

**INTER-MUNICIPAL AGREEMENT**  
**PROCESSING and DISPOSAL AGREEMENT**

THIS INTER-MUNICIPAL AGREEMENT (the "Agreement") is entered into as of the 1<sup>st</sup> day of January 2020 by and between **SANITARY DISTRICT No. 1, TOWN OF HEMPSTEAD, NEW YORK**, a municipal corporation organized under the Nassau County Civil Divisions Act and having its office at Bay Boulevard, Lawrence, Nassau County, New York 11559 (hereinafter the "District"), and the **CITY OF LONG BEACH, NEW YORK**, a municipal corporation of the State of New York, having its principal offices at 1 West Chester Street, Long Beach, New York 11561 (hereinafter the "Municipality") and each individually referred to as "Party" and/or collectively the "Parties" provides as follows:

**RECITALS:**

**WHEREAS**, municipal corporations in the State of New York, including the Parties herein, are authorized under General Municipal Law §119-o to enter into agreements for the performance among themselves or one for the other of their respective functions, powers and duties on a cooperate or contract basis;

**WHEREAS**, the Municipality currently generates and/or collects Acceptable Solid Waste, Construction & Demolition Debris, and Recyclable Materials (collectively, the "Acceptable Materials"), as defined herein, that are suitable for disposal, processing and/or marketing by the District; and

**WHEREAS**, the District has contracted for services pursuant to a Request for Proposal process under New York State General Municipal Law § 120 (w) and the Parties wish to utilize shared services; and

**WHEREAS**, the District owns a transfer station, operated by its Contractor, at 2 Bay Boulevard, Lawrence, New York 11559 (the "Facility").

**WHEREAS**, the Municipality wishes to have the District and/or its Contractor accept, process and/or dispose of the Municipality's Acceptable Materials, and the District and/or its Contractor wishes to accept such material for processing and/or disposal under the terms set forth below; and

**WHEREAS**, the District and the Municipality have agreed to enter into this Agreement pursuant to which the District has agreed to accept, process and/or dispose of, and the Municipality has agreed to deliver and pay for the acceptance, processing and/or disposal of its Acceptable Solid Waste, Construction & Demolition Debris and Recyclable Materials, all in accordance with the terms and conditions set forth herein; and

WHEREAS, the cooperative action of the District and the Municipality is expected to be for the economic and environmental benefit of each Party and will service a public purpose for each Party; and

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE MUTUAL COVENANTS AND AGREEMENT HEREIN CONTAINED, THE PARTIES AGREE, WARRANT AND COVENANT AS FOLLOWS:

**ARTICLE 1. General Provisions.**

- 1.1 Whereas Clauses. The Whereas Clauses are hereby repeated and incorporated into and made a part of this Agreement.
- 1.2 Definitions. Certain capitalized terms are defined in Article 13.
- 1.3 Quantity. During the Term, the Municipality shall only deliver Acceptable Materials to the Facility in amounts equal to the Annual Commitment and pay the Acceptance Fee therefore.
- 1.4 Delivery Schedule. During the Term, the Municipality may deliver Acceptable Materials to the Facility, exclusive of Holidays, Monday through Friday from 6:00 a.m. to 3:30 p.m. and on Saturday from 6:00 a.m. to 1:00 p.m.
- 1.5 Quality. The Municipality shall deliver only Acceptable Materials hereunder.
- 1.6 Delivery Vehicles. Acceptable Materials shall be delivered by the Municipality, at the Municipality's sole cost and expense, to the Facility in enclosed container vehicles or enclosed compactor vehicles complying with District's and its Contractor's identification procedures and complying with all rules, regulations and procedures which are required by any governmental entity, including but not limited to, any local rules.
- 1.7 Term. This Agreement shall remain in full force and effect during the Term, as hereafter defined. Upon expiration of the Term, the obligations of the District and the Municipality under this Agreement shall terminate, provided, however, that the provisions of Section 6.2 shall survive such termination.

**ARTICLE 2. Facility Procedures**

- 2.1 Acceptance/Rejection of Solid Waste. From and after the Effective Date and until this Agreement is terminated or expires, the District shall accept at the Facility, Acceptable Materials, as hereafter defined, in accordance with the terms of this Agreement, provided however, that the District or its Contractor shall have no obligation to accept (i) Acceptable Materials it does not accept by reason of an Event of Force Majeure or due to the fault of the Municipality, (ii) Acceptable Materials that are not delivered in

accordance with the requirements of this Agreement, and (iii) Acceptable Materials not delivered by the Municipality by reason of an Event of Force Majeure. The District, or its Contractor, shall have the right in their sole discretion to reject delivery of any material which does not constitute Acceptable Materials. Ownership of Unacceptable Waste delivered to the Facility shall remain with the Municipality and shall never pass to the District or its Contractor. In the event that the District or its Contractor determines that any material delivered to the Facility by the Municipality does not constitute Acceptable Materials, the provisions of Section 4.1 shall apply. Title to Acceptable Materials shall pass to the District or its Contractor upon its inspection and acceptance at the Facility.

2.2 Delivery Procedures. The delivery of Acceptable Materials to the Facility shall be regulated by procedures generally applicable to customers utilizing the Facility reasonably determined by the District or its Contractor. The delivery procedures shall have reasonable terms and conditions consistent with the then operation of the Facility.

