

APPENDIX C

**AGREEMENT TO PROVIDE
FOR THE PROVISION OF COMBINED SERVICES FOR THE TRANSFER, TRANSPORTATION
AND/OR DISPOSAL SERVICES OF ALL TYPE 13, 13C, 23 (NON-PROCESSIBLE PORTION) AND
27 (NON-RECYCLED PORTION) SOLID WASTE GENERATED IN ESSEX COUNTY**

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by and between

THE ESSEX COUNTY UTILITIES AUTHORITY

and

Dated as of January 1, 2026



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AGREEMENT TO PROVIDE FOR THE PROVISION OF COMBINED SERVICES FOR THE TRANSFER, TRANSPORTATION AND/OR DISPOSAL SERVICES OF ALL TYPE 13, 13C, 23 (NON-PROCESSIBLE PORTION) AND 27 (NON-RECYCLED PORTION) SOLID WASTE GENERATED IN ESSEX COUNTY , made this ___ day of , 2025_ (the "Agreement"), by and between **THE ESSEX COUNTY UTILITIES AUTHORITY** (the "ECUA"), a public body corporate and politic of the State of New Jersey organized and existing under the Municipal and County Utilities Authorities Law, constituting Chapter 183 of the Pamphlet Laws of 1957, of the State of New Jersey and the acts amendatory thereof and supplemental thereto, and **[NAME OF SUCCESSFUL BIDDER]** (the "Contractor"), a [corporation] [partnership] duly organized under the laws of [State].

W-I-T-N-E-S-S-E-T-H:

WHEREAS, pursuant to the provisions of the New Jersey Solid Waste Management Act, constituting Chapter 39 of the Pamphlet Laws of 1970, of the State of New Jersey, and the acts amendatory thereof and supplemental thereto (the "Solid Waste Act"), the County of Essex, New Jersey (the "County") has been designated as a Solid Waste Management District and as such, is charged with the responsibility of adopting and providing for the implementation of the Essex County District Solid Waste Management Plan (the "County Plan") to provide for the disposal of solid waste generated within the geographic boundaries of the County; and

WHEREAS, in furtherance of such requirements the Board of Commissioners of the County developed, and the New Jersey Department of Environmental Protection (the "Department") subsequently approved, the County Plan for the Essex County Solid Waste Management District, which provides for, among other things, the development and implementation of a comprehensive solid waste system relating to the collection and disposal of County-generated solid waste; and

WHEREAS, in order to, among other things, provide for the provision of solid waste management services in a more effective and efficient manner, the Board of Commissioners, by ordinance finally adopted on July 1, 1992, created The Essex County Utilities Authority (the "ECUA") as a public body corporate and politic of the State of New Jersey, with all necessary and proper powers, among other things, to acquire, construct, maintain, and operate or contract for the operation of facilities for the collection, transportation, processing, recycling and disposal of solid waste generated within the geographic boundaries of the County in an environmentally sound manner; and

WHEREAS, on August 4, 1993, the Board of Commissioners of the County adopted an amendment to the County Plan designating the ECUA as the sole agency responsible for implementation of the County Plan, which amendment to the County Plan has been certified as approved by the Department; and

WHEREAS, the ECUA has authorized and prepared non-discriminatory bid specifications to procure Combined Services for at least 200,000 Tons per year of Acceptable Solid Waste generated within Essex County; and

WHEREAS, the ECUA desires to ensure the provision of Combined Services in a reliable, cost-effective and environmentally sound manner; and

WHEREAS, the ECUA determined that the Contractor was the lowest responsible bidder for the provision of Combined Services; and

WHEREAS, in order to effectuate the above-described goals, the ECUA and the Contractor desire to enter into this Agreement; and

WHEREAS, the ECUA and the Contractor have duly authorized their respective officials and officers to enter into and execute this Agreement;

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained and of the undertakings of each party to the other, the Parties hereto, intending to be legally bound hereby, mutually covenant, promise and agree as follows:

ARTICLE I.

DEFINITIONS AND INTERPRETATIONS

Section 1.01. Certain Definitions. Capitalized words which are used herein as defined terms shall, unless the context clearly requires otherwise, have the meanings ascribed to such words below.

"Acceptable Waste" means the non-recycled portion of Solid Waste generated within Essex County that constitutes (1) I.D. Type 13 and 13C - Bulky Waste (large items, appliances, automobiles, construction and demolition waste), (2) I.D. Type 23 - Vegetative Waste (non-processible portion), (3) I.D. Type 27 - Dry Industrial Waste (non-hazardous industrial waste) in each case as defined by N.J.A.C. 7:26-2.13(g).

In no event shall Acceptable Waste include the following waste types, (1) I.D. Type 10. - Municipal Waste, (2) I.D. Type 12 - Dry Sewage Sludge, (3) I.D. Type 27A - Dry Industrial Waste (containing asbestos and asbestos containing materials), (4) I.D. Type 72- Bulk liquids and semi-liquids, (5) I.D. Type 73 - Septage Tank Cleanout Waste, (6) I.D. Type 74 - Liquid Sewage Sludge, in each of (1) to (5), inclusive, as defined by N.J.A.C. 7:26-2.13, (7) any Hazardous Waste, (8) infectious and pathological hospital wastes and (9) any prohibited waste types under Applicable Laws.

Recyclable materials consisting of fully source separated recyclable materials or recyclable materials remaining after separation through transfer station recycling activities shall not constitute Acceptable Waste, provided that such materials are designated as recyclable pursuant to NJDEP regulations and/or the Essex County Solid Waste Management Plan.

"Act" means the Municipal and County Utilities Authorities Law, constituting Chapter 183 of the Pamphlet Laws of 1957, of the State of New Jersey and the acts amendatory thereof and supplemental thereto.

"Applicable Laws" means any permits, licenses and approvals issued for or with respect to the Facility (or any component thereof) and/or issued for or with respect to the performance by a party of its obligations hereunder, and any statute, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation, standard or similarly binding authority, which in any case, shall be enacted, adopted, promulgated, issued or enforced by a governmental body, regulatory agency and/or court of competent jurisdiction that relates to or affects the ECUA, the Contractor and/or the Facility (or any portion thereof), or the performance by a party of its obligations hereunder, including, without limitation, the Plan.

"Authority" or "ECUA" means The Essex County Utilities Authority, the implementing agency for the Essex County Solid Waste Management District.

"Bid" means the Contractor's submission to the ECUA in response to the Bid Specifications with respect to the provision of Combined Services as described in the Bid Specifications, including all technical, legal, financial information, all General Bid Transmittal Forms (Appendix A of the Bid Specifications), all Cost and Other Bid Forms (Appendix B of the Bid Specifications), this executed Agreement, and any and all information required to be submitted in accordance herewith.

"Bid Specifications" means the bid specifications issued for the provision of Combined Services which Bid Specifications may be amended or modified from time to time in accordance with the Local Public Contracts Law prior to the date established for the submission of Bids.

"Billing Year" means a twelve-month period commencing on January 1 and ending on December 31.

"Board of Commissioners" means the Essex County Board of Commissioners.

"Combined Services" means collectively the services required to be provided by the Contractor pursuant to this Agreement and the Bid Specifications in connection with the transfer, transportation, and disposal of Acceptable Waste, including, but not limited to, receiving, weighing, processing, and loading Acceptable Waste onto transfer trailers to deliver such Acceptable Waste to the Disposal Facility(ies) and to dispose of such Acceptable Waste at the Disposal Facility(ies).

"Combined Services Agreement" means this "Agreement to Provide Transfer, Transportation, and Disposal Services for Acceptable Waste," to be executed by the ECUA and the Contractor setting forth the terms and conditions relating to the transfer, transportation, and disposal of Acceptable Waste.

"Commencement Date" means the date that the Contractor shall commence provision of the Combined Services. Unless otherwise notified in writing by the ECUA, the Commencement Date is expected to occur on or about January 1, 2026.

"Contract Date" means January 1, 2026.

"Contractor Fault" means any breach, failure, non-performance or non-compliance by the Contractor with the terms and conditions of this Agreement or the terms of any Permits, licenses or approvals applicable to the Facility, or any negligent or willful act or omission of any officer, agent, employee, contractor, subcontractor of any tier or independent consultant or contractor of the Contractor which prevents or delays the Contractor from performing its obligations under the terms of this Agreement or which increases the cost of such performance or limits or impairs the ability of ECUA to receive the benefits of its rights under this Agreement.

"County" means the County of Essex, New Jersey, and its successors and assigns.

