

# FILE COPY

## SOLID WASTE MANAGEMENT AGREEMENT

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 (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, white goods, bulky wastes and related items and materials; and

Whereas, during June, 1999, the TOWN issued a Request for Proposals ("RFP"), inviting qualified companies to submit proposals to provide comprehensive solid waste handling services for the residents of Hudson through the operation of the Site as a transfer station in accordance with M.G.L. c. 111, § 150A and 310 CMR 19.00; and

WHEREAS, B-P submitted a proposal to the TOWN dated June 16, 1999 in response to the RFP (the "B-P Proposal"); and

WHEREAS, B-P was selected by the TOWN to enter into a contract to provide solid waste services for the TOWN under the terms of the RFP and the B-P Proposal.

### 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) \$10.00 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

#### 1.1 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;
- (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 and;
- (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 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.

## **1.2 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, judgement, 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 enforceable in accordance with its terms; and

(e) The CONTRACTOR agrees that it is an independent agent and not an employee of the TOWN for any purpose.

## ARTICLE II SERVICES TO BE PROVIDED BY CONTRACTOR

### **2.1 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.

### **2.12 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.

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.

#### **2.1.3 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 limitations, 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.

#### **2.1.4 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.

## 2.2 Specific Description of Services

The following describes in more detail specific 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.

### 2.2.1 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.

The CONTRACTOR may at its expense make such improvements as it shall deem necessary or appropriate to enable it to operate a transfer station at the Site and to otherwise perform its obligations as provided herein. Any buildings or improvements to the present building constructed as part of the work hereunder shall become the property of the TOWN, provided that all fixtures and equipment purchased by the CONTRACTOR shall remain the property of the CONTRACTOR.

The CONTRACTOR shall operate the 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 following are the intended operational hours:

|            |                        |
|------------|------------------------|
| 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 7:00 p.m. |
| Friday:    | 8:00 a.m. to 4:00 p.m. |
| Saturday:  | 8:00 a.m. to 3:30 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.

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 in 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 that is brought to the Site from outside of the TOWNS boarders. The Fee will be \$0.50 per ton, payable to the TOWN on a quarterly basis with supporting documentation.

"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, Sludge's, or Resusable 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 approiate 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 the right to modify the materials accepted if market conditions warrant and any changes will be specified by the CONTRACTOR and approved by the TOWN.

#### **2.2.2 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.

#### **2.2.3 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.

#### **2.2.3 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.

### **2.3 Administration and Fees**

Fees charged to Town of Hudson residents shall be:

\$1.00 per bag or barrel of household waste, not to exceed 30 gallons, delivered by residents who display the proper transfer station decal. Each additional 30 gallon bag or barrel is also \$1.00 each. Bags or barrels in excess of 30 gallons will be charged proportionally;

\$15.00 per appliance for white goods (refrigerators and air conditioning units must have certification that the refrigerant was recovered and recycled by an EPA certified recovery service to be accepted);

\$5.00 per passenger car tire;

\$85.00 per ton for construction and demolition (C&D) materials, with a minimum charge of \$25.00;

\$85.00 per ton for bulky items, with a minimum charge of \$25.00;

\$85.00 per ton for brush, with a minimum charge of \$25.00;

No charge for yard and organic waste;

No charge for motor oil; and

No charge for materials brought to the recycling drop-off center.

Fees charged by the CONTRACTOR shall not change during the original one-year term, but may be adjusted pursuant to negotiation with the TOWN of any renewal of the Agreement.

The CONTRACTOR shall be responsible for billing and collecting payments from the users of the Site.

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 to operate a transfer station and conduct activities described herein for the term of one (1) year from the date of this Agreement. By mutual agreement of the parties, the term of this license may be extended for up to five (5) additional two (2) year terms, provided that either party may terminate this Agreement in accordance with the provisions of Article VI. The parties agree to begin negotiations on said renewals or on any successor contract no later than ninety (90) days before the end of the term of the contract then in force.

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**

##### **5.1 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 judgements 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 CONTACTOR 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;
- ◆ 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."; and

- ◆ 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.

### **5.1.1 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.

### **5.1.2 Comprehensive General Liability Insurance**

A Comprehensive General Liability policy shall be obtained to provide for a limit of not less than the amount of \$1,000,000 for all damages arising out of bodily injuries to or death of one person and subject to that limit for each person, a total limit of \$2,000,000 for all damages arising out of bodily injuries to or death of two or more persons in any one occurrence; and insurance providing for a limit of not less than \$1,000,000 for all damages arising out of injury to or destruction of property in any occurrence and, subject to that limit per occurrence, a 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. Bodily injury insurance will include extraterritorially and guest coverage.