2.3 Vehicle Identification. The District or its Contractor may provide for a system for the identification of delivery vehicles and shall also provide that the District or its Contractor may place unqualified reliance on representations made by operators of vehicles owned by or operated on behalf of the Municipality with proper identification as to the Person or entity against whose account the Acceptable Materials delivered is to be charged. The District or its Contractor shall be under no obligation to accept Acceptable Materials from Persons or vehicles not complying with the identification system or the delivery procedures established by the District or its Contractor. The District or its Contractor may enforce compliance with identification and delivery procedures by denial of disposal privileges and such other means as it may reasonably determine to be necessary and appropriate.

### ARTICLE 3. Fees

#### 3.1 Fees

3.1.1 As provided in Section 5.1, the Municipality shall pay to the District the Acceptance Fee for each Ton of Acceptable Materials delivered by or on behalf of the Municipality to the Facility and accepted by the District or its Contractor, together with any other Fees payable hereunder, including, without limitation, any surcharges.

3.1.2 In the event the Municipality desires to deliver Acceptable Materials to the Facility outside of the hours and/or days as outlined in Section 1.4, the Municipality shall notify the District and its Contractor, as soon as practicable, of the Municipality's need and desire to deliver Acceptable Materials to the Facility beyond the hours outlined in Section 1.4. Upon consent of both the District and its Contractor, the Municipality may deliver Acceptable Materials beyond the hours outlined in Section 1.4 and the Municipality shall pay to the District the Extended Hours Fee for each hour the Facility remains open to accept delivery of the Municipality's Acceptable Materials. In the event the Facility is opened for the acceptance of the Municipality's Acceptable Materials on a Sunday or a

Holiday, the Municipality shall pay the Extended Hours Fee for each hour the Facility remains open to accept delivery of the Municipality's Acceptable Materials but at a minimum the Municipality shall pay the District an Extended Hours Fee of four (4) hours.

- 3.1.3 The obligations of the Municipality to make payments pursuant to the terms hereunder shall not be subjected to any set-off, abatement, counterclaim, existence of a dispute or any reason, known or unknown, foreseeable or unforeseeable, which might otherwise constitute a legal or equitable defense or discharge of the liabilities of the Municipality hereunder or limit recourse to the Municipality. Payment pursuant to this provision shall not prejudice the rights of the Municipality to claim abatements, refunds or adjustments to which it is entitled under this Agreement.

### 3.2 Adjustment of Fees

- 3.2.1 If in any Contract Year the District, its Contractor, or the Facility incur Force Majeure Costs, the District shall provide a reasonably detailed written notice thereof to the Municipality. The Municipality shall be responsible to pay its proportionate share of such Force Majeure Costs, based on the material the Municipality delivers to the Facility, to the District upon receipt of an invoice. Force Majeure Costs may be payable at the District's option as a lump sum payment or as an increase in the Acceptance Fee payable under this Agreement. "Force Majeure Costs" shall mean Operating Cost Increases incurred during the Contract Year as a result of a Force Majeure Event. "Operating Cost Increase" means any increase in the Facility's reasonable direct costs of operating the Facility that arises from a Force Majeure Event less any insurance payments received in connection with such Force Majeure Event.

## ARTICLE 4. Quality of Material

### 4.1 Unacceptable Waste

- 4.1.1 The Municipality agrees that it shall not deliver Unacceptable Waste to the District or its Contractor. If a delivery of material is made which contains both Acceptable Materials and Unacceptable Waste, the District or its Contractor may separate and accept Acceptable Materials, to the extent such separation can be achieved without unreasonable expense or the use of unreasonable effort; the entire delivery shall constitute Unacceptable Waste if the Unacceptable Waste cannot be separated from the Acceptable Materials, without the use of unreasonable efforts or expense of the District or its Contractor to cause such separation. If the Municipality delivers Unacceptable Waste to the Facility, the District or its Contractor at their sole option may (i) reject acceptance of such Unacceptable Waste and require the Municipality to reload and dispose of such Unacceptable Waste at the Municipality's sole cost and expense, or (ii) if the District or its Contractor does not discover such Unacceptable Waste in time to reject and reload such Unacceptable Waste, the District or its Contractor may, after giving the Municipality telephonic notice thereof, dispose of such Unacceptable Waste and charge

the Municipality all direct and indirect costs incurred by the District or its Contractor for such disposal, unless the Municipality elects to dispose of the waste, it shall be required to do so within 24 hours of notification, if the waste is Hazardous Waste, and within 48 hours of notification if the waste is Unacceptable Waste but not Hazardous Waste. If after electing to do so, the Municipality does not dispose of the Unacceptable Waste within the prescribed time period, the District or its Contractor may dispose of the Unacceptable Waste without further notice to the Municipality and the Municipality shall be required to pay the fees and costs set forth above. No notice shall be required of the District or its Contractor to the Municipality to dispose of Unacceptable Waste in emergency situations where a delay in such disposal would constitute a hazard to public health and safety. Nothing herein contained shall obligate the District or its Contractor to screen material or to detect Unacceptable Waste delivered by the Municipality, and the Municipality shall remain liable for all damages of any nature resulting from the delivery by the Municipality of Unacceptable Waste.