"Day" means a 24-hour period of time, beginning at 12:01 a.m. in the eastern time zone in the United States and coinciding with the calendar day, whether or not a Saturday, Sunday or Legal Holiday.

"DEP," "NJDEP," or the "the Department" means the New Jersey Department of Environmental Protection, or any successor thereof, including any agency or department to which the powers of the Department of Environmental Protection shall be *transferred*.

"Disposal Facility(ies)" means the sanitary landfill that will ultimately be utilized for the disposal of Acceptable Waste.

"ECUA Fault" means (a) any breach, failure, non-performance or non-compliance by the ECUA with the terms and conditions of this Agreement or the terms of permits, licenses or approvals applicable to the ECUA, or any negligent or willful act or omission of any director, official, agent, employee, contractor, subcontractor of any tier or independent consultant or contractor of the ECUA which prevents or delays the Contractor from performing its obligations under the terms of this Agreement, or which increases the cost of such performance or limits or impairs the ability of the Contractor to receive the benefits of its rights thereunder, and/or (b) any action or failure to take action by the County or the ECUA which limits or impairs the Contractor's right to arrange for the delivery of Acceptable Waste to the Facility.

"EPA" means the United States Environmental Protection Agency, or any successor thereof, including any agency or department to which the powers of the United States Environmental Protection Agency shall be transferred.

"Essex County Resource Recovery Facility" or "ECRRF" means the waste-to-energy facility located at 183 Raymond Boulevard, Newark, New Jersey 07105, that is owned by the Port Authority of New York and New Jersey.

"Event of Default" means the non-performance of the Contractor under the terms of this Agreement.

"Facility" means the [Transfer Station Facility] [Disposal Facility] designated by the Contractor to be utilized pursuant to this Agreement.

"Facility Site" means the real property upon which the [Transfer Station Facility] [Disposal Facility] has been constructed, as more particularly described in Schedule 1 hereto.

"Governmental Body" means, as appropriate, any one or several of, any Court of competent jurisdiction, the United States of America, the State of New Jersey and/or any state in which the Facility is located or which validly exerts appropriate jurisdiction over the Contractor or its activities relating to the Facility; or any agency, authority, regulatory body or subdivision of any of the above as may have jurisdiction over or power and authority to regulate the ECUA, the Contractor, and/or the transfer, transportation, and disposal of Acceptable Waste.

"Guarantor" means either a joint venture partner, or other similar entity, who assumes joint and several liability for the Contractor, or other entity serving as Guarantor and which in each case guarantees performance of the obligations of the Contractor under the terms of this Agreement.

"Hazardous Substances" means any material which is defined as a hazardous substance under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and any applicable State law, in either case, as replaced or amended from time to time, and the rules, regulations and official written policies and guidelines promulgated thereunder.

"Hazardous Waste" means (1) any waste, material, or substance which, by reason of its composition or characteristic, is regulated as a toxic or hazardous waste or substance under, without limitation, (a) the Solid Waste Disposal Act, 42 U.S.C.A. 6901, et seq., as replaced or amended from time to time, and the rules,, regulations and written policies or written guidelines promulgated thereunder, (b) the New Jersey Solid Waste Management Act, N.J.S.A. 13:1 E-1 et seq. and the regulations thereunder, including N.J.A.C. 7:26-8.1 et. seq., as replaced or amended from time to time, and the rules, regulations and written policies or written guidelines promulgated thereunder, and (c) the Toxic Substances Control Act, 15 U.S.C. §260 et seq., as replaced or amended from time to time, and the rules, regulations and written policies and written guidelines promulgated thereunder, or any other laws of similar purpose or effect, and such policies or regulations thereunder, or under any other relevant federal or state law as replaced or amended from time to time, and the rules, regulations, written policies or written guidelines promulgated thereunder, or (2) radioactive material which is source, special nuclear or by-products material within the meaning of the Atomic Energy Act of 1954 as replaced or amended from time to time, and the rules, regulations and written policies or written guidelines promulgated thereunder, or (3) any other waste, material or substance which any Governmental Body having appropriate jurisdiction shall determine from time to time is harmful, toxic, hazardous or dangerous, or otherwise ineligible for delivery to the Facilities, as the case may be, other than those permitted for disposal of hazardous wastes; or (4) all material defined as hazardous by the Resource Conservation and Recovery Act of 1976, or the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as replaced or amended from time to time, and the rules, regulations and written policies and written guidelines promulgated thereunder.

"Landfill" or "Landfills" means any and all portions of the landfill (s) that are designated by the Contractor as a Disposal Facility.

"Legal Holidays" means those legal holidays which are set forth on Schedule 2 hereto, as the same may be amended or supplemented from time to time,

"Local Public Contracts Law" means the New Jersey Local Public Contracts Law, constituting Chapter 198 of the Pamphlet Laws of 1971, of the State of New Jersey and the acts amendatory thereof and supplemental thereto.

"Overdue Rate" means the lesser of (a) the maximum rate of interest permitted by Applicable Laws, or (b) 1% over the prime rate of interest published in The Wall Street Journal, or such other daily financial publication as shall be mutually agreeable to the parties if The Wall Street Journal ceases to be published or ceases to publish such information.

"Permits" means the applicable approvals, authorizations, certifications, licenses and permits issued by federal, State or local governmental authorities required for the operation and maintenance of the Facility.

"Plan" means the Essex County District Solid Waste Management Plan adopted by the governing body of the County pursuant to the provisions of the Solid Waste Act, relating to the collection and disposal of Solid Waste generated within the geographic boundaries of the County, as the same has been previously amended and supplemented and as may be further amended and/or supplemented from time to time.

"Receiving Time" means the times that Acceptable Waste may be delivered to a Facility, as designated in a written notice delivered by the Contractor to the ECUA, as the same may be amended from time to time, but in no event at times that do not include the hours set forth in the Facility Permits, licenses and approvals as of the Commencement Date.

"Recyclable Materials" means those materials which would otherwise become solid waste and which may be collected, separated or processed and returned to the economic mainstream in the form of raw materials or products pursuant to the Essex County District Recycling Plan and § 3 of P.L. 1987, C.102.

"Schedule" means any exhibit, schedule or annex which is attached to, incorporated in, or made a part of this Agreement.

"Service Charges" means the fees payable for or with respect to the provision of Services, as set forth in Section 3.01 hereof.

"Solid Waste" means all materials or substances that were generally discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection.

"Solid Waste Act" means the New Jersey Solid Waste Management Act constituting Chapter 39 of the Pamphlet Laws of 1970, of the State of New Jersey and the acts amendatory thereof and supplemental thereto.

"State" means the State of New Jersey.

"Term" means the five (5) years beginning on the Commencement Date and ending five (5) years after the Commencement Date, unless earlier terminated pursuant to this Agreement or the Bid Specifications.

"Ton" means a short ton of 2000 pounds.

"tpd" means Tons per day.

"tpy" means Tons per year.

["Transfer Station Facility" means such transfer station that is utilized by the Contractor for the provision of Combined Services in accordance with this Combined Services Agreement.]

"Unacceptable Waste" means any material that is not Acceptable Waste.

"Uncontrollable Circumstance" means any act, event or condition occurring on or after the Contract Date that has had, or may reasonably be expected to have, a material and adverse effect (for this purpose, any act, event or condition or the costs of which are the result of the willful or negligent action or inaction of a party shall not be deemed to have a material and adverse effect) on a right or an obligation of either or both of the ECUA or the Contractor under this Agreement if such act, event or condition is beyond the reasonable *control* of the party relying thereon as justification for not performing under this Agreement. Uncontrollable Circumstances shall include the following:

(a) an *act of God*, landslide, lightning, earthquake, fire, explosion, flood, nuclear radiation, acts of a public enemy, war, blockade, insurrection, riot or civil disturbance or any similar occurrence, or a condemnation or other taking by or on behalf of any public, quasi-public or private entity; but not including reasonably anticipated weather conditions for the geographic area of the Facility; and

(b) the suspension, termination, interruption, denial or failure of renewal or continuation of any permit, license, consent, authorization, or approval required for the provision of Combined Services; provided however, that such event shall not be the result of the willful or negligent action or inaction of the party relying thereon; and

(c) the loss of or inability to obtain any utility services, including water, sewerage, fuel oil, gasoline and electric power other than that generated by the Facility, necessary for operation of the Facility if such loss or inability is not the result of the willful or negligent action or inaction of the Contractor; and

(d) a public or private labor dispute relating to the collection of Solid Waste which involves persons other than those working for (or on behalf of) the Contractor or any affiliate or subcontractor hired by the Contractor, which prevents the delivery of Solid Waste to the Facility (including Acceptable Waste delivered or to be delivered by (or on behalf of) the ECUA); and

The occurrence of an Uncontrollable Circumstance shall only suspend the obligations of the parties hereto to perform their respective obligations hereunder to the extent that such performance is impaired or prevented as a direct result of such occurrence.

