

SOLID WASTE MANAGEMENT AGREEMENT

This Agreement is made and entered as of the last date entered below by and between the Town of Hudson, Massachusetts (the "TOWN"), political subdivision of the Commonwealth of Massachusetts, and B-P Trucking Inc. ("B-P"), a Massachusetts corporation with offices at 47-55 Nickerson Road, Ashland, Massachusetts, or its nominee, as defined below, (together with its successors and assigns, the "CONTRACTOR").

RECITALS

WHEREAS, the TOWN owns property on Municipal Drive (off of Cox Street) in Hudson (the "Site"), intended for use as a transfer station for purpose of receiving, handling and transferring solid waste, recyclable materials, whitegoods, bulky wastes and related items and materials; and

WHEREAS, the Board of Health granted a Site Assignment at a public hearing on January 7, 1986 (the "Site Assignment") assigning the Site for use as a Refuse Transfer Station;

WHEREAS, B-P entered into a contract with the TOWN on or about July 1, 1999 titled "Solid Waste Management Agreement," as amended (the "Original Agreement"), under which B-P agreed to provide solid waste services for the Town in accordance with the terms of an RFP issued by the Town, a proposal submitted by B-P on or about June 16, 1999, and the Site Assignment;

WHEREAS, the TOWN intends to de-commission the transfer station currently existing on the Site (the "existing Transfer Station") and construct a new transfer station (the "New Transfer Station") on a portion of the Site also encompassed by the Site Assignment; and

WHEREAS, B-P was selected by the TOWN to enter into a contract to provide solid waste services for the TOWN.

CONSIDERATION

NOW THEREFORE, in order to confirm their mutual agreement and understanding with respect to the solid waste management services contemplated herein, and in consideration of: (a) the mutual promises and covenants contained in this Agreement; (b) \$100.00 paid by B-P to the TOWN; and (c) other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the TOWN and B-P, intending to be bound hereby, agree as follows.

ARTICLE I. REPRESENTATIONS

Section 1.01 Representations of the Town

The TOWN makes the following representations as the basis for the undertaking on the part of the CONTRACTOR under this Agreement:

- (a)** The TOWN is a municipal corporation and political subdivision of the Commonwealth, duly created and existing under the pursuant to the Constitution of laws of the Commonwealth;

- (b) The TOWN has full legal power and authority to enter into this Agreement, to carry out the transactions contemplated by this Agreement, and to perform its obligations in accordance with the terms of this Agreement;
- (c) The TOWN represents that all approvals required from boards or agencies of the Town of Hudson in order for the CONTRACTOR to operate a transfer station as the Site have been obtained or granted prior to the execution of this Agreement, including, without limitation, a site assignment issued pursuant to c. 111, § 150A and further represents that the Site Assignment remains valid and encompasses all land necessary for the construction of the New Transfer Station. Contractor agrees to maintain any and all permits;
- (d) The TOWN has not entered into any agreement with any other person or party regarding use of the Site or any of the solid waste management services that are to be provided by the CONTRACTOR in accordance with the Agreement; and any prior agreements and contracts involving the use of the Site or the providing of waste management services pertaining to the Site have been lawfully terminated;
- (e) This Agreement constitutes a legal, valid and binding obligation of the TOWN and shall be enforceable in accordance with its terms;
- (f) The Town acknowledges and agrees that CONTRACTOR shall have the right to designate a nominee to exercise its rights and obligations under this Agreement by notice to TOWN given not later than the Commercial Operation Date. Any entity in which the principals of CONTRACTOR own or control, directly or indirectly, 100% of the stock or beneficial interests of CONTRACTOR, as the case may be, will be deemed a nominee for the purposes of this Agreement; and
- (g) The Town has received no notice of any order, decree, notice, judgment, ruling, regulation, amendment or other action affecting the Site, the current Site Assignment or the Facility Operations Plan approved by DEP for the Site.

Section 1.02 Representations of the Contractor

The CONTRACTOR makes the following representations as the basis for the undertaking on the part of the TOWN under this Agreement:

- (a) The CONTRACTOR is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts and is in the business of providing solid waste management services;
- (b) The CONTRACTOR has the authority and legal capacity to enter into this Agreement and perform its obligations hereunder in accordance with the terms of this Agreement;
- (c) The execution, delivery and performance by the CONTRACTOR of this Agreement and transactions contemplated hereby are within its corporate powers, have been duly authorized by all necessary corporate and other action and do not and will not:
 - (i) Violate and provision of its incorporation papers or by-laws, as amended to date, or of any securities issued by the CONTRACTOR.

- (ii) Constitute or result in a breach of, default under, or conflict with any statute or other law, or any order, judgment, award, decree, regulation, ruling or requirement of any court, tribunal, arbitration, or governmental or administrative authority, commission or agency, or any indenture, agreement, lease, instrument or other undertaking to which the CONTRACTOR or its associates, affiliates or related entities, is a party or by which it or its property or assets may be bound or affected;
- (d) This Agreement constitutes a legal, valid and binding obligation of the CONTRACTOR and shall be forceable in accordance with its terms;
- (e) The CONTRACTOR agrees that it is an independent agent and not an employee of the TOWN for any purpose; and
- (f) The contractor represents that it has not been adjudicated or determined to be in violation of any local, state or federal law regulating the disposal of solid waste including hazard waste and materials nor as to the operation or management of any solid waste disposal, processing, or transfer facility.

