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County Executive

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James P. Doran, Ed.D., Vice-Chairman
Nicholas Goldsack, Treasurer
Frank Lorenzo, Secretary
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Brian K. Dellabella
Jeffrey Dublin
Martin T. Martinetti
John A. Peneda

Responses to Questions from Bidders

1. **Please provide a copy of the current HCIA/NJSEA-Keegan contract.**

Response: Attached is a copy of the most recent contract by and between HCIA and NJSEA for landfill disposal services. The contract was extended by the mutual consent of the parties through June 20, 2018.

2. **What is the term of and/or expiration of the HCIA/NJSEA-Keegan contract?**

Response: The most recent contract commenced on January 1, 2014 and expired on July 1, 2016. The contract was extended on two occasions by the parties through June 20, 2018.

3. **What is the impact of the current closure order of the NJSEA-Keegan Facility?**

Response: The Order requires NJSEA to cease the acceptance of solid waste for disposal at the Keegan Landfill until final disposition of the matter pending in the Superior Court, Hudson County, and any subsequent appeals.

4. **If an award is made subject to this procurement, and the NJSEA-Keegan Facility reopens prior to 12/1/19, will the HCIA return to the NJSEA-Keegan Facility?**

Response: No, HCIA will not return to the Keegan Landfill should it reopen prior to December 1, 2019. HCIA intends, assuming receipt of complying bids, to contract for disposal services through this procurement and seek all necessary NJDEP approvals of a plan amendment and contract.

5. **If a disposal facility requires special approvals for the ID-27 waste, will the HCIA accept separate pricing for that material?**

Response: All pricing for Non-Processible Waste must be clearly reflected in a bid submitted in response to this procurement. Due to the requirements of the Local Public Contracts Law, HCIA must award a contract to the lowest, responsible bidder and special pricing for ID-27 Waste developed after the bid and special approvals are obtained will contravene the Local Public Contracts Law. In the event special pricing for ID-27 Waste is available at the time of bid submittal, it should be factored into the per ton price for all Non-processible Waste utilizing the historical waste disposal data shown in Appendix D.

6. **As tomorrow is a holiday and most offices will be closed on 7/5/19, would HCIA consider moving the due date to 7/23/19?**

Response: No, HCIA will not consent to an extension of the bid receipt date from July 17, 2019.

JAN - 2014
JUNE - 2016

SOLID WASTE DISPOSAL AGREEMENT

THIS SOLID WASTE DISPOSAL AGREEMENT ("Agreement"), made this 21st day of March 2014, by and between the Hudson County Improvement Authority ("Authority"), a public body corporate and politic of the State of New Jersey with principal offices for the transaction of business located at 830 Bergen Avenue, Ninth Floor, Jersey City, New Jersey; and the New Jersey Meadowlands Commission ("NJMC") a public body corporate and politic of the State of New Jersey with principal offices for the transaction of business located at One DeKorte Park Plaza, Lyndhurst, New Jersey;

WITNESSETH

WHEREAS, the Authority is a public body corporate and politic of the State of New Jersey, created by the Hudson County Board of Chosen Freeholders ("Freeholders") in accordance with the provisions of the Municipal and County Utilities Authorities Law, N.J.S.A. 40:14B-1 et seq. ("MUA Law"), and exercises essential governmental functions for the public health, benefit and welfare of the citizens of Hudson County ("County"); and

WHEREAS, NJMC (formerly known as the Hackensack Meadowlands Development Commission) is a public body corporate and politic of the State of New Jersey, established in, but not of, the New Jersey Department of Community Affairs, and created pursuant to and in accordance with the provisions of the Hackensack Meadowlands Reclamation and Development Act, N.J.S.A. 13:17-1 et seq., and exercises essential governmental functions for the public health, benefit and welfare of the citizens of the State of New Jersey; and

WHEREAS, the Hudson County District Solid Waste Management Plan ("Hudson Plan") was developed in accordance with the New Jersey Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. ("Act") and initially adopted by the Freeholders on April 26, 1979 and certified by the New Jersey Department of Environmental Protection ("NJDEP") on January 7, 1982, and has since been amended; and

WHEREAS, on November 18, 1985, the Freeholders designated the Authority as the agency responsible for the implementation of the Hudson Plan, as amended from time to time, pursuant to and in accordance with the Act, and the Authority is empowered, pursuant to the

MUA Law, to plan, acquire, construct, maintain and operate facilities for the processing, disposal and/or recycling of solid waste generated in the County; and

WHEREAS, the Authority, in its capacity as implementing agency for the County Plan, has previously developed, implemented and financed a solid waste management system to provide for the processing and disposal of all solid waste generated within the geographic boundaries of the County ("County System"); and

