

CITY OF PHILADELPHIA

Contract No. _____

WASTE TRANSFER AND DISPOSAL AGREEMENT

This Waste Transfer and Disposal Agreement (the “Agreement”) is made and entered into on the ____ day of _____, 2012, by and between **THE CITY OF PHILADELPHIA**, a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania, acting through its **DEPARTMENT OF STREETS** (the “City”), and **WASTE MANAGEMENT OF PENNSYLVANIA, INC.**, having its office at 100 Brandywine Boulevard, Third Floor, Newtown, PA 18940 (the “Contractor”).

BACKGROUND

A. The City desires to ensure the provision of solid waste transfer, transportation and disposal in a reliable, cost-effective and environmentally sound manner.

B. On October 18, 2011, the City, acting through its Department of Streets, issued a Request For Proposal (the “RFP”) for purchasing service for the transfer, transportation and disposal of solid waste

C. On December 2, 2011, Contractor submitted to the City a proposal in response to the RFP. Contractor is a successful proposer to the RFP.

D. Contractor has duly authorized its respective officials and officers to enter into and execute this Agreement.

E. The RFP is hereby incorporated by reference as if fully set forth herein. The City and Contractor hereby agree to be bound by all of the terms and conditions contained in the RFP.

NOW, THEREFORE, the parties, in consideration of the mutual covenants, considerations, and promises contained herein, incorporating the above Background, and agreeing to be legally bound by this Agreement, agree as follows:

ARTICLE 1
DEFINITIONS; GENERAL PROVISIONS

1.01 Definitions.

Words, phrases, or other expressions used in this Agreement shall have the meanings as described below:

Act 101 Plan shall mean the plan prepared by the City, and approved by the Commonwealth, in accordance with the provisions of the Municipal Waste Planning, Recycling and Waste Reduction Act, 53 P.S. § 4000.101 *et seq.* The Act 101 Plan may be amended in accordance with established City procedure and Applicable Laws.

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Affiliates shall mean any Person that controls, is controlled by, or is under common control with Contractor.

Agreement shall mean this Agreement between the City and Contractor, and all Exhibits attached hereto.

Agreement Date shall mean the date first set forth above.

Agreement Year shall mean a twelve (12) month period commencing on July 1 and ending on June 30 during the Term of this Agreement.

Alternate Facility shall mean the Transfer Station(s) and/or Disposal Facility(ies) utilized by the City during a period of time that Contractor is unable to fulfill its obligations for receipt and/or disposal of Municipal Solid Waste in accordance with this Agreement.

Applicable Laws shall mean the Permits and any statute, law, constitution, charter, ordinance, judgment, order, decree, rule, regulation, directive, standard, policy or similarly binding authority, which shall be enacted, adopted, promulgated, issued or enforced by a Governmental Body relating to the Contractor, the City, the Designated Transfer Station(s), the Designated Disposal Facility(ies), and this Agreement, including without limitation, the Act 101 Plan.

Change in Law shall mean,

- (1) the adoption, promulgation, initial application, issuance, modification or official change in interpretation, after the Disposal Fee Date of any Applicable Law, except for locally imposed host community fees, other than such charges imposed by the City; and/or
- (2) the imposition after the Disposal Fee Date, of any condition on the issuance, reissuance or continued effectiveness of any existing Permit(s) or in any pending applications for Permit(s); and/or
- (3) the order and/or judgment of any Governmental Body after the Disposal Fee Date that would affect the obligations of the parties under this Agreement

Notwithstanding the foregoing, if one or more events specified in Subsections (1), (2) or (3) above occurs,

- (1) it shall not be deemed a Change in Law if such event is the result of willful or negligent action or failure to act in accordance with this Agreement or Applicable Laws by Contractor, its agents, employees, subcontractors, parent companies, subsidiary(ies) or Affiliates; provided, however, the contesting in good faith by such party of any suspension, termination, interruption or failure of issuance or renewal of any Permit(s), license or approval shall not constitute or be construed to constitute such a willful or negligent action or inaction of such party and,
- (2) such an event shall only be deemed a Change in Law hereunder if it imposes requirements on Contractor more costly than those in existence as of the Disposal Fee Date.

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Change in Law Adjustment shall mean for any period after the Disposal Fee Date and for any Change in Law the amount of any and all adjusted costs related to or based upon, directly or indirectly, the delivery and disposal of Municipal Solid Waste at the Designated Transfer Station(s) and/or Disposal Facility(ies), including capital costs, operating, design, construction, equipment maintenance, closure and/or post-closure care, start up, costs of the Designated Transfer Station(s) and/or Disposal Facility(ies) and any tax created after the Disposal Fee Date and any increase in governmental fees, federal, state and City imposed host community fees or surcharges (but excluding any locally imposed host community fees or surcharge and any adjustment in the tax rate to a tax existing prior to the Disposal Fee Date including, but not limited to, the United States corporate income tax, the state income tax and real property taxes) resulting from the Change in Law.

Change in Law Costs shall mean costs actually incurred by a Contractor pursuant to a Change in Law and as set forth in Change in Law Adjustment.

City shall have the meaning set forth in the first paragraph of this Agreement.

Commencement Date shall have the meaning set forth in Section 3.01 of this Agreement.

Commissioner shall mean the Commissioner of the Department of Streets of the City (including an individual serving in an acting capacity) or his/her designee(s).

Commonwealth shall mean the Commonwealth of Pennsylvania.

Construction and Demolition Debris shall mean concrete, bricks and other construction and demolition waste.

Contractor shall mean the entity named and designated in the first paragraph of this Agreement.

Day shall mean a calendar day during the Term of this Agreement.

Designated Disposal Facility shall mean the Disposal Facility (ies), including the sites, buildings, equipment and supplies which Contractor shall utilize to perform the Work set forth herein, and designated by Contractor in Exhibit "C" (as Exhibit "C" may be subsequently amended to reflect additional Disposal Facility(ies) offered by Contractor and accepted by the City) and approved by the City's Act 101 Plan for the final disposal of Municipal Solid Waste under this Agreement.

Designated Transfer Station shall mean the Transfer Station(s), including the sites, buildings, equipment, and supplies which Contractor shall utilize to perform the Work set forth herein, as designated by Contractor in Exhibit "C" (as Exhibit "C" may be subsequently amended to reflect additional Transfer Station(s) offered by Contractor and accepted by the City) and approved by the City's Act 101 Plan for the final disposal of Municipal Solid Waste under this Agreement.

Disposal Facility shall mean a property or properties used for the final disposal of Municipal Solid Waste in accordance with all Applicable Laws.

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Disposal Fee(s) shall be the per Ton price paid by the City for the disposal of Municipal Solid Waste, Construction and Demolition Debris and/or Residual Waste at the Designated Transfer Station(s) and the Designated Disposal Facility(ies) as provided in Exhibit “E”.

Disposal Fee Date shall mean the last day on which the Contractor submitted proposed Disposal Fees for the consideration of the City in response to the City’s RFP.

Disposal Permit shall mean the permit issued by the Pennsylvania Department of Environmental Protection for a solid waste disposal and/or processing facility permit applicable to a Transfer Station.

Economic Opportunity Plan (“EOP”) shall mean a plan approved by the Office of Economic Opportunity mandating participation by companies owned by minority persons, women or disabled persons pursuant to and consistent with Philadelphia Code Section 17-1600 *et seq.* as it exists on the Effective Date.

Event of Default shall have the meaning set forth in Section 6.01 of this Agreement.

Exhibit(s) shall mean the exhibits attached to this Agreement or as subsequently modified at the mutual agreement of the City and Contractor, and incorporated by reference in the Agreement, in accordance with the provisions of this Agreement.

Finance Director shall mean the Director of the Department of Finance of the City (including an individual serving in an acting capacity), or his/her designee.

Force Majeure Event shall have the meaning set forth in Section 6.04 of this Agreement.

Forge Recycling and Transfer Station (“the Forge Transfer Station”) shall mean the Transfer Station owned by Waste Management at 5109-5245 Bleigh Avenue, Philadelphia, Pennsylvania.

Government Approvals shall mean all licenses, permits and approvals required from any Governmental Body for the performance of Contractor's obligations under this Agreement.

Governmental Body shall mean, as appropriate, any one or several of: the United States of America, the Commonwealth, the City, any state, county or local unit of government or any agency, authority, regulatory body or subdivision of any of the foregoing as may have jurisdiction over or power and authority to regulate the City, Contractor, the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies), the Work, or this Agreement.

Guaranteed Annual Quantity shall mean the minimum annual quantity of Municipal Solid Waste to be delivered to the Designated Transfer Station(s) by the City or accepted by Contractor from the City as set forth in Section 4.01 of this Agreement in any Agreement Year.

Guarantor shall have the meaning set forth in Section 2.02 of the Agreement, or such other party as approved by the City in accordance with this Agreement.

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Holiday shall mean all holidays designated on an official City calendar to be provided annually by the City to Contractor as it becomes available.

Initial Term shall have the meaning set forth in Section 3.01 of this Agreement.

Maximum Daily Quantity shall mean the maximum quantity of Municipal Solid Waste that the City may by right deliver to the Designated Transfer Station(s) and/or may by right have the Contractor accept at the Designated Disposal Facility(ies) on a given Day during the Term. The Maximum Daily Quantity shall not include Residual Waste, Construction and Demolition Debris or Christmas trees delivered by the City pursuant to Section 5.02 of this Agreement.

MBE shall mean a Minority Business Enterprise as defined in Executive Order 2-05 of the City of Philadelphia.

Municipal Solid Waste shall mean waste that is categorized as Municipal Waste under Section 103 of the Pennsylvania Solid Waste Management Act, 35 P.S. § 6018.103 and collected by or on behalf of the City in accordance with its Regulations Governing Municipal Refuse Collection. Municipal Solid Waste may also include (a) limited quantities of oversize bulky wastes collected as part of normal refuse collection such as appliances, furniture, mattresses, tires, and other such large objects, and (b) materials cleaned from City storm sewer street inlets and non-residential municipal waste collected from various City facilities. Municipal Solid Waste shall not include Construction and Demolition Debris which is sufficiently segregated so it may be recycled or disposed of as such.

Performance Bond shall have the meaning set forth in Section 2.01 of this Agreement.

Permits shall mean all permits, including without limitation the Disposal Permit, licenses or authorizations issued by a Governmental Body entitling Contractor to construct and/or operate the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) and includes any modifications to such Permits.

Person shall mean any individual, general partnership, limited partnership, corporation, joint venture or association or other entity.

Philadelphia Transfer Station shall mean the transfer Station owned and operated by Waste Management and located at 3605 Grays Ferry Avenue, Philadelphia, Pennsylvania.

Renewal Term(s) shall have the meaning set forth in Section 3.02 of this Agreement.

Residual Waste shall mean that waste which is categorized as Residual Waste under Section 103 of the Pennsylvania Solid Waste Management Act, 35 P.S. § 6018.103.

RFP shall have the meaning set forth in Section B. of the Background of this Agreement.

Term shall mean the Initial Term and any and all Renewal Term(s).

Ton shall mean a short ton of 2,000 pounds.

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Transfer Station shall mean a property or properties permitted for the receipt of Municipal Solid Waste and for the transfer of such materials into vehicles for hauling to a Disposal Facility or for reuse in accordance with all Applicable Laws.