ARTICLE II. **NEW TRANSFER STATION**

Section 2.01 Ground Lease of the Site

As a material inducement for CONTRACTOR undertaking solid waste services set forth in this Agreement, the TOWN shall enter into a ground lease with the CONTRACTOR (the "Lease") under the following general terms and conditions:

- (a) The TOWN shall lease to CONTRACTOR the land defined as the "Site" above;
- (b) The initial term of the Lease shall be twenty (20) years.
- (c) The use of the Site by the CONTRACTOR shall be for the continued operation of the existing Transfer Station and subsequent operation of a New Transfer Station for providing Solid Waste Services in accordance with this Agreement;
- (d) The TOWN and the CONTRACTOR shall be co-applicants on all applications for permits and approvals required by any state and local boards, commissions or others for the operation of the New Transfer Station; and
- (e) The Lease shall be in a form agreeable to the Parties and otherwise in accordance with G.L. c. 44, § 28C.
- (f) Upon execution of the Lease, the CONTRACTOR may access the Site for all purposes related to the planning, permitting and construction of the New Transfer Station. CONTRACTOR may continue its current practice of accessing the Site through TOWN property abutting the Site in cooperation with the Town of Hudson DPW.

Section 2.02 Construction of the New Transfer Station

As a further material inducement for CONTRACTOR undertaking solid waste services set forth in this Agreement, the CONTRACTOR shall undertake the construction of the New Transfer Station under the following basic terms and conditions:

- (a) At the CONTRACTOR'S sole cost and expense, CONTRACTOR shall construct the New Transfer Station on the Site on land that falls within the Site Assignment;
- (b) The CONTRACTOR will continue to operate the existing Transfer Station during construction;
- (c) The TOWN and the CONTRACTOR shall be co-applicants on all applications for permits and approvals required by any state and local boards, commissions or others for the construction and development of the New Transfer Station and improvements;
- (d) The TOWN shall in all respects cooperate with the CONTRACTOR during the permitting and construction of the New Transfer Station;
- (e) The Contractor shall diligently commence permitting and construction as soon as reasonably possible following execution of said agreement and shall thereafter diligently and continuously prosecute all construction and improvements on the Site necessary for completion of the New Transfer Station, subject to the following estimated schedule: (a) Final engineering, building design and layout prepared and filed with DEP within four (4) months after the execution of this Agreement, (b) DEP permitting review and approval process of up to eleven (11) months, (c) Construction bidding process of two (2) months, (d) Local town permits – approval period to be determined, (d) Construction completion – approximately nine (9) months, and (e) Receipt of an authorization to operate from DEP of up to four (4) months;
- (f) During the term of the Lease, the CONTRACTOR may at its expense make such improvements as it shall deem necessary or appropriate to enable it, with approval of the TOWN, which approval shall not be unreasonably withheld, to operate the New Transfer Station at the Site or to otherwise perform its obligations as provided herein;
- (g) Any buildings constructed as part of the work hereunder shall become the property of the TOWN, provided that Personal Property, as this term is defined in the Lease, purchased by the CONTRACTOR shall remain the property of the CONTRACTOR, said Personal Property to be set forth on Schedule A, attached hereto, which Schedule A may be amended from time to time when and if CONTRACTOR acquires additional Personal Property for the new Transfer Station; and
- (h) The date on which construction of the New Transfer Station is completed and all permits and approvals necessary for its operation, including an occupancy permit, have been obtained by CONTRACTOR is hereinafter referred to as the "Commercial Operations Date."
- (i) Prior to commencement of Construction, CONTRACTOR shall deliver a performance bond, in form and substance acceptable to the Town, to secure CONTRACTOR'S construction of the New Transfer Station in accordance with all approvals and permits and approved plans and specifications.

Section 2.03 Decommissioning the exiting Transfer Station

As a further material inducement for CONTRACTOR undertaking solid waste services set forth in this Agreement, the TOWN shall enter into a separate agreement with CONTRACTOR under which CONTRACTOR will decommission the existing Transfer Station under the following basic terms and conditions:

- (a) Upon the Commercial Operation Date, as defined in the Lease, of the New Transfer Station, the TOWN shall undertake to decommission the exiting Transfer Station at the TOWN's sole cost and expense;

- (b) The TOWN and the CONTRACTOR shall be co-applicants on all applications for permits and approvals required by any state and local boards, commissions or agencies for the CONTRACTOR to perform decommissioning services of the existing Transfer Station as soon as is reasonably practicable following substantial completion of the New Transfer Station;
- (c) Prior to decommissioning of the existing Transfer Station, the CONTRACTOR shall be given a reasonable period of time to remove any of its Personal Property from the existing Transfer Station. The existing Transfer Station and any fixtures or improvements shall be demolished and all debris discarded at CONTRACTOR's sole cost. If the TOWN desires to retain any fixtures or improvements owned by the TOWN, it must give notice to the CONTRACTOR and remove such fixtures or improvements within a reasonable period of time that does not interfere with or delay the decommissioning of the existing Transfer Station.;
- (d) The CONTRACTOR shall use good faith efforts to ensure that the operation of the New Transfer Station is not impacted or impaired by the decommissioning process.