4.1.2 If the District or its Contractor elects to dispose of such Unacceptable Waste, the Municipality shall indemnify and hold the District and its Contractor harmless from and against all liabilities, losses, damages, costs, expenses, and disbursements, including reasonable legal fees and expenses arising out of the processing or disposal by such Person of Unacceptable Waste or waste not constituting Acceptable Materials delivered by or on behalf of the Municipality and incidental and consequential damages incurred by such Person. Such disposal by the District or its Contractor shall not constitute acceptance by the District or its Contractor, transfer of ownership to the District or its Contractor, consent by the District or its Contractor to a pattern of repeated deliveries by the Municipality of Unacceptable Waste, or waiver by the District or its Contractor of any remedies it may have against the Municipality because of the delivery of Unacceptable Waste. All activities of the District or its Contractor with respect to such Unacceptable Waste delivered to or abandoned at the Facility shall be as agent for the Municipality.

#### ARTICLE 5. Billing and Payments

5.1 Payments. The District or its Contractor shall prepare and deliver to the Municipality an invoice reflecting all amounts of Acceptable Materials delivered by and/or on behalf of the Municipality to the Facility in each calendar month within (20) days of the end of each such month. Said invoice shall reflect the type of such Acceptable Materials, and the sums due and owing by the Municipality to the District, together with all additional amounts due from each Party to the other, pursuant to the terms of this Agreement. Each Party shall pay to the other, as applicable, the amount due on said invoice within thirty (30) days of the receipt of the monthly invoice or within forty-five (45) days of the last day the Municipality delivered Acceptable Materials to the Facility in any particular monthly billing cycle, whichever is later. Payment shall be based upon weights recorded at the Facility scale(s), or, if such scales are not available for any reason, at such other scale as may be reasonably agreed upon by the Parties. All scales at the Facility shall be maintained and calibrated by the District in accordance with the standards of the Nassau County Department of Weights and Measures and the laws of the State of New York, but

not less frequently than once every 180 days. Checks for payment issued pursuant to this Agreement shall be made payable to both the District and Contractor as Payees.

5.2 Overdue Charges. Amounts owed to the District thirty (30) days after the invoice due date shall accrue interest each day such invoice is not paid at the maximum rate permitted by applicable law or one percent (1%) per month, whichever is less. The Municipality shall be responsible for any and all costs incurred by the District, including but not limited to reasonable legal expenses, should the Municipality's account be submitted to a District-appointed attorney for collection.

5.3 Disputes. In the event of any dispute over billing, the Party disputing the amount due shall promptly advise the other of the amount at issue and the basis of such dispute, and shall provide such documentary evidence as may support its position. The Parties shall pay all amounts set forth on invoices that are not in dispute pursuant to §5.1 and §5.2, above.

#### **ARTICLE 6. Insurance and Indemnification**

6.1 Insurance. Each Party hereto shall proceed on a self-insured basis, provided however, that all delivery and pickup vehicles shall be insured as required by law. In addition, the Contractor shall provide the Municipality, as additionally insured, with an insurance certificate evidencing insurance as required in the District/Contractor Agreement.

#### **6.2 Indemnity.**

6.2.1 The Municipality shall defend, indemnify and save harmless the District and its Contractor from and against all losses, and all claims, demands, payments, suits, actions, recoveries, judgments, costs and expenses, in connection therewith, of every nature, including but not limited to claims for property damage, bodily injury, or death, by any third party and by or on behalf of the Municipality's contractors, agents, servants or employees, arising out of or in connection with performance of this Agreement and caused, in whole or in part, by the Municipality, its agents, servants or employees.

6.2.2 The District and the Contractor shall defend, indemnify and save harmless the Municipality from and against all losses, and all claims, demands, payments, suits, actions, recoveries, judgments, costs and expenses, in connection therewith, of every nature, including but not limited to claims for bodily injury, or death, by any third party and by or on behalf of the District's contractors, agents, servants or employees, arising out of or in connection with performance of this Agreement and caused, in whole or in part, by the District, its agents, servants or employees.

#### **ARTICLE 7. Governmental Regulation**

7.1 Jurisdiction. The District, its Contractor and the Municipality acknowledge that the collection, transportation and disposition of Acceptable Materials is subject to the

jurisdiction of various governmental agencies, including, without limitation, agencies of the United States of America and the State of New York.

7.2 Compliance. The District, its Contractor and the Municipality agree, at their own expense (subject to the provisions herein relating to Change in Law and Events of Force Majeure), to materially comply with all applicable statutes, rules and regulations applicable to them in connection with this Agreement and the transactions contemplated hereby. Such statutes, rules and regulations may include, without limitation, actions taken by the jurisdiction in which the Facility is located. The Municipality agrees to take all necessary action to cause Persons delivering material on its behalf to the Facility to comply with any law, statute, regulation, order, standard or ordinance of the jurisdiction in which the Facility is located or the State of New York.

## ARTICLE 8. Suspension Due to Force Majeure

### 8.1 Suspension of Obligations

8.1.1 A delay or failure of performance hereunder by either Party shall not constitute an event of default or cause for any liability under this Agreement to the extent caused by an Event of Force Majeure. Such delay or failure shall be excused at any time performance is affected by an Event of Force Majeure and during such period thereafter as may be reasonably necessary for the Party so affected, using its reasonable efforts, to correct the adverse effects of such Event of Force Majeure. If an Event of Force Majeure causes a reduction, but not a complete suspension in the ability of the District and/or its Contractor in connection with the operation of the Facility to accept, process and/or dispose of Acceptable Materials, then subject to (i) the then existing commitments of the District with respect to the Facility, (ii) the reserved capacity requirements for the Landfill, and (iii) the requirements of all applicable permits, consents and approvals of the State of New York and other governmental entities, the District and its Contractor shall use their reasonable efforts to allocate a portion of such reduced capacity of the Facility to the Municipality; provided, that such allocation shall be determined by the District or its Contractor in their sole reasonable discretion. An act or event of Force Majeure shall not terminate or suspend the Municipality's obligation to make payments pursuant to this Agreement for material which has been delivered to the Facility prior to a suspension for an Event of Force Majeure.

8.1.2 The Party relying on an Event of Force Majeure as justification for a delay or failure of performance hereunder shall give the other Party prompt written notice of such Event of Force Majeure.

8.2 Efforts to Remove Condition. A Party whose performance is adversely affected by an Event of Force Majeure shall use its reasonable efforts to overcome or remove such Event of Force Majeure. After the completion of a suspension due to an Event of Force Majeure and to the extent the District and/or its Contractor have the capacity to accept, process and dispose of Acceptable Materials, the District and its Contractor shall use their reasonable efforts to accept Acceptable Materials collected by and/or on behalf of the

Municipality which the Municipality was unable to deliver to the Facility during the Event of Force Majeure period. The District or its Contractor shall not be obligated to accept Acceptable Materials to the extent that the acceptance, processing and/or disposal of such material is contrary to or in violation of or would cause the District and/or its Contractor to be in violation of any permits and/or approvals necessary for Facility operations.

- 8.3 Termination of Contract. If an act or Event of Force Majeure causes a complete or partial suspension in the ability of either Party to accept, process and dispose of Acceptable Materials, in the case of the District, or deliver Acceptable Materials in the case of the Municipality, and said suspension continues for a period of ninety (90) days or more, either Party may terminate this Agreement on thirty (30) days written notice and the obligation to accept, process, dispose and deliver Acceptable Materials hereunder (but such termination shall not terminate the Parties' obligations with respect to material delivered prior to such termination).

## ARTICLE 9. DEFAULT

- 9.1 Events of Default of the District. The following shall be an event of default by the District under this Agreement.

9.1.1 The District makes a general 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 any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect, or if there shall have been filed any such proceeding in an order for relief is entered or which is not dismissed for a period of sixty (60) days or more or if by any act indicates its consent to, approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of any custodian, receiver of or any trustee for it or any substantial part of its property or suffers any such custodianship, receivership or trusteeship to continue undischarged for a period of sixty (60) days or more.

9.1.2 The District fails to observe and perform any other material term, covenant or agreement contained in this Agreement and such failure continues for a period of twenty (20) business days, excluding, Holidays, Saturdays and Sundays, after written notice to the District specifying the nature of such failure and requesting that it be remedied; or

- 9.2 Events of Default of the Municipality. Each of the following shall be an event of default by the Municipality under this Agreement.

9.2.1 The Municipality fails to timely pay any amounts, including without limitation, the Acceptance Fee, and any amounts payable pursuant to Sections 5.2 or 5.3 which become due hereunder;



9.2.2 The Municipality fails to observe and perform any other material term, covenant or agreement contained in this Agreement, the delivery procedures or other agreements or policies to which the Municipality is subject and such failure continues for a period of twenty (20) business days, excluding, Holidays, Saturdays and Sundays, after written notice to the Municipality specifying the nature of such failure and requesting that it be remedied; or

9.2.3 The Municipality makes a general 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 any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect, or if there shall have been filed any such proceeding in an order for relief is entered or which is not dismissed for a period of sixty (60) days or more or if by any act indicates its consent to, approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of any custodian, receiver of or any trustee for it or any substantial part of its property or suffers any such custodianship, receivership or trusteeship to continue undischarged for a period of sixty (60) days or more.

9.4 Remedies on Default. Whenever any event of default shall have occurred and be continuing, the non-defaulting Party shall have the following rights and remedies:

9.4.1 Upon twenty (20) business days, excluding Holidays, Saturdays and Sundays, written notice to the District, if the District is then in default, the Municipality shall have the option to terminate this Agreement unless the event of default is fully cured prior to the expiration of such twenty (20) day period or unless during such period the District has taken remedial steps the effect of which would be to enable the District to cure such event of default within a reasonable period of time (which, if the event of default is a default in the payment of monies and results from restraint by a court or regulatory agency, shall mean the undertaking and prosecution of prompt, diligent, good faith efforts to remove such restraint);

9.4.2 Upon twenty (20) business days, excluding Holidays, Saturdays and Sundays, written notice to the Municipality, if the Municipality is then in default, the District shall have the option to terminate this Agreement unless the event of default is fully cured prior to the expiration of such twenty (20) day period or unless during such period the Municipality has taken remedial steps the effect of which would be to enable the Municipality to cure such event of default within a reasonable period of time (which, if the event of default is a default in the payment of monies and results from restraint by a court or regulatory agency, shall mean the undertaking and prosecution of prompt, diligent, good faith efforts to remove such restraint);

9.4.3 Upon written notice to the Municipality, if the Municipality has defaulted, the District shall have the option, without terminating this Agreement, to stop accepting Acceptable Materials delivered or tendered for delivery by the Municipality, until such default is cured or this Agreement is terminated.

#### ARTICLE 10. Representations and Warranties

10.1 Representations and Warranties of the Municipality. The Municipality hereby represents and warrants to the District that the Municipality has the full power and authority to execute and deliver this Agreement to the District and to carry out the transactions contemplated hereby. There is no litigation pending or to the knowledge of the Municipality, threatened, which questions this Agreement or which affect or may affect the transactions contemplated hereby.