WHEREAS, in anticipation of the Supreme Court's denial of certiorari in Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County, the County adopted a Plan Amendment in November 1997 that reaffirmed the implementation of regulatory waste flow for solid waste generated in the County and the Plan Amendment was certified by DEP on December 30, 1997; and

WHEREAS, the Authority has undertaken various public procurements pursuant to the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., in order to maintain regulatory waste flow control, and NJDEP has approved contracts enabling the Authority to continue to provide safe, adequate and proper disposal services for Non-Processible Waste generated within the County, subject to regulatory flow control under the County Plan; and

WHEREAS, in accordance with a duly adopted resolution, HCLIA authorized the execution of the Interlocal Agreement for the disposal of Non-Processible Waste at the NJMC Keegan Landfill for a term of five years, commencing on January 1, 2009, and the rights and obligations of the parties under the terms of the Interlocal Agreement were approved by NJDEP by Solid Waste order issued on May 28, 2009; and

WHEREAS, the Local Public Contracts Law, and specifically N.J.S.A. 40A:11-5(2) authorizes the award of a contract without public bidding when such a contract is to "be made or entered into with the United States of America, the State of New Jersey, county or municipality or any board, body, officer, agency or authority thereof or any other state or subdivision thereof;" and

WHEREAS, in anticipation of the expiration of the current Interlocal Agreement with NJMC, the Authority, in an attempt to obtain the most cost-efficient and effective services for the disposal of Non-Processible Waste, recently entered into negotiations with the NJMC; and

WHEREAS, the Authority and NJMC have duly authorized their respective officials to enter into and execute this Agreement; and

WHEREAS, the procurement of capacity for the proper disposal of Non-Processible Waste at the lowest cost is an issue that significantly affects the health, safety and welfare of the citizens of the County;

NOW, THEREFORE, in consideration of the promises, the mutual covenants and agreements set forth below, and the respective undertakings of each party to the other, the Authority and the NJMC, each binding itself, its successors, and assigns, do mutually covenant, promise and agree as follows:

Section 1.1 Definitions. As used herein, the following terms shall have the meanings as set forth below:

(1) "Act of Bankruptcy" means that either party (a) shall have commenced a voluntary case under any bankruptcy law, applied for or consented to the appointment of, or the taking of possession by, a receiver, trustee, assignee, custodian or liquidator of all or a substantial part of its assets, (b) shall have made a general assignment for the benefit of creditors, (c) shall have been adjudicated a bankrupt, or shall have filed a petition or an answer seeking an arrangement with creditors, (d) shall have taken advantage of any insolvency law, or shall have submitted an answer admitting the material allegations of a petition in bankruptcy or insolvency proceeding, (e) an order, judgment or decree for relief shall have been entered in an involuntary case, without the application, approval or consent by any court of competent jurisdiction appointing a receiver, trustee, assignee, custodian or liquidator, or for a substantial part of any of its assets and such order, judgment or decree shall continue unstayed and in effect for any period of one hundred eighty (180) consecutive days, (f) shall have filed a voluntary petition in bankruptcy, (g) shall have failed to remove an involuntary petition in bankruptcy filed against it within one hundred eighty (180) days of the filing thereof, or (h) an order for relief shall have been entered under the provisions of the United States Bankruptcy Act, 11 U.S.C.A. §301.

(2) "Agreement" means this "Solid Waste Disposal Agreement," including the Schedules and any written amendments or supplements hereto that has been executed by both the Authority and the NJMC.

(3) "Applicable Law" means the Permits and any statute, code, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, standard or similarly binding authority, which shall be enacted, adopted, promulgated, issued or enforced by a Governmental Body relating to the NJMC, Authority, the Landfill Facilities or the Landfill.

(4) "Change in Law" means either (1) the enactment, adoption, promulgation, modification, official change in interpretation, or repeal, subsequent to the Contract Date, of any Applicable Law, (2) the material modification of or the imposition of any material conditions on the issuance or reissuance of any official permit, license or approval, or (3) the order and/or judgment of any Governmental Body, subsequent to the Contract Date, which in the case of (1), (2) or (3) above, established requirements affecting the operation of the Landfill or Landfill Facilities that are materially more burdensome than the most stringent requirements applicable to the Landfill or Landfill Facilities, or the ability of the Authority to direct Non-Processible Waste to the Landfill, and are (i) in effect on the Contract Date, as defined by both written laws and regulations, or (ii) contained in any official permits, licenses or approvals with respect to the Landfill or Landfill Facilities that have been obtained prior to the Contract Date; provided however, that if the enactment, adoption, promulgation or modification of such Applicable Law was officially proposed or published for comment and such comment period has expired as of the Contract Date, such action shall not constitute a "Change in Law."