"USEPA" or "EPA" means the United States Environmental Protection Agency, or any successor agency.

"Waste-to-Energy Facility" means a facility employing large scale mass-burn technology to combust solid waste to produce energy.

"Wrongfully Rejected Waste" means Acceptable Waste that the Contractor does not accept for transfer, transportation, and disposal of at the Facility due to a circumstance that neither is ECUA Fault, an Uncontrollable Circumstance, nor Acceptable Waste which the Contractor is entitled to reject pursuant to the provisions of Section 2.03 hereof.

Section 1.02. Terms Generally. Whenever the context may require, any pronoun which is used in this Combined Services Agreement shall include the corresponding masculine, feminine and neuter forms and the singular shall include the plural and vice versa. Unless otherwise noted, the words "include," "includes" and "including" which are used in this Combined Services Agreement shall be deemed to be followed by the phrase "without limitation." The words "agree," "agreements," "approval" and "consent" which are used in this Combined Services Agreement shall be deemed to be followed by the phrase "which shall not be unreasonably withheld or unduly delayed" except as may otherwise be specified.

ARTICLE II.

CONTRACTOR'S OBLIGATIONS

Section 2.01. Operation and Maintenance of Facility and Facility Site.

(a) General. Except to the extent otherwise provided in this Agreement, the Contractor shall operate and maintain the Facility and the Facility Site so as to transfer, transport, and dispose of the Acceptable Waste delivered by (or on behalf of) the ECUA under this Agreement, in accordance with Applicable Laws, and the Bid Specifications.

(b) Ownership or Lease of Facilities. The Contractor shall own, lease, or otherwise control, operate, maintain a Facility(ies), capable of accepting Acceptable Waste (at least 100,000 Tons and up to 200,000 Tons per year). If the Contractor is a lessee pursuant to a lease of the Facility, the lease term shall not expire before five (5) years following the Commencement Date. Should the term of the lease expire prior to expiration or otherwise earlier termination of this Agreement, the Contractor must have demonstrated, as part of its Bid, the ability to extend the lease. The Facility shall be operated in accordance with all applicable permits and regulations relating to such Facility and in accordance with the terms and conditions of this Agreement. In particular, if the Facility is located outside of Essex County or the State of New Jersey, they must be capable of accepting waste generated within Essex County without violating any federal, state or local laws, rules, regulations or orders.

(c) Operation of Facility. Unless prevented or inhibited by ECUA Fault and/or the occurrence and continuation of an Uncontrollable Circumstance, the Contractor shall, at its own cost and expense, operate and maintain the Facility in accordance with this Agreement, Applicable Laws, the Contractor's rules and regulations, and so as to ensure that the Facility is able to receive Acceptable Waste, for transfer, transportation, and disposal, and comply with permits, licenses, and/or approvals. As between the ECUA and the Contractor, the Contractor shall be responsible for payment of any fines, penalties or assessments imposed by the DEP or any other regulatory agency having competent jurisdiction as a result of the failure of the Facility to comply with Applicable Laws, unless such failure shall result from the occurrence or continuation of ECUA Fault.

(d) Permits. The Contractor shall be responsible for obtaining all necessary permits, licenses, and approvals required in connection with the provision of Services under this Agreement from all regulatory agencies having competent jurisdiction. The Contractor shall also be responsible for maintaining and/or renewing said permits, if necessary during the Term of this Agreement. In the event that the Contractor has not obtained the necessary regulatory permits and/or approvals to fully perform the Services herein required, within sixty (60) days of the expiration of the current permits, the Contractor shall be in Default and will be subject to the remedies set forth in Article VII.

(e) Compliance with Previously Executed Construction and/or Operation Agreements. The Contractor shall be responsible for satisfaction of and compliance with all

provisions of any construction and/or operation agreements and all other ancillary agreements previously executed by the Contractor for or with respect to the Facility, including without limitation, any leases, host municipality agreements, financing documents, performance guarantees, and/or payment obligations.

(g) Regulatory and Other Approvals. The Contractor (with the assistance and cooperation of the ECUA) shall be responsible for satisfying and complying with any regulatory, governmental, or other procedures required for or with respect to (i) this Agreement, (ii) the Contractor's respective obligations hereunder, (iii) any jurisdictional procedures required with respect to the provision of Combined Services, (iv) the procedural requirements of the jurisdiction in which the Facility is located, including execution and/or maintenance of a host community agreement that specifically authorizes the acceptance of out-of-state waste if the Facility is located in a state other than New Jersey, and (v) the procedural requirements of any jurisdiction exercising regulatory powers with respect to the Contractor,

(h) Technical Requirements. The Contractor shall be responsible for complying with the technical requirements in Schedule 3 and in the Bid Specifications.

Section 2.02. Obligation to Accept, Transfer, Transport, and Dispose of Acceptable Waste; Accounting/Computer System; Transfer Trailers.

(a) General. The Contractor shall (except to the extent otherwise provided in Section 2.03 hereof) accept; transfer, transport, and dispose of all Acceptable Waste delivered to the Facility by (or on behalf of) the ECUA pursuant to this Agreement and the Bid Specifications.

THE ECUA AND THE COUNTY DO NOT AND WILL NOT WARRANT OR GUARANTEE THE AMOUNT OR COMPOSITION OF SOLID WASTE TO BE AVAILABLE FOR THE PROVISION OF COMBINED SERVICES IN ANY GIVEN YEAR OR IN THE AGGREGATE PURSUANT TO THIS AGREEMENT. NOTHING CONTAINED HEREIN OR IN ANY OF THE BID DOCUMENTS SHALL BE CONSTRUED TO GUARANTEE OR WARRANT SUCH AMOUNTS OR COMPOSITION. TONNAGE AMOUNTS SET FORTH HEREIN CONSTITUTE EITHER HISTORIC FLOW RATES OR ESTIMATES OF FUTURE FLOW RATES AND MAY NOT BE INDICATIVE OF ACTUAL FLOW RATES TO BE EXPERIENCED IN THE FUTURE.

NOTHING HEREIN SHALL ENTITLE THE CONTRACTOR TO ANY CLAIM TO A SERVICE CHARGE INCREASE FOR LOST PROFITS OR FOR ANY OTHER COMPENSATION WHATSOEVER IN THE EVENT THAT ACTUAL WASTE QUANTITIES AND COMPOSITION DELIVERED TO AND PROCESSED UNDER THIS AGREEMENT ARE MORE OR LESS THAN HISTORICAL QUANTITIES OR COMPOSITIONS OR ANY PROJECTION OF FUTURE QUANTITIES AND COMPOSITIONS THAT MAY BE CONTAINED HEREIN.

(b) Weighing Facilities; Rules and Regulations. The Contractor shall operate and maintain weighing facilities at the Facility Site for the purpose of determining, among other things, the total tonnage of Acceptable Waste which is delivered to the Facility by (or on behalf of) the ECUA. The Contractor shall regulate the flow of traffic through the Facility scales and into the Facility receiving area. In addition, the Contractor shall establish and enforce reasonable rules and regulations concerning use of the Facility (including requirements for insurance, prepayment/payment, etc.), provided however, that such rules and regulations do not contradict any provision, right, or obligation under this Agreement. Contractor shall notify the

Authority, in writing, in the event that the queuing lines at the Facility result in a 1/2 hour waiting time measured by the last truck on line.

(a) The Contractor shall, at its own expense administer and maintain and operate an on-site billing system, established by the ECUA, including but not limited to a computer link up between the Facility and the ECUA offices.

(b) The Contractor shall accommodate Non-Registered haulers/County residents on an appointment basis on Saturday.

(c) If the Facility is unable to accommodate the staging of transfer trailers throughout the Facility's operating hours, specific hours must be allocated each day for accommodating the staying of transfer trailers. Such hours shall be established by the Contractor in writing, and agreed upon by the ECUA, prior to the Commencement Date.

Section 2.03. Rejection of Deliveries.