Unacceptable Waste shall mean:

- (1) any material that by reason of its quantity is ineligible for disposal at the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies);
- (2) any material that by reason of its composition or characteristics is ineligible for disposal at the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) pursuant to the provisions of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 *et seq.*, and the regulations thereunder, except for those small quantities normally found in household or commercial solid waste which the City and Contractor are authorized to handle as Municipal Solid Waste;
- (3) any material that by reason of its composition or characteristics is ineligible for disposal at the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) pursuant to any other Applicable Law(s), including without limitation: (a) Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; (b) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 *et seq.*; (c) the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*; (d) the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*; (e) the Atomic Energy Act of 1954, 42 U.S.C. § 2011 *et seq.*; or (f) the Pennsylvania Solid Waste Management Act, 35 P.S. § 6018.101 *et seq.*; or
- (4) any materials which any Governmental Body having appropriate jurisdiction shall determine from time to time to be harmful, toxic, hazardous, dangerous, or otherwise ineligible for disposal at the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies).

WBE shall mean a Woman Business Enterprise as defined in Executive Order 2-05 of the City of Philadelphia.

WM SpecFUEL Technology shall mean the machinery and infrastructure required to separate recyclables, remove organics, PVC, and other elements from the solid waste stream, extract materials of value from the remaining waste stream and pelletize those material into solid fuel pellets for use in various combustion systems.

Work shall mean the performance of all of Contractor's activities expressly required by this Agreement and all activities necessary or desirable for meeting the requirements of this Agreement.

Wrongfully Rejected Waste shall have the meaning set forth in Section 4.02 of this Agreement.

1.02 Exhibits.

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The following exhibits are attached to and incorporated by reference as if fully set forth herein:

Exhibit "A"	Performance Bond
Exhibit "B"	Economic Opportunity Plan and Participation of MBEs and WBEs and Executive Order 2-05
Exhibit "C"	Designated Transfer Station(s) and/or Designated Disposal Facility(ies)
Exhibit "D"	Maximum Daily Quantity
Exhibit "E"	Disposal Fees
Exhibit "F"	Disposal Permit Information as required in Section 401 of the Agreement
Exhibit "G"	Guaranty
Exhibit "H"	Rules and Regulations at Designated Transfer Station(s) and/or Designated Disposal Facility(ies)

1.03 Interpretation of Certain Words.

Whenever in this Agreement, the words "as ordered," "as directed," "as required," "as permitted," "as allowed," or words or phrases of like import are used, it shall be understood that the order, direction, requirements, permission, or allowance of the City is intended only to the extent of judging compliance with the terms of this Agreement. None of these terms shall imply the City has any authority or responsibility for supervision of Contractor's forces or operations, such supervision and the sole responsibility therefore being strictly reserved solely to Contractor. Similarly the words "approved," "reasonable," "suitable," "acceptable," "proper," "satisfactory," or words of like effect and import, unless otherwise provided, shall mean approved, reasonable, suitable, acceptable, proper, or satisfactory in the judgment of the City, subject to limitation as provided in the preceding sentence.

1.04 Scope of this Agreement.

(1) The scope of this Agreement is the Work required to be performed by the Contractor under this Agreement to receive, transfer, transport and/or dispose of Municipal Solid Waste and /or such other materials in accordance with the terms of this Agreement.

(2) The Contractor shall furnish, provide and perform all Work required by this Agreement in a good, substantial and workmanlike manner, together with the requirements stipulated and terms and conditions of this Agreement.

1.05 Conflict Between Documents.

In the event of a conflict between the terms and conditions of this Agreement and the RFP, the terms and conditions of this Agreement shall take precedence, followed by the terms and conditions of the RFP.

1.06 Amended Laws

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All laws referenced in this Agreement shall be applied in their then current form, as may be amended from time to time, or replaced by successor laws.

1.07 Oral Statements Not Binding; Amendments

The written terms and provisions of this Agreement shall supersede all oral statements of any representatives of the parties. Oral statements shall not be effective or be construed as being a part of this Agreement. This Agreement shall not be changed or modified except as specifically provided herein or by a duly executed written amendment between the City and Contractor.

1.08 Headings Not Controlling

Article, Section and Subsection headings in this Agreement are for reference purposes only and are inserted as a matter of convenience and in no way define, limit, extend or describe the scope or intent of this Agreement.

ARTICLE 2 **GENERAL CONDITIONS**

2.01 Performance Bond.

(1) Upon execution of this Agreement, Contractor shall provide security for the faithful performance of the Work and for compliance with the terms of this Agreement in the form of a performance bond (the "Performance Bond"), with an approved surety company as surety thereon, in a sum equal to one-half the anticipated value (as determined by the City) of the Disposal Fees to be paid during the first Agreement Year of this Agreement. The Performance Bond shall be in the form set forth in Exhibit "A" and issued by a surety company duly authorized and licensed to do business in the Commonwealth and approved by the City.

(2) During each subsequent Agreement Year, Contractor shall provide the City with a Performance Bond certificate thirty (30) Days prior to the commencement of each subsequent Agreement Year. The value of the Performance Bond shall be adjusted to an amount equal to one-half the anticipated value (as determined by the City) of the Disposal Fees for the upcoming Agreement Year.

(3) The Performance Bond must be issued by a surety listed on the then-current annual "Surety List" promulgated by the Commonwealth Insurance Department. The Performance Bond amount must be in an amount permitted by the Surety List. If the surety issuing the Performance Bond fails to meet the requirements of this Section 2.01, Contractor shall have thirty-five (35) Days from the date the inadequate Performance Bond was rejected by City to obtain a Performance Bond issued by a surety that meets the requirements of the Surety List.

(4) Letter of Credit

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(a) In lieu of the Performance Bond, Contractor shall have the right to substitute a Letter of Credit for the performance bond required hereunder at the beginning of any fiscal year of the City (July 1) and maintain in effect such Letter of Credit in lieu of such performance bond for each City fiscal year (July 1 to June 30) for all of the remaining Term and the Renewal Term if the Contractor fulfills all of the provisions as set forth in this Section 2.04 (4).

(i) The Letter of Credit shall comply with all applicable requirements of the Agreement.

(ii) The Letter of Credit and/or each Letter of Credit thereafter shall be available to draw against up to and including the maximum amount thereof for any and all claims that may arise during the Term and the Renewal Term for ninety (90) days after the expiration of the then-current Letter of Credit, if no acceptable renewal Letter of Credit or performance bond is timely provided or required.

(iii) The Letter of Credit shall be issued by a bank that has a long term credit rating of at least AA by Standard and Poors, Inc. and Aa by Moodys Investors Service, Inc. ("Acceptable Credit Rating") and shall be approved by the City, which approval shall not be unreasonably withheld. If the bank issuing the Letter of Credit is incorporated/chartered outside the United States of America and does not have a domestic branch, the Letter of Credit must be confirmed by a domestic bank with an Acceptable Credit Rating. If the credit rating of the bank issuing the Letter of Credit or the confirming bank drops below an Acceptable Credit Rating, the Contractor must supply a substitute Letter of Credit with an Acceptable Credit Rating within thirty five (35) days of notice to or knowledge of the Contractor of such event.

(iv) The Contractor shall furnish or shall cause to be furnished a legal opinion acceptable to the City from independent counsel or the bank's counsel stating that the Letter of Credit is legally enforceable in the United States as to the issuing bank, and, if applicable, the confirming bank.

(v) The duly authorized representatives of the City for the Letter of Credit are the Finance Director and/or the Streets Commissioner as well as those serving in an acting capacity for said positions.

(vi) The Letter of Credit shall be in a form acceptable to the City.

(vii) The issuing bank must furnish an acceptable form of draw certificate and sight draft with the Letter of Credit.

(b) The Letter of Credit shall be for a sum equal to one-half the anticipated value (as determined by the City) of the Disposal Fees to be paid during the first twelve (12) months following the Operations Commencement Date. The Letter of

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Credit shall provide for annual renewal, after successful completion of the first (12) months of operation following the Operations Commencement Date. During each subsequent twelve (12) month period, the stated amount of the Letter of Credit amount shall be adjusted to an amount equal to one-half the anticipated value of the Disposal Fees for that period.

(c) Any Letter of Credit issued during the Term shall contain a clause providing for the automatic annual renewal of the Letter of Credit on the beginning day of the City's fiscal year (July 1) at which time it shall renew for ninety (90) days in satisfaction of the requirements outlined in this Section. Any Letter of Credit issued for a Renewal Term shall run from July 1 up to June 30 of the following year at which time it shall renew for ninety (90) days after the expiration of the then-current Letter of Credit if no acceptable renewal Letter of Credit or performance bond is timely provided or required in satisfaction of the requirements of this Section.

(d) In the event the Letter of Credit is not automatically renewed as contemplated in Section 2.04 (4)(c), a substitute Letter of Credit or performance bond shall be delivered to the City for each annual renewal period at least sixty (60) days before the expiration of the Letter of Credit. Substitution of a performance bond for a Letter of Credit during the Term or the Renewal Term is contingent on provision of a Letter of Credit for a period of ninety (90) days after the expiration of the then-current Letter of Credit in satisfaction of the requirements of this Section.

2.02 Guaranty.

Contractor shall provide a third-party guaranty of its performance and discharge of all obligations under this Agreement. On or prior to the Agreement Date, Contractor shall provide to City such third-party guaranty in a form of guaranty agreement acceptable to the City, to be executed by Waste Management, Inc. (the "Guarantor") and continuously maintained during the Term of this Agreement.

2.03 Economic Opportunity Plan

(1) In accordance with the Philadelphia Code Section 17-1600 *et seq.*, as it may be amended from time to time, the City has established a requirement for Economic Opportunity Plan(s) ("EOP") for this Agreement.

(2) Contractor has committed itself to providing significant portions of the work required by this Contract to individual Minority-owned Business Enterprises (MBEs), Women-owned Business Enterprises (WBEs) and/or Disabled-owned Business Enterprises (DSBEs).

(3) In furtherance of the participation commitments identified above, Contractor agrees to comply with and is subject to the EOP attached to this Agreement as Exhibit "B".

(4) Prior to the commencement of any Work, including any design or engineering work or the procurement and installation of any equipment, Contractor shall secure the prior

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written approval of the City Office of Economic Opportunity (“OEO”) of the MBEs, WBEs and/or DSBEs to be utilized for the respective work. Contractor also shall have OEO approval prior to making any changes or modifications to the OEO-approved Agreement commitments made by Contractor herein, including without limitation, substitutions for its MBEs, WBEs and/or DSBEs, changes or reduction in work provided by its M/W/DSBE Subcontractors, or changes or reduction in the dollar and/or percentage amounts of commitments with its M/W/DSBE Subcontractors.

(5) Contractor shall, within thirty (30) days after receipt of payments from the City under this Contract, deliver to its M/W/DSBE Subcontractors the proportionate share of such payment for work performed by its M/W/DSBE Subcontractors. In connection with payment of its M/W/DSBE Subcontractors, Contractor agrees to comply fully with the City’s payment reporting process, which may include the use of electronic payment verification systems.

(6) Contractor shall, in the event of an increase in units or work and/or compensation under this Contract, increase its commitments with its M/W/DSBE Subcontractors proportionately. The OEO may from time to time request documentation from Contractor evidencing compliance with this provision.

(7) Contractor shall submit, within the time frames prescribed by City, any and all documentation City may request, including, but not limited to, copies of subcontractor(s) with M/W/DSBEs, participation summary reports, M/W/DSBE Subcontractor invoices, telephone logs and correspondence with M/W/DSBE Subcontractors, cancelled checks and certification of payments. Contractor shall maintain all documentation related to the EOP for a period of five (5) years from the date of receipt of final payment under this Contract.