ARTICLE III. SOLID WASTE SERVICES TO BE PROVIDED BY CONTRACTOR

Section 3.01 General Description of Services

Solid waste management services to be provided by the CONTRACTOR shall include activities necessary to comply with federal, state and local laws and regulations and approvals with respect to the operation of a transfer station for the receipt, handling and off-site disposition of solid waste, recyclables and related materials. This includes, but is not limited to:

- ◆ Enforce waste bans and recycling requirements;
- ◆ Providing for processing and/or recycling of landfill-banned items (as may be defined by DEP), including, but not limited to, recyclables, brush, yard waste, white goods, metal, tires, waste oil and related items;
- ◆ Providing all additional signage as necessary in both English and Portuguese;
- ◆ Control of vectors, fire, noise, odor and other nuisances; and
- ◆ Providing all materials, labor and equipment necessary to operate the Site and recycling drop-off center.

The TOWN acknowledges and agrees that work performed by the CONTRACTOR at the Site in furtherance of its obligations under this Agreement may include activities not expressly defined or described in this Agreement. Specific methods undertaken by the CONTRACTOR to complete this work will conform to specific requirements of applicable regulations and agency requirements, including specific authorizations, permits and orders.

The CONTRACTOR assumes the risk for changes in law, regulation and policies that affect any activity at the Site. The CONTRACTOR shall comply with any and all waste bans, including those set under 310 CMR 19.017 or any successor regulation, as they may apply to a transfer station.

(a) Personnel and Performance

The CONTRACTOR shall furnish personnel for all services rendered under this Agreement, including supervisory, clerical and on-site personnel. Such personnel shall consist of the number and classification as may at any time be necessary to accomplish work under this Agreement.

All of the CONTRACTOR'S employees shall be qualified and experienced and shall be physically able to perform their assigned duties and shall, at all times, interact with courtesy and civility to the residents or public at large.

The CONTRACTOR shall give personal attention to the faithful prosecution of the work, shall keep the same under direct control.

The CONTRACTOR shall maintain a toll-free telephone number for receiving calls from residents of the TOWN regarding the operation of the transfer station at the Site. The CONTRACTOR shall receive and record any complaint regarding the manner of service rendered by the CONTRACTOR. It shall be the responsibility of the CONTRACTOR to document any complaints, along with the corrective actions taken, in a report filed at least quarterly with the TOWN Board of Health.

(b) Materials and Equipment

The CONTRACTOR shall provide all materials and equipment necessary to operate the transfer station, at no cost to the TOWN, other than regular expenses that may be incurred by the TOWN in monitoring the activities of the CONTRACTOR or in assisting the CONTRACTOR, as may be necessary, to obtain and maintain necessary approvals for the performance of work under this Agreement.

The CONTRACTOR will provide all general maintenance and repairs of the Site and structures including, without limitation, snow removal and landscaping. The CONTRACTOR shall be responsible for the payment of all other operating costs including, without limitation, the cost of all water, sewer, electric and other utility charges.

(c) Other Performance Conditions

Project Safety

All practices, materials and equipment shall comply with the Federal Occupational Safety and Health Act, as well as any pertinent federal, state and/or local safety codes.

Equal Opportunity Employment

The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to the following activities: employment, promoting, demoting, or transferal, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, including apprenticeship.

The CONTRACTOR shall take steps to ensure that employees are treated during employment without regard to their race, color, religion, sex, age, or national origin. The CONTRACTOR will comply with applicable provisions for Minority/Women Business Enterprise programs.

The CONTRACTOR shall at all times observe and comply with all federal, state and local laws, by-laws, ordinances and regulations in any matter which affects the conduct of the work or applies to employees under contract. Similarly, the CONTRACTOR shall comply with all orders or decrees which have been promulgated or enacted by any other legal body or tribunal having authority or jurisdiction over the work, materials, employees, or the contract.

Section 3.02 Specific Description of Services

The following describes in more detail specific solid waste-related services to be provided by the CONTRACTOR. The detailed descriptions are not intended to limit the CONTRACTOR'S responsibility to provide full and complete solid waste management services as otherwise required herein.

(a) Site Operation

The CONTRACTOR will undertake the following activities with respect to the Site:

- (i) Secure, update and maintain existing state and local permits under regulations relating to the Site;
- (ii) Conduct engineering review and surveying services in connection with the foregoing; and
- (iii) Conduct other solid waste management activities and permitting necessary to operate the Site properly.

After written notice to and approval by the TOWN, which approval shall not be unreasonably withheld, the CONTRACTOR may at its expense make such improvements as it shall deem necessary or appropriate to enable it to operate the New Transfer Station at the Site and to otherwise perform its obligations as provided herein. Any buildings or improvements to the New Transfer Station building(s) constructed as part of the work hereunder shall become the property of the TOWN, provided that all Personal Property purchased by the CONTRACTOR shall remain the property of the CONTRACTOR.

The CONTRACTOR shall operate the New Transfer Station six (6) days per week excluding the following holidays:

New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. The operational hours for the facility shall be 7:00 a.m. to 8:00 p.m. or such longer period as may be reasonably required. The following are the intended operational hours during which the facility will be open to the public:

Monday:	8:00 a.m. to 4:00 p.m.
Tuesday:	8:00 a.m. to 4:00 p.m.
Wednesday:	8:00 a.m. to 4:00 p.m.
Thursday:	8:00 a.m. to 4:00 p.m.
Friday:	8:00 a.m. to 4:00 p.m.
Saturday:	8:00 a.m. to 2:00 p.m.

Exceptions to the schedule due to additional holidays, scheduled downtime and emergencies must be specified by the CONTRACTOR and approved by the TOWN.