(5) "Commencement Date" means January 1, 2014 or such date that the Authority delivers Non-Processible Waste to the Landfill pursuant to this Agreement.

(6) "Contract Date" means the date of execution of this Agreement.

(7) "County" means the County of Hudson, New Jersey.

(8) "County Plan" means the Hudson County District Solid Waste Management Plan, relating to the collection and disposal of solid waste generated within the geographic boundaries of the Hudson County Solid Waste Management District, as the same has been previously amended and supplemented and as may be further amended and supplemented from time to time, to the extent that such Plan shall have been certified by the NJDEP, as required by Applicable Law.

(9) "Event of Default" means any event which is specified as such under the terms of Section 6 hereof.

(10) "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, 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 NJMC, the Authority, the Landfill Facilities or the Landfill.

(11) "Hazardous Waste" means (a) any material or substance which, by reason of its composition or characteristics, is either (i) toxic or hazardous waste as defined in either the Solid Waste Disposal Act, 42 U.S.C.A. 6901 et seq., as replaced, amended, or supplemented, or any laws of similar purpose or effect, and such rules or regulations promulgated thereunder, or (ii) special nuclear or by-products materials within the meaning of the Atomic Energy Act of 1954, as replaced, amended or supplemented, or any laws of similar purpose or effect, and such rules or regulations promulgated thereunder; or (b) other materials which the NJDEP or the United States Environmental Protection Agency ("EPA") or any other Governmental Body shall determine from time to time is harmful, toxic, or dangerous, or otherwise ineligible for disposal in the Landfill.

(12) "Landfill" means the NJMC Keegan Landfill.

(13) "Landfill Facilities" means the Landfill and all other facilities related thereto, including, without limitation, liners, protective covers, leachate collection and treatment facilities, stormwater collection and treatment facilities, erosion and sedimentation control facilities, gas vents, gas collection systems, borrow areas, offices, haul roads, truck weigh scale, equipment, gear and other tangible property used in connection with the operation of the Landfill.

(14) "LPCL" means the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and the acts amendatory thereof and supplemental thereto;

(15) "MUA Law" means the Municipal and County Utilities Authorities Law, N.J.S.A. 40:14B-1 et seq., and the acts amendatory thereof and supplemental thereto;

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

(17) "Non-Processible Waste" means solid waste generated within the geographic boundaries of the County and consisting of Types 13 (excluding automobiles, trucks, trailers, large vehicle parts, drums, and appliances), 13C, 23 and 27 generated within the County.

(18) "Permits" means all permits, licenses or authorizations issued by any Governmental Body having jurisdiction over the construction and/or operation of the Landfill and/or the Landfill Facilities entitling the NJMC to construct and/or operate the Landfill and Landfill Facilities, including any modifications to such Permits.

(19) "State" means the State of New Jersey.

(20) "Term" means the period of time during which this Agreement shall be in force and effect as provided in Section 2.2 hereof.

(21) "Ton" means two thousand (2,000) pounds.

(22) "Uncontrollable Circumstance" means any event beyond the control of the NJMC or Authority (or any person or entity for whom the NJMC or Authority may be contractually or legally responsible) that is not due to an act or omission of the NJMC or Authority that materially and adversely delays the performance of any obligations under this Agreement and the event or effects thereof could not have been avoided by the Authority's or the NJMC's due diligence and the use of reasonable efforts.

For the purpose of this Agreement, Uncontrollable Circumstances include, but are not limited to, acts of God, blockades, rebellions, wars, riots, acts of sabotage or civil commotion, or national strikes; fires, floods, earthquakes or other cataclysmic natural phenomena; acts of the State in its sovereign capacity or any exercise of the power of eminent domain, police power, condemnation or other taking by or on behalf of any public, quasi-public or private entity; or a Change in Law or the failure, or refusal, of any Governmental Body to provide the approvals necessary for either (a) the Authority to deliver or cause to be delivered Non-Processible Waste to

the Landfill, or (b) the NJMC to accept any Non-Processible Waste in the manner contemplated by the terms of this Agreement. The time for performing obligations under this Agreement shall be extended commensurate with such Uncontrollable Circumstance except to the extent that such performance is limited or prevented as a result of such occurrence.

1.2 Interpretation. The terms "herein," "hereunder," "hereby," "hereto," "hereof," and similar terms, refer to this Agreement; the term "heretofore" means before the Contract Date and the term "hereafter" means after the Contract Date. Words importing the masculine gender include the feminine gender or the neuter and vice versa, as the case may be. Words importing the singular number include the plural number and vice versa.