(8) Contractor agrees that the City may, in its sole discretion, conduct periodic reviews to monitor Contractor’s compliance with the terms of the Contract and EOP.

(9) Contractor agrees that in the event the City determines that Contractor has failed to comply with any of the requirements of this Article or the EOP, City may, in addition to any other rights and remedies it may have under Section 17-1605 of the Philadelphia Code or any rights and remedies the City may have under this Contract, or any bond filed in connection therewith or at law or in equity, exercise one or more of the following remedies, which shall be deemed cumulative and concurrent:

- (a) Withhold payment(s) or any part thereof until corrective action is taken.
- (b) Terminate the Contract, in whole or in part.
- (c) Suspend/Debar the successful bidder from bidding on and/or participating in any future City contracts for a period of up to three (3) years.
- (d) Recover as liquidated damages, one percent of the total dollar amount of the Contract for each one percent (or fraction thereof) of the commitment shortfall. For purposes

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of this Article, the total dollar amount of the contract shall include approved change orders and amendments.

(10) There is no privity of contract between City and any M/W/DSBE Subcontractor(s) herein and City does not intend to give or confer upon such M/W/DSBE Subcontractor(s) any legal rights or remedies in connection with the Subcontract work under Executive Orders 02-05 or 05-10 or by reason of this Contract except such rights or remedies that the M/W/DSBE Subcontractor may seek as a private cause of action under any legally binding contract to which it may be a party. The remedies enumerated above are for the sole benefit of City and City's failure to enforce any provision or the City's indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of the City's rights in connection with this Contract nor shall it give rise to actions by any third parties including identified M/W/DSBE Subcontractors.

(11) It is understood that false certification or representation is subject to prosecution under Title 18 Pa. C. S. §§ 4107.2 and 4904.

(12) In accordance with Section 17-1402(f) of the Philadelphia Code, Contractor shall during the Term of the Contract, disclose the name and title of each City officer or employee who directly or indirectly advised the Contractor, any officer, director or management employee of the Contractor, or any person representing the Contractor that a particular Person could be used by the Contractor to satisfy any goals established in the Contract for participation of minority, women, disabled or disadvantaged business enterprises. The Contractor shall also disclose the date the advice was provided, and the name of such particular Person. Such disclosure shall be made on a form provided by the Department, and the form shall be signed and filed with the Department within five Business Days after the Contractor as so advised. The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.

2.04 Notices.

Contractor shall maintain an office within the City during the Term of this Agreement. Notices provided for herein shall be sufficient if hand delivered or mailed by certified mail (postage prepaid) to the City at the following address:

City of Philadelphia Streets Department
Municipal Services Building, Room 730
1401 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19102
Attn.: Commissioner

with a copy to:

City of Philadelphia Law Department
1515 Arch Street, 16th Floor

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Philadelphia, Pennsylvania 19103-2081
Attention: Chief Deputy City Solicitor, Regulatory Affairs Unit

for Contractor:

Waste Management of Pennsylvania, Inc.
Attention: Area Vice President
100 Brandywine Boulevard
Third Floor
Newtown, PA 18940

With a copy to

Waste Management Legal Department
Attention: East Group General Counsel
100 Brandywine Boulevard
Third Floor
Newtown, PA 18940

or to such other respective addresses as the parties may, from time to time, designate to each other in writing.

2.05 Applicable Laws and Permits.

(1) This Agreement shall be entered into under the laws of the Commonwealth and interpretation and construction shall be governed by such laws. Contractor shall observe and comply, at its sole cost and expense, with all Applicable Laws in connection with this Agreement. Contractor certifies that the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) are in compliance with Applicable Laws and applicable Permits, and such Designated Transfer Station(s) and/or Designated Disposal Facility(ies) shall remain in compliance with Applicable Laws and applicable Permits during the Term of this Agreement. Throughout the Term of this Agreement, the City may from time to time request reasonable assurances from Contractor that Contractor's operations, the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) are in compliance with Applicable Laws and applicable Permits. Contractor shall respond to the City's request for such assurances within ten (10) days of such request.

(2) Contractor shall obtain and maintain, at its sole cost and expense, all Permits, certificates of authority, approvals and inspections required by federal, state, and local supervisory agencies for the performance of the Work, the Designated Transfer Station(s), and/or the Designated Disposal Facility(ies).

(3) Failure of the Contractor's Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) to comply with Applicable Laws or Contractor's failure to provide reasonable assurances of compliance may result in the suspension or termination of the delivery

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of Municipal Solid Waste to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) by the City under this Agreement.

2.06 Independent Contractor.

At all times during the Term of this Agreement, the relationship of Contractor to the City shall be that of an independent contractor.

2.07 Subcontracting and Assignment.

(1) Contractor shall be responsible during the Term of this Agreement for complete supervision and control of its subcontractors as though they were its own forces. Notice to Contractor shall be considered notice to all of Contractor's subcontractors.

(2) Contractor shall be liable for the failure of its subcontractors in any phase of the Work. Contractor shall be as fully liable, responsible, and accountable to the City for the acts and omissions of its subcontractors and of persons employed by them as it is for the acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement shall create any contractual relationship or liability between any of Contractor's subcontractors and the City unless so elected by the City in writing.

(3) Contractor shall neither assign nor subcontract the Work, or any part thereof without the prior written consent of the City, nor shall Contractor assign, by power of attorney or otherwise, any of the money payable under this Agreement unless the prior written consent of the City has been obtained. The granting or denial of the City's consent under this Section shall be in the City's sole discretion.

(4) The City reserves the right to assign this Agreement to any other party. This Agreement shall be binding upon the parties hereto, their heirs, administrators, successors and assigns.

ARTICLE 3

TERM

3.01 Initial Term.

The initial term (the "Initial Term") of this Agreement shall commence on July 1, 2012 (the "Commencement Date"), and terminate four (4) year(s) thereafter or upon earlier termination under the terms of this Agreement.

3.02 Renewal Terms.

The City shall have the sole right and option to renew the Initial Term for three (3) one-year renewal terms (each a "Renewal Term") to be exercised by the City by giving at least ninety

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(90) days written notice to Contractor prior to expiration of the Initial Term or then-current Renewal Term, as the case may be.

3.03 Operations Commencement.

At least sixty (60) days prior to the Commencement Date of this Agreement, Contractor shall furnish and deliver to the City, for examination of and approval by the City, documentary evidence establishing that Contractor has available the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) needed to perform the Contractor's obligations under this Agreement including copies of all necessary permits, certificates, host community agreements and approvals as required by Applicable Laws.

3.04 Termination.

The City may terminate the Agreement upon notification from the Contractor or upon the City's independent determination that the Contractor has failed to secure Disposal Permits or disposal capacity sufficient to accept the Maximum Daily Quantity in accordance with Section 4.01 (5).

ARTICLE 4 **FACILITIES AND OPERATIONS**

4.01 Disposal Rights and Obligations.

(1) At all times during the Term of this Agreement, Contractor shall own, or control through contract or otherwise, the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) and represents, warrants and agrees that:

(a) the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) shall at all times during the Term of this Agreement be properly zoned and permitted to allow the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) to be used for the purposes contemplated by this Agreement and the RFP and be in compliance with all Applicable Laws; or in the case of a Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) that requires approval of Disposal Permits during the Term, Contractor shall provide reasonable assurances that the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) will have necessary Disposal Permits for the Term, such reasonable assurances describing the Contractor's efforts to obtain or maintain Disposal Permits and the termination dates of the existing Disposal Permits shall be incorporated in the Agreement as Exhibit "F";

(b) Contractor has sufficient Municipal Solid Waste transfer and disposal capacity available through reservation, contract or otherwise for the sole benefit of the City in an amount equal to the Maximum Daily Quantity of Municipal Solid Waste throughout the Term of this Agreement; or in the case of a Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) that requires Disposal Permits approvals to accept Municipal Solid Waste

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for transfer and/or disposal for the Term, Contractor shall provide reasonable assurances in Exhibit "F" that the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) will have disposal capacity for the Term;

(c) all access roadways and structures subject to vehicular traffic are designed for AASHTO H-20 loading; all roadways are a minimum of twenty-four (24) feet in width; and sufficient queuing space is available within the confines of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) for all vehicles awaiting tipping;

(d) a minimum of two scales are present at each Designated Transfer Station(s) and/or Designated Disposal Facility(ies) which are at least ten (10) feet wide, seventy (70) feet long, and capable of weighing a sixty (60) Ton load;

(e) the scales must incorporate a fully automated, computerized weighing, identification and accounting system fully compatible with the City's system, as may be updated from time to time.

(f) the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) shall meet all of the minimum design specifications set forth in the RFP;

(g) Contractor shall provide an adequate number of clean restrooms for both its employees and City personnel. Contractor shall provide access to the Contractor's telephone for City employees on official business and a public telephone for other use by City employees. The City shall require that City employees who use the restrooms and telephones comply with the Contractor's rules and regulations for restroom and telephone use set forth in Exhibit "H"; and

(h) the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) shall be equipped with adequate bumper logs to prevent vehicles from backing into disposal pits. Bumper logs shall be designed and placed to prevent damage to unloading vehicles and to facilitate efficient unloading.

(2) Under no circumstances shall Municipal Solid Waste delivered to Contractor by or on behalf of the City pursuant to this Agreement be disposed of at any Transfer Station(s) and/or Disposal Facility(ies) that has/have not been included in the City's approved Act 101 Plan.

(3) Contractor shall also use reasonable efforts to accommodate the City by providing additional capacity as requested by the City at rates contained in this Agreement.

(4) On an annual basis, thirty (30) Days prior to the commencement of each Agreement Year, Contractor shall certify to the City that adequate capacity remains at the Designated Transfer Station(s) and/or the Designated Disposal Facility to meet Contractor's obligations hereunder.

(5) Contractor shall guarantee acceptance of the Maximum Daily Quantity during the times set forth in Exhibit "C" for the Term.

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(a) However, if the Contractor has failed to obtain or maintain a Disposal Permit for a Designated Transfer Station(s) and/or a Designated Disposal Facility(ies) that requires a Disposal Permit during the Term in accordance with Section 401(1)(a) and is therefore unable to accept the Maximum Daily Quantity, and the Contractor has provided notice to the City at least 270 days in advance of the last permitted disposal date, the guarantee shall extend only to the termination date of the Disposal Permit as provided in Exhibit “F”.

(b) In the event that the Contractor cannot accept the Maximum Daily Quantity due to a failure to obtain or maintain Disposal Permits required under Section 401(1)(a), the City at its sole discretion may offer additional Work to one or more contractors under agreement with the City for the remainder of the Term.

(6) During each Agreement Year, the City shall deliver a Guaranteed Annual Quantity of Municipal Solid Waste to Contractor, except where Contractor has failed to obtain or maintain Disposal Permits for a Designated Transfer Station(s) and/or a Designated Disposal Facility(ies) or as provided under Article 6 of this Agreement.