CONTRACTOR acknowledges and agreed with the Board of Health's public safety concern and need for CONTRACTOR'S vehicle operations to reduce speed between 7:00 a.m. to 3:00 p.m., Monday through Friday, when in the vicinity of the Mulready School on Cox Street.

The CONTRACTOR shall use and operate the transfer station as designed and will handle only non-hazardous municipal and commercial solid waste (hereafter "MSW"), construction & demolition waste (C&D) waste, solid waste specifically authorized by the Massachusetts Department of Environmental Protection ('DEP') and recyclables ("Acceptable Solid Waste"). The CONTRACTOR will operate the transfer station within its approved daily capacity and comply with all federal, state and local laws and regulations with respect to the operation of the transfer station.

The CONTRACTOR shall have an exclusive license to utilize the Site to operate a transfer station for Acceptable Solid Waste generated by the Town of Hudson and by the CONTRACTOR. The CONTRACTOR will operate the site within its daily permitted capacity. For this exclusive license the CONTRACTOR will pay the TOWN a Host Community Fee ("FEE") for all Acceptable Solid Waste in the amount of \$2,000.00 per month, payable on the first of each month, commencing on the Commercial Operation Date.

"Acceptable Solid Waste" means all household garbage, trash, rubbish, refuse, and combustible agriculture, commercial and light industrial waste but excluding (a) explosives and ordinance materials, pathological wastes, chemicals, radioactive materials, lead acid batteries, oil, sludges, highly inflammable substances, cesspool or other human wastes, human and animal remains, motor vehicles, farm or the large machinery and hazardous refuse of any type or kind including those addressed by regulations adopted by the United States Environmental Protection Agency ('EPA') pursuant to the Resource Conservation Recovery Act of 1976, 42 U.S.C. 6901 et seq.; the Massachusetts Hazardous Waste Management Act, G.L. c. 21C; the Massachusetts Oil and Hazardous Material Release Act, G.L. C 21 E and G.L.C. 111 § 150 A, as said statutes may be amended from time to time or other federal status or adopted by the Massachusetts Department of Environmental Protection ("DEP"), such as, but not limited to, cleaning fluids, crankcase oils, cutting oils, hazardous paints, acids, caustics, poisons, drugs, radioactive materials, fine powdery earth used to filter cleaning fluid and refuse of a similar nature, (b) all other items of waste which the CONTRACTOR reasonably believes would be likely to pose a threat to health or safety or the acceptance and disposal of which may cause damage to the Facility or be in violation of any judicial decision, order or action of any federal, state or local government or any agency thereof, of any other regulatory authority or applicable law or regulations. Some substances which are not, as of the date of this proposal, considered harmful or of a toxic nature or dangerous, may be determined as such by DEP and/or EPA subsequent to the date hereof as hazardous, toxic, dangerous or harmful, and at the time of such recognition, such substances shall cease to be acceptable waste.

Acceptable Solid Waste to be recycled and/or managed by the CONTRACTOR for the TOWN and its residents includes:

- ◆ Regular Waste - wastes that are not included in the categories of Banned Recyclable Wastes, Banned Organic Wastes, Sludges, or Reusable Items;
- ◆ Landfill-Banned Recyclable Wastes - including but not limited to large appliances (white goods), metals and tires. This includes items banned now or in the future by DEP regulations.
- ◆ Landfill-Banned Organic Wastes - including brush, leaves, grass clippings and other yard waste, including Christmas trees. This includes items banned now or in the future by DEP regulations.
- ◆ Reusable Items - items that will be diverted from the waste stream for potential reuse by residents (take-it-or-leave-it shed); items not reused in a reasonable period of time will be disposed of or recycled.

The CONTRACTOR agrees to use the Site solely for the handling of Acceptable Solid Waste and other solid waste purposes as are contemplated by this Agreement.

The CONTRACTOR will purchase and install appropriate recycling receptacles to continue and expand the current recycling drop-off area for the residents. The CONTRACTOR shall utilize and/or provide all necessary equipment, labor, management

and facilities for the receipt and disposal of the following materials for recycling: Old corrugated (OCC), newsprint, magazines, mixed office/school paper, clear, green and brown glass, metal/tin cans and plastic. The CONTRACTOR reserves to right to modify the materials accepted if market conditions warrant and any changes will be specified by the CONTRACTOR and approved by the TOWN.

(b) Drop-off and Handling of Banned Recyclable Wastes

The CONTRACTOR shall provide and utilize all necessary equipment, labor, management and facilities for the receipt of Banned Recyclable Wastes from the TOWN and its residents. The CONTRACTOR shall provide for the processing, transport, recycling and/or marketing of said Banned Recyclable Wastes.

(c) Drop-off and Handling of Brush and Yard Wastes

The CONTRACTOR shall provide for handling of brush and yard waste originating in the TOWN as shall be required by this Agreement and the mandate of any state or federal law.

The CONTRACTOR shall conduct operations which may consist of: (i) separate receiving areas for compostable material, such as leaves, yard waste and additives; (ii) handling and sorting facilities suitable for receiving, sorting and processing compostable material as the CONTRACTOR shall determine is most suitable for the type of material and process being utilized; or (iii) transfer material to a properly permitted commercial compost facility.

(d) Household Hazardous Waste

The CONTRACTOR will coordinate a household hazardous waste day for the TOWN at no charge, provided that the TOWN pays for the costs of transportation and disposal of all household hazardous wastes collected on that day.