(a) Contractor's Rejection Rights. The Contractor may reject deliveries of Acceptable Waste delivered to the Facility by {or on behalf of) the ECUA under the following circumstances: (i) Acceptable Waste is delivered to the Facility at hours other than the permitted Receiving Times or in violation of the Facility's Rules and Regulations, (ii) Acceptable Waste that the Contractor is unable to accept as a result of the occurrence of an Uncontrollable Circumstance or ECUA Fault, (iii) Solid Waste that (due to its character or composition) is properly defined as Hazardous Waste or Unacceptable Waste. The contractor may not reject Acceptable Waste for any other reason. In such event the provisions of Section (e) below and Article VII shall apply. Contractor shall immediately notice, in writing, the ECUA in the event of rejection.

(b) Other Obligations Not Effected by Contractor's Right to Reject. The provisions of subparagraph (a) above shall only apply to the Contractor's right to reject Acceptable Waste and shall not abrogate any of the Contractor's other obligations (including the payment of damages) under the terms of this Agreement.

(c) Composition of Acceptable Waste. Nothing shall be construed to mean that the ECUA guarantees the composition or quantity of any Acceptable Waste as it pertains to the proportion of any material contained therein and the provisions of Section 7.03 hereof shall not be applicable to delivery of such Acceptable Waste. As such, other than the rejection right provided to the Contractor pursuant to Section 2.03(a) (iii) hereof, the obligations of the Contractor hereunder shall not be diminished due to any variation in the composition of any Acceptable Waste which is delivered to the Facility.

(d) Transportation and Disposal of Wrongfully Rejected Waste. Any Acceptable Waste that is delivered to the Facility by [or on behalf of) the ECUA that is rejected without a permitted rejection right shall constitute Wrongfully Rejected Waste. Such Wrongfully Rejected Waste shall be transported to and disposed of at an alternate disposal facility provided by (or on behalf of) the ECUA. The ECUA shall use reasonable efforts to transport and dispose of any Wrongfully Rejected Waste in the most economical manner practicable consistent with

Applicable Laws and then current market conditions so as to mitigate the amount of damages payable by the Contractor hereunder.

(e) Payment of Damages by the Contractor for Wrongfully Rejected Waste. The Contractor shall pay the ECUA as liquidated damages an amount equal to the excess, if any, of (i) the actual cost incurred by the ECUA for the transfer, transportation and disposal of Wrongfully Rejected Waste, over (ii) the Service Charge applicable to the Wrongfully Rejected Waste.

Notwithstanding the foregoing, the Contractor may (at its sole cost and expense) obtain insurance with respect to payment of the amount of liquidated damages payable under this paragraph (e). In such event, any payment made to the ECUA pursuant to such insurance policy shall for purposes of this paragraph (e) be deemed to have been made by the Contractor hereunder.

Payment of such damages shall be made by the Contractor within thirty (30) Days of receipt of an invoice from ECUA for such payment together with documentation substantiating such costs.

Payments made by the Contractor pursuant to this Section for Wrongfully Rejected Waste shall constitute the ECUA's sole and exclusive remedy with respect to Wrongfully Rejected Waste. The parties hereto agree that the damages arising out of or relating to the wrongful rejection of Acceptable Waste are difficult to ascertain or measure and, as such, that the liquidated damages payable hereunder in respect of Wrongfully Rejected Waste are payable as damages and do not constitute a penalty.

(f) Transportation and Disposal of Properly Rejected Waste. Any Acceptable Waste that would otherwise be delivered to the Facility by (or on behalf of) the ECUA that is properly rejected by the Contractor pursuant to the provisions of Section 2.03(a) hereof shall be transported to and disposed of at an alternate disposal facility provided by (or on behalf of) the ECUA.

Section 2.04. Insurance.

(a) From and after the Commencement Date and throughout the Term of this Agreement, the Contractor shall, at its sole cost and expense, maintain with responsible insurers licensed to do business in the State, at a minimum, the insurance required to be provided under the provisions of this Section 2.04 and the Bid Specifications and shall comply with all terms and conditions relating thereto.

(b) Ten (10) Days prior to the Commencement Date, the Contractor shall provide the ECUA with a certificate of insurance that evidences compliance with the requirements of this Section 2.04. Thereafter, new or renewal certificates shall be delivered at least sixty (60) Days prior to expiration of the current policy (ies). If the Contractor fails or neglects to obtain or to maintain (or cause same to be obtained or maintained) any insurance that it is required to provide or to furnish the ECUA with satisfactory evidence of coverage on any such policy, the ECUA may purchase such insurance if the Contractor fails to do so within five (5) Days after receipt of written notice of the lack of required coverage. All such payments made by the ECUA

shall be recoverable from the Contractor promptly upon being billed therefor, together with interest thereon at the Overdue Rate.

(c) Sixty (60) days prior to cancellation or material change or notice of non-renewal or material change in the policies, the Contractor shall give notice to the ECUA, by registered mail, return receipt requested, for all of the following stated insurance policies. The Certificate of Insurance shall state:

Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will mail sixty (60) days written notice to the certificate holder named to the left.

All notices shall name the Contractor and identify this Combined Services Agreement. All policies shall be endorsed naming the ECUA and the County of Essex as additional insureds. All policies shall require that the insured will pay all defense claims and any judgments entered herein. It is expected that all policies will be issued on an occurrence basis. The ECUA may waive or modify any requirement stated herein if the ECUA, in its sole judgment and discretion, deems it would be in its best interests to do so.

(d) Workers' Compensation. The Contractor shall obtain Standard Workers' Compensation Insurance indemnifying the Contractor, the ECUA, and the County against any loss arising from liability or injuries sustained by any and all agents, servants, employees of the Contractor who shall be entitled to compensation under the Workers' Compensation Law of the State of New Jersey or applicable host jurisdiction. If the Contractor is 'incorporated outside the State of New Jersey, then said policy must include: "Other States' Endorsements."

(e) General Liability. The Contractor shall obtain Comprehensive General Liability Insurance on an "occurrence" form with a one million dollars (\$1,000,000.00) combined single limit of liability per occurrence and three million dollars (\$3,000,000.00) annual aggregate. The Policy shall include the Board Form Endorsement if written on a 1973 Occurrence Form. If written on a 1990 Simplified Occurrence Form, the Policy will contain no endorsements that would limit or eliminate the coverage provided by the ISO version without endorsements and will include ISO Form CG 25 03 11 85. Amendment - Aggregate Limits of Insurance (per Project).

(f) Automobile Liability. The Successful Bidder shall obtain Automobile Liability Insurance with a minimum combined single limit of liability of one million dollars (\$1,000,000.00) per accident. Said Policy must include coverage for owned, non-owned and hired autos. The Policy must also have an MCS-90 endorsement, a true copy of which must be filed with the ECUA. The Successful Bidder shall respond to environmental liability while used motor oil is in transit from a collection site to the Successful Bidder's ultimate destination. The policy must provide for the defense for the first named insured, as well as the ECUA and the County, all of whom are to be endorsed to the policy as additional insured.

(g) Disability. The Contractor shall provide proof of compliance with the Disability Benefits Law.

(h) Optional Limits. The Contractor shall obtain Excess or Umbrella Liability Policy (to respond in excess of the commercial general liability and employers liability policies) at limits of \$1,000,000.00, \$2,000,000.00 and \$3,000,000.00 combined single limits per occurrence.

(i) Policy Changes. If at any time any of the foregoing policies shall be or become unsatisfactory to the ECUA, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the ECUA, the Contractor shall, upon notice to that effect from the ECUA, within thirty (30) days obtain a new policy, submit the same to the ECUA for approval and submit a Certificate hereof as hereinabove provided. Upon failure of the Contractor to furnish, deliver, and maintain such insurance as herein provided, this Agreement, at the election of the ECUA, may be forthwith declared suspended, discontinued, or terminated. Failure of the Contractor to take out and/or maintain any required insurance shall not relieve the Contractor of any liability under any Agreement. All policies required above shall contain a sixty (60) day notice of cancellation and/or of non-renewal clause and shall require the insurer to immediately notify the ECUA of its intent to either cancel or not to renew.

(i) Insurance Companies. The Contractor shall use an insurance company(ies) that has (have) an A.M. Best Company rating of at least AX. The ECUA, in its sole judgment and discretion, if it considers it appropriate to do so, may allow the Contractor to utilize and insure with a rating less than AX. All such requests must be forwarded to the ECUA for its review and approval. The Contractor shall use an insurance company(ies) that is (are) authorized to underwrite insurance risks for the specific line(s) of coverage by the Department of Insurance of the State of New Jersey or the applicable host jurisdiction.