(7) The Guaranteed Annual Quantity shall equal Seventy Five Percent (75%) of the Maximum Daily Quantity set forth in Exhibit “D” multiplied by 260. The Guaranteed Annual Quantity shall be adjusted by subtracting from the multiplier of 260, the number of Days that City deliveries to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) were restricted by any failure of Contractor to receive Municipal Solid Waste or any Force Majeure Event, calculated as follows:

$$\text{Guaranteed Annual Quantity} = .75 \times \text{Maximum Daily Quantity} \times (260 - (\text{Days Contractor unable to accept Municipal Solid Waste} + \text{Force Majeure Event Days}))$$

(8) For each Renewal Term hereunder, if any, the City may adjust the Maximum Daily Quantity for each Agreement Year to reflect changes in the total quantity of Municipal Solid Waste collected by or for the City’s Department of Streets. That is, should the total annual quantity of Municipal Solid Waste collected by or on behalf of the City increase or decrease, as for example, by population or demographic changes, source reduction, recycling, changed collection practices, deletion of Municipal Solid Waste collected by other City agencies and legal or regulatory changes, the City may adjust the Maximum Daily Quantity by the percentage change in total Municipal Solid Waste collected. At least ninety (90) Days prior to the beginning of each Renewal Term, if any, the City shall inform Contractor in writing of changes in the total annual quantity of Municipal Solid Waste collected, estimating the annual quantity to be collected for the next Agreement Year and at the City’s sole option establishing a new Maximum Daily Quantity. Such new Maximum Daily Quantity shall remain in effect throughout the applicable Agreement Year and shall continue through the remainder of the Term unless subsequently modified by the City in accordance with this subsection.

4.02 Amounts in Excess of Maximum Daily Quantity; Unacceptable Waste.

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(1) Contractor may not reject any delivery of Municipal Solid Waste by or on behalf of the City, unless the Maximum Daily Quantity is exceeded or delivery occurs outside of the required operating hours as set forth in Exhibit "C". The provisions of this subsection shall apply only to Contractor's right to reject Municipal Solid Waste and shall not abrogate any of Contractor's other obligations (including the payment of damages) under the terms of this Agreement.

(2) If the City, or any person on behalf of the City, delivers Unacceptable Waste to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies), the City shall be promptly notified of such delivery. The City may reload and remove the Unacceptable Waste or the City may request Contractor to dispose of such Unacceptable Waste. The City shall pay the actual, reasonable and necessary costs incurred by Contractor with respect to the proper disposal of such Unacceptable Waste. The Guaranteed Annual Quantity shall not include any Unacceptable Waste. In no event shall the City be responsible for the handling and disposal costs of any Unacceptable Waste delivered to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) unless it can be clearly demonstrated that such waste was delivered by the City or caused to be delivered by the City.

(3) Nothing in this Agreement shall be construed to mean that the City guarantees the composition or quantity of any Municipal Solid Waste as it pertains to the proportion of any material contained therein. The obligations of Contractor hereunder shall not be diminished due to any variation in the composition of any Municipal Solid Waste which is delivered to the Designated Transfer Station and/or Designated Disposal Facility(ies).

(4) Any Municipal Solid Waste that is delivered to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) by or on behalf of the City that is rejected without a permitted rejection right shall constitute "Wrongfully Rejected Waste". Such Wrongfully Rejected Waste shall be transported to and disposed of at an alternate location provided by Contractor or, if Contractor fails to provide an alternate location, to a site determined by the City. The City shall use reasonable efforts to transport and dispose of any Wrongfully Rejected Waste in the most economical manner practicable, consistent with Applicable Laws and then current market conditions so as to mitigate the amount of damages payable by Contractor hereunder.

(5) Contractor shall pay the City as damages the actual cost incurred by the City for the transfer, transportation and disposal of Wrongfully Rejected Waste. The City shall deliver an invoice to Contractor promptly following determination of amounts due for Wrongfully Rejected Waste, and payment shall be due within thirty (30) Days of receipt of such invoice.

4.03 Methods of Operation.

The Contractor shall inform the City in advance concerning plans for performing each part of the Work. If at any time the Designated Transfer Station(s), Designated Disposal Facility(ies), or Contractor's methods of executing the Work appear to the City to be inadequate to ensure the required reliability, safety, quality, or rate of progress of the Work, the City may request the Contractor to increase or improve its Designated Transfer Station(s) and/or Disposal Facility(ies) and/or methods; but neither compliance with such requests nor failure of the City to issue such

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requests shall relieve Contractor from its obligation to secure the degree of reliability, safety, quality of the Work, and the rate of progress required by this Agreement. The Contractor shall be solely responsible for the reliability, safety, adequacy, and efficiency of its operations, Designated Transfer Station(s), and/or the Designated Disposal Facility(ies) and/or methods.

4.04. WM SpecFUEL Technology Facility.

(1) Contractor shall use reasonable best efforts to obtain all necessary permits and to construct a WM SpecFuel Technology facility at the Forge Transfer Station, capable of processing 300,000 tons per year of Municipal Solid Waste.

(2) As of January 1, 2014, Contractor shall process at least 500 tons per day of Municipal Solid Waste using WM SpecFUEL Technology at the Forge facility. Failure to meet this target shall constitute an Event of Default as described in Article 6 (Defaults and Remedies) of this Agreement, unless the City determines, at its sole discretion, that Contractor is utilizing reasonable best efforts to comply with its commitment under this Section, and delays are due to conditions beyond Contractor's control.

4.05 City's Use of an Alternate Facility.

(1) If for any reason (except for a Force Majeure Event as defined in Section 6.04 of this Agreement) the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) cannot accept delivery of the Maximum Daily Quantity as required under this Agreement at any time during the Term of this Agreement, the City shall have the right (in addition to any other rights or remedies available to the City under this Agreement, at law or in equity) to dispose of the Maximum Daily Quantity at an Alternate Facility and to hold the Contractor liable for all excess costs (including, but not limited to, increased tipping fees and additional City transportation costs) incurred by the City until such time as the City can deliver the Municipal Solid Waste to the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) or the Contractor can deliver Municipal Solid Waste to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies). Contractor shall have no claim or right to any benefit accruing to the City through its use of an Alternate Facility.

(2) Nothing contained in this Section 4.05 shall be construed to limit the City's right to proceed at any time under the provisions of Article 6 of this Agreement (Defaults and Remedies). Should the City elect to proceed under Article 6 of this Agreement by issuing a notice to cure, the Contractor shall remain liable under the provisions of this Section 4.05 for the City's excess costs in utilizing the Alternate Facility until the date the Contractor cures the breach to the satisfaction of the City or the City declares the Contractor in default hereunder and exercises the rights and remedies available to the City under Article 6 of this Agreement.

4.06 Inspection.

(1) At any time, the Commissioner or authorized representative may inspect the Designated Transfer Station(s), and/or the Designated Disposal Facility(ies) and the Work performed to determine compliance with this Agreement. Contractor shall furnish all reasonable

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assistance required for its inspection. Such inspection shall not relieve the Contractor from any obligation to perform the Work strictly in accordance with this Agreement.

(2) The City may have such representatives on site at the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) during any or all operating hours. Contractor shall cooperate in all respects with the City's representatives, who shall have full access to all parts of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) and may at any time inspect the Designated Transfer Station(s) and/or Designated Disposal Facility(ies), equipment, operating procedures, materials and records, including without limitation, scale and maintenance records.

(3) In exercising their rights under this Section 4.06, the Commissioner and other authorized representatives of the City shall not be obstructed and shall be free at all times to perform their inspection of the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) but shall not interfere unreasonably with Contractor's operations during such inspections.

(4) Contractor shall provide for reasonable access to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) by the President of the City Council of Philadelphia and representatives of Councilmanic Districts (as requested by City Council) to monitor and record information pursuant to Applicable Laws on the environmental performance of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies). Councilmanic District representatives shall be granted reasonable visitation rights to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) located within their Councilmanic District. Contractor shall provide written notice to the City Council members in Councilmanic Districts (as requested by City Council) of any written violation notices issued by any Governmental Body.

4.07 Receipt of and Title to Municipal Solid Waste.

(1) Responsibility for and title to all Municipal Solid Waste delivered or caused to be delivered by the City to the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) shall vest in Contractor at such time as the Municipal Solid Waste is discharged from the delivering vehicle into the receiving spaces of the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies). Contractor shall have the right to designate the point of discharge within the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies) of each load of Municipal Solid Waste, provided that such designation does not detain the delivery vehicles.

(2) At all times during the Term of this Agreement, Contractor shall operate and maintain the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) in a manner that will permit weighing, delivery and exiting of vehicles delivering Municipal Solid Waste pursuant to this Agreement in not more than twenty (20) minutes.

(3) Title to Unacceptable Waste shall not vest with Contractor.

(4) The Designated Transfer Station(s) and its transfer operation and/or the Designated Disposal Facility(ies) shall be designed and operated to accommodate all Municipal Solid Waste to be delivered in accordance with the Maximum Daily Quantity.

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4.08 Facility Maintenance.

(1) Contractor shall have the sole responsibility for the operation and maintenance of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) utilized by the Contractor under this Agreement and shall maintain the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) in a proper state of repair with due allowance made for reasonable wear and tear. The City may hold payment of invoices if it is determined that the Contractor is not in compliance with the provisions provided below.

(2) The Contractor shall maintain all of the Contractor's vehicles and containers used in the performance of the Work in a clean and repaired condition.

(3) The Contractor shall be responsible for maintaining complete accessibility and clear passage through all necessary roadways at the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) during all hours of operation, and shall plow all roads as necessary to maintain this condition.

(4) During the Term of this Agreement, Contractor shall be responsible for all major capital replacement(s), improvements, redesign, or other changes to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies). The Contractor shall notify the City of any proposed material changes to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies). Changes shall be scheduled by the Contractor to avoid interruption in the operation of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies). Any redesign or installation of equipment shall not interfere with the ability of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) to meet all requirements of this Agreement.

(5) At all times during the Term of this Agreement, Contractor shall operate and maintain the Designated Transfer Station(s) and/or Designated Disposal Facility(ies): (i) in a safe and sound manner; (ii) in a manner that permits weighing and delivery of Municipal Solid Waste at all times during the hours of operation required under this Agreement; and (iii) as otherwise required by Applicable Laws and Government Approvals. Contractor shall be responsible for maintaining and renewing all licenses and permits and other Government Approvals required for operation of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) in effect at all times and operating the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) in accordance with Applicable Laws and Government Approvals.

(6) The Designated Transfer Station(s) and/or Designated Disposal Facility(ies) shall be maintained in a manner that will prevent odors from escaping the building. No detectable odors shall be present outside the boundaries of the Designated Transfer Station(ies) and/or the Designated Disposal Facility(ies). The Designated Transfer Station(s) and /or the Designated Disposal Facility(ies) shall be kept free and clear of all litter and debris at all times.

(7) The facility maintenance obligations described in this Section 4.08 shall not apply to the Designated Transfer Station(ies) and/or the Designated Disposal Facility(ies) that are owned, operated and maintained by third parties. Contractor shall use reasonable best efforts

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to ensure that such facilities owned by third parties are properly maintained and available to the City throughout the Term.

4.09 Hauling of Municipal Solid Waste by or for Contractor.

(1) Any hauling of Municipal Solid Waste by the Contractor shall be done with fully enclosed equipment so that the possibility of dripping, spilling, or scattering is kept to a minimum. Should any of these occur, Contractor shall be responsible, at its sole cost and expense, for prompt and timely cleanup of any such materials.

(2) The Contractor is required to comply with all State licensing requirements for transfer vehicles and any City waste management licensing requirements.

(3) In the event of a spill, leak or loss of payload at the Designated Transfer Station(s) and/or during transit to the Designated Disposal Facility(ies), Contractor shall immediately arrange for the clean-up and transportation of the payload to the Designated Disposal Facility(ies) at Contractor's sole cost and expense, shall pay any resulting fines, assessments, penalties and damages resulting therefrom, and shall indemnify and hold harmless the City from any liability in connection with the foregoing.