Section 3.03 Administration and Fees

(a) Fees. Fees charged to Town of Hudson residents shall be:

BAGS

Up to 18 gallons:	\$1.00 each
19 to 30 gallons:	\$2.00 each
31 to 40 gallons:	\$3.00 each
41 to 50 gallons:	\$4.00 each
51 to 60 gallons:	\$5.00 each
Bags over 60 gallons shall not be accepted.	

BARRELS

Up to 50 gallons:	\$5.00 each
51 to 96 gallons:	\$7.00 each

Pricing is for normal municipal/residential waste only.

CONSTRUCTION AND DEMOLITON (C&D): \$160.00 per ton, minimum charge \$60.00

WHITE GOODS/APPLIANCES

Dishwasher:	\$15.00 each
Microwave:	\$15.00 each
Stoves:	\$25.00 each
Washers & Dryers:	\$25.00 each
Hot Water Heaters up to 55 gallons:	\$25.00 each
Hot Water Heaters over 55 gallons:	Priced by size
Refrigerators and Freezers (Freon evacuated):	\$25.00 each
Air Conditioners and Dehumidifiers (Freon evacuated):	\$15.00 each
Gas Grill (without propane tank):	\$10.00 each

TELEVISIONS AND CRT TERMINALS: \$35.00 each

BULKY WASTE

Furniture (Sofa's, stuffed chairs, etc.)	\$25.00 each
Furniture (Sleep sofa's)	\$35.00 each
Mattress or Box Springs:	\$20.00 each
Lawn Mowers:	
Push (gas & oil removed):	\$15.00 each
Riding (gas & oil removed):	Priced according to size
Other Bulky Waste items:	\$160.00 per ton, minimum charge \$50.00

STUMPS AND BRUSH: \$160.00 per ton, minimum charge \$50.00

PROPANE TANKS (30 lbs and under empty): \$8.00 each

TIRES

Passenger under 20":	\$5.00 each
Passenger over 20":	\$8.00 each
Pickup Truck under 36":	\$15.00 each
Commercial Truck:	Priced by size

YARD AND ORGANIC WASTE (grass & Leaves): No Charge, Hudson Residents Only

RECYCLING DROP-OFF CENTER: No Charge, Hudson Residents Only

WASTE MOTOR OIL: Not Accepted

No charge to maintain and service dumpsters to receive Acceptable Solid Waste at the municipal buildings and schools as designated by the Town with no additional charge to the TOWN in accordance with the services and frequency of services set forth in Attachment A; and

CONTRACTOR shall accept at the Site at no charge residual sludge from the TOWN'S septic treatment plant.

- (b) Fee Increases. In recognition of the length of the Term of this Agreement, and in order to assure an equitable arrangement for both parties hereto, the TOWN agrees that CONTRACTOR may increase the fees contained in this Agreement for Bags and Barrels once each year, upon not less than ninety (90) days prior written notice, (provided however increases shall not exceed \$0.25 per bag or barrel in the aggregate over any two year period) to address any associated operational cost increases incurred by the CONTRACTOR, including but not limited to disposal cost increases, subject to the approval of the Hudson Board of Health, which approval shall not be unreasonably denied. All other fees may be adjusted by the CONTRACTOR with not less than a thirty (30) day notice that must be posted at the scale house and on any signage that details pricing.
- (c) Collection from Users. The CONTRACTOR shall be responsible for billing and collecting payments from the users of the Site.
- (d) Record Keeping. The CONTRACTOR shall keep daily records of wastes collected and the TOWN shall have the right to inspect the same at reasonable times. The CONTACTOR shall provide reports to the TOWN that will detail the daily activity and operational information that will include the following information: The quantity and type of solid waste and recyclables received at the Site, the off-Site disposal location of all solid waste, the off-site disposal location for all recycled materials, any maintenance or repairs made to the Site, our facility staffing and any deviations from the approved plan and operational procedures.

ARTICLE IV. TERM

The CONTRACTOR shall have an exclusive license to utilize the Site, including the New Transfer Station, to operate a transfer station and conduct activities described herein for an initial term of twenty (20) years beginning on the earlier of October 1, 2022 or the Commercial Operation Date of the New Transfer Station (the "Initial Term").

The CONTRACTOR shall continue to provide Solid Waste Services to the TOWN at the existing Transfer Station until the New Transfer Station is operational. In the event the Commercial Operation Date occurs prior to October 1, 2022, the CONTRACTOR's obligations to provide Solid Waste Management services under the Original Agreement shall cease and its obligations to provide such services in accordance with Article III hereof shall begin. In the event the New Transfer Station is not operational by October 1, 2022, the CONTRACTOR shall continue to provide Solid Waste Services to the TOWN at the existing Transfer Station in accordance with the terms of Article III hereof until the Commercial Operations Date.

At the end of the term of the license granted under this Agreement, or upon any earlier termination, CONTRACTOR shall return full operational control of the Site to the TOWN.

At the end of the term of this Agreement or any prior termination hereunder, CONTRACTOR, at its option, may remove from the Site all fixtures and personal property owned by the CONTRACTOR prior to returning the Site to the TOWN. Any property not removed shall become the property of the TOWN upon acceptance of the TOWN and return of the Site.