### **5.1.3 Vehicle Liability**

The CONTRACTOR shall maintain vehicle liability insurance as required by the Commonwealth of Massachusetts, covering all owned and hired vehicles.

### **5.1.4 Pollution Liability**

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

### **5.1.5 Umbrella**

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

## **5.2 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.

## **ARTICLE VI DEFAULT AND REMEDIES; TERMINATION**

### **6.1 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 party 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 and Event of Default only if:
    - A) 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; 20 unless corrected within twenty-one (21) days of such notice, such default(s) 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
    - B) Within twenty-one (21) days from the date of receipt of such notice, the party allegedly in breach shall have neither corrected such default nor initiated reasonable steps that will substantially correct the alleged default within sixty (60) days after receipt of such notice;

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

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.

## **ARTICLE VII** **ASSIGNMENT OR AMENDMENT OF AGREEMENT**

### **7.1 Assignment**

- a) This Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties to this Agreement; provided, however, that except for any assignments authorized hereunder, neither this Agreement nor any interest herein shall be transferred or assigned by either party hereto except with the consent in writing of the other party hereto, and any attempt to assign without such consent shall be void, except as provided in subparagraph (b) herein.
- b) Subject to subparagraph (a) herein, the CONTRACTOR shall require any assignee to become responsible to perform all terms and conditions of this Agreement which relate to the services being assigned.

### **7.2 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.

### **7.3 Beneficiaries**

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

## ARTICLE VIII MISCELLANEOUS

### 8.1 Indemnification's

- a) The CONTRACTOR shall fully indemnify, hold harmless and defend the TOWN for all claims, demands, payments, suits, actions, recoveries and judgements of every description, whether or not founded in law, brought ~~or~~ recovered against the TOWN, by reason of any act of omission of the CONTRACTOR, its agents, or employees in the execution of this Agreement or in consequence of insufficient protection, or for the use of any patented invention by the CONTRACTOR. 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 harmless and defend the CONTRACTOR for all claims, demands, payments, suits, actions, recoveries and judgments of every description, whether or not founded in law, brought or recovered against the CONTRACTOR, by reason of any act of 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.

### 8.2 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.

If to the TOWN:

Board of Health  
78 Main Street  
Hudson, MA 01749

And

Paul Blazar  
Executive Assistant  
Board of Selectmen  
78 Main Street  
Hudson, MA 01749

If to B-P Trucking, Inc.:

Mr. Joseph P. DePaolo  
B-P Trucking, Inc.  
P.O. Box 386  
47-55 Nickerson Road  
Ashland, MA 01721

**8.3 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 my hand and seal this 1 <sup>st</sup> day of July, 1999, for B-P Trucking, Inc.:

Joseph DePaolo  
Joseph P. DePaolo  
President

Witness our hands and seals this 1 <sup>st</sup> day of July, 1999, for the Town of Hudson:

Dale P. Nadeau 6/30/99  
Dale Nadeau

James Saart

Daniel Ehntholt 6/30/99  
Daniel Ehntholt

## **FIRST AMENDMENT TO AND RENEWAL OF SOLID WASTE SERVICES AGREEMENT**

This First Amendment to and Renewal of the Solid Waste Services Agreement, dated July 1, 1999 is made and entered as of the last date entered below, by and between the Town of Hudson, Massachusetts (the "TOWN"), a 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 (together with its successors and assigns, the "CONTRACTOR").

### **RECITALS**

WHEREAS, the TOWN and the CONTRACTOR entered into a Solid Waste Services Agreement (the "Agreement") for the CONTRACTOR to provide comprehensive solid waste handling services at the solid waste transfer station located on Municipal Drive (off Cox Street) in Hudson (the "Site"); and

WHEREAS, pursuant to Article IV of the Agreement, the parties may, by mutual agreement, extend the Agreement for up to five (5) additional two (2) year terms; and

WHEREAS, pursuant to Section 7.2 of the Agreement, the parties agreed that it may be necessary to amend the Agreement during the term of the Agreement and that the Agreement may be amended in writing executed in the same manner as the Agreement itself; and

WHEREAS, the TOWN and the CONTRACTOR want to renew the Agreement for an additional term and in so doing also want to amend certain provisions of the Agreement;

NOW THEREFORE, in order to confirm their mutual agreement and understanding with respect to the extension and amendment of the Agreement, the TOWN and B-P agree as follows:

**1. At the end of Article I, section 1.2 the following section has been added:**

(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.