4.10 Hours of Operation.

(1) Designated Transfer Station(s). The Designated Transfer Station(s) shall be open to accept delivery of Municipal Solid Waste during the days and hours set forth in Exhibit "C". Contractor may, at its option and at no additional cost to the City, open the Designated Transfer Station(s) at additional times to receive Municipal Solid Waste delivered by or on behalf of the City subject to applicable permit and regulatory limitations.

(2) Residual Waste. Contractor shall accept Residual Waste delivered by the City to the Designated Disposal Facility(ies) in accordance with Exhibit "C".

4.11 Weighing Devices.

(1) The number of Tons of Municipal Solid Waste delivered to the Designated Transfer Station(s) and/or Designated Disposal Facility(s) by or on behalf of the City shall be determined by obtaining an incoming and an outgoing weight for each delivery truck, roll-off container, or transfer vehicle on certified scales located at the Designated Transfer Station(s) and/or the Designated Disposal Facility(ies). Both the City and Contractor shall have the right at any time to require the weighing or reweighing of any vehicle.

(2) The Contractor shall be required to have the weight scales certified at any time but no more often than once a month. The Contractor shall furnish evidence of a maintenance agreement for the scales providing thirty (30) day inspection and service maintenance. All costs and expenses associated with the installation, inspection, certification, and maintenance of the weight scales shall be borne exclusively by the Contractor.

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4.12 Disposal Information.

(1) Daily Reports. By 12:00 noon each Day that Contractor is required to accept Municipal Solid Waste, Contractor shall provide the City with a report of each and every one of the previous Day's scale transactions at each scale at the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) related to this Agreement. If the City has delivered Municipal Solid Waste to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) on a Saturday, Contractor shall provide the Friday and Saturday reports on the following Monday. This report will include a daily computer file in a DBF format or other format designated by the City containing the following information in a file structure acceptable to the City: (a) names of Designated Transfer Station(s) and/or Designated Disposal Facility(ies); (b) date; (c) time of arrival and departure in military time; (d) sequential ticket number; (e) commodity code; (f) vehicle number; (g) gross vehicle weight at ingress; (h) gross vehicle weight at egress; (i) net weight of load; and (j) source code of City Department delivering the Municipal Solid Waste. With reasonable notice, the City may require that additional information be provided.

(2) Monthly Reports. In addition to any other reports required by any other provision of this Agreement, Contractor shall furnish to the City monthly written reports, together with such statements, documentary data or other information as the City may require, relative to any matter pertaining to Contractor's compliance with any provision of this Agreement. The data included in the detailed report shall be sufficiently detailed to facilitate analysis and shall be acceptable to the City. The monthly report shall include, without limitation, (a) any changes in the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) operating plans including anticipated outages scheduled for the next month, (b) quantity of Municipal Solid Waste transported from the Designated Transfer Station(ies) to the Designated Disposal Facility(ies), and (c) quantity of Municipal Solid Waste received at the Designated Transfer Station(s) and/or Designated Disposal Facility(ies). The monthly report shall be submitted on the 20th Day of the month following the month for which the report is submitted.

(3) Annual Reports. Contractor shall submit to the City an annual report within sixty (60) days following the end of each Agreement Year that incorporates a summary of monthly operations reports for the preceding Agreement Year.

(4) Late or Inadequate Reports. In the event that Contractor files a report required under this Agreement after the date that it is due or files an inadequate report (the adequacy or inadequacy of such report being in the sole discretion of the City), payment of all amounts due to Contractor for the period covered by the late or inadequate report may be deferred until all late or inadequate reports are submitted or corrected to the satisfaction of the City. The City shall retain the last payment due under this Agreement until Contractor has provided all reports required in this Section.

4.13 Rules and Regulations.

(1) The City shall require its employees, agents, contractors and representatives to comply with Contractor's rules and regulations in performance of its duties under this Agreement attached hereto and marked as Exhibit "E", provided however, that all such rules and regulations

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shall be consistent with this Agreement, lawful, reasonable and uniformly applied to all haulers delivering waste to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies).

(2) Contractor may implement additional rules and regulations that are not inconsistent with this Agreement and Applicable Laws and which apply equally to all haulers delivering Municipal Solid Waste to the Designated Transfer Station(s) and Designated Disposal Facility(ies), upon thirty (30) Days prior written notice thereof to the City; provided however, that such additional rules and regulations may be implemented earlier than upon thirty (30) Days prior written notice if such implementation is required in order to avoid an emergency or to protect the health, safety and welfare of Contractor, its employees or Persons delivering Municipal Solid Waste to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies).

(3) Contractor may refuse to receive Municipal Solid Waste from any vehicle operated by a hauler who repeatedly or intentionally violates the rules and regulations set forth in Exhibit "H".

(4) The terms of payment and the rights and obligations of the parties shall be governed by the terms of this Agreement and not by any such rules and regulations set forth in Exhibit "H".

ARTICLE 5 **CONSIDERATION**

5.01 Invoices.

(1) The City shall pay to Contractor for the performance of the Work and the discharge by Contractor of all of its obligations as set forth in this Agreement, and the Contractor shall accept the per Ton price set forth in this Agreement as full and complete compensation and payment. Payment of such compensation shall be in the manner and at the time provided for in this Agreement.

(2) Contractor shall tender itemized invoices to the City in form and content acceptable to the City on a not more frequently than weekly basis on the Tuesday following a Work week for the Municipal Solid Waste delivered by the City during the applicable billing period. At a minimum, the invoice shall include the following: (a) Designated Transfer Station(s) location and/or the Designated Disposal Facility(ies) for Municipal Solid Waste from the Northwest Transfer Station; (b) date; (c) ticket numbers; (d) vehicle identification; (e) gross vehicle weight; (f) vehicle tare weight; (g) net payload; (h) Disposal Fee; and (i) summary daily report.

(3) The City shall pay (or cause to be paid) the invoice amount to Contractor in accordance with this Section 5.01 for the performance by the Contractor of its obligations hereunder. The City will pay said invoices in accordance with its standard payment procedures, normally within forty-five (45) Days from the date of receipt of a proper invoice.

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(4) The City may offset against the invoice amount any amounts payable by Contractor to the City as damages.

(5) Invoices shall be mailed to:

City of Philadelphia Streets Department
Municipal Services Building, Room 730
1401 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19102

5.02 Disposal Fees.

(1) The City shall pay to Contractor the disposal fees described in Exhibit “E” (each a “Disposal Fee”; collectively, the “Disposal Fees”) in consideration of Contractor performing the Work under this Agreement:

(2) The City shall pay a per Ton price for Municipal Solid Waste delivered to the Designated Transfer Station(s) (or for the Guaranteed Annual Quantity in the event that the Guaranteed Annual Quantity has not been provided, as calculated pursuant to Section 4.01 of this Agreement) during the Initial Term of this Agreement and thereafter in accordance with the price schedule for any and all Renewal Terms set forth in Exhibit “E”.

(3) The City shall pay a per Ton price for Residual Waste delivered directly to Contractor’s Designated Disposal Facility(ies) during the Initial Term of this Agreement and thereafter in accordance with the price schedule for any and all Renewal Term(s) in Exhibit “E”. The City shall have no obligation whatsoever to provide any minimum quantity of Residual Waste to Contractor under this Agreement.

(4) The City may at any time agree to an offer by a Contractor to reduce the Disposal Fees in Exhibit “E”.

5.03 Change in Law.

(1) For each Change in Law that causes the Contractor to sustain Change in Law Costs, the City shall be assessed a share of such Change in Law Costs.

(a) All increases and decreases in surcharge fees assessed by the Commonwealth of Pennsylvania for the disposal of Municipal Solid Waste at a landfill or resource recovery facility pursuant to, or in addition to Act 101 of 1988 and Act 90 of 2002, shall be added in full to or subtracted in full from the per ton disposal rate as a pass through cost increase or decrease to the City during the Term of the Agreement. The Contractor shall make its best efforts to direct the waste to the facilities with the lowest surcharge fees.

(b) For all other Change in Law Costs, Contractor shall within one hundred eighty (180) days of the effective date of any Change in Law, calculate the related per Ton Change in Law Adjustment that it has sustained as a result of such Change in Law, and shall give to the City

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written notice of the resulting per Ton assessment. The notice shall include, without limitation, information setting forth the assumptions, data, formula and calculations used in making the assessment and shall specify all applicable Changes in Law and the effective dates thereof. The City reserves the right to request from Contractor, and Contractor agrees to promptly provide to City, information in addition to that submitted with Contractor's notice under this Section 5.03(1)(b). In the event Contractor fails to notify the City in strict accordance with the terms of this Section 5.03(1)(b), Contractor shall have waived its right to assess the City for the Change in Law.

(c) Within sixty (60) Days of receiving written notice from Contractor under Section 5.03(1)(b), the City may challenge Contractor's assessment of the Change in Law by notifying Contractor in writing. If challenged, the City, at its sole cost and expense, may engage an independent consulting and/or accounting firm(s), reasonably acceptable to Contractor, to review and prepare an audit of Contractor's assessment. The City and Contractor hereby agree to be bound by the conclusion of the independent consulting and/or accounting firm(s) that may be engaged pursuant to this Section. In the event the City challenges Contractor's assessment of the Change in Law under this Section, and does not engage an independent consulting and/or accounting firm(s), the City and Contractor shall make good faith efforts to resolve the challenge in a reasonably prompt manner.

(d) Unless challenged under Section 5.03(1)(c) above, the City shall begin paying City's Change in Law Costs, subject to Section 5.03(3) below, on the later of the first day Contractor sustains increased costs as a result of a Change in Law or the date sixty (60) Days prior to the date that the City receives written notice of the Change in Law from Contractor. The per Ton assessment to the City under Section 5.03 shall be substantially equal to the increase charged to all users of the Designated Transfer Station(s) and/or Designated Disposal Facility(ies), as the case may be. If such Change in Law is subsequently eliminated or reduced, the City's Change in Law Costs shall be correspondingly eliminated or reduced.

(2) The City shall not be responsible for any Change in Law Adjustment related to a change in state law other than Pennsylvania law for any Designated Disposal Facility(ies) located outside of the Commonwealth.

(3) For Change in Law Costs in Section 5.03 (b) incurred on or after the Disposal Fee Date, the price per Ton increase from the Change in Law Adjustment shall be no more than five percent (5%) per year, and in no event shall the price per Ton increase from the Change in Law Adjustment be more than the following percentages over the corresponding periods:

<u>Years</u>	<u>Percent</u>
4	10
5	11.66
6	13.33
7	15.00

(4) For Change in Law Costs incurred after the Disposal Fee Date but prior to the Agreement Date, such Changes in Law and proposed Change in Law Adjustments shall be disclosed

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to the City on or before the Agreement Date. The City, at its sole discretion, may elect not to execute the Agreement due to Change in Law Adjustments.

5.04 Patents.

Royalties and fees for patents covering processes, materials, articles, apparatus, devices, or equipment used in connection with the Work shall be included in the Disposal Fee(s) amount and no additional payments therefor shall be due or payable by the City. Contractor shall satisfy, at its sole cost and expense, all demands that may be made at any time for such royalties or fees, and Contractor shall be liable for any damages or claims for patent infringements. Contractor shall, at his own cost and expense, defend all suits or proceedings that may be instituted against the City for infringement or alleged infringement of any patents involved in the Work; and in case of an award of damages Contractor shall pay such award.