ARTICLE V. INSURANCE AND ROYALTIES

Section 5.01 Insurance

The Contractor shall obtain and maintain at its own expense, through the term of this Agreement and any extension thereof, insurance coverage specified below to adequately protect against claims and judgments for bodily injury, property damage, personal injury and other damage that may arise out of or in consequence of performance under the Agreement, whether such performance be by the CONTRACTOR or for whose acts the CONTRACTOR may be liable.

Upon executing this contract and within 21 days after any renewal, the CONTRACTOR shall furnish the TOWN with certificates of insurance in corresponding insurance policies. Said policies shall:

- ◆ Identify the TOWN as “an additional insured” on all policies “with the policy so endorsed”;
- ◆ State that bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy;
- ◆ Specify the following “Notice of Cancellation” provision:

“Should any described policies be cancelled or terminated before the expiration date thereof, the issuing company will mail, at least thirty (30) days in advance, written notice thereof to named certificate holder and the Board of Health, 78 Main Street, Hudson, MA 01749 before said cancellation or termination shall take effect.”

- ◆ Be issued or signed by the insurer providing the coverage listed therein.

No insurance shall be secured from an insurer which:

- ◆ Is not licensed to transact the business of insurance in Massachusetts;
- ◆ Is not authorized to provide insurance as an excess or surplus lines insurer in Massachusetts and does not have a current Best’s rating of “A” or better, or
- ◆ Is not a risk retention group lawfully providing insurance to its members in Massachusetts.

(a) Workers Compensation Insurance

In accordance with M.G.L. c. 149, §34A, the CONTRACTOR shall, before commencing performance of work, provide insurance for the payment of compensation and the furnishing of other benefits under M.G.L. Chapter 152, as amended, to all persons employed pursuant to this Agreement. The CONTRACTOR shall continue such insurance in full force and effect during the term of the contract.

(b) Comprehensive General Liability Insurance

A Comprehensive General Liability policy shall be obtained to provide for a combined single limit of not less than the amount of \$1,000,000 for all damages arising out of bodily injuries to or death and for all damages arising out of injury to or destruction of property in any occurrence and, subject to that limit per occurrence, a combined total or aggregate limit of \$2,000,000 for all damages arising out of injury to or destruction of property during the term of the contract. Said limits shall also include \$1,000,000.00 for Personal and Advertising Injury, \$2,000,000.00 for Products-Completed Operations with a combined or aggregate limit of \$2,000,000.00. Bodily injury insurance will include extraterritorially and guest coverage.

(c) Vehicle Liability

The CONTRACTOR shall maintain vehicle liability insurance as required by the Commonwealth of Massachusetts, covering all owned and hired vehicles with a combined single limit of \$1,000,000.00 for bodily injury and property damage.

(d) Pollution Liability

The CONTRACTOR shall maintain pollution liability insurance to include coverages of \$ 1,000,000 for incidents relating to CONTRACTOR’S vehicles or to activities at the Site.

(e) Umbrella

The CONTRACTOR shall maintain umbrella insurance as required by the Commonwealth of Massachusetts, up to \$5,000,000.

(f) All Risk Property Coverage

The CONTRACTOR shall provide and maintain primary building insurance for the transfer station facilities on an "All Risk," Replacement Cost basis, consistent with the terms contained in the present CNA coverage form, a copy of which is attached hereto and incorporated herein, by reference with minimum limits to include . The deductible for said property coverage shall not exceed \$5,000 for any one occurrence. The payment of the aforementioned deductible is the sole and exclusive responsibility of the Contractor, which will make such payment in a timely manner so as to maintain the all risk property coverage. The policy and the various liability coverages required of the CONTRACTOR under Article IV shall name the Town of Hudson, including in its capacity as the landlord under the ground lease referred to in Section 2.01, as primary additional insured.

(g) The TOWN and the CONTRACTOR anticipate that they may enter into additional contracts related to waste disposal for the TOWN, including without limitation a lease agreement and a curbside pickup agreement. Unless expressly agreed to the contrary, the liability amount for each category of insurance required hereunder shall not be aggregated with the amounts required by other such contracts.

Section 5.02 Royalties

The CONTRACTOR shall pay all royalties and license fees and agrees to assume and save the TOWN and its officers and agents harmless from any liability of any kind or nature arising out of the use of any apparatus, appliance or mechanism under the terms of this Agreement, including patent and copyright infringement.

Section 5.03 Operating Names of Insured Companies

Prior to the TOWN'S execution of this Agreement, CONTRACTOR will furnish the TOWN with the proper legal name, state of incorporation and business addresses of all insurance companies that are furnishing contractor's insurance policies under Article IV hereof.

ARTICLE VI.
DEFAULT AND REMEDIES; TERMINATION

Section 6.01 Events of Default and Remedy

(a) Either party shall have the right to terminate this Agreement only for cause, i.e., if an Event of Default on the part of the other party, as defined in paragraph (b), shall have occurred and shall continue after notice.

(b) An "Event of Default" shall mean any of the following events:

(i) The failure or refusal by a party to fulfill any material obligation in accordance with this Agreement, provided, however, that such failure or refusal shall constitute an Event of Default only if:

1) The affected party shall have given prior written notice to the party allegedly in breach stating: (1) that in the affected party's opinion specific default(s), to be described in reasonable detail in such

notice, exist; (2) unless corrected within twenty-one (21) days of such notice, such defaults) will constitute a material breach of this Agreement on the party of the party allegedly in breach; and (3) if not corrected within such twenty-one (21) days, such breach will give the affected party a right to terminate this Agreement for cause under this section; and

- 2) Within twenty-one (21) days from the date of receipt of such notice, the party allegedly in breach shall not have corrected such default, or if the breach is not reasonably susceptible of cure within such twenty-one (21) day period, the party shall not commence to cure such breach within such twenty-one (21) day period or thereafter shall not diligently prosecute such cure to completion within a reasonable period of time.