10.2 Representations and Warranties of the District. The District hereby represents and warrants to the Municipality that the District has the full power and authority to execute and deliver this Agreement to the Municipality and to carry out the transactions contemplated hereby. There is no litigation pending or to the knowledge of the District, threatened, which questions this Agreement or which affect or may affect the transactions contemplated hereby.

10.3 Liability for Breach. It is understood and agreed that the Parties hereto shall be liable to each other in the manner and to the extent provided by law for any loss or harm occasioned by the breach of any term, covenant, agreement, undertaking or obligation of this Agreement. It is understood and acknowledged by the Parties that neither Party shall be liable to the other Party for any incidental or consequential damages, except as expressly stated in this Agreement. This section shall survive the termination and/or expiration of this Agreement but any applicable Statute of Limitations shall not be tolled.

#### ARTICLE 11. Governing Law.

11.1 The interpretation and performance of this Agreement shall be in accordance with and controlled by the laws of the State of New York. The sole and exclusive forum for the initial determination of any question of law or fact to be determined in any judicial proceeding relating to this Agreement shall be the Supreme Court of the State of New York, County of Nassau.

11.2 The pendency of litigation shall affect neither the obligations of the Parties to make any payment or render any service required by this Agreement nor the rights of the Parties under this Agreement.

#### ARTICLE 12. Miscellaneous

12.1 Entire Agreement. This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties. This Agreement constitutes the entire agreement between the Parties herein in respect of the subject matter hereof.

- 12.2 Waiver. No delay in exercising or failure to exercise any right or remedy accruing to or in favor of either Party hereunder shall impair any such right or remedy or constitute a waiver thereof. Every right and remedy given hereunder or by law may be exercised from time to time and as often as may be deemed expedient by the Parties hereto.
- 12.3 Modifications. This Agreement may not be modified or amended except in writing signed by or on behalf of both Parties by their duly authorized officers.
- 12.4 Successors and Assigns. This Agreement shall inure to the benefit of and bind the respective successors and permitted assigns of the Parties hereto.
- 12.5 Notices. All written notices, reports and other documents required or permitted under this Agreement shall be in writing and shall be deemed to have been given when delivered personally or deposited with a recognized commercial overnight courier addressed to the Party whom notice is being given at its address set forth below. Either Party may change its address by notice similarly given.

If to the District:

Sanitary District No.1  
Town of Hempstead  
Bay Blvd.  
Lawrence, New York 11559  
Attn: George Pappas, District Superintendent

With a copy to:

Nathaniel M. Swergold, Esq., District General Counsel  
124 Cedarhurst Avenue  
Cedarhurst, New York 11516

and

Omni Recycling of Westbury, Inc.  
7 Portland Avenue  
Westbury, New York 11590

If to the Municipality:

The City of Long Beach  
1 West Chester Street  
Long Beach, New York 11561  
Attn.: \_\_\_\_\_

With a copy to:

The City of Long Beach  
Office of the Corporation Counsel  
City Hall, Room 402  
1 West Chester Street  
Long Beach, New York 11561  
Attn: Gregory Kalnitsky, Esq.

- 12.6 Further Actions. Each Party agrees that it will, at its own expense, execute any and all certificates, documents and other instruments, and take such other further actions as may be reasonably necessary to give effect to the terms of this Agreement.
- 12.7 Severability. In the event that any of the provisions, portions, or applications of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the District and the Municipality shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions, portions, or applications thereof shall not be affected thereby.
- 12.8 Assignment. The Municipality may not assign or transfer, directly or indirectly, its interest in and to this Agreement.
- 12.9 Headings for Convenience. The headings in this Agreement are for convenience and reference only and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

### ARTICLE 13. Definitions and Interpretation

- 13.1 Definitions. The following words and phrases shall have the following meanings when used in this Agreement:

"Acceptable Materials" shall mean all Acceptable Solid Waste, Construction & Demolition Debris and Recyclable Materials generated and/or collected by the Municipality and/or on the Municipality's behalf.

"Acceptable Solid Waste" means Municipal Solid Waste, provided however, Acceptable Waste shall not include Unacceptable Waste.

"Acceptable Solid Waste Fee" means the per Ton disposal fee that the Municipality shall pay to the District for each Ton of Acceptable Solid Waste delivered to the Facility by and/or on behalf of the Municipality. The Acceptable Solid Waste Fee consists of both a disposal fee of Eighty Dollars (\$80.00) per Ton and an environmental fee of Five Dollars (\$5.00) per Ton. On January 1, 2021 and each January 1<sup>st</sup> thereafter that this Agreement is in effect, the disposal fee portion of the Acceptable Solid Waste Fee shall be subject to

an increase from the preceding year's rate by the CPI Adjustment. Regardless of the actual CPI Adjustment each year, the disposal fee portion of the Acceptable Solid Waste Fee shall increase at a minimum of two (2.00%) percent each year. The environmental fee portion of the Acceptable Solid Waste Fee shall remain the same each year.

"Acceptance Fee" means the Acceptable Solid Waste Fee; the Construction & Demolition Debris Fee; and the Recyclable Materials Fee.

"Annual Commitment" means, all Acceptable Materials generated within the Municipality and under the control of the Municipality. It is agreed and understood by the Parties that Recyclable Materials shall only be included in the definition of "Annual Commitment" after the Municipality's current contract with its current vendor for acceptance and processing of Recyclable Materials expires on December 31, 2020, if not terminated earlier.