5.05 Payment for Labor and Supplies.

Contractor agrees to promptly pay all Persons, which have furnished labor or supplies in connection with the Work required under this Agreement and shall provide, upon request of the City, evidence that the same have been fully paid or satisfactorily secured. In addition to any other indemnification obligations under this Agreement, Contractor shall indemnify, defend and hold the City harmless from all claims, suits or actions for labor and supplies furnished in connection with this Agreement.

ARTICLE 6

DEFAULTS AND REMEDIES

6.01 Default of the Contractor.

The occurrence of one (1) or more of the following events shall constitute an event of default under this Agreement (each an “Event of Default”):

(1) Except for Force Majeure Events as defined in Section 6.04 of this Agreement or a failure to obtain or maintain Disposal Permits as described in Section 4.01(5) an Event of Default shall occur immediately if Contractor is unable to accept Municipal Solid Waste from City for more than one (1) consecutive day that Contractor is obliged to receive such Municipal Solid Waste pursuant to the terms of this Agreement.

(2) Except for Force Majeure Events as defined in Section 6.04 of this Agreement or a failure to obtain or maintain Disposal Permits as described in Section 4.01(5), an Event of Default by Contractor shall occur if one (1) or more of the following occurs and Contractor fails to cure the same within ten (10) Days after receiving written notice thereof from City, unless Contractor has promptly commenced and is continuing diligently and in good faith to cure such default and does cure such default within thirty (30) Days of such notice (except for a default under Section 6.01(2)(c) or (d) below):

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(a) Contractor cannot accept delivery of Municipal Solid Waste in the Maximum Daily Quantity agreed to under this Agreement at any time during the Term of this Agreement;

(b) Contractor fails to perform any Work to be performed by it under this Agreement;

(c) the filing of a petition by or against Contractor for relief as a bankruptcy or insolvency or for its reorganization or for the appointment pursuant to any local, state or federal bankruptcy or insolvency law of a receiver or trustee of any part of Contractor property; or, an assignment by Contractor for the benefit of creditors; or, the taking possession of the property of Contractor by any local, state or federal governmental officer or agency or court-appointed official for the dissolution or liquidation of Contractor or for the operating, either temporary or permanent, of Contractor's business, provided, however, that if any such action is commenced against Contractor, the same shall not constitute an Event of Default if Contractor causes the same to be dismissed or discharged within sixty (60) Days after the filing of same;

(d) the filing of a petition by or against Guarantor for relief as a bankruptcy or insolvency or for its reorganization or for the appointment pursuant to any local, state or federal bankruptcy or insolvency law of a receiver or trustee of any part of Guarantor property; or, an assignment by Guarantor for the benefit of creditors; or, the taking possession of the property of Guarantor by any local, state or federal governmental officer or agency or court-appointed official for the dissolution or liquidation of Guarantor or for the operating, either temporary or permanent, of Guarantor 's business, provided, however, that if any such action is commenced against Guarantor, the same shall not constitute an Event of Default if Guarantor causes the same to be dismissed or discharged within sixty (60) Days after the filing of same; and/or

(e) Contractor fails to fulfill any other terms, conditions, obligations or covenants contained in this Agreement, including Section 2.03 (Economic Opportunity Plan) provided such failure to comply with Section 2.03 was not the direct result of a default of the M/W/DSBE subcontractor(s) in the performance of contractual obligations to the Contractor.

6.02 Remedies of the City Following the Contractor's Default.

(1) The rights and remedies afforded to the City under the terms of this Agreement shall not be deemed to be exclusive but shall be cumulative, and the City shall have and reserves any and all other rights and remedies provided at law or in equity, and the City may elect the manner in which it shall proceed.

(2) Upon an Event of Default by Contractor, the City may elect to terminate this Agreement and award a new contract to a substitute contractor. In lieu of termination, the City may temporarily suspend delivery of Municipal Solid Waste to Contractor and dispose in an Alternate Facility in accordance with Section 4.05 of this Agreement. Regardless of how the City elects to proceed upon an Event of Default by Contractor, Contractor, its surety under Section 2.01 above, and Guarantor shall be liable to the City for all damages (including but not limited to excess costs) sustained by the City by reason of an Event Default by Contractor under this Agreement.

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(3) The Work to be performed hereunder by the Contractor involves the health and safety of the residents of the City. In the event of an anticipatory breach or an Event of Default under this Agreement by the Contractor, the City shall be and Contractor consents that the City is entitled to injunctive relief enjoining and restraining Contractor from doing any act in violation of this Agreement, or mandating that such act or acts be done by Contractor to carry out the terms of this Agreement. The application by the City for an injunction or mandate to any court shall not be, and shall not be construed to be, a waiver by the City of any other right or remedy available to the City under this Agreement, at law or in equity, and shall not be deemed a waiver of any other or further breaches of condition or failure to perform hereunder. The exercise of such right or rights by the City shall not prejudice in any manner whatsoever the rights of the City to enforce or secure any other rights or remedies, including but not limited to, the right to seek damages (including excess costs) for breach of this Agreement.

(4) It is also agreed by the parties hereto that upon an Event of Default under Section 6.01(2)(c) above, this Agreement shall not be an asset of the Contractor in any proceeding set forth in Section 6.01(2)(c).

6.03 Nonwaiver.

Neither party hereunder shall be deemed to have waived any part, provision, language, covenant, condition or requirement of this Agreement unless such waiver is in writing and signed by such party. Any partial waiver shall not be deemed to be in any manner the waiver of any other part, provision, language, covenant, condition or requirement, and where any waiver is made, either partially or otherwise, of any provision, condition, or requirement, it shall be strictly construed and deemed to be a waiver of no more than that which is clearly expressed in writing. Any ambiguity shall be resolved in favor of the City.

6.04 Force Majeure.

(1) Contractor or City shall not be excused nor relieved from any act or responsibility of performance under the terms of this Agreement except for the following events of Force Majeure (each a "Force Majeure Event") which prevent the Contractor or City from performing under this Agreement:

(a) an Act of God;

(b) state of declared war, insurrection, labor strike, but as to the Contractor, only those labor strikes against a third party (excluding Contractor's Affiliates) occurring off the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) which substantially interrupts the supply of materials and equipment needed to construct or operate the Designated Transfer Station(s) and/or Designated Disposal Facility(ies);

(c) any conditions (excluding costs) which are clearly beyond the control of the party claiming the Force Majeure Event and, as to the Contractor, without the fault or negligence of Contractor or Contractor's agents, employees, subcontractors or suppliers provided, however, that

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the party claiming the Force Majeure Event shall exhaust every available remedy to correct the condition and promptly report to the other party in writing the circumstances which justify non-performance;

(2) Upon the occurrence of a Force Majeure Event which prevents the Contractor or the City from performing any of its obligations under this Agreement, the non-performing party shall notify the other party as soon as is reasonably practicable regarding the Force Majeure Event and shall diligently endeavor to eliminate the cause of the Force Majeure Event.

(3) In the event a Force Majeure Event prevents the Contractor from performing responsibilities or obligations hereunder with respect to the receipt of Municipal Solid Waste at the Designated Transfer Station(s) and/or Designated Disposal Facility(ies), Contractor shall use reasonable best efforts to provide alternative arrangements which are acceptable to the City for the receipt of the Municipal Solid Waste during the Force Majeure Event, and Contractor shall continue to perform and comply with all portions of this Agreement with which it is possible for the Contractor to perform and comply. Any proposed alternative arrangement submitted to the City for its approval shall be at no greater cost to the City than the City would have incurred under this Agreement (transportation costs and Disposal Fees included) and any savings accruing to Contractor as a result of such arrangement shall be credited to the City.

(4) Notwithstanding any other terms in this Article 6, it shall be an Event of Default if Contractor fails to perform its obligations under this Agreement resulting from a Force Majeure Event for sixty (60) consecutive Days.

(5) If the Force Majeure Event prevents the City from performing responsibilities or obligations hereunder with respect to the delivery of Municipal Solid Waste to the Designated Transfer Station(s) and/or Designated Disposal Facility(ies) and such Force Majeure Event continues for a period of sixty (60) consecutive Days, Contractor shall have the right to terminate this Agreement under the provisions of this subsection.

ARTICLE 7

INSURANCE AND LIABILITY

7.01 Maintenance of Insurance.

Unless otherwise approved by the City's Risk Manager in writing, Contractor shall throughout the Term of this Agreement, at its sole cost and expense, and Contractor shall cause its subcontractors, at their sole cost and expense, to procure and to maintain in full force and effect, the types and minimum limits of insurance specified below. All insurance shall be procured from reputable insurers admitted to do business on a direct basis in the Commonwealth or otherwise acceptable to the City. All insurance herein, except Environmental Impairment Liability and Workers' Compensation, shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall Work be performed under this Agreement until the required evidence of insurance has been furnished. The insurance shall provide for at least thirty (30) Days prior written notice to be given to the City in the event coverage is materially changed,

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cancelled, or non-renewed. The City, its officers, employees, and agents, shall be named as additional insureds on the General Liability Insurance Policy. An endorsement is required stating that the City, its officers, employees, and agents, shall be named as additional insureds on the General, Environmental Liability & Umbrella Liability Insurance Policies.

- (a) Workers' Compensation and Employers' Liability
 - (i) Workers' Compensation: Statutory Limits
 - (ii) Employers' Liability:
 - \$500,000 Each Accident – Bodily Injury by Accident;
 - \$500,000 Each Employee – Bodily Injury by Disease;
 - \$500,000 Policy Limit – Bodily Injury by Disease.
 - (iii) Other States' Endorsement
- (b) General Liability Insurance
 - (i) Limit of Liability: \$2,000,000 per occurrence for bodily injury including death) and property damage liability.
 - (ii) Coverage: Premises operations; collapse, explosion and underground hazards, blanket contractual liability; personal injury liability (employee exclusion deleted); products and completed operations; independent contractors, employees and volunteers as additional insureds; cross liability; and broad form property damage (including completed operations).
- (c) Automobile Liability Insurance
 - (i) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
 - (ii) Coverage: Owned, non-owned, and hired vehicles.
- (d) Environmental Impairment or Pollution Liability Insurance
 - (i) Limit of Liability: \$10,000,000 each incident/\$10,000,000 aggregate for bodily injury (including death) and property damage.
 - (ii) Coverage: Shall include sudden, accidental and gradual occurrences and may be written on a claims-made basis provided that coverage for occurrences happening during the term of this contract be maintained in full force and effect under the policy or "tail" coverage for a period of at least two (2) year following the Term of this Agreement.

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- (e) Umbrella Liability Insurance: at limits totaling \$20,000,000 per occurrence when combined with insurance required under (b), (c), and (d) above.

7.02 Evidence of Insurance Coverage.

(1) The original certificate of insurance must be submitted to the City's Risk Manager at the following address:

City of Philadelphia
Division of Risk Management
1515 Arch Street, 14th Floor
Philadelphia, PA 19102
Fax: (215) 683-1705

(2) The original Certificates of Insurance shall be submitted to the Risk Manager at the above address, at least ten (10) Days prior to the commencement of any rights exercisable by Contractor hereunder and at least ten (10) Days prior to the expiration of any policy required hereunder. The actual endorsement adding the City as an additional insured must be submitted to the City Risk Manager at the above address. The City reserves the right to require Contractor to furnish certified copies of the original policies of all insurance required under this Agreement at any time upon ten (10) Days written notice to Contractor. The City also reserves the right, in any event, not more frequently than once every year, to reasonably adjust the amounts, types and deductibles of the insurance coverage required hereunder, upon thirty (30) Days notice to Contractor.