(ii) Any material representation or warranty made by a party is false or misleading as of the date of this Agreement; or

(iii) Any party makes an assignment for the benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, petitions or applies to any tribunal for any custodian, receiver, or trustee for it or any substantial part of its property, commences any proceeding relating to it under bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction and such case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) days or a trustee, receiver, custodian, or other official shall be appointed in such a case and is not removed within sixty (60) days of being appointed.

(c) If any party shall have a right of termination for failure of the other party to correct a default in the manner provided in this section, the same may be exercised only by separate written notice of termination sent to the party in default by certified mail, return receipt requested. The decision of a party not to terminate this Agreement in the event of a failure to correct a default as described above shall not act as a waiver of the party's rights, in the event of any future default, to give notice of default and notice of termination.

Section 6.02 Force Majeure/Act of God

- (a) Neither party hereto shall be considered in default in the performance of its obligations hereunder (other than its obligation to make any payment of money), or be liable in damages or otherwise for any failure or delay in performance which is due to strike or other industrial disturbance; fire, explosion or other natural catastrophe; epidemic; terrorism; civil disturbance; curtailment, shortage, rationing or allocation of normal sources of supply of labor, materials, transportation, energy, or utilities; act of God; delay of subcontractors or vendors; act of government or compliance with government regulations (whether or not valid); embargo; machinery or equipment breakdown; or any other similar or dissimilar cause which is beyond the reasonable control of the party claiming excuse hereunder.
- (b) The party that has been so affected shall forthwith give notice to the other party and shall do everything to resume performance. A force majeure or an act of God event shall not include changes in the recycling market prices.

ARTICLE VII. ASSIGNMENT OR AMENDMENT OF AGREEMENT

Section 7.01 Assignment

- (a) Transfers. For a period of ten (10) years from the execution of this Agreement, CONTRACTOR shall not assign this Agreement. Thereafter, the CONTRACTOR may, with the prior written consent of the TOWN, which consent shall

not be unreasonably withheld, (1) assign, transfer, or encumber this Agreement or any interest herein, whether directly or by operation of law, or (2) permit any other entity to become the CONTRACTOR hereunder by merger, consolidation, or other reorganization.

- (b) Consent Standards. Following the expiration of the ten (10) year period reference in Section 7.01(a), the TOWN shall not unreasonably withhold, its consent to any proposed Transfer, provided, however, that the TOWN, after a complete review of any information requested by the TOWN in connection with the proposed Transfer as described in Section 7.01 herein, determines that the proposed transferee is creditworthy, has a good reputation in the business community, and is able to perform the CONTRACTOR's obligations under the Agreement in the public interest.
- (c) Request for Consent. If the CONTRACTOR requests the TOWN's consent to a proposed Transfer, then the CONTRACTOR shall provide the TOWN with a written description of all terms and conditions of the proposed Transfer, copies of the proposed documentation, and the following information about the proposed transferee: name and address; reasonably satisfactory information about its business and business history; banking, financial, and other credit information; and general references sufficient to enable the TOWN to determine the proposed transferee's creditworthiness and character.
- (d) Conditions to Consent. If the TOWN consents to a proposed Transfer, then the proposed transferee shall deliver to the TOWN a written agreement whereby it expressly assumes the CONTRACTOR's obligations hereunder. The TOWN's consent to any Transfer shall not waive the TOWN's rights as to any subsequent Transfers. In the event of an assignment by the CONTRACTOR that has been approved by the TOWN which is to an entity that undertakes in writing to fully perform and discharge all of the CONTRACTOR's obligations and liabilities, the CONTRACTOR shall not assume, jointly and severally with such assignee, the performance of CONTRACTOR's obligations hereunder. TOWN may also request surety from any transferee or assignee guaranteeing the performance under this agreement.
- (e) Permitted Transfers. Following the expiration of the ten (10) year period reference in Section 7.01(a), and notwithstanding anything contained herein to the contrary, the TOWN's consent may be granted to any assignment, sublet or transfer of this Agreement by the CONTRACTOR (each a "Permitted Transfer") upon the furnishing of adequate information necessary for the TOWN to determine that the Transfer is to (i) any parent, subsidiary or affiliate of the CONTRACTOR (the "CONTRACTOR's Affiliates"); (ii) any entity with which or into which the CONTRACTOR, or the CONTRACTOR's general partner or managing or majority member or shareholder has combined, whether by way of merger, reorganization, consolidation, sale of assets, sale of capital stock or the like, a majority equity interest; (iii) an entity which acquires all, substantially all or a majority of the CONTRACTOR's assets and provided that in any such event (a) the successor to the CONTRACTOR has a net worth, computed in accordance with generally accepted accounting principles consistently applied, at least equal to the greater of (1) the net worth of the CONTRACTOR immediately prior to such merger, consolidation or transfer, or (2) the net worth of the CONTRACTOR on the date of this Agreement; (b) proof satisfactory to the TOWN of such net worth shall have been delivered to the TOWN at least ten (10) days prior to the effective date of any such transaction, and (c) the assignee agrees directly with the TOWN, by written instrument in form satisfactory to the TOWN in its reasonable discretion, to be bound by all the obligations of the CONTRACTOR hereunder, including, without limitation, the covenant against further assignment.
- (f) Collateral Assignments. CONTRACTOR and the TOWN agree, acknowledge and understand that CONTRACTOR is financing the construction of the New Transfer Station (the "Obligations") with a third-party lender (the "Lender"). Notwithstanding anything contained in this Agreement, CONTRACTOR may without consent of the TOWN assign, transfer, set over and, if required, deliver to the Lender and grant to Lender a continuing security interest in this

Agreement and the Lease to secure the Obligations. CONTRACTOR shall furnish to TOWN copies of all such collateral assignment documents within 24 hours of receipt.