"Change in Law" means either (a) the enactment, adoption, promulgation, modification, written interpretation or reinterpretation, written guideline or repeal, subsequent to the Effective Date, of any law, ordinance, code, rule, regulation or similar legislation by any Federal, State, County or other governmental body, other than an act by a Party hereto, or (b) the modification of or the imposition of any conditions on the issuance, modifications or renewal of any official permit, license or approval subsequent to the Effective Date, which in the case of either (a) or (b), establishes requirements affecting the operation of the Facility which are more burdensome than and adversely inconsistent with the most stringent requirements which are applicable to the Facility, the District or its Contractor, as the case may be, and which are contained in any applicable laws with respect to the Facility in effect as of the Effective Date.

"Construction & Demolition Debris" shall have the same meaning as the term "Construction and demolition debris" or "C&D debris" has in 6 CRR-NY 360.2(b) of the Official Compilation of Codes, Rules and Regulations of the State of New York and shall also include: yard waste, consisting of leaves, branches, and logs under two (2.00") inches in diameter and four (4.00') feet in length; and bulk waste, consisting of large residential items such as couches, dressers, shelving and furniture, but shall not include mattresses. The District and/or its Contractor may require the Municipality to deliver C&D debris, yard waste and/or bulk waste in a separate collection truck.

"Construction & Demolition Debris Fee" means the per Ton disposal fee that the Municipality shall pay to the District for each Ton of Construction & Demolition Debris delivered to the Facility by and/or on behalf of the Municipality. The Construction & Demolition Debris Fee consists of both a disposal fee of Eighty Dollars (\$80.00) per Ton and an environmental fee of Five Dollars (\$5.00) per Ton. On January 1, 2021 and each January 1<sup>st</sup> thereafter that this Agreement is in effect, the disposal fee portion of the Construction & Demolition Debris Fee shall be subject to an increase from the preceding year's rate by the CPI Adjustment. Regardless of the actual CPI Adjustment each year, the disposal fee portion of the Construction & Demolition Debris Fee shall increase at a

minimum of two (2.00%) percent each year. The environmental fee portion of the Construction & Demolition Debris Fee shall remain the same each year.

"Contract Year" means the consecutive twelve-month period beginning January 1<sup>st</sup> and ending December 31<sup>st</sup>.

"Contractor" means Omni Recycling of Westbury, Inc. In the event of a change of the District's Contractor, the District shall promptly notify the Municipality.

"CPI Adjustment" shall mean the 12-month average beginning in January and ending in December of the same year of the Consumer Price Index as reported by the U.S. Department of Labor, Bureau of Labor Statistics for All Items, All Urban Consumers, Non-Seasonally Adjusted for New York-Newark-Jersey City, NY-NJ-PA and reported in the CPI-U detailed report Series ID CUURS12ASA0. Such 12-month average shall be rounded to the same number of decimal places as the monthly average reported in the series. If the CPI-U as described above ever ceases to be published, then the Parties shall substitute, in good faith, a replacement index that most closely resembles the CPI-U as so defined above.

"Effective Date" means the first day of the Term.

"Event of Force Majeure" means the following acts, events or conditions or any combination thereof that has had or may reasonably be expected to have direct, material, adverse effect on the rights or obligations of either Party to this Agreement; provided however, that such act, event or condition shall be beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party under the terms of this Agreement:

- (a) An act of God such as severe natural conditions such as landslide, lightning, earthquake, flood, hurricane, blizzard, tornado or other severe weather conditions, severe sea conditions or similar cataclysmic occurrence, nuclear catastrophe, an act of public enemy, an act of terrorism, war, blockade, insurrection, sabotage, vandalism, theft, riot, general arrest or general restraint of government and people.
- (b) A Change in Law.
- (c) The long term loss of any utility services necessary for the operation of the Facility.
- (d) The unavailability of a Landfill for the disposal of Acceptable Solid Waste and/or Construction & Demolition Debris within two hundred (200) miles of the Facility.

- (e) The presence of any subsurface or latent physical condition (including the presence of Hazardous Waste or other contamination or pollution) at, on or in the Facility which shall prevent or require a redesign or change in the operation of the Facility.
- (f) The condemnation, taking, seizure, involuntary conversion or acquisition of title to or use of the Facility or any material portion or part thereof, by the action of any federal, state or local government or governmental agency or authority.
- (g) The inadvertent processing of Unacceptable Waste in the Facility.
- (h) Strike, slowdown, work stoppage or other Labor action.

"Extended Hours Fee" means One Hundred Twenty Five (\$125.00) Dollars fee each hour that the Facility remains open to accept delivery of the Municipality's Acceptable Materials beyond the hours outlined in Section 1.4. On January 1, 2021 and each January 1<sup>st</sup> thereafter that this Agreement is in effect, the Extended Hours Fee shall be subject to an increase from the preceding year's rate by the CPI Adjustment. Regardless of the actual CPI Adjustment each year, the Extended Hours Fee shall increase at a minimum of two (2.00%) percent each year.

"Facility" means the transfer station located at 2 Bay Blvd, Lawrence, New York operated by the District's Contractor; or any such mutually agreeable backup facility location that may be used from time to time.

"Fees" means the Acceptance Fee and such other amounts that the Municipality is required to pay.