- (3) A copy of the certificate of insurance shall be submitted to:

City of Philadelphia Streets Department/Sanitation Division
Municipal Services Building, Room 730
1401 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19102
Attn.: Commissioner

7.03 No Limit of Liability.

The insurance requirements set forth in this Article 7 shall in no way be intended to limit, modify or reduce the indemnification, made in this Agreement or to limit Contractor's liability to the limits of the policies of insurance required hereunder.

7.04 Indemnification.

Contractor shall indemnify, defend and hold harmless City, its officers, employees and agents, from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees), claims, suits, actions, damages, liability and expenses including, but not limited to, those in connection with loss of life, bodily injury, personal injury,

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damage to property, hazardous substances, contamination or adverse effects on the environment, failure to pay such subcontractors and suppliers, any breach of this Agreement, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret) resulting from Contractor's acts or omissions or negligence or the acts or omissions or negligence of Contractor's agents, subcontractors, officers, employees or servants under or in connection with this Agreement. This obligation to indemnify, defend and hold harmless City, its officers, employees and agents, shall survive the termination of this Agreement.

ARTICLE 8. **MISCELLANEOUS PROVISIONS**

8.01 Nondiscrimination.

(1) The Parties acknowledge that they have entered into and perform the Contract under the terms of the Philadelphia Home Rule Charter, as it is amended from time to time, and in performing the Contract, Contractor shall not discriminate or permit discrimination against any person because of race, color, religion or national origin. In addition, the Contractor shall, in performing the Contract, comply with the provisions of the Fair Practices Ordinance of the Philadelphia Code (Chapter 9-1100) and the Mayor's Executive Order No. 04-86 (prohibiting discrimination on the basis of Human Immunodeficiency Virus infection), as each may be amended from time to time and which, as applicable, prohibit, among other things, discrimination against individuals in employment, housing and real property practices, and/or public accommodation practices whether by direct or indirect practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familial status, genetic information, or domestic or sexual violence victim status, or other act or practice made unlawful under Chapter 9-1100 or under the nondiscrimination laws of the United States or the Commonwealth of Pennsylvania.

(2) In accordance with Chapter 17-400 of the Philadelphia Code, as it may be amended from time to time, Contractor agrees that its payment or reimbursement of fees or other expenses in association with participation by Contractor or its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes without limiting the generality of other provisions of this Contract a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available in law or equity. Contractor agrees to include this subparagraph, with appropriate adjustments for the identity of the Parties, in all subcontracts that are entered into for work to be performed pursuant to the Contract.

(3) Contractor further agrees to cooperate with the Commission of Human Relations for the City of Philadelphia in any manner that the said Commission deems reasonable and

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necessary for the Commission to carry out its responsibilities under Chapter 17-400 of the Philadelphia Code. Without limiting the generality of any other provisions of this Contract, the Contractor's failure to cooperate shall constitute a material breach of this Contract entitling the City to all rights and remedies provided herein or otherwise available in law or equity.

(4) In accordance with Act 57 of 1998, 62 Pa.C.S. § 3701, in the hiring of employees for the performance of work under the Contract or any Subcontract, neither the Contractor nor any of its Subcontractors, nor any person acting on their behalf shall discriminate, by reason of gender, race, creed or color, against any citizen of the Commonwealth who is qualified or available to perform the work to which the employment relates.

(5) Neither the Contractor nor any of its Subcontractors, nor any person acting in their behalf shall in any manner discriminate against or intimidate any employee hired for the performance of work under the Contract on account of gender, race, creed or color.

(6) Contractor and each Subcontractor shall furnish all necessary employment documents and records to permit access to its books, records and accounts by the City for purposes of investigation to ascertain compliance with the provision of this Article.

(7) In the event of any breach of this Article, the City may, in addition to any rights and remedies available under this Contract, or at law or in equity, immediately cancel, terminate or suspend this Contract, and all money due or to become due under this Contract may be forfeited for a violation of the terms and conditions of this Article. In addition, a violation of any provisions of this Article may serve as grounds for suspension and debarment of the Contractor or its Subcontractors from contracting activities by the City.

(8) **Philadelphia 21st Century Minimum Wage Standard.**

This Contract is subject to Chapter 17-1300 of The Philadelphia Code, "Philadelphia 21st Century Minimum Wage and Benefits Standard," and all regulations and procedures adopted thereunder. Contractor will comply with the requirements of Chapter 17-1300 of the Philadelphia Code as they exist on the date when the Contractor entered into this Contract or as they exist on the date when any amendment is executed to this Contract. The Contractor will promptly provide to the City documents and information verifying its compliance with the requirements of Chapter 17-1300. The Contractor will notify its affected employees with regard to the wages that are required to be paid pursuant to Chapter 17-1300. The Office of Labor Standards may grant a partial or total waiver of Section 17-1300 based on the specific stipulated reasons elaborated in Section 17-1304 of the Philadelphia Code.

8.02 Business Interest in Northern Ireland, Sudan and Iran

(1) In accordance with Section 17-104 of the Philadelphia Code, Contractor by execution of this Contract certifies and represents that:

(a) Contractor (including any parent company, subsidiary, exclusive distributor or

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company affiliated with Contractor) does not have, and will not have at any time during the Term (including any extensions thereof), any investments, licenses, franchises, management agreements or operations in Northern Ireland, unless Contractor has implemented the fair employment principles embodied in the MacBride Principles; and

(b) No product to be provided by Contractor will originate in Northern Ireland, unless the Contractor has implemented the fair employment principles embodied in the MacBride Principles;

(c) Contractor (including any parent company, subsidiary, exclusive distributor or company affiliated with Contractor) does not, and will not at any time during the Term (including any extension thereof), do any business in Iran or Sudan; and

(d) No product to be provided under this Contract were, are or will be manufactured by an entity doing business in Iran or Sudan, unless a federal override with respect to Iran or Sudan, as applicable, is in place or unless an exclusion from disqualification applies.

(2) In the performance of this Contract, Contractor agrees that it will not utilize any suppliers or Subcontractors at any tier:

(a) Who have or whose parent(s), subsidiary(ies), exclusive distributor(s) or company affiliate(s) have any investments, licenses, franchises, management agreements or operations in Northern Ireland;

(b) Who will provide products originating in Northern Ireland unless said supplier, subconsultant or Subcontractor has implemented the fair employment principles embodied in the MacBride Principles.

(c) Who do or whose parent(s), subsidiary(ies), exclusive distributor(s) or company affiliate(s) do business in Iran or Sudan during the Term, or

(d) Who will provide products manufactured by an entity doing business in Iran or Sudan, as applicable, unless a federal override with respect to Iran or Sudan, as applicable, is in place or unless an exclusion from disqualification applies.

(3) Contractor agrees to cooperate with the City's Director of Finance in any manner, which such Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of the Philadelphia Code. Contractor expressly understands and agrees that any false certification or representation in connection with this section and/or any failure to comply with the provisions of this section shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise Applicable Law (including, but not limited to, Section 17-104 of the Philadelphia Code or equity). In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa. S. C. A. § 4904.

8.03 Business, Corporate and Slavery ERA Insurance Disclosure

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(1) In accordance with Section 17-104 of the Philadelphia Code, Contractor, after execution of the Contract agrees to complete an affidavit certifying and representing that Contractor (including any parent company, subsidiary, exclusive distributor or company affiliated with Contractor) has searched any and all records of Contractor or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit.

(2) Contractor expressly understands and agrees that any false certification or representation in connection with this paragraph and/or any failure to comply with the provisions of this paragraph shall constitute a substantial breach of the Contract entitling the City to all rights and remedies provided in the Contract and otherwise available in law (including, but not limited to, Section 17-104 of the Philadelphia Code) or equity and the contract will be deemed voidable. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A § 4904.

8.04 Contractor Integrity Provisions

(1) For purposes of this Article (Contractor Integrity Provisions), the following definitions shall have the meanings set forth in this Paragraph 40.1.

(a) Confidential information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the City.

(b) Consent means written permission signed by a duly authorized officer or employee of the City, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the City shall be deemed to have consented by virtue of execution of this Contract.

(c) Contractor means Contractor including its directors, officers, partners, managers, key employees, owners of more than a five percent (5%) interest, parent companies, and subsidiaries.

(d) Financial interest means:

- (i) Ownership of more than a five percent (5%) interest in any business; or
- (ii) Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

(e) Gratuity means any payment of more than nominal monetary value in the form of case, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

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(2) Contractor shall maintain the highest standards of integrity in the performance of this Contract and shall take no action in violation of Applicable Laws or requirements that govern contracting with the City.

(3) Contractor shall not disclose to others any confidential information gained by virtue of this Contract.

(4) Contractor shall not, in connection with this or any other contract with the City, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of City.

(5) Contractor shall not, in connection with this or any other Contract with the City, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of City.

(6) Except with the consent of City, neither the Contractor nor anyone in private with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this Contract except as provided therein.

(7) Except with the consent of City, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.

(8) The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify City in writing.

(9) The Contractor, by execution of this Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he or she has not violated any of these provisions.

(10) The Contractor, upon the inquiry or request of the Inspector General of the City or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the contractor's integrity or responsibility, as those terms are defined by City's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the contractor's business or financial records, documents or files of any type or form, which refer to or concern this Contract. Such information shall be retained by the Contractor for a period of three (3) years beyond the termination of the Contract unless otherwise provided by law.

(11) To preserve the integrity of City employees and maintain public confidence in the competitive bidding system, the City intends to vigorously enforce the various ethics laws as

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they relate to City employees in the bidding and execution of contracts to which the City is a party. Such laws are in three categories:

(a) Executive Order No. 03-11, which prohibits City employees from soliciting or accepting anything of value from any person seeking to initiate or maintain a business relationship with the City, including, but not limited to, any of its departments, boards, commissions or agencies. All City employees presented with gifts or gratuities as indicated in Executive Order 03-11 have been instructed to report these actions to the appropriate authorities. All bidders, agents or intermediaries who are solicited for gifts or gratuities by City employees are urged to report these actions to the appropriate authorities, including but not limited to the Inspector General.

(b) Section 10-102 of the Philadelphia Home Rule Charter, which prohibits any bid from being accepted from, or contract awarded to any city employee or official, or any firm in which City employee or official has a direct or indirect financial interest. All bidders are required to disclose any current City employees or officials of the bidder's firm, or who otherwise would have a financial interest in the contract.

(c) The State Ethics Act and the City Ethics Code, which prohibit a public employee from using his or her public office or any confidential information gained thereby to obtain financial gain for himself or herself, a member of his or her immediate family, or a business with which he or she or any member of his or her immediate family is associated. "Use of Public office" is avoided by the employee or official publicly disclosing the conflict and disqualifying him or herself from official action in the matter, as provided in the Philadelphia Code § 20-608.

(12) For violation of any of the above provisions, the City may terminate this and any other Contract with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the City may have under the law, statute, regulation, or otherwise.

8.05 Contractor Responsibility Provisions

(1) Contractor certifies that it is not currently under suspension or debarment by the City, the Commonwealth, any other state, or the federal government.

(2) If Contractor enters into any Subcontracts under this Contract with Subcontractors who are currently suspended or debarred by the City, the Commonwealth, or federal government or who become suspended or debarred by the City, the Commonwealth or federal government during the Term or any extensions or renewals thereof, City shall have the right to require Contractor to terminate such Subcontracts.