1.3 Rights and Obligations of the Authority and NJMC. The rights granted and obligations of the parties hereto shall be only as expressly stated herein and shall not be expanded, modified, extended or in any way changed by any subsequent change in circumstances or federal, state, county or local statutory or common law, except as expressly provided for herein; provided however, that the provisions of this Agreement shall, if required by Applicable Law of the State, be subject to the review and/or approval of the NJDEP. In the event that review and approval of this Agreement is required by Applicable Law of the State and NJDEP does not approve this Agreement, then this Agreement shall be terminated upon receipt by the Authority of an Order from NJDEP memorializing its disapproval.

1.4 NJDEP Jurisdiction. (a) In the event that the Agreement is required to be submitted to the NJDEP for review and/or approval under Applicable Law, the Authority shall be fully responsible for obtaining such review and/or approval. Notwithstanding the above, the NJMC shall cooperate with the Authority in providing information that is reasonably required by the Authority in connection with any such review and/or approval and which information is not (in the sole discretion of the NJMC) confidential or proprietary.

(b) The Authority intends to seek an amendment to the County Plan referencing and incorporating this Agreement. In the event that NJDEP denies certification of such amendment, this Agreement shall be terminated upon receipt by the Authority of such denial of certification.

1.5 Effective Date of Agreement. This Agreement shall take effect on the Contract Date.

Section 2.1 Right to Deliver Non-Processible Waste for Disposal.

(a) For and in consideration of the covenants of the Authority that are set forth herein and other good and valuable consideration, the NJMC does hereby grant to the Authority all rights to deliver Non-Processible Waste for disposal at the Landfill, whether or not such Non-Processible Waste is first delivered to the Landfill from a transfer station or materials recovery facility operating under an agreement with the Authority. Notwithstanding the above to the contrary, the parties hereto acknowledge and agree that the provisions of this paragraph shall not apply to any Non-Processible Waste that during the term of the Agreement is designated by the County as a "recyclable material" and included as such in the County Plan. Title to and responsibility for all Non-Processible Waste delivered to the Landfill for disposal pursuant to the terms of this Agreement shall pass to NJMC upon the solid waste delivery vehicles of the solid waste collectors receiving its exit ticket from the Landfill.

(b) Notwithstanding any other provisions in this Agreement to the contrary, the parties hereto agree that the Authority may enter into arrangements with licensed materials recovery facilities that have, or may subsequently obtain, contracts with the Authority for the acceptance and recycling of Non-Processible Waste in accordance with the County Plan, whereby the Authority is paid its then-applicable rate component fee for that portion of the Non-Processible Waste remaining after the performance of recycling activities ("Residue") and the materials recovery facility may dispose of the Residue at any licensed solid waste facility. It is further agreed that the disposal of the Residue at a solid waste facility other than the Landfill will not constitute a violation of the covenants and representations of the Authority in Section 5.1 (g) and (h) or an event of default under Section 6.4 (b) of this Agreement.

2.2 Term of Agreement and Termination. The provision of disposal services pursuant to this Agreement shall commence on the Commencement Date and shall continue for a

period of thirty (30) months from the Commencement Date, and expire at midnight on July 1, 2016.

(a) Termination. The Authority shall have the right to terminate this Agreement upon the occurrence of a Change in Law or determination by a court of competent jurisdiction that limits the rights of the Authority or the NJMC to perform their respective obligations under this Agreement.

2.3 Assignment of Rights Under Agreement. Neither party shall be permitted to assign, sell, transfer or otherwise vest in any Person any of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

2.4 Limitations on Rights Under Agreement. (a) The Authority shall exercise its rights and interests hereunder only in accordance with Applicable Law and in such a manner as will not cause NJMC to be in violation of Applicable Law. At a minimum, the Landfill shall be available for disposal of Non-Processible Waste during the hours from 6:00 a.m. to 4:00 p.m. on Mondays through Fridays and 6:00 a.m. to 1:30 p.m. on Saturdays, subject to existing reasonable regulations and restrictions as may be amended by NJMC from time to time upon fifteen (15) days prior written notice to Authority; provided however, such regulations and restrictions shall not in any way materially adversely affect the Authority's exercise of its rights hereunder.

(b) NJMC assumes no responsibility for the transportation or delivery of Non-Processible Waste to the Landfill. Notwithstanding the foregoing, the NJMC shall provide and shall be responsible for the provision of all necessary services at the Landfill that are required in order to receive and safely dispose of such Non-Processible Waste and NJMC shall cooperate fully with Authority with respect to matters pertaining to the receipt of Non-Processible Waste so that Authority might exercise its rights under this Agreement.