(j) Contractual Liability insurance. The Contractor shall agree to indemnify, defend, and hold harmless the ECUA and the County of Essex, and their respective officers, agents, contractors, subcontractors, servants and employees, from and against any and all claims, demands, suits, proceedings, liabilities, judgments, awards, losses, damages, costs and expenses, including attorneys' fees, because of bodily injury, sickness, disease or death, sustained by any person or persons, or injury or damages to, or destruction of, any property directly or indirectly arising out of, relating to, or in connection with the work, whether or not due or claimed to be due, in whole or in part, to the active, passive or concurrent negligence or fault of the Contractor, its officers, agents, servants, or employees and/or any other person or persons and whether or not such claims, demands, suits or proceedings are just, unjust, groundless, false, or fraudulent.

The Contractor shall furnish evidence to the ECUA that, with respect to accomplishing the work in this Agreement, that it carries Contractual Liability Insurance in the amounts specified in paragraph (e) above.

(k) Pollution Insurance. The Policy shall contain Contractor's Pollution Insurance with a minimum single limit of five million dollars (\$5,000,000.00) per occurrence with a ten million dollar (\$10,000,000.00) annual aggregate. Said Policy shall be written on an occurrence form with a minimum five (5) year sunset clause on coverage for completed operations. The Policy must provide for the defense of the ECUA and the County as a first named insureds, as well as its officers, employees, agents and servants, all of whom are to be endorsed to the Policy as

additional insureds. The Pollution Insurance Policy must include coverage for the removal, clean-up, and remediation of any and all pollutants at an operation exposure or while in transit due to the negligence of the Contractor. Further, the Policy must provide bodily injury and property damage liability coverage resulting from or directly related to a pollution event caused by the Contractor.

Section 2.05. ECUA's Visitation and Inspection of the Facility.

(a) Visitation and Inspection. The ECUA, at its sole cost and expense, shall have the right (along with its agents and representatives), upon prior reasonable notice to the Contractor, to visit and to accompany visitors through the Facility during normal weekday business hours (i.e., 8:30 a.m. to 4:00 p.m.) in order to observe and to permit others to observe, the various services which the Contractor performs.

(b) Inspection. Subsequent to the Commencement Date, the ECUA may, at its sole cost and expense, and with the full cooperation of the Contractor after providing reasonable notice, inspect the Facility and Facility related activities to determine whether the Contractor is in compliance with its obligations under the terms of this Agreement. The Contractor shall not be entitled to any additional compensation for participating in such inspections. Unless otherwise agreed to by the Contractor (which agreement shall not be unreasonably withheld) up to two (2) employees of the ECUA may have access to the Facility and surrounding area for purposes of inspection or for observation of the waste delivered to the Facility for transfer, transportation, and disposal; provided however, that the ECUA's representative(s) shall comply with all reasonable rules and regulations of the Contractor pertaining to the safe and efficient operation of the Facility and/or the Facility Site and the ECUA's representative(s) shall not interfere with such operation.

(c) Compliance with Rules and Regulations. In connection with such inspections or visitations, the ECUA shall, on its own behalf, and on behalf of its agents and representatives, comply and cause its agents and representatives to comply, with all reasonable rules and regulations which are adopted by the Contractor, including a requirement that each person, inspecting or visiting the Facility sign a statement agreeing (i) to assume the risk of the inspection or visitation, but not the risk of injury due to the intentional or negligent acts or omissions to act of the Contractor, and (ii) not to disclose or use (consistent with Applicable Laws) any confidential information of the Contractor, to the extent such information has been identified as being confidential as of the Commencement Date and from time to time thereafter through the Term of this Agreement. However, neither the ECUA, nor its agents and representatives shall be held liable for any damage or injury which may result from any disclosure that might occur by any person (other than the ECUA, its officers, members, employees, and agents) inspecting or visiting the Facility.

Section 2.06. Recordkeeping and Reporting.

(a) The Contractor shall, at its sole cost and expense, prepare and maintain proper, accurate and complete books and records and accounts of all transactions and other matters relating to this Agreement for which the Contractor has invoiced the ECUA.

(b) The ECUA shall establish and maintain an information system to provide storage and ready retrieval of any information necessary to verify calculations made with respect to the transportation and disposal of Wrongfully Rejected Waste, to the extent that such information is or should have been within its control.

(c) Both the ECUA and the Contractor shall provide for the retention and storage of all records described in this Section 2.06 for a period of at least seven (7) years. The use of remote storage media, consisting of maintaining photocopies, microfilm or microfiche copies, access to electronic storage media or any other commonly used storage system with respect to such records within the jurisdictional boundaries of the Contractor shall constitute such retention and storage, regardless of where the foregoing records are physically located.

(d) In furtherance of its obligations hereunder, during the Term of this Agreement, the Contractor shall be obligated to cause all applicable data (including hauler account information, and daily disposal activity) to be electronically transmitted to the ECUA. In the event that such electronic transmission system is not operational, the Contractor shall cause such data to be provided to the ECUA in the most efficient and timely manner practicable.

(e) The Contractor shall also be responsible for billing all haulers and municipalities. The Contractor shall permit municipalities to open accounts and to pay bills in accordance with governmental accounting principles and procedures. On a weekly basis, the Contractor must also pay the ECUA, via wire transfer or ACH, the ECUA's share of the tipping fee.

Section 2.07. Rules and Regulations.

(a) The Contractor may implement and enforce reasonable rules and regulations for the delivery of Acceptable Waste to the Facility; provided however, that any such Rules and Regulations shall be lawful, reasonable and uniformly applied to all haulers delivering Acceptable Waste to the Facility. The initial Rules and Regulations are set forth in Schedule 4 hereto and shall apply-equally to every hauler delivering Acceptable Waste to the Facility. The Contractor may implement additional Rules and Regulations that are not inconsistent with this Agreement or Applicable Laws and which apply equally to all haulers delivering Acceptable Waste to the Facility, upon thirty (30) Days prior written notice thereof to ECUA; provided however, that such additional Rules and Regulations may be implemented earlier than upon thirty (30) Days prior written notice if such implementation is required in order to avoid an emergency or to protect the health, safety and welfare of the Contractor's employees and/or persons delivering Acceptable Waste to the Facility. As such, the ECUA shall not be responsible for assuring that such person or firm comply with the provisions of this Agreement, including specifically (and without limitation), the provisions of Section 2.04 hereof and this Section 2.07.

(b) The Contractor may refuse to receive Acceptable Waste from any vehicle operated by a hauler who repeatedly or intentionally or by negligent action violates the Rules and Regulations. Except in situations that the Contractor reasonably determines to be exigent, the Contractor shall provide ECUA prior written notice of its intent to refuse deliveries from any hauler in accordance with its policies for exclusion of haulers from the Facility.

(c) The Contractor may deny access to the Facility to any hauler at any time (i) if necessary to prevent or overcome the occurrence of any emergency condition or an Uncontrollable Circumstance, or (ii) if necessary to protect any person or property located on or at the Facility Site.

(d) The ECUA agrees to comply with all reasonable Facility rules and regulations, provided however, that the Contractor has submitted such rules and regulations as part of its Bid. In any event, however, the terms of payment and the rights and obligations of the parties shall be governed by the terms of this Agreement, and not by any such rules and regulations.

Section 2.08. Vehicles and Equipment. The Contractor shall be responsible for providing vehicles and equipment of such type and in such quantity as are required to fulfill its obligations under this Agreement; provided however, that such vehicles and equipment shall satisfy the minimum technical requirements set forth in Schedule 3 and in the Bid Specifications. The Contractor shall also be responsible for the operation, maintenance, and repair of all such vehicles and equipment in accordance with the manufacturer's specifications and in a manner sufficient to ensure that such vehicles and equipment are capable of providing all of the required Combined Services as set forth in this Agreement and in the Bid Specifications.

Section 2.09. Disposal of Acceptable Waste. The Contractor shall be responsible for ultimate disposal of all Acceptable Waste delivered by (or on behalf of) the ECUA to the Facility pursuant to this Agreement. Such Disposal Facility to be utilized by the Contractor shall be a properly permitted and validly operating sanitary Landfill.

ARTICLE III.

**ESTABLISHMENT AND PAYMENT OF SERVICE CHARGES
AND OTHER AMOUNTS**

Section 3.01. Service Charge.

(a) General. On and after the Commencement Date and for each Billing Period thereafter during the Term of this Agreement, the Contractor shall charge and collect the Service Charge for or with respect to the provision of Combined Services in accordance with the provisions of this Article III the Bid Specifications, and the Bid submitted by the Contractor and accepted by the ECUA.

(b) Amount of Service Charge. The total Service Charge shall be as follows:

Year 1	\$ _____
Year 2	\$ _____
Year 3	\$ _____
Year 4	\$ _____
Year 5	\$ _____

Notwithstanding anything contained herein to the contrary, the Contractor understands that the Service Charge as set forth above for each year of the contract shall under no circumstances be modified.

Section 3.02. Intentionally Omitted

Section 3.03. Host Municipality/County Benefit Payments. For any Billing Year, the Contractor shall perform (at its sole cost and expense) all obligations under any applicable host agreement.

Section 3.04. Payment Disputes. If a Party disputes any amount that is payable under this Agreement (whether or not constituting a portion of the Service Charges payable under Article 111), the Party disputing such amount shall provide written notice to the other Party of such disputed amount, together with sufficient information to enable the other Party to understand the nature of the dispute. Such notice shall be delivered by the Party disputing such amount no later than the date that such amount is due and payable. In such event, the Party disputing such amount shall make payment of the undisputed amount on the due date thereof. If the amount that is in dispute is ultimately determined to be due and payable, such disputed amount, together with interest thereon (at the Overdue Rate) shall be paid by the Party disputing such amount within ten (10) Business Days.

ARTICLE IV.

SECURITY FOR CONTRACTOR'S OBLIGATIONS

Section 4.01. Security for Performance of Contractor. In order to assure the full and timely performance by the Contractor hereunder, the Contractor shall provide to the ECUA one of the following : (i) a Performance Letter of Credit, or (ii) a Performance Bond, each as described below (hereinafter referred to collectively as "Performance Security").

(a) Entire Term Performance Security. The Performance Security, as defined in Section 4.01 above, may be in effect for the entire Term of this Agreement, commencing on the Commencement Date. The amount of such Performance Security shall be a minimum of \$2,500,000.00 per year for years one through three of the Combined Services Agreement, and \$1,500,000 per year for the years four and five of the Combined Services Agreement

(b) Annually Renewable Performance Security. Alternatively, the Performance Security may be an annually renewable in lieu of for the full Term. If the Contractor provides an annually renewable Performance Security, the Contractor shall have the bank or surety issuing such Performance Security must provide the ECUA with sixty (60) Days prior written notice of intention not to renew such Performance Security for the following year. In that event, the Contractor must provide (i) a substitute Performance Security and (ii) within seven (7) Days of ECUA's receipt of the bank's or surety's notice that it will not renew the existing Performance Security, must submit to the ECUA a Consent of Surety or Bank (in the form set forth in Bid Document Forms A-10 or A-12, as applicable) verifying that a substitute Performance Security in the same amount and under the same terms and conditions will be provided upon cancellation or termination of the original Performance Security. Failure to provide such Consent of Surety or Bank within such seven (7) Day time frame will entitle the ECUA to terminate this Agreement on such seventh (7th) Day, without further notice to the Contractor, and to draw upon the existing Performance Security for the full amount thereof.

(c) Form and Surety. If the Contractor provides the ECUA with a Performance Bond, such Performance Bond shall be in the form set forth in Bid Document Form A-11 and shall not contain any conditions to the obligations of the surety company(ies) issuing such Performance Bond, other than as expressly provided in Bid Document Form A-11. Such Performance Bond shall be obtained from a surety that is authorized to do business in the State of New Jersey, that satisfies the requirements set forth in N.J.S.A. 2A:44-143(1)(b), and that is listed in the United States Treasury Department Circular 570. Such Performance Bond will be drawn upon in full and in accordance with its terms and only upon the occurrence of an Event of Default by the Contractor.

(d) Form and Bank or Financial Institution. If the Contractor provides the ECUA with a Performance Letter of Credit, such Performance Letter of Credit shall be in the form set forth in Form A-13 and shall not contain any conditions to the obligations of the bank or financial institution issuing same, other than as expressly provided in Form A-13. Such Performance Letter of Credit shall be provided by a bank or financial institution having a credit rating for its long-term debt of at least "A", or the equivalent thereof, from a nationally recognized credit rating. Such Performance Letter of Credit will be drawn upon in full and in accordance with its terms and only upon the occurrence of an Event of Default by the Contractor.

(e) Performance Guaranty Executed by Public Taxing Authority

In the event the Contractor is a public body, such Contractor may elect to provide a Performance Guaranty executed by a Public Taxing Authority. For the purposes of this section, a Public Taxing Authority means a public body that is authorized and empowered by Applicable Law to levy ad valorem taxes upon all the taxable property within the jurisdiction of such public body. In the event that such Contractor provides a Performance Guaranty executed by a Public Taxing Authority, in lieu of a Performance Letter of Credit or Performance Bond, such Performance Guaranty shall be in effect for the term of the Services Agreement, commencing on the Commencement Date. The amount of such Performance Guarantee shall be a minimum of \$2,500,000 per year for years one through three of the Combined Services Agreement and \$1,500,000 per year for the years four and five of the Combined Services Agreement.

The Performance Guaranty may be an annually renewable guaranty in lieu of a five (5) year guaranty.

The Performance Guaranty shall be duly executed by the Public Taxing Authority, which shall unconditionally guaranty the Contractor's performance under this Agreement, and which shall contain terms and conditions as may reasonably be satisfactory to ECUA.

ARTICLE V.

COVENANTS AND REPRESENTATIONS

Section 5.01. . Representations and Warranties of Each Party. Each party represents and warrants to and with the other as of the Commencement Date [and such representations and warranties as of the Commencement Date shall survive the termination or expiration of this Agreement), as follows:

(a) Each party is duly organized and existing in good standing and each is duly, qualified and authorized to enter into and perform the obligations set forth in this Agreement.

(b) The execution and performance of this Agreement (1) have been duly authorized by all required corporate or other action of such party, (2) do not require any consent or approval not otherwise previously obtained, and (3) will not violate any judgment, order, law or regulation applicable to such party or any provisions of such party's charter, ordinances or resolutions.

(c) The execution of this Agreement and the performance of all obligations set forth herein do not conflict with, and will not, nor with the passage of time or the giving of notice, constitute a breach of or event of default under any charter, ordinances or resolutions of the party, or any agreement, indenture, mortgage, bond, contract, instrument or applicable laws to which the party is subject or by which such party is bound. This Agreement has been duly executed and constitutes a legal, valid and binding obligation of each party and is enforceable in accordance with its terms, except to the extent that the enforcement thereof is limited by any applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or limiting creditors' rights generally and the application of principles of equity.

(d) 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 party, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the party of its obligations hereunder or the other transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the party in connection with the transactions contemplated hereby.

Section 5.02. Additional Representations of the ECUA. The ECUA further represents to the Contractor as of the Commencement Date (and such representations and warranties as of the Commencement Date shall survive the termination or expiration of this Agreement) that:

(a) ECUA is duly qualified and authorized to carry on the governmental functions and operations contemplated by this Agreement, and ECUA has the power, authority and legal right to enter into and perform its obligations set forth under this Agreement.

(a) The execution, delivery and performance of this Agreement by ECUA (i) has been duly authorized by the governing body of the ECUA, (ii) has been (or will be, prior to the

Commencement Date) approved by all governmental bodies and/or regulatory agencies whose approval is required pursuant to the laws of the State of New Jersey, (iii) does not require any consent, approval or referendum of voters, and (iv) will not violate any judgment, order, law (including the Local Public Contracts law of New Jersey, N.J.S.A. 40A:11-1 et seq.) or regulations applicable to the ECUA or any provisions of the ECUA's charter, ordinances or resolutions.

Section 5.03. Additional Representation of the Contractor. The Contractor further represents to the ECUA (and such representation and warranty shall survive termination or expiration of this Agreement) that the Facility has received all Permits, licenses and approvals with respect to the Facility that are required in order to provide the Combined Services.

Section 5.04. Covenants of Each Party. Each party covenants to and with the other (and such covenants shall survive the termination or expiration of this Agreement) that (a) such party will not take any actions or omit to take any actions the effect of which would limit the ability of such party to perform its obligations under the terms of this Agreement, except to the extent mandated by Applicable Laws, (b) such party shall take such actions as shall be required to maintain its corporate and/or legal existence and the continuation of its business operations throughout the Term of this Agreement. In the event that the duties and obligations of the ECUA under this Agreement are assigned to the County by the ECUA under Section 6.03 hereof, the provisions of (b) hereof shall be deemed to have been satisfied.

Section 5.05. Additional Covenant of the Contractor. The Contractor shall promptly notify the ECUA of any action or proposed action of which it has knowledge or the occurrence of any event of which it becomes aware, which would or could lead to the revocation or suspension of any Permit.

ARTICLE VI.