Section 7.02 Amendment of Agreement

This Agreement may not be amended except in writing executed in the same manner as the Agreement itself and delivered by the parties hereto. It is contemplated by both parties that amendment of this Agreement may be necessary during the term of this Agreement.

Section 7.03 Beneficiaries

The parties intend that there shall not be any third-party beneficiaries to this Agreement.

ARTICLE VIII. MISCELLANEOUS

Section 8.01 Indemnifications

- (a) The CONTRACTOR acknowledges and agrees that it is responsible as an independent contractor for all operations under this Agreement and for all acts of employees and agents hereunder, and agrees that it shall defend, indemnify, exonerate and hold harmless the TOWN and its officers, boards, employees, agents and officials from and against any and all loss, damage, cost, charge, expense and claim, which may be made against it or them or to which it or they may be subject by reason of any alleged act, action, neglect, omission or default on the part of the CONTRACTOR or any of their agents or employees and will pay promptly on demand all costs and expenses of the investigation and defense thereof, including attorneys' fees and expenses. If any such claim is made, the TOWN may retain out of any payments, then or thereafter due to the Contractor, a sufficient amount to protect it completely against such claim, costs and expenses. The CONTRACTOR also shall be responsible for paying any fines assessed to the TOWN for the CONTRACTOR'S failure to provide required services in accordance with applicable requirements.
- (b) The TOWN shall fully indemnify, hold and defend the CONTRACTOR for all claims, demands, payments, suites, actions, recoveries and judgments of every description, whether or not founded in law, brought or recovered against the CONTRACTOR, by reason of any act or omission of the TOWN, its agents, or employees in the execution of this Agreement, or arising from or relating in any way to the ownership or operation of the Site by the TOWN or by other persons who provided solid waste handling or management services at or related to the Site prior to the date of execution of this Agreement.

Section 8.02 Notices

Any notice, demand, approval, proposal, protest, direction or request provided for in this Agreement to be delivered, given, or made shall be in writing, except as otherwise explicitly provided herein and shall be deemed given when delivered by hand, deposited with an overnight courier service or mailed by registered or certified mail, postage prepaid, return receipt requested and addressed as follows. Each party may change the address to which notices shall be sent by filing written notice thereof with the other party.

[Space intentionally left blank.]

If to the TOWN:

Town of Hudson
Board of Health
78 Main Street
Hudson, MA 01749
Attn: Kelli M. Calo, Director of Public and Community Health

and

Town of Hudson
Board of Selectman
78 Main Street
Hudson, MA 01749
Attn: Thomas Gregory, Executive Assistant

If to B-P Trucking, Inc.:

B-P Trucking, Inc.
P.O. Box 386
65 Nickerson Road
Ashland, MA 01721
Attn: Mr. Gary DePaolo

Section 8.03 Applicable Law

This Agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts. Each of the parties, to the extent that it may lawfully do so, hereby consents to the jurisdiction of the courts of the Commonwealth and the United States District Court for the District of Massachusetts, as well as to the jurisdiction of all courts from which an appeal may be taken from such courts, for the purposes of any suit, action or other proceeding arising out of any of its obligations arising hereunder or with respect to the transactions contemplated hereby and expressly waives any and all objections which it may have as to the venue in any such courts.

ARTICLE IX. SEVERABILITY

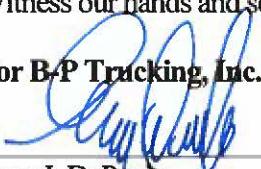
If any provision of this Agreement is held invalid or unenforceable, the parties agree that such provision shall be modified consistent with the original intent of the parties so as to be enforceable and remainder of the Agreement shall remain in full force and effect. In any section, paragraph, clause or provision of this Agreement shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Agreement shall be unaffected by such adjudication and all of the remaining provisions of this Agreement shall remain in full force and effect as though such section, provision, clause or provision of this Agreement, or part thereof, had not been included herein, unless such remaining provisions, standing alone, are incomplete and incapable of being executed in accordance with the intent of the parties to this Agreement.

Any provision of this Agreement which is prohibited, unenforceable, or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability, or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

The parties hereto indicate their approval of this Agreement by their authorized signatures below.

Witness our hands and seals this 26 day of October, 2021,

For B-P Trucking, Inc. :



Gary J. DePaolo,
Vice President
Hereunto duly authorized.

Witness our hands and seals this 15 day of November 2021,

For the Town of Hudson, by its Board of Health:



Michael Delfino, Chairperson
With no personal liability,
Hereunto duly authorized.



Christie Vaillancourt, Board Member
With no personal liability,
Hereunto duly authorized.



Cassia Monteiro, Board Member
With no personal liability,
Hereunto duly authorized.