Section 3.1 Disposal Price. (a) As compensation for the performance of disposal services for Non-Processible Waste at the Landfill, or such other disposal facility as may be designated by the NJMC during the term of this Agreement, the NJMC will charge and collect a

tipping fee from haulers of Non-Processible Waste in the amount of \$57.00 per ton for the period from January 1, 2014 through December 31, 2014. In addition to the tipping fee, NJMC will also charge and collect from haulers of Non-Processible Waste a rate component fee of \$40.54 per ton levied by the Authority for payment of the Authority's administrative and debt charges ("Rate Component") for every ton of waste received for processing by NJMC. The tipping fee rate and Rate Component shall be charged to haulers at the same time. However, payment by the hauler for the Rate Component shall be due immediately regardless of the terms otherwise given by NJMC to haulers for the payment of tipping fees. The NJMC shall remit to the Authority on a weekly basis the total Rate Component amount charged in the preceding week. Prior to the inception of this Agreement, the Authority shall confirm with NJMC, in writing, the appropriate amount to be charged by NJMC for the Rate Component, and shall notify NJMC, in writing, of any change in the amount of the Rate Component during the term of this Agreement. Such notification shall be made at least one week in advance of any change.

(b) The initial per ton tipping fee of \$57.00 set forth in Section 3.1(a) shall increase on January 1, 2015 to \$59.00 per ton and remain in effect through December 31, 2015.

(c) On January 1, 2016, the \$59.00 per ton rate shall increase to \$60.00 per ton and remain in effect through June 30, 2016.

Section 4.1 Covenants of NJMC. During the Term of this Agreement, NJMC warrants and covenants to the Authority as follows:

(a) NJMC will use its best efforts to obtain and/or maintain all necessary Permits for sufficient permitted and uncommitted capacity to provide for disposal of Non-Processible Waste at the Landfill.

(b) During the Term of this Agreement, NJMC shall, at all times, comply with, and adhere in all respects to Applicable Law in its ownership and operation of the Landfill and the Landfill Facilities. NJMC shall provide to the Authority within seven (7) days of the receipt thereof, true, correct and complete copies of any written notice of substantial non-compliance issued by any Governmental Body.

(c) Without limiting the generality of Section 4.1(a) above, during the Term of this Agreement, NJMC shall take all actions that are necessary to retain, and shall refrain from taking any actions that would materially adversely affect the retention of, all Permits in good standing. In addition, if during the Term of this Agreement additional Permits are required or compliance with additional governmental requirements is required, NJMC shall apply for such additional Permits or comply with such additional requirements on a timely basis or initiate legal proceedings to contest such additional Permits or requirements. NJMC shall provide to the Authority notice of the revocation of any Permits or the denial of any subsequently required Permits. Such notice shall be provided within forty-eight (48) hours of NJMC's receipt of notice of such revocation or denial.

(d) NJMC shall not, at any time during the Term of this Agreement, sell, lease, license or otherwise use or permit to be used, any portions of the Landfill when such sale, licensing or use would reduce the total permitted capacity of the Landfill to less than the amount required to fulfill its obligations to accept and dispose of Non-Processible Waste pursuant to this Agreement.

(e) NJMC shall continue to construct and add to the Landfill and Landfill Facilities, as and when necessary, in order to enable NJMC to accept and dispose of Non-Processible Waste pursuant to this Agreement. NJMC will maintain, at all times, the necessary manpower, equipment and capital that is required in order to be able to accept and dispose of the Non-Processible Waste.

(f) Without limiting the generality of any other covenant set forth herein, NJMC shall take all steps required by Applicable Law to bury, grade, cover and otherwise process all Non-Processible Waste deposited in the Landfill. It is agreed by the parties hereto that the Authority shall have no duties, obligations, responsibilities or rights of any nature with respect to the operation, maintenance, design, construction or management of the Landfill or the Landfill Facilities.

(g) NJMC shall diligently (1) defend itself against any and all actions and causes of action pending (or threatened) against it which, irrespective of the merits thereof, would materially adversely affect the ability of NJMC to perform its obligations and observe its covenants hereunder, and (2) prosecute any and all claims which if waived or permitted to lapse, would materially

adversely affect the ability of NJMC to perform its obligations and observe its covenants hereunder; provided however, that NJMC shall provide to the Authority notice of all such actions, causes of action and claims within seven (7) days of the receipt thereof or NJMC's filing thereof, as the case may be.

(h) NJMC shall at all times maintain all necessary insurance coverages and all policies of insurance shall contain a provision whereby the insurer agrees to provide the Authority with at least thirty (30) days prior written notice of any amendment, cancellation or non-renewal of such insurance. On or prior to the Commencement Date, and within thirty (30) days after the renewal, amendment or acquisition of additional policies of insurance, NJMC shall deliver to the Authority copies of all executed policies or certificates of insurance related to the Landfill or Landfill Facility.

(i) NJMC shall at all times maintain complete and accurate daily records of the total tons of Non-Processible Waste that it accepts each day for processing pursuant to this Agreement.

4.2 Representations of NJMC. NJMC hereby represents to the Authority as follows:

(a) NJMC is a public body corporate and politic of the State duly organized and validly existing in good standing and is duly qualified to transact business to enable NJMC to perform its obligations as provided in this Agreement. No Act of Bankruptcy has been commenced by or against the NJMC. The execution of this Agreement, and the performance of all obligations as provided in this Agreement have been authorized by all required action of NJMC, all as required by the charter, by-laws and Applicable Law that regulate the conduct of the NJMC's affairs. The execution of this Agreement and the performance of all obligations set forth herein do not conflict with and do not constitute a breach of or event of default under any charter or by-laws of NJMC or any agreement, indenture, mortgage, contract, or other instrument to which NJMC is a party or by which NJMC is bound so that, upon execution hereof and upon satisfaction of the conditions herein contained, this Agreement, as of the Contract Date, constitutes the valid, legally binding obligations of NJMC, enforceable against NJMC in accordance with its terms, except to the extent that enforcement thereof is limited by applicable bankruptcy, insolvency, reorganization, moratorium or

other laws relating to or limiting creditors' rights generally and the application of the general principles of equity.

(b) NJMC, for itself and with respect to its ownership of the Landfill or operation of the Landfill Facilities, is not currently in breach of or in default under the Permits or any other Applicable Law that would materially adversely affect NJMC's ability to perform hereunder, and has obtained all required Permits.

(c) NJMC represents that the design and construction of the Landfill meets or exceeds, in all material respects, the applicable requirements of all Applicable Law.

(d) NJMC represents, to the best knowledge of the NJMC after reasonable investigation, that the operation of the Landfill meets or exceeds, in all material respects, the applicable requirements of all Applicable Law.

(e) To the best knowledge of the NJMC after reasonable investigation, from the date when NJMC obtained ownership of the Landfill, none of the waste disposed at the Landfill since such date has contributed to any release of leachate or Hazardous Waste off of the Landfill property that is harmful to or presents danger to the person or property of any third parties. The Landfill site, or any part thereof, is not on the EPA Superfund Project List.

(f) There is no action, suit or proceeding, at law or in equity, before or by any court or similar Governmental Body against NJMC wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by NJMC of its obligations hereunder or the other transactions contemplated hereby, or which, in any way, would materially adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by NJMC in connection with the transaction contemplated hereby.

(g) Without limiting the generality of the foregoing, (1) NJMC has in its possession valid permits that, pursuant to Applicable Law, will permit NJMC to receive and dispose of Non-Processible Waste in the Landfill for a minimum of three (3) years, and (2) NJMC will continue to apply for and work diligently to obtain any necessary permits, and to have adequate equipment, manpower, Landfill Facilities and capital to perform its obligations hereunder.

(h) NJMC's ownership of the Landfill is sufficient to enable NJMC to perform its obligations under this Agreement.

(i) NJMC has sufficient uncommitted capacity to provide for disposal of the Non-Processible Waste at the Landfill.

(j) NJMC will at all times obtain and maintain adequate permitted capacity for use by the Authority at the Landfill as required for the NJMC to fulfill its obligations under the Agreement.

(k) NJMC will at all times obtain and maintain its current level of insurance coverages.

(l) NJMC has met and will continue to meet all Permit conditions relating to the Landfill, including all closure and post-closure obligations.

Section 5.1 Covenants and Representations of the Authority. The Authority represents, warrants and covenants to and with the NJMC as follows:

(a) The Authority is duly organized and existing in good standing under the laws of the State and has the power, authority and legal right, to enter into and perform the obligations set forth in this Agreement.

(b) The execution, delivery and performance of this Agreement (1) has been duly authorized by the governing body of the Authority, (2) does not require any consent, approval or referendum of voters, and (3) will not violate any judgment, order, law or regulation applicable to the Authority or any provisions of Authority'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 Authority or any agreement, indenture, mortgage, trust, contract, instrument of Applicable Law to which the Authority is a party or by which the Authority is bound. This Agreement has been duly executed and delivered and, as of the Contract Date, constitutes a legal, valid and binding obligation of the Authority, 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 creditor's rights generally and the application of general 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 Authority, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Authority of its obligations hereunder or the other transactions contemplated hereby, or that, in any way, would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the Authority in connection with the transactions contemplated hereby.

(e) The Authority shall direct deliveries of only Non-Processible Waste to the Landfill, and the Authority agrees that NJMC may reject any waste delivered pursuant to direction by the Authority to the Landfill that is not Non-Processible Waste.