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(3) Contractor agrees that it shall be responsible for reimbursing City for all necessary and reasonable costs and expenses incurred by the Office of the Inspector General relating to an investigation of Contractor's compliance with the terms of this or any other Contract between Contractor and City which results in the suspension or debarment of the Contractor.

8.06 The Americans with Disabilities Act

(1) Contractor understands and agrees that, pursuant to federal regulations promulgated under the authority of the Americans With Disabilities Act, 28 C.F.R. § 35.101 *et seq.*, no individual with a disability shall, on the basis of the disability be excluded from participation in the Contract or from activities or services provided under the Contract. As a condition of accepting and executing the Contract, Contractor shall comply with all provisions of the Americans With Disabilities Act (the "ADA"), 42 U.S.C. §§ 12101-12213, and all regulations promulgated thereunder, as the ADA and regulations may be amended from time to time, which are applicable to: (a) the Contractor; (b) the benefits, services, activities, facilities and programs provided in connection with the Contract; (c) the City or the Commonwealth; and the benefits, services, activities, facilities and programs of the City or of the Commonwealth, and, (d) if any funds for payments or otherwise under the Contract are provided by the federal government and its benefits, services, activities, facilities and programs the benefits. Without limiting the applicability of the preceding sentence, Contractor shall comply with the "General Prohibition Against Discrimination," 28 C.F.R. Part 35,130, and all other regulations promulgated under Title II of the ADA, as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through Contracts with outside contractors.

(2) Contractor shall be responsible for and agrees to indemnify and hold harmless City from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the City as a result of Contractor's failure to comply with the provisions of this Section 8.06.

8.07 Sales and Use Tax; Federal Excise Tax

(1) The City is not subject to federal, state or local sales or use tax or federal excise tax. Contractor hereby assigns to the City all of its right, title and interest in any sales and use tax which may be refunded as a result of the purchase of any materials in connection with the Contract, and the Contractor, unless directed by the City, shall not file a claim for any sales or use tax refund subject to this assignment. The Contractor authorizes the City, or its agent, in its own name, or in the name of the Contractor, to file a claim for a refund of any sales or use tax subject to this assignment. To the extent it may be applicable to the work under this Contract, the Contractor covenants and agrees that it shall not bill the City for or otherwise pass-through to the City for payment any Federal Excise Tax paid in connection with the work under this Contract; in consideration of the Contractor's foregoing covenant, the City hereby consents to any filing by the Contractor for a refund of any Federal Excise Tax paid in connection with the work under this contract.

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(2) The Contractor agrees to include the above referenced paragraph in any Subcontracts with Subcontractors.

8.08 Access to Accounting Records

(1) Contractor shall certify that all materials, equipment and labor charged to the City are accounted for and shall keep such full and detailed accounts as may be necessary for proper financial management under this Contract.

(2) The Contractor shall retain, and shall provide the City and its representatives access, to all records, books of account, correspondence, instructions, shop drawings, receipts, vouchers, memoranda, and similar data and documentation pertaining to the Contract for a period of five (5) years following final payment, or earlier termination of the Contract, or for such longer period as may be required by law; however, if any litigation, claim or audit is commenced prior to the expiration of said five(5)-year period, then records shall be retained until all litigation, claims or audit findings have been completely terminated or resolved, without right of further appeal, or if Applicable Law requires a longer period, then the record shall be retained for such longer period.

(3) From time to time during the performance of the work under the Contract, and for a period of five (5) years after the completion of the work under the Contract, the City may audit any and all aspects of the Contractor's performance under the Contract, including but not limited to its billing and invoices. Representatives, agents or contractors of the City, including, without limitation, the City Controller may conduct audits. If requested by the City, the Contractor shall submit to the City all vouchers, records, reports, expenditures or fees incurred pursuant to the Contract. All books invoices, vouches, records, reports, cancelled checks and other materials are subject to inspection and review by the City, federal and state representatives, as may be applicable, or their designees, at the officers of the Contractor in the City or in another location with the City's consent.

(4) The Contractor shall cooperate with all City, state and federal inspections and reviews conducted in accordance with the provisions of the Contract. Such inspection and review of the Contractor's work hereunder shall be in the sole discretion of the inspecting or reviewing entity. Such inspection or review may include, without limitation, review of staffing ratios and job descriptions, and meetings with any of the Contractor's staff that are either directly or indirectly involved in providing all or any portion of the work hereunder. The Contractor shall make available within the City at reasonable times during the performance of work hereunder and for period set forth above in this paragraph, all records pertaining to the Contract for the purpose of inspection, audit or reproduction by any authorized representative of the city (including any agent or contractor and the City Controller), the Commonwealth Auditor General, and any other federal or state auditors, as may be applicable, at no additional cost to the City.

8.09 Right-to-Know Law

(1) The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, applies to this Contract.

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(2) The City shall notify the Contractor using the legal contact information provided in this Contract if the City needs the Contractor's assistance in any matter arising out of the Right to Know Law ("RTKL"). The Contractor shall notify the City in writing of any change in the name or the contact information within a reasonable time prior to the change.

(3) Upon notification from the City that the City requires the Contractor's assistance in responding to the RTKL request ("Requested Information"), Contractor shall have five Days from receipt of notification from the City to provide input on the release of the requested information and such other records and assistance as the City may request in order to comply with the RTKL. If the Contractor fails to provide such input, records or assistance within five (5) Days after receipt of such a request from the City, Contractor shall indemnify and hold the City harmless for any damages, penalties, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the City.

(4) The City's determination as to whether the Requested Information is a public record is dispositive of the question as between the parties. The Contractor agrees not to challenge the City's decision to deem the Requested Information a public record. If, upon review of the information and records provided by the Contractor, the City decides to release the Requested Information in response to the RTKL request, the Contractor will not challenge or in anyway hold the City liable for such a decision.

(5) The City will reimburse the Contractor for any costs associated with complying with this provision only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

(6) The Contractor agrees to abide by any decision to release a record to the public made by the Office of Open Records, or by the Pennsylvania courts. The Contractor agrees to waive all rights or remedies that may be available to it as a result of the City's disclosure of Requested Information pursuant to the RTKL. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

8.10 Miscellaneous

(1) **Entire Agreement.** This Contract, when executed, together with all other Contract Documents attached hereto or to be attached hereto, as provided for by this Contract shall contain all the agreements, conditions, understandings, undertakings, representations, covenants, promises and warranties made between the Parties hereto with respect to the subject matter hereof and supersedes all prior negotiations and proposals (either written or oral).

(2) **Headings.** Headings and subtitles used throughout this Contract are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

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(3) **Amendments; Waiver.** This Contract may not be amended, supplemented, altered, modified or waived, in whole or in part, except by a written amendment signed by the Parties. Except to the extent that the Parties may have otherwise agreed in writing in an amendment, no waiver, whether express or implied, by either Party of any provision of the Contract shall be deemed: (a) to be a waiver by that Party of any provision in the Contract; or (b) to be a waiver by that Party of any breach by the other Party of its obligations under the Contract. Any forbearance by a Party in seeking a remedy for any noncompliance or breach by the other Party shall not be deemed to be a waiver of rights and remedies with respect to such noncompliance or breach.

(4) **Further documents.** The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract.

(5) **Order of Precedence.** If any conflicts or discrepancies should arise in the terms and conditions of this Contract or the interpretation thereof and the attached Schedules, Exhibits, and Appendices, the terms of this Contract shall control.

(6) **Governing law and venue.** This Contract shall be deemed to have been made in Philadelphia, Pennsylvania. The Contract and all disputes arising under the Contract shall be governed, interpreted, construed and determined in accordance with the laws of the Commonwealth without regard to the choice of law doctrine theory. Any suit brought to enforce any of the rights and obligations under this Contract shall be brought in the state and federal court situated in Philadelphia, Pennsylvania.

(7) **Severability.** In the event that any clause or provision of this Contract or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Contract unless the result would be manifestly inequitable or unconscionable.

(8) **Waiver of Jury Trial.** The Parties hereby mutually waive any rights that either may have to request a jury trial in any proceeding at law or in equity in any court of competent jurisdiction.

(9) **No Third Party Beneficiaries.** Nothing in the Contract, express or implied, is intended or shall be construed to confer upon or give to any Person, other than the Parties, any rights, remedies, or other benefits, including but not limited to third-party beneficiary rights, under or by reason of the Contract. The Contract shall not provide any third party with any remedy, claim, liability, reimbursement, cause of action or other right other than any such remedy, claim, etc. existing without reference to the term of or the existence of the Contract.

8.11 Certificate of Non-Indebtedness.

(1) Contractor hereby certifies and represents to the City that Contractor and Contractor's parent company(ies), subsidiary(ies), and Affiliate(s), if any, are not currently

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indebted to the City, and will not during the Term of this Agreement be indebted to the City, for or on account of any delinquent taxes (including, but not limited, to taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established.

(2) Contractor shall require all contractors and subcontractors performing work in connection with this Agreement to be bound by the following provision and Contractor shall cooperate with the City in exercising the rights and remedies described below or otherwise available at law or in equity:

“Contractor (“Contractor”) [or subcontractor (“Subcontractor”)] hereby certifies and represents that Contractor [or Subcontractor], and Contractor’s [or Subcontractor’s] parent company(ies) and their subsidiary(ies), are not currently indebted to the City of Philadelphia (the “City”), and will not at any time during the Term of Contractor’s Agreement with the City (“Agreement”) be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established.”

(3) Any breach or failure to conform to the aforesaid certifications shall constitute an Event of Default by Contractor and entitle the City to exercise any rights or remedies available to it under this Agreement, and at law and in equity.

(Remainder of page is intentionally blank)

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IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the day and year first above written.

THE CITY OF PHILADELPHIA, acting
by and through its Department of Streets

APPROVED AS TO FORM:
Shelley R. Smith
City Solicitor

BY: _____
Commissioner
Department of Streets

BY: _____
Law Department

CONTRACTOR
Waste Management of Pennsylvania, Inc.

BY: _____
PRESIDENT/VICE PRESIDENT

SEAL

BY: _____
SECRETARY/TREASURER



CITY OF PHILADELPHIA

PERFORMANCE BOND

Bond No. _____

City Contract No. _____

Bond Amount _____

1. Contractor Waste Management of Pennsylvania ("Contractor") and the Surety _____ jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the City for the performance of the City Contract, Waste Disposal Services for the Streets Department which is incorporated herein by reference.
2. If the Contractor performs the City Contract, in accordance with the terms and conditions of the City Contract, the Surety and the Contractor shall have no further obligation under this Performance Bond.
3. The Surety's obligation under this Performance Bond shall arise after the City has declared a Contractor Default as defined below, formally terminated the City Contract or the Contractor's right to complete the City Contract, and notified the Surety of the City's claim under this Performance Bond.
4. When the City has satisfied the conditions of Paragraph 3 above, the Surety shall, at the Surety's sole cost and expense, undertake one or more of the following actions:
 - a. Arrange for the Contractor to perform and complete the City Contract, provided, however, that the Surety may not proceed with this option, except upon the express written consent of the City, which consent may be withheld by the City for any reason; or
 - b. Perform and complete the City Contract itself, through qualified contractors who are acceptable to the City, through a contract between the Surety and qualified contractors, which performance and completion shall be undertaken in strict accordance with the terms and conditions of the City Contract; or
 - c. Tender payment to the City in the amount of all losses incurred by the City as a result of the Contractor Default and as determined by the City for which the Surety is liable to the City, including all costs of completion of the City Contract and all consequential losses, costs, and expenