractor shall accept all waste generated within Hunterdon County. The acceptance of waste from sources outside of Hunterdon shall be done only when all other Hunterdon County needs are satisfied.

#### ARTICLE 9 INDEMNIFICATION

9.1 Contractor will indemnify and hold the County of Hunterdon harmless from any and all loss, damages, suits, penalties, costs, liabilities and expenses, including but not limited to, reasonable investigation and legal expenses, arising out of the operation of the Transfer Station as a Merchant Facility, the transportation of, and the ultimate disposal of the waste, or arising out of, or under this Agreement, except for acts or conduct of the County or its agents, servants, or employees. Users of the Transfer Station are not considered agents, servants or employees of the County. This indemnification includes but is not limited to: 1) personal injury or property damage, 2) environmental liability, 3) damage for payment for the use of any intellectual property, or any patented or copyrighted material, process, article or device that may enter into the manufacture or construction or form a part of the work covered by this Agreement, 4) for any statutory or administrative penalty for which Hunterdon County may be held liable on account of the fault or default of the Contractor, and 5) any and all damage or injury sustained on account of the default of the Contractor and costs and expenses in connection with remedying,

repairing or completing the Contractor's work.

9.2 The County of Hunterdon will indemnify and hold harmless the Contractor from any environmental liability or statutory or administrative penalty on account of an accident, incident, or occurrence which arose prior to the effective date of this Contract.

#### ARTICLE 10 HOST COMMUNITY AGREEMENT

10.1 Contractor shall provide the Township of Clinton, as the Host Community for the Transfer Station Facility pursuant to N.J.S.A. 13:1E-28.1(a), a Host Community Benefit. The Township of Clinton shall be entitled to this Host Community Benefit for the entire term of this Agreement.

10.2 Contractor shall, pursuant to N.J.S.A. 13:1E-28.1(a)(2), exempt the Township of Clinton from all fees and charges for the acceptance for the transfer of solid waste generated within the boundaries thereof.

10.3 Contractor shall, pursuant to N.J.S.A. 13:1E-28.1(a)(3), remit to the Township of Clinton quarterly lump sum payments in the amount of not less than \$1.40 per ton of solid waste processed at the Transfer Station during the entire term of the Contract.

#### ARTICLE 11 ASSIGNMENT

11.1 This Agreement is not assignable by Contractor without the prior written consent of the County of Hunterdon, which consent will not be unreasonably withheld if the proposed assignment is to the parent, or a subsidiary or an affiliated company of Contractor. However, Contractor shall remain responsible for the full performance of this Agreement.

11.2 Contractor may subcontract, upon notice to the County, the operation of the transfer station to a qualified subsidiary or affiliate of Contractor. Contractor may, with the

consent of the County, subcontract the station operation, transportation, disposal and auditing to be provided under this Agreement to a qualified company. The Contractor may subcontract other portions of the work only upon notice to the County qualified contractors of its own choosing.

## ARTICLE 12 INSURANCE AND CASUALTY, INCLUDING FIRE

12.1 Contractor will carry comprehensive general public liability insurance, including liability coverage for the premises and business automobile insurance in the aggregate amount of \$10,000,000.00, which policy will provide that the aggregate will not be impaired by claims made on projects or activities other than this Contract. The underlying limits of the liability policy will be no less than \$1,000,000.00 combined single limits. Any additional coverage may be provided through umbrella coverage. The County of Hunterdon and the State of New Jersey must be named as additional insureds. Contractor must also furnish proof of workmen's' compensation insurance as required under New Jersey Statutes. A detailed list of all insurance requirements is set forth in Section 19 of Exhibit A.

12.2 The Contractor will carry fire and casualty insurance on the transfer station building itself, for the full replacement value and shall name the County of Hunterdon as additional insured and loss payees. Contractor will be responsible for carrying such insurance on its equipment and personnel as it chooses. Contractor will be responsible for complying fully with all directives and determinations of the insurance carrier or fire underwriter in connection with conditions created by Contractor, or the manner or method of operation, at the Facility. Contractor will modify, at its own expense, conditions, or its manner or method of operation at the site to comply with such directives or requirements within the time frames indicated by the



carrier or underwriter.

12.3 In the event of any damage to the Transfer Station, the Contractor will cooperate in the making of any necessary repairs, including managing the construction and repairs if requested by the County and will be responsible for any costs of repairs not covered by insurance.

12.4 A fire or other casualty will not result in the termination of this Agreement, but the procedure outlined below will be followed.

12.4.1 Contractor will continue to make the payments called for under this Agreement.

12.4.2 At the time of such event or occurrence, Contractor will immediately make all reasonable business efforts to deal with such condition and provide a "Plan" to the County for continued operation, and restoration, repair or replacement of the building and reaching peak operational efficiency as promptly as possible, taking into consideration the event or occurrence.

12.4.2.1 At the direction of the County, Contractor will implement the "Plan" with such reasonable modifications as the County may require. In the event that the implementation of the "Plan" alters the terms, covenants and conditions of this Agreement, or increases the cost of operation, then the County shall consider a request for reasonable and equitable tariff adjustment in connection with the implementation of the "Plan."

12.4.3 Under no circumstances shall such an event or occurrence relieve Contractor from its responsibility for providing an alternate disposal site.

12.4.4 In the event that a plan for interim transfer and disposal cannot be reasonably implemented and the waste is temporarily redirected to a disposal facility other than the Transfer Station, the Contractor shall continue to make the monthly Operating Fee.

12.5 Contractor will furnish to the County at the time of the execution of this Agreement certificates indicating that its required insurance coverages are in existence. Contractor's original certificate of insurance is attached as Exhibit D. Contractor will provide a copy of the policy within thirty (30) days. At least thirty (30) days prior to the expiration date of the initial certificate or any subsequent certificate, Contractor will provide a new certificate and copies of the policies.

### ARTICLE 13 HEALTH AND SAFETY

13.1 Contractor shall place the highest importance and priority on health and safety for all services performed by Contractor. Contractor shall comply with all applicable fire, safety and health laws and regulations as well as any reasonable safety and health requirements of the County at the Facility. Any modifications required in the building for such compliance will be the County's responsibility. Contractor shall insure that all of its employees are made aware of all safety, fire and health requirements and regulations applicable to the work to be performed pursuant to this Agreement.

13.2.1 Contractor shall not permit there to exist any hazardous, unsafe, unhealthy, or environmentally unsound condition or activity at the transfer station. In the event that Contractor becomes aware of any such condition or activity, it shall promptly notify the County and immediately take whatever reasonable steps are necessary to eliminate, terminate, abate or rectify such condition. If the County becomes aware of such condition or activity before it is known to Contractor, then Contractor shall take prompt, reasonable, corrective action upon being notified by the County.

13.2.2 Any such hazardous, unsafe, unhealthy, or environmentally unsound condition or activity at the transfer station which is the result of a structural defect or presently existing major safety condition of the transfer station, including but not limited to electrical, wiring, plumbing, heating, and air-conditioning shall be the sole responsibility of the County to correct at its cost provided the Contractor provides notice to the County of such condition by January 14, 2019. Any such condition which arises after that date (or which existed prior to then, but for which the Contractor did not provide notice), shall be Contractor's responsibility. Contractor is responsible for all other repairs.

13.2.3 The County believes that the transfer station has been operated in compliance with all applicable environmental laws and regulations, and that the transfer station and surrounding properties are free of any hazardous waste as defined herein. Contractor has no responsibility for pre-existing environmental conditions at the site. The County has the responsibility for remedying any pre-existing environmental condition required by law and shall indemnify Contractor for any costs or damages it may incur in connection therewith. Contractor is solely responsible for all conditions created, aggravated or which occur after the date this contract commences.

13.2.4 Contractor shall be responsible for complying with all environmental clean-up laws, rules or regulations which are applicable upon the termination of its operation.

#### ARTICLE 14 PERFORMANCE BOND

14.1 Contractor has furnished a Guarantee and Performance Bond in connection with all of its obligations under this Agreement. The bond is attached as Exhibit E. The bond shall be issued by an approved surety company under New Jersey Law. The Guarantee

and Performance Bond insures to the County the complete performance of all of Contractor's responsibilities under this Agreement for the full five (5) year term of the Agreement. The bond indemnifies the County fully in connection with all costs of operation, including the cost of ultimate disposal, as well as the collection of all charges to the user and the remittance of such sums to the County. The bond is in the penal amount of Ten Million Dollars (\$10,000,000.00) for the first year and then shall be reduced by \$2,000,000.00 per year until such time the bond amount will be \$6,000,000.00 which amount will remain constant throughout the balance of this Agreement.

#### ARTICLE 15 COMPLIANCE WITH LAWS

15.1 In performance of all of the services to be provided hereunder, Contractor agrees to comply with all applicable Federal, State and local laws and ordinances and all lawful orders, rules and regulations of any constituted authority and to maintain all records required pursuant thereto.

15.2 To the best of its knowledge, the County understands that operation of the transfer station pursuant to the terms of its Solid Waste Facilities Permit and other applicable permits, including the Air Quality Permit is in compliance with all existing noise and water quality laws, codes, and regulations. The Contractor is responsible for compliance with the terms, covenants and conditions of the permits at Contractor's sole cost and expense. In the event that during the term of this Agreement, additional or different regulatory requirements are imposed in any Permit with respect to the operation of the transfer station, then the Contractor will comply with those conditions at its sole cost and expense. The County will be solely responsible, at its cost, for applying for and obtaining any extension or renewals of the permits

and licenses that govern operation of the transfer station. Contractor shall inform the County whenever it has reason to believe that conducting its operations in accordance with any Permit violates any law, code, or regulation.

### 15.3 MANDATORY AFFIRMATIVE ACTION LANGUAGE

(MANDATORY AFFIRMATIVE ACTION LANGUAGE)  
(MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE)  
Goods, Professional Service and General Service Contracts

N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)  
N.J.A.C. 17:27 et seq.

#### GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer

setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27 5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing,

as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report

Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at

[www.state.nj.us/treasury/contract\\_compliance](http://www.state.nj.us/treasury/contract_compliance))

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

**The Contractor's submission is attached to this Contract as Exhibit F.**

15.4 This Contract has been awarded to the Contractor based upon an Fair and Open Competitive Bidding process and upon the merits and ability of the Contractor to provide the goods and services described herein. The Contractor warrants and represents that it has not colluded with any member of the Board of Chosen Freeholders, or any Constitutional Officer, to secure an award of this Contract based upon political contributions. This Agreement is governed by the laws of the State of New Jersey involving political contributions and, in particular, what is commonly known as the New Jersey “Pay to Play” law, N.J.S.A. 19:44A-20.4, et seq. Compliance with that statute is a material term of the Agreement.

The Contractor further understands that business entities that have received in any calendar year \$50,000 or more in the aggregate through agreements or contracts with a public entity, the Contractor is required to complete and file with the Election Law Enforcement Commission, an annual report on a form to be designated by the Commission, pursuant to N.J.S.A. 19:44A-20.27 The Contractor agrees to a file copy of the report simultaneously with the Hunterdon County Board of Chosen Freeholders and the Hunterdon County Purchasing Agent.

The Contractor agrees that the Agreement is voidable at the option of the public entity if Contractor has not complied with all campaign contribution laws and if any of the representations it has made are untrue. Contractor is responsible for all damages the County incurs as a result.

15.5 A copy of the Contractor’s Business Registration Certificate and the Business Registration Certificates for subcontractors are attached as Exhibit G.



ARTICLE 16  
COMPLIANCE WITH LEASE

16.1.1 Contractor is aware of a lease agreement between the State of New Jersey and the County of Hunterdon dated May 1, 1982 and modified July 1, 1989, which governs the County's use of the transfer station site. Contractor agrees to comply with all the terms, covenants and conditions of that agreement, in all respects that apply to Contractor' operation. A copy of that lease with the State of New Jersey is attached to Exhibit A as Schedule A, and is incorporated by reference in this Agreement.