DEFAULTS AND TERMINATION

Section 6.01. Events of Default. Events of Default and applicable remedies therefore are set out in this Article VI.

Section 6.02. Events of Default by the Contractor. The following shall constitute Events of Default on the part of the Contractor unless such event results from the occurrence of an Uncontrollable Circumstance or ECUA Fault:

(a) persistent and repeated failure by the Contractor to timely perform any material obligation under the terms of this Agreement, except the obligations which are described in Section 6.02(b) hereof, and the continuance of such persistent and repeated failure for a period of sixty (60) Days after written notice thereof has been provided by the ECUA specifying such failure and requesting that such condition be remedied if the Contractor does not either cure the default or initiate and diligently pursue reasonable actions to cure such non-performance; or

(b) failure to pay amounts which are owed by the Contractor to the ECUA under the terms of this Agreement within thirty (30) Days following the receipt of written notice from the ECUA that amounts are due and payable, giving due regard to the provisions of Section 3.04 hereof; or

(c) (1) the Contractor's being insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee, or liquidator for a substantial part of its property, or (2) a bankruptcy, winding up, reorganization, insolvency, arrangement, or similar proceeding instituted by the Contractor, under the laws of any jurisdiction or against the Contractor, if the Contractor does not take appropriate action to dismiss said proceedings, which proceeding has not been dismissed within ninety (90) Days of the institution of such proceeding, or (3) any action or answer by the Contractor, approving of, consenting to, or acquiescing in, any such proceeding, or (4) the levy of any distress, execution, or attachment upon the property of the Contractor, which shall substantially interfere with its performance thereunder.

Section 6.03. Events of Default by ECUA. The following shall constitute Events of Default on the part of ECUA unless such event results from the occurrence of an Uncontrollable Circumstance or Contractor Fault:

(a) a persistent and repeated failure by ECUA to timely perform any material obligation under the terms of this Agreement, except the obligations which are described in Section 6.03(b) hereof, and the continuance of such persistent and repeated failure for a period of sixty (60) Days after written notice thereof has been provided by the Contractor specifying such failure and requesting that such condition be remedied if the ECUA does not either cure the default or initiate and diligently pursue reasonable actions to cure such non-performance; or

(b) failure to pay (or credit) amounts which are owed by ECUA to the Contractor under the terms of this Agreement within thirty (30) Days following the time same becomes due and payable, giving due regard to the provisions of Section 3.04 hereof; or

(c) (1) the ECUA being insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property, or (2) a bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding instituted by ECUA under the laws of any jurisdiction or against the ECUA, if the ECUA does not take appropriate action to dismiss said proceedings, which proceeding has not been dismissed within ninety (90) Days of the institution of such proceeding, or (3) any action or answer by the ECUA, approving of, consenting to, or acquiescing in, any such proceeding, or (4) the levy of any distress, execution or attachment upon the property of the ECUA, which shall substantially interfere with its performance hereunder.

Section 6.04. Remedies of ECUA.

(a) The ECUA and the Contractor agree that the sole remedies for the occurrence of an Event of Default under the terms of Section 7.02(a) and (b) hereof shall be (i) a suit seeking performance by the Contractor of the provisions of this Agreement, including the performance by the Contractor of its obligations hereunder and its obligations to make payment of any and all payments, credits or adjustments which are provided under the terms of this Agreement, and such ancillary equitable remedies attendant to the enforcement of a decree, judgment or order for such performance, or (ii) with respect to any Event of Default for which payments, credits or adjustments are not provided under the terms of this Agreement, a suit seeking payment of damages at law.

(b) The occurrence of an Event of Default described under Section 6.02(c) hereof shall not require notice by the ECUA as hereinabove provided, but shall terminate this Agreement forthwith, at the option of the ECUA. An Event of Default described in Section 6.02(c) hereof may be waived by the ECUA if the ECUA determines, in its sole discretion, that the Contractor will be able to perform its obligations pursuant to the terms of this Agreement and that adequate guarantees for such performance exists.

(c) In the event that the ECUA successfully pursues an action to enforce any remedy provided in this Section 6.04, the Contractor shall be liable to the ECUA, for payment of all costs and expenses (including, but not limited to, attorneys fees and court costs) incurred by the ECUA in connection with such action.

(d) This Section 6.04 shall survive termination of this Agreement.

Section 6.05. Remedies of the Contractor.

(a) The ECUA and the Contractor agree that the remedies for the occurrence of an Event of Default under the terms of Section 6.03(a) or Section 6.03(b) hereof shall be (i) a suit seeking performance by the ECUA of the provisions of this Agreement, including the performance by the ECUA of its obligations hereunder and its obligations to make payment of any and all payments, credits or adjustments which are provided under the terms of this Agreement, and

such ancillary equitable remedies attendant to the enforcement of a decree, judgment or order for such performance, or (ii) with respect to any Event of Default for which payments, credits or adjustments are not provided under the terms of this Agreement, a suit seeking payment of damages at law.

(b) The occurrence of an Event of Default described under Section 6.03(c) hereof shall not require notice by the Contractor as hereinabove provided, but shall terminate this Agreement forthwith. An Event of Default described in Section 6.03(c) hereof may be waived by the Contractor if the Contractor determines, in its sole discretion, that the ECUA will be able to perform its obligations pursuant to the terms of this Agreement and that adequate guarantees for such performance exists.

(c) This Section 6.05 shall survive termination of this Agreement.

Section 6.06. Pendency of Disputes. Notwithstanding anything contained in this Agreement to the contrary, if there shall be a dispute concerning the right of either party to terminate this Agreement, both parties shall continue to perform their respective obligations hereunder as if this Agreement were in effect and both parties rights shall continue in effect until such dispute is resolved in the appropriate forum, including but not limited to in a court of law, and any appeals permitted thereunder are exhausted.

Section 6.07. Exclusivity of Remedies. The remedies provided to the ECUA and the Contractor pursuant to Section 6.04 and Section 6.05, respectively, shall together be the exclusive remedies available to the parties under this Agreement.

ARTICLE VII.

MISCELLANEOUS

Section 7.01. Term of Agreement. Unless terminated as a result of the occurrence of an Event of Default, this Agreement (including the respective obligations of the parties to perform thereunder) shall commence on the Commencement Date and shall end on the earlier to occur on December 31, 2030, or the fifth (5th) anniversary of the Commencement Date.

Section 7.02. Conditions Precedent to Implementation of Agreement. In order to implement this Agreement, as conditions precedent, the Contractor must:

- (a) obtain and keep current all permits, approvals, and licenses required;
- (b) comply at all times with all applicable local, state, and federal laws and regulations relating to the design, construction and operation of the Facility;
- (c) operate the Facility pursuant to a valid NJDEP Solid Waste Facility Permit (or other such permit as may be required by the applicable host jurisdiction);
- (d) provide valid performance security to the ECUA in the correct form and amount pursuant to Section IV; and
- (e) provide appropriate Certificates of Insurance pursuant to Section 2.04.

Section 7.03. Assignment.

(a) This Agreement may not be assigned by either Party without the prior written consent of the other Party (which consent shall not be unreasonably withheld), except that the ECUA may, without the prior written consent of the Contractor, assign its rights to receive payments hereunder (but not its other rights or performance obligations hereunder) to the Trustee for the holders of its bonds or to the County or other governmental entity to which responsibility for solid waste management activities within the County are transferred and such entity has the legal power to carry out the obligations set forth under this Agreement.

(b) In connection with any assignment after the Commencement Date, each Party shall execute and deliver any consents to assignment and attornment agreements in form and content reasonably satisfactory to such assignee, subject to reimbursement by the party assigning this Agreement of any legal, financial advisory or other consultant fees incurred in connection with such cooperative efforts.

Section 7.04. Indemnification.

(a) the Contractor shall: (i) protect and indemnify ECUA and the County and their officers, agents and employees (collectively, the "Essex Indemnified Parties") against all actions, liabilities and losses (including, without limitation, reasonable attorneys' fees), and (ii) defend the Essex Indemnified Parties in any suit for personal injury to, or death of, any person or persons, or loss or damage to property, in each case, to the extent caused, (A) by breach of this

Agreement by the Contractor, or (BO by the willful misconduct or negligent acts or omissions of the Contractor, its agents, contractors or employees, in connection with or as a result of this Agreement or the performance of its obligations hereunder, unless in each case the injury, death, loss, damage or cost was the result of the willful misconduct or negligent acts or omissions of one or more of the Essex Indemnified Parties.