(f) The Authority shall direct the delivery of Non-Processible Waste to the Landfill, expressly subject to the rights reserved in Section 2.1(b) hereof.

(g) The Authority will take all reasonable actions to effectuate, maintain and enforce its control over all Non-Processible Waste generated within the geographic boundaries of the County through enforcement of such waste flow orders or certifications issued by NJDEP and/or any other Governmental Body applicable to the County.

(h) The Authority shall maintain insurance appropriate to cover any employees, contractors or other persons acting on behalf of the Authority entering the Landfill.

Section 6.1 Breach of Warranties or Covenants by NJMC. If at any time during the Term of this Agreement, the NJMC shall breach any material obligation herein, including, but in no way limited to, timely remitting all Rate Component monies to the Authority, or any covenant or warranty made by it herein, or any representation made by NJMC herein shall be (or prove to be) false in any material respect, then, upon the Authority's providing written notice thereof to the NJMC, the NJMC shall proceed with due diligence and dispatch to take all such actions as shall reasonably be required to cure such breach and NJMC shall continue to take all such actions until such breach is cured.

6.2 Events of Default by NJMC. Subject to the provisions of Section 6.1 hereof, any one or more of the following shall constitute an Event of Default by NJMC hereunder:

(a) Failure by NJMC to cure any event described in Section 6.1 above within sixty (60) days of the occurrence of such event unless, in the sole discretion of the Authority, such cure period is extended (in writing); or

(b) Any Act of Bankruptcy on the part of the NJMC has occurred.

6.3 Breach of Warranties or Covenants by the Authority. In the event that the Authority shall breach any material obligation herein, or any covenant or warranty made by it herein, or if at any time any representation made by the Authority herein shall be or prove to be false in any material respect then, upon NJMC's providing written notice thereof to the Authority, the Authority shall proceed with due diligence and dispatch to take all such actions as shall reasonably be required within sixty (60) days to cure such breach and the Authority shall continue to take all such actions until such breach is cured.

6.4 Events of Default by the Authority. Subject to the provisions of Section 6.3 hereof, any one or more of the following shall constitute an Event of Default by the Authority hereunder:

(a) Failure by the Authority to cure any event described in Section 6.1 above within sixty (60) days of the occurrence of such event unless, in the sole discretion of the NJMC, such cure period is extended (in writing); or

(b) Failure by the Authority to deliver Non-Processible Waste to the Landfill, expressly subject to the rights reserved in Section 2.1(b) hereof.

6.5 Nonwaiver. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient by the non-breaching party in its sole discretion.

No waiver of the occurrence of any Event of Default hereunder, whether by the NJMC or the Authority, shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereto.

6.6 Uncontrollable Circumstance Not a Breach or an Event of Default. The non-performance by either the NJMC or the Authority of any obligations provided under the terms of this Agreement which non-performance arises from or is caused by the occurrence of an Uncontrollable Circumstance shall not be deemed to be a breach or an Event of Default for the purposes of this Section.

6.7 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 the Agreement were in effect until such dispute is resolved and any appeals permitted thereunder are exhausted.

6.8 Remedies. In the Event of Default, parties may pursue any available remedies under the law.

Section 7.1 Claims. (a) Between the NJMC and Authority, the NJMC, subject to the provisions of the New Jersey Tort Claims Act and the New Jersey Contractual Liability Act, shall be responsible for and shall, at its own expense, defend itself against any and all suits, claims, losses, demands or damages of whatsoever kind or nature, arising out of or in connection with any act or omission of the NJMC, its employees, agents or contractors, in the performance of the obligations assumed by the NJMC pursuant to this Agreement. The NJMC hereby releases the Authority from any and all liabilities, claims, losses, costs, expenses and demands of any kind or nature whatsoever, arising under state or federal law, solely out of or in connection with the NJMC's performance of the obligations assumed by the NJMC pursuant this Agreement.

(b) Between the NJMC and Authority, the Authority, subject to the provisions of the New Jersey Tort Claims Act and the New Jersey Contractual Liability Act, shall be responsible for and shall, at its own expense, defend itself against any and all suits, claims, losses, demands or damages

of whatsoever kind or nature, arising out of or in connection with any act or omission of the Authority, its employees, agents or contractors, in the performance of the obligations assumed by the Authority pursuant to this Agreement. The Authority hereby releases the NJMC from any and all liabilities, claims, losses, costs, expenses and demands of any kind or nature whatsoever, arising under state or federal law, solely out of or in connection with the Authority's performance of the obligations assumed by the Authority pursuant this Agreement.