**2. The hours of operation provision of Article II, section 2.2.1 shall be amended to read as follows:**

*Thursday: 8:00 a.m. to 4:00 p.m.*

**3. The fee provision of Article II, section 2.3 shall be amended to read as follows:**

*\$1.00 per bag or barrel of household waste, not to exceed 30 gallons, delivered by residents who display the proper transfer station decal. Each additional 30-gallon or smaller bag or barrel is also \$1.00.*

*\$2.00 per bag or barrel of household waste, 30 gallons and larger in size, delivered by residents who display the proper transfer station decal. Each additional 30-gallon or larger bag or barrel is also \$2.00. Bags and barrels in excess of 55 gallons will be charged proportionally to size.*

4. The first paragraph of Article IV is amended to read as follows:

*The CONTRACTOR shall have an exclusive license to utilize the Site to operate a transfer station and conduct activities described herein for an additional term of five (5) years to run from July 1, 2000 until June 30, 2005. By mutual agreement of the parties, the term of this license may be extended for up to two (2) additional five (5) year terms, provided that either party may terminate this Agreement in accordance with the provisions of Article VI. The parties agree to begin negotiations on said renewals or on any successor contract no later than ninety (90) days before the end of the term of the contract then in force.*

5. The following section has been added to Article V, after section 5.2:

5.3 Operating Names of Insurance 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 V hereof.

6. Article VIII, section 8.1 is amended to read as follows:

a) *The CONTRACTOR shall fully indemnify, hold and defend the TOWN for all claims, demands, payments, suites, actions, recoveries and judgments of every description, whether or not founded in law, brought or recovered against the TOWN, by reason of any act or omission of the CONTRACTOR, its agents, or employees in the execution of this Agreement or in consequence of insufficient protection, or for the use of any patented invention by the CONTRACTOR. 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.*

7. Except as amended herein, the Solid Waste Services Agreement between the parties shall remain in full force and effect.

\* \* \* \*

The parties hereto indicate their approval of this **First Amendment to and Renewal of the Solid Waste Service Agreement** by their authorized signatures below.

Witness my hand and seal this 31<sup>st</sup> day of May, 2000 for B-P Trucking, Inc.:

Joseph P. DePaolo  
Joseph P. DePaolo  
President

Witness my hands and seals this 31<sup>st</sup> day of May, 2000 for the Town of Hudson, the  
The duly elected Board of Health:

Dale P. Nadeau  
Dale Nadeau

James Saart  
James Saart

Daniel Ehntholt  
Daniel Ehntholt

## SECOND AMENDMENT TO AND RENEWAL OF SOLID WASTE SERVICES AGREEMENT

This second Amendment to and Renewal of the Solid Waste Services Agreement, dated July 1, 1999 is made and entered as of the last date entered below, by and between the Town of Hudson, Massachusetts (the "TOWN"), a political subdivision of the Commonwealth of Massachusetts and B-P Trucking, Inc. ("CONTRACTOR"), a Massachusetts corporation with offices at 47-65 Nickerson Road, Ashland, Massachusetts (together with its successors and assigns, the "CONTRACTOR").

### RECITALS

WHEREAS, the TOWN and the CONTRACTOR entered into a Solid Waste Services Agreement (the "Agreement") for the CONTRACTOR to provide comprehensive solid waste handling services at the solid waste transfer station located on Municipal Drive (off Cox Street) in Hudson (the "Site"); and

WHEREAS, pursuant to Article IV of the amended Agreement, the parties may, by mutual agreement, extend the Agreement for up to two (2) additional five (5) year terms; and

WHEREAS, pursuant to Section 7.2 of the Agreement, the parties agreed that it may be necessary to amend the Agreement during the term of the Agreement and that the Agreement may be amended in writing executed in the same manner as the Agreement itself; and

WHEREAS, the TOWN and the CONTRACTOR want to renew the Agreement for an additional term and in so doing also want to amend certain provisions of the Agreement;

NOW THEREFORE, in order to confirm their mutual agreement and understanding with respect to the extension and amendment of the Agreement, the TOWN and CONTRACTOR agree as follows:

**1. At the end of Article II, section 2.3 the following section has been added:**

*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 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 insurance cost increases. Such consent shall not be unreasonably withheld so long as Contractor provides supporting documentation to evidence such cost increases. Notwithstanding the foregoing, CONTRACTOR agrees that no increases will be prior to July 1, 2004.*

**2. The first paragraph of Article IV is amended to read as follows:**

*The CONTRACTOR shall have an exclusive license to utilize the Site to operate a transfer station and conduct activities described herein for an additional term of fifteen (15) years to run from November 1, 2002 until October 31, 2017. Thereafter, CONTRACTOR may extend the term of this license for up to one (1) additional five (5) year term, provided that CONTRACTOR has provided ninety (90) days*

advance written notice to the TOWN of its intent to renew and provided that CONTRACTOR at the time of the renewal notice is not in material breach of any provision of this Agreement.

3. Except as amended herein, the Solid Waste Services Agreement between the parties dated July 1, 1999 shall remain in full force and effect.

\* \* \* \*

The parties hereto indicate their approval of this **Second Amendment to and Renewal of the Solid Waste Service Agreement** by their authorized signatures below.

Witness my hand and seal this 13<sup>th</sup> day of November, 2002 for B-P Trucking, Inc.:

Joseph P. DePaolo  
Joseph P. DePaolo  
President

Witness my hands and seals this 13 day of November, 2002 for the Town of Hudson, the  
The duly elected Board of Health:

Dale P. Nadeau  
Dale Nadeau

James Saart  
James Saart

Daniel Ehntholt  
Daniel Ehntholt

## THIRD AMENDMENT TO THE SOLID WASTE SERVICES AGREEMENT

The Third Amendment to the Solid Waste Services Agreement dated July 1, 1999 is made and entered as of the last date entered below, by and between the Town of Hudson, Massachusetts (The "TOWN") a 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 (together with its successors and assigns, the "CONTRACTOR")

### RECITALS

WHEREAS, The TOWN and the CONTRACTOR entered into a Solid Waste Agreement (the "Agreement") for the CONTRACTOR to provide comprehensive solid waste handling services at the solid waste transfer station located on Municipal Drive in Hudson (the "Site"); and

WHEREAS, pursuant to Section 7.2 of the Agreement, the parties agreed that it may be necessary to amend the Agreement during the term of the Agreement and that the Agreement may be amended in writing executed in the same manner as the Agreement, itself; and

WHEREAS, the TOWN and the CONTRACTOR desire to amend certain provisions of the Agreement;

NOW THEREFORE, in order to confirm their mutual agreement and understanding with respect to the amendment of the agreement, the Town and B-P agree as follows:

The following section has been added to Article V, Insurance and Royalties, following section 5.1.5:

#### 5.1.6 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. 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 5 shall name the Town of Hudson as primary additional insured.

The parties hereto indicate their approval of this Third Amendment to the Solid Waste Service Agreement by their authorized signatures below:

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2006 for B-P Trucking Inc.:

Joseph P. DePaolo

Joseph P. DePaolo, President  
Hereunto duly authorized

Witness our hands and seals this 8<sup>th</sup> day of MARCH, 2006 for The Town of Hudson the duly elected Board of Health with no personal liability to themselves:

Dale P. Nadeau

Dale Nadeau

Daniel Ehntholt

Daniel Ehntholt

James Saart

James Saart

## B P Trucking Inc

Supplement to Binder # BD6042602665  
The Getchell Companies

04/26/2006

## Additional Named Insureds

| Named Insured           | Entity Type |
|-------------------------|-------------|
| DePaolo Realty Trust    | Trust       |
| DePaolo Realty Trust II | Trust       |

## Locations List

| Loc # Bldg # | Address, County, City, State Zip         |
|--------------|--|
| 00001 00001  | 55 Nickerson Road<br>Ashland, MA 01721   |
| 00002 00001  | 47 Nickerson Road<br>Ashland, MA 01721   |
| 00003 00001  | 300 Cox Street<br>Hudson, MA 01749       |
| 00003 00002  | 300 Cox Street<br>Hudson, MA 01749       |
| 00004 00001  | 65 Nickerson Avenue<br>Ashland, MA 01721 |