"Hazardous Waste" means waste which is harmful, toxic or dangerous or is now or hereafter defined as hazardous waste in either the Solid Waste Disposal Act, 42 U.S.C. 6901 et seq., or the regulations thereunder, or under other applicable statutes, or the regulations thereunder, or any other material that cannot be accepted for disposal pursuant to the Facility's applicable permits.

"Holidays" means New Year's Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving, and Christmas Day.

"Landfill" means the landfill or landfills designated from time to time by the District or the District's Contractor for receipt of Acceptable Solid Waste and/or Construction & Demolition Debris.

"Municipal Solid Waste" means all materials or substances that are discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse and other discarded materials, but not including contained gaseous materials, Construction & Demolition Debris, sewage and other highly diluted water-carried materials or substances and those in gaseous form, and special nuclear or by-product materials within the meaning of the Atomic Energy Act of 1954, as amended. For the purposes of this Agreement, it is the intention of the Parties that Recyclable Materials, including yard waste material, is excluded from the definition of Municipal Solid Waste.

"Person" means a municipality, corporation, partnership, business trust, trust, joint venture, company, firm or individual.

"Recyclable Materials" means clean: newspaper, cardboard, magazines, junk mail, PET (#1 Plastics), HDPE-Colored and HDPE-Natural (#2 Plastics), tin cans, aluminum cans, aluminum foil, glass bottles, metal pots and pans. The District and the Municipality, in consultation with the District's Contractor, may from time to time discuss in good faith the composition of what constitutes Recyclable Materials and the manner in which the Recyclable Materials are collected by and/or on behalf of the Municipality in an effort to improve and benefit the Municipality's recycling program(s).

"Recyclable Materials Fee" means an amount to be negotiated and agreed upon in good faith between the Parties which shall commence once the Municipality's current agreement for Recyclable Materials expires on December 31, 2020, if not terminated sooner. To the extent reasonably possible, the Parties will work in good faith to negotiate the Recyclable Materials Fee prior to the Municipality's delivery of any Recyclable Materials to the Facility pursuant to this Agreement. If the Parties cannot agree upon a reasonable fee, upon impasse, either Party may submit the issue to binding Arbitration under the rules and conditions of the American Arbitration Association.

"Term" means, unless sooner terminated in accordance with the terms of this Agreement, the period from January 1, 2020 to December 31, 2024. The Term of this Agreement may be extended for up to two additional terms of five (5) years each upon written mutual agreement of the Parties at terms and conditions mutually agreeable to both Parties.

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

"Unacceptable Waste" means (a) Municipal Solid Waste that is specifically prohibited for admittance or processing at the Facility by the NYS DEC or other regulatory agency having jurisdiction over the Facility; (b) Hazardous Waste; (c) radioactive waste; (d) Construction & Demolition Debris which contains items which are not included in the definition of "Construction & Demolition Debris" in this Agreement; and (e) Recyclable Materials which contain more than Two Percent (2.00%) residue and/or items which do not compromise the items delineated in the definition of "Recyclable Materials" in this Agreement.



13.2 Interpretation. Each Party recognizes that this Agreement is a legally binding contract and acknowledges that such Party has had the opportunity to consult with legal counsel of choice. In any construction of the terms of this Agreement, the same shall not be construed against either Party on the basis of that Party being the drafter of such terms.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written. This Agreement is intended to take effect as a sealed instrument.

SANITARY DISTRICT No. 1,  
TOWN OF HEMPSTEAD

BY THE CHAIRMAN,  
BOARD OF COMMISSIONERS

By: 

James J. Vilardi, Chairman

CITY OF LONG BEACH,  
STATE OF NEW YORK

By: 

Title: Acting City Manager



*DJW*  
*5/19*

## City of Long Beach

ONE WEST CHESTER STREET  
LONG BEACH, NEW YORK 11561

TEL: (516) 431-1011

FAX: (516) 431-5008

JOHN A. MIRANDO, P.E.  
COMMISSIONER  
DEPARTMENT OF PUBLIC WORKS

December 20, 2019

Mr. James J. Vilardi  
Chairman  
Sanitary District No. 1  
Town of Hempstead  
1 Bay Blvd.  
Lawrence, NY 11559

**Re: Notice of Award-Inter-Municipal Agreement for the Transport and Disposal  
of Municipal Solid Waste**

Dear Mr. Vilardi:

You are hereby advised that in accordance with Resolution No. 104/19 adopted by the City Council on December 17, 2019, your Proposal has been accepted by the City.

In accordance with the terms of the Inter-Municipal Agreement, each party shall proceed on a self-insured basis. In addition, the Contractor shall provide the Municipality (City of Long Beach), as additionally insured, with an insurance certificate evidencing insurance as required in the District/Contractor Agreement. Please sign and return three (3) copies of the attached contract(s) for the City Manager's signature. A purchase order will be sent separately for billing purposes.

Enclosed is one copy of the Resolution for your use.

Sincerely yours,

John A. Mirando, P.E.

cc: Joseph Febrizio, Dep Commissioner of Public Works  
Greg Kalnitsky, Corporation Counsel  
Broadus Brown, Superintendent of Sanitation

December 17, 2019

Item No. 1  
Resolution No. 104/19

The following Resolution was moved by Mr. Mandel  
and seconded by Mr. Bendo :

Resolution Authorizing the Acting City Manager to Enter into  
an Inter-Municipal Agreement for the Transport and Disposal  
of Municipal Solid Waste.