16.1.2 Contractor, for itself, its successors and assigns, and anyone using the premises, assumes all risks of and liability for and covenants to indemnify, protect and save harmless the State of New Jersey, and releases the State of New Jersey and each of its officers, agents, servants and employees, and its successors and assigns, from any and all liability, claims and actions which may in any manner arise out of, be occasioned by, or result from the use or occupancy of the premises, including the sidewalk, if any, by Contractor, its agents, servants, employees or invitees, express or implied, including users of the transfer station. Contractor shall secure and maintain in full effect, during the term of the lease, a comprehensive general liability insurance policy in the amount of at least \$1,000,000.00, naming the State as co-insured.

16.1.3 Contractor shall be responsible for necessary security to maintain an adequate level of control, and to eliminate or remedy any public nuisance which may result from the operation of the waste transfer station.

16.1.4 Contractor shall comply with the requirements of N.J.S.A. 10:5-31, and N.J.S.A. 52:25-24.2.

ARTICLE 17  
AUDITS  
ACCESS TO BOOKS AND RECORDS

17.1 Contractor will provide to the County each year an independent certified audit of its operations within ninety (90) days of the end of its fiscal year.

17.2 Contractor shall keep adequate books, records and other documentation consistent with applicable regulatory requirements and in accordance with generally accepted accounting principles, pertaining to the performance of the services required by this Agreement, including personnel records, correspondence, instructions, plans, receipts, vouchers and other memorandum. Contractor shall retain copies of all manifests and other records required under applicable rules and regulations.

17.3 Contractor warrants and represents that it is familiar with all applicable Federal, State and local laws, rules, regulations and ordinances which govern the activities required under this Agreement or contemplated by it. Contractor warrants and represents that it has sufficient and knowledgeable personnel in order to comply with all requirements of the law and will do so.

17.4 Contractor agrees to permit at all reasonable times, duly authorized representatives of the County to inspect and have access to the books, records and documentation referred to herein related to the performance of this Agreement, for the purposes of auditing and verifying the performance of services performed pursuant to this Agreement, the charges for such services and the required maintenance of records relative to such services. Such access by the County's representatives shall include the right to discuss such documentation with Contractor's personnel having knowledge of their contents and the right to copy such documentation. Contractor shall preserve all documentation pertaining to the services required

by this Agreement for a period of six (6) years following completion of the services rendered by Contractor to the County or for any greater period of time required by law.

17.5 Pursuant to N.J.A.C.17:44-2.2 the contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

#### ARTICLE 18 WARRANTIES AND REPRESENTATIONS

18.1 In addition to the warranties and representations contained elsewhere in this Agreement, Contractor specifically warrants and represents to the County as follows:

.1 That it has examined the Proposal Specifications of the County dated August 9, 2018, and understands the intent and meaning thereof and the Objective to be accomplished.

.2 That it prepared its Proposal in good faith and warrants and represents that all of the terms, covenants and conditions of the Operational Plan portion of its proposal, attached to this Agreement as Exhibit B, when implemented, shall be sufficient to accomplish the stated Objective.

.3 That its Proposal does not knowingly contain any untrue material statement, nor omit any material statement necessary in order to make the statements made in the proposal not misleading.

.4 That every written statement in the Contractor's Proposal, including the financial statements, any exhibits, certificates, or other documents delivered in the proposal are true and correct in all material respects.

.5 That the financial information contained in the Contractor's Proposal, and in the pro forma Operating Statement attached as Exhibit H fairly presents in all material respects the projected costs of operations and the resulting profit to Contractor and that each item therein is warranted to be true and accurate in all material respects.

.6 That the representations made as to the size, available capacity, nature, environmental suitability, and availability (from a legal and technical point) of the Contractor's Disposal Sites are true and correct in all material respects.

#### ARTICLE 19 RELATIONSHIP OF THE PARTIES

19.1 Contractor's relationship to the County shall be that of an independent contractor. Contractor is to exercise its own discretion in the manner and method of performing its duties in compliance with this Agreement. The employees, methods, equipment and facilities used by Contractor shall at all times be under its exclusive direction and control. Nothing in this Agreement shall be construed to designate Contractor or any of its employees or agents to be or become joint venturers or partners or representatives or agents of the County.