(b) If a claim is asserted against an Essex Indemnified Party or a Contractor Indemnified Party, in each case, for which it is indemnified hereunder:

- (i) the indemnitor shall be promptly notified;
- (ii) the indemnitor shall be given the opportunity to defend such claim; and
- (iii) the indemnified party shall not settle such claim without the prior written approval of the indemnitor.

These indemnification provisions are for the protection of the Essex Indemnified Parties and the Contractor Indemnified Parties and shall not establish, of themselves, any liability to third parties.

(c) The Contractor agrees to protect, indemnify and defend the Essex Indemnified Parties against all actions, liabilities and losses (including, without limitation, reasonable attorneys' fees) caused by or arising from environmental conditions present on the surface or in the subsurface of the Facility Site, including the presence of Hazardous Substances, that did not arise from the actions, inactions or negligence of the ECUA that in any case results in any liability by (or on behalf of) the ECUA that arose from such contamination and the delivery of Solid Waste to the Facility pursuant to this Agreement.

(d) the provisions of this Section 7.04 shall survive the expiration or termination of this Agreement.

Section 7.05. Further Assurances. Each party agrees to execute and deliver any instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to the terms of this Agreement; provided however, that any actions taken in furtherance of the above obligations shall not involve the assumption of obligations other than those which are provided for in this Agreement.

Section 7.06. Cooperative Efforts. Each party hereto agrees to exercise all reasonable efforts to cooperate in obtaining any regulatory approvals required in order to effectuate the terms of this Agreement. In this regard, each party agrees that the parties shall provide the opportunity to review and comment upon all draft documents and applications submitted to governmental authorities relating to any Permits or authorizations for which the cooperation of the other party has been requested.

Section 7.07. Relationship of the Parties. Except as otherwise provided herein, no party to this Agreement shall have any responsibility whatsoever with respect to services which are to be

provided or contractual obligations which are to be assumed by the other party and nothing in this Agreement shall be deemed to constitute either party as a partner, agent or legal representative of the other party or to create any fiduciary relationship between the parties.

Section 7.08. Notices. Any notice or communication which is required or permitted to be given hereunder shall be in writing and sufficiently given if delivered in person, by courier services, by recognized overnight delivery service or three (3) Days after being sent by certified or registered mail, postage prepaid, with a copy sent by overnight mail or courier, as follows:

If to ECUA:

The Essex County Utilities Authority
Leroy F. Smith Jr. Public Safety Building
60 Nelson Place, 6th Floor
Newark, NJ 07102
Attn: Executive Director
Fax: 973-792-9066

w/a copy to:

Francis J. Giantomasi, Esq.
Chiesa Shahinian & Giantomasi PC
105 Eisenhower Parkway
Roseland, NJ 07068
Fax: 973-325-1501

If to the Contractor:

Attn: _____
Fax: _____

Changes in the respective addresses to which notices may be directed may be made from time to time by either party by written notice to the other party.

Section 7.09. Modification. The provisions of this Agreement may be amended and/or supplemented from time to time. Any such amendment and/or supplement shall be effective only if set forth in a written instrument approved and executed by both parties hereto.

Section 7.10. Waiver. The waiver by either party of a default or of a breach of any provision of this Agreement by the other party shall not operate or be construed to operate as a waiver of any subsequent default or breach. The making or the acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of such default or of any subsequent default or breach.

Section 7.11. Severability. In the event that any provision of this Agreement shall be determined for any reason to be invalid, illegal, or unenforceable in any respect by any court of competent jurisdiction, the parties hereto shall negotiate in good faith and agree to such amendments, modifications or supplements of or to this Agreement or to such other

appropriate actions as, to the maximum extent practicable in light of such determination, shall implement and give effect to the intentions of the parties as reflected herein. Notwithstanding such determination, such determination shall not invalidate or render any other provision hereof unenforceable.

Section 7.12. No Liability of Officers and Employees. No officer, elected official, agent, representative or employee of the ECUA, the County or the Contractor shall be held personally liable under any provision of this Agreement or as a result of its execution or attempted execution or as a result of any breach or alleged breach hereof; provided however, that all persons shall remain responsible for their own criminal acts.

Section 7.13. Governing Law. The rights and obligations of each of the parties under this Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey. However, to the extent that jurisdiction validly exists in the federal courts, any legal action or proceeding against a party with respect to this Agreement may be brought in the courts of the United States; provided, however, that each party hereby agrees that venue (in the event of an action instituted or pending in district court) is proper only in the United States District Court for the District of New Jersey and irrevocably waives any objection which it may now or hereafter have to the laying of venue in that district and further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

Section 7.14. Merger Clause. This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter herein and this Agreement supersedes all prior and contemporaneous agreements and understandings, representations and warranties, whether oral or written, relating to such matters.

Section 7.15. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties hereto.

Section 7.16. Third Party Beneficiaries. It is not intended that this Agreement make any person or entity a third party beneficiary hereof, notwithstanding the fact that persons or entities other than the ECUA and the Contractor may be benefitted thereby.

Section 7.17. Affirmative Action and Mandatory Equal Employment Opportunity Language. The language contained in N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127) and N.J.A.C. 17:27-1.1 et seq. and, where applicable, the requirements of P.L. 1963, C. 150 with respect to the payment of prevailing wages, as amended and supplemented from time to time, is incorporated herein by reference as if set forth in full herein. If such mandatory language is amended or supplemented from time to time, such revised language shall apply to the obligations hereunder, regardless of whether the Contractor has actual notice of such modification.

During the performance of this Agreement, 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 all 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 the 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 [N.J.A.C. 17:27-1.1 et seq.] 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.

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 ECUA, 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 Approval, issued in accordance with N.J.A.C. 17:27-4; or
- Employee Information Report Form AA302 (electronically provided by the Division of Purchase and Property within the Department of the Treasury and distributed to the public agency through the Division's website at www.state.nj.us/treasury/contract_compliance, to be completed by the Contractor, in accordance with N.J.A.C. 17:27-4).

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..

Section 7.18. Americans with Disabilities Act. The ECUA and the Contractor do hereby agree that the provisions of Title II of the Americans with Disabilities Act of 1990 (the "Act") (42 U.S.C. Section 12101 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant thereto, are made a part of this Agreement. In providing any aid, benefit, or service on behalf of the ECUA pursuant to this Agreement, the Contractor agrees that the performance shall be in strict compliance with the Act. In the event that the Contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this Agreement, the Contractor shall defend the ECUA in any action or administrative proceeding commenced pursuant to the Act. The Contractor shall indemnify, protect, and save harmless the ECUA, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages, of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The Contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints

brought pursuant to the ECUA's grievance procedure, the Contractor agrees to abide by any decision of the ECUA which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the ECUA, or if the ECUA incurs any expense to cure a violation of the Act which has been brought pursuant to its grievance procedure, the Contractor shall satisfy and discharge the same at its own expense.

The ECUA shall, as soon as practicable after a claim has been made against it, give written notice thereof to the Contractor along with full and complete particulars of the claim. If any action or administrative proceeding is brought against the ECUA or any of its agents, servants, and employees, the ECUA shall expeditiously forward or have forwarded to the Contractor every demand, complaint, notice, summons, pleading, or other process received by the ECUA or its representatives.

It is expressly agreed and understood that any approval by the ECUA of the Combined Services provided by the Contractor pursuant to this Agreement will not relieve the Contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the ECUA pursuant to this paragraph.

It is further agreed and understood that the ECUA assumes no obligation to indemnify or save harmless the Contractor, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of this Agreement. Furthermore, the Contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the Contractor's obligations assumed in this Agreement, nor shall they be construed to relieve the Contractor from any liability, nor preclude the ECUA from taking any other actions available to it under any other provisions of the Agreement or otherwise at law.

Section 7.19. "Pay to Play" – Notice of Disclosure Requirement. Any business entity that has received \$50,000.00 or more in contracts from government entities in a calendar year is required to file an annual disclosure report with the New Jersey Election Law Enforcement Commission ("ELEC") pursuant to N.J.S.A. 19:44A-20.27. Business entities are responsible for determining if filing is necessary. Additional information on this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.

Section 7.20. Headings. Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

Section 7.21. Counterparts. This Agreement may be executed in more than one (1) counterpart, each of which shall be deemed to be an original.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have set their hands and their seals on the date first above written.

THE ESSEX COUNTY UTILITIES AUTHORITY

ATTEST:

By: _____
_____, Secretary

By: _____
_____, Chairman

[SEAL]

[CONTRACTOR]

WITNESS/ATTEST:

By: _____

By: _____
[NAME & TITLE]

Name: _____

Title: _____