WHEREAS, a proposal was received in the Office of the Commissioner of Public Works from Sanitary District No. 1, Town of Hempstead, Bay Boulevard, Lawrence, New York 11559, for an Inter-Municipal Agreement for the transport and disposal of municipal solid waste, in accordance with plans and specifications on file in the Department of Public Works; and

WHEREAS, the City desires to enter into said Inter-Municipal Agreement with Sanitary District No. 1, Town of Hempstead whereby City solid waste, bulk materials, construction and demolition debris and recyclable materials will be brought to the transfer station located at 2 Bay Boulevard, Lawrence, New York 11559, for a period of five years, commencing January 1, 2020, at a cost of \$85.00 per ton for the first year, with 2% annual increases through December 31, 2024;

NOW, THEREFORE, be it

RESOLVED, that the proposed Inter-Municipal Agreement constitutes an unlisted action under SEQRSA, and it is hereby determined that the proposed Inter-Municipal Agreement will not have a significant effect on the environment and issues a negative declaration; and be it further

RESOLVED, by the City Council of the City of Long Beach, New York that the Acting City Manager be and he hereby is authorized to enter into an Inter-Municipal Agreement with the Sanitary District No. 1, Town of Hempstead, Bay Boulevard, Lawrence, New York 11559 for the transport and disposal of the City's solid waste, bulk materials, construction and demolition debris and recyclable materials at a cost of \$85.00 per ton for a period of five years, commencing January 1, 2020, at a cost of \$85.00 per ton for the first year, with 2% annual increases through December 31, 2024. Funds are available in Account No. A8160.54459 (Sanitation-Waste and Rubbish Removal).


December 17, 2019

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Resolution No. 104/19

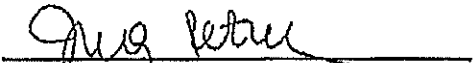
APPROVED:

  
\_\_\_\_\_  
Commissioner of Public Works

APPROVED AS TO ADMINISTRATION:

  
\_\_\_\_\_  
Acting City Manager

APPROVED AS TO FUNDS:

  
\_\_\_\_\_  
City Comptroller

APPROVED AS TO FORM & LEGALITY:

  
\_\_\_\_\_  
Acting Corporation Counsel

VOTING:

Council Member Diamond - ABSENT

Council Member Eramo - ABSENT

Council Member Mandel - AYE

Vice President Bendo - AYE

President Moore - AYE

December 15, 2020

Item No. 9  
Resolution No. 119/20

The following Resolution was moved by Pres. Bendo  
and seconded by Mr. DeLury :

Resolution Authorizing the City Manager to Amend the City's  
Inter-Municipal Agreement for the Transport and Disposal  
of Municipal Solid Waste.

WHEREAS, pursuant to Resolution No. 104/19, duly adopted on December 17, 2019, the City entered into an Inter-Municipal Agreement for the transport and disposal of municipal solid waste with Sanitary District No. 1, Town of Hempstead, Bay Boulevard, Lawrence, New York 11559, for a period of five years, commencing January 1, 2020, at a cost of \$85.00 per ton for the first year, with annual increases scheduled to begin on January 1, 2021 and continue through December 31, 2024; and

WHEREAS, the City desires to amend said Inter-Municipal Agreement with Sanitary District No. 1 to incorporate mixed paper, mattresses and commingled items (cans, glass and plastics) into our existing agreement, beginning January 1, 2021; and

WHEREAS, the rate for mixed paper shall be \$35/ton, the rate for mattresses shall be \$30/each and the rate for commingled items shall be \$80/ton, with annual increases as set forth in the Agreement to commence on January 1, 2022 and continue through December 31, 2024;

NOW, THEREFORE, be it

RESOLVED, that the proposed Inter-Municipal Agreement constitutes an unlisted action under SEQRA, and it is hereby determined that the proposed Inter-Municipal Agreement will not have a significant effect on the environment and issues a negative declaration; and be it further

RESOLVED, by the City Council of the City of Long Beach, New York that the City Manager be and she hereby is authorized to amend the Inter-Municipal Agreement with the Sanitary District No. 1, Town of Hempstead, Bay Boulevard, Lawrence, New York 11559 for the transport and disposal of the City's solid waste, bulk materials, construction and demolition debris and recyclables, to incorporate mixed paper, mattresses and commingled items at the rate of \$35 per ton for mixed paper, \$30 per mattress and \$80 per ton for commingled items, with annual increases as set forth in said amendment to commence on January 1, 2022 and continue through December 31, 2024. Funds are available in Account No. A8160.54459 (Sanitation-Waste and Rubbish Removal).

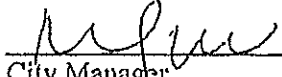
December 15, 2020

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Item No. 9  
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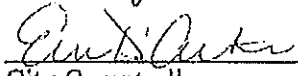
APPROVED:

  
\_\_\_\_\_  
Commissioner of Public Works

APPROVED AS TO ADMINISTRATION:

  
\_\_\_\_\_  
City Manager

APPROVED AS TO FUNDS:

  
\_\_\_\_\_  
City Comptroller

APPROVED AS TO FORM & LEGALITY:

  
\_\_\_\_\_  
Deputy Corporation Counsel

VOTING:

Council Member Delury - AYE

Council Member Mandel - AYE

Council Member Treston - AYE

Vice President McInnis - AYE

President Bendo - AYE