(c) The Parties further agree that each Party may pursue any claims that it may have against the other Party and seek all such remedies as are available at law or in equity.

Section 8.1 Uncontrollable Circumstance; Effect on Obligations. Upon the occurrence of an Uncontrollable Circumstance, which occurrence prevents the NJMC or the Authority from performing all or a portion of its obligations under the terms of this Agreement, the NJMC or the Authority, as the case may be, shall be relieved (to the extent that the occurrence of such Uncontrollable Circumstance shall prevent such performance) from performance of its obligations hereunder, and shall diligently endeavor to eliminate the cause of the Uncontrollable Circumstance and the NJMC shall use all reasonable efforts to accept and dispose of Non-Processible Waste.

Section 9.1 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. Each party shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such action as may be reasonably requested by the other party; provided however, that such actions are not inconsistent with the provisions of this Agreement and do not involve the assumption of obligations other than those which are provided for in this Agreement to carry out the intent of this Agreement.

9.2 Relationship of the Parties. Except as otherwise explicitly provided herein, no party to this Agreement shall have any responsibility whatsoever with respect to services that are to be provided or contractual obligations that are to be assumed by any other party and nothing in this Agreement shall be deemed to constitute any party a partner, joint venture participant, agent or legal

representative of any other party or to create any fiduciary relationship between or among the parties.

9.3 **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 other prior, continuing or 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 any prior, continuing or subsequent default or breach.

9.4 **Modification.** Modifications, waivers or amendments of (or to the provisions of) this Agreement shall be effective only if set forth in a written instrument signed by both parties hereto after all corporate or other action regarding the authorization for such modifications, waivers or amendments have been taken.

9.5 **Headings.** The captions and headings in this Agreement are for convenience and ease of reference only and in no way define, limit or describe the scope or intent of this Agreement and such headings do not in any way constitute a part of this Agreement.

9.6 **Notices.** Any notice or other communication which is required to be given hereunder shall be in writing and shall be deemed to have been validly given if telecopied to the telephone number set forth below, delivered in person or mailed by certified or registered mail, postage prepaid, addressed as follows:

If to the Authority: Hudson County Improvement Authority
830 Bergen Avenue, Ninth Floor
Jersey City, New Jersey 07306
Attn: Chief Executive Officer
Tel. No.: (201) 324-6222
Telecopy: (201) 324-6201

If to the NJMC: New Jersey Meadowlands Commission
One DeKorte Plaza
Lyndhurst, New Jersey 07071
Attn: Executive Director
Tel. No.: 201-460-4642
Fax No.: 201-804-9620

If such notice is sent by telecopy or similar transmission, the original executed copy of such notice shall be mailed or delivered as provided above.

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

9.7 Subsidiaries, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective subsidiaries, successors and permitted assigns of the parties hereto.

9.8 Severability. In the event that any provision of this Agreement shall, if for any reason, be determined 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 shall, to the maximum extent practicable in light of such determination, 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.

9.9 Governing Law. The obligations of the parties under the terms of this Agreement shall be governed by, construed and interpreted in accordance with the Constitution and laws of the State of New Jersey. The NJMC in entering into this Agreement does not waive its Sovereign Immunity except as provided in the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. ("the Liability Act"). The rights and benefits provided to Authority that exceed those provided by the Liability Act and the obligations established under this Agreement are contractual in nature and shall not be deemed to expand the waiver of Sovereign Immunity as set forth in the Liability Act.

9.10 Liability of Officers and Employees. Except to the extent provided by Applicable Law, no commissioner or director nor any officer, agent, representative or employee of either party shall be charged personally by the other party or held contractually liable thereto under any term or provision of this Agreement, because of either party's execution or attempted execution or because of any breach or alleged breach thereof; provided however, that all persons remain responsible for any of their own criminal or fraudulent actions or omissions.

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

9.12 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if the signature and seals thereto and hereto were upon the same instrument.

IN WITNESS WHEREOF, the Authority and the NJMC have executed this Agreement, intending to be legally bound hereby as of the day and year first above written.

ELIZABETH RAMOS
A Notary Public of New Jersey
ID # 2075231
My Commission Expires 12/19/2015

HUDSON COUNTY IMPROVEMENT AUTHORITY

ATTEST:

By: [Signature]
Name: Elizabeth Ramos
Title: Executive Assistant

By: NONKORU U. GUYER
Name: [Signature]
Title: Chief Executive Officer

[SEAL]

NEW JERSEY MEADOWLANDS COMMISSION

ATTEST:

By: Christine Ferrante
Name: Christine Ferrante
Title: Executive Assistant / Paralegal

By: MARCIA A. KARAM
Name: [Signature]
Title: Executive Director