#### ARTICLE 20 CONTRACT INTERPRETATION

20.1 In this contract the County has recited various clauses which are similar to clauses in its Bid Documents Exhibit A. Inconsistencies between the Bid Documents and this Agreement are to be construed in favor of the County to insure protection of the public interest. The fact that specific paragraphs have been highlighted in this formal Contract Agreement, does not mean that the other paragraphs contained in the Bid Documents, but not repeated in the body of this Agreement, are not as important as those recited. All parts of the Bid Documents (Exhibit

A) are incorporated in this contract by reference. It is Contractor's responsibility to comply with them.

20.2 This Agreement is to be interpreted in accordance with the laws of the State of New Jersey. Jurisdiction for any dispute lies in the Courts of New Jersey. The Contractor submits to the jurisdiction of the Courts of New Jersey with venue in Hunterdon County.

## ARTICLE 21 DEFAULT

21.1 Failure to comply with the Bid Specifications or the Contract Documents in any respect constitutes a breach of contract. In addition to any other rights and remedies indicated in the Bid Specifications, the County shall have the rights in this paragraph. In the event of a breach of contract, or if the Contractor is adjudged bankrupt, or makes general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency, then the County may, without prejudice to any other right or remedy, terminate this Agreement. Termination shall occur after giving five (5) days prior written notice by certified mail to the Contractor and its Surety. In the event of termination, the Surety shall, beginning on the sixth day provide for substitute performance on behalf of the Contractor. The Surety's responsibility will be in accordance with the Performance Bond, Exhibit E.

21.2 The Surety will provide for substitute performance up to the dollar limit of the Performance Bond without offset.

21.3 If the Surety does not promptly perform, and the County must arrange for substitute performance, the Contractor and the Surety will be liable to the County for the cost of performance.

21.4 The Contractor and its Surety will be responsible for all damages or losses to the Hunterdon County as a result of the Contractor's breach of contract. The damages incurred by the County under this Agreement are more than just the payments which the Contractor is required to make under Article 6. The County has entered into this Agreement for the purposes of accomplishing the Operational Objective of disposing of all solid waste and recycled material generated in Hunterdon County and so substitute performance by the Surety in the event of default includes the cost and processing and supplying operational services and a waste and recycling disposal outlet.

21.5 The Contractor acknowledges that the County will be irreparably harmed if there is a failure to perform this Agreement for any reason. The handling of Solid Waste and its disposal at an ultimate disposal site is a critical and serious public health function. Therefore, the Contractor and its Surety consent to the issuance of a mandatory preliminary and permanent injunction to enforce the County's right to insist upon prompt performance in the event of Default. Disposal capacity at Ultimate Disposal Sites is scarce and so damages are not an adequate remedy.

## ARTICLE 22 SEVERABILITY

22. 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 invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement. This Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

ARTICLE 23  
AMENDMENTS

23. This Agreement may be amended from time to time only by an instrument in writing signed by the parties to this Agreement at the time of such amendment. No provision of this Agreement can be waived by either party, except by written instrument signed by either party waiving such provision. The failure of either party to object to any breach of a provision of this Agreement cannot constitute the waiver of a right to object to a continued or subsequent breach of the same or any other provision of this Agreement.

ARTICLE 24  
ENTIRE AGREEMENT

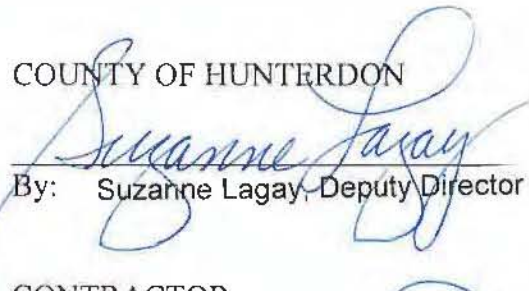
24. This Agreement constitutes the entire understanding between the parties hereto.

The parties have read and understand this Agreement fully. It is signed and sealed in accordance with New Jersey law by the duly authorized corporate officers of each of the parties.

ATTEST:

  
By: Denise B. Doolan, Clerk of the Board

COUNTY OF HUNTERDON

  
By: Suzanne Lagay, Deputy Director

ATTEST:

  
By: Thomas E. Utermark, Assistant Secretary

CONTRACTOR

  
By: Rafael Carrasco, President