## B F Trucking Inc

Supplement to Binder # B06042602665  
 The Getchell Companies

04/26/2006

## Property List

Loc # Bldg # Address, County, City, State Zip  
 00003 00001 300 Cox Street  
 Hudson, MA 01749,  
 Hudson, MA 01749

| Subject                  | Valuation | Cause of Loss             | Amount    | Deductible | Coins. % |
|--------------------------|-----------|---------------------------|-----------|------------|----------|
| Business Personal Proper | RC        | Spec Inc Theft            | 5 000     | 1000       | 100      |
| BI&EE other than Rental  |           | Special                   | 5,745 740 | 24         | 100      |
| Equipment Breakdown      |           | Equipment Breakdown       |           | 1000       |          |
| Building                 | RC        | Special (Including theft) | 450 000   | 1000       | 100      |

Loc # Bldg # Address, County, City, State Zip  
 00003 00002 300 Cox Street  
 Hudson, MA 01749

| Subject                  | Valuation | Cause of Loss      | Amount | Deductible | Coins. % |
|--------------------------|-----------|--------------------|--------|------------|----------|
| Building                 | RC        | Special Incl theft | 20 000 | 1000       | 100      |
| Your Business Personal P | RC        | Special Incl Theft | 5.000  | 1000       | 100      |
| Equipment Breakdown      |           | Special            |        | 1000       |          |

**Additional Coverages and Factors****04/26/2006****Line of Business Coverages for General Liability**

| Coverage               | Limits              | Ded/Ded Type | Rate | Premium | Factor |
|------------------------|---------------------|--------------|------|---------|--------|
| General Aggregate      | 2000000             |              |      |         |        |
| Products/Completed Ops | 2,000,000           |              |      |         |        |
| Aggregate              |                     |              |      |         |        |
| Each Occurrence        | 1000000             |              |      |         |        |
| Personal & Advertising | 1000000             |              |      |         |        |
| Injury                 |                     |              |      |         |        |
| Fire Damage            | 100000              |              |      |         |        |
| Medical Expense        | 5000                |              |      |         |        |
| Employee Benefits      | 1,000,000/1,000,000 | 1,000        |      |         |        |

## **FOURTH AMENDMENT TO AND RENEWAL OF SOLID WASTE SERVICES AGREEMENT**

This Fourth Amendment to and Renewal of the Solid Waste Services Agreement, dated July 1, 1999 is made and entered as of the last date entered below, by and between the Town of Hudson, Massachusetts (the "TOWN"), a political subdivision of the Commonwealth of Massachusetts and B-P Trucking, Inc. ("CONTRACTOR"), a Massachusetts corporation with offices at 47-65 Nickerson Road, Ashland, Massachusetts (together with its successors and assigns, the "CONTRACTOR").

### **RECITALS**

WHEREAS, the TOWN and the CONTRACTOR entered into a Solid Waste Services Agreement (the "Agreement") for the CONTRACTOR to provide comprehensive solid waste handling services at the solid waste transfer station located on Municipal Drive (off Cox Street) in Hudson (the "Site"); and

WHEREAS, pursuant to the Second Amendment to the Agreement, executed by the parties on November 12, 2002, the parties agreed to extend the Agreement until October 31, 2017; with the right of the Contractor to further extend it October 31, 2022, upon ninety (90) days prior written notice to the Town;

WHEREAS, pursuant to Section 7.2 of the Agreement, the parties agreed that it may be necessary to amend the Agreement during the term of the Agreement and that the Agreement may be amended in writing executed in the same manner as the Agreement itself; and

WHEREAS, the TOWN and the CONTRACTOR want to renew the Agreement for the previously agreed upon extended additional term and in so doing also want to amend certain provisions of the Agreement;

NOW THEREFORE, in order to confirm their mutual agreement and understanding with respect to the extension and amendment of the Agreement, the TOWN and CONTRACTOR agree to amend the Agreement, as previously amended, as follows:

**1. Article II, Section 2.2.1 is amended by deleting paragraph six which reads:**

*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 to the TOWN A Host Community Fee ("FEE") for all acceptable Solid Waste that is brought to the site from outside of the Town's borders. The fee will be \$0.50 per ton, payable to the TOWN on a quarterly basis with supporting documentation.*

**and replacing it with new paragraph six as follows:**

*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 to the TOWN A Host Community Fee ("FEE") for all acceptable Solid Waste*

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2010 for B-P Trucking, Inc.:

\_\_\_\_\_  
Joseph P. DePaolo  
President

Witness my hands and seals this 12<sup>th</sup> day of January, 2010 for the Town of Hudson, the  
duly elected Board of Health with no personal liability to themselves:

Dale P. Nadeau 1/12/10  
Dale P. Nadeau 1/12/10  
Dale P. Nadeau 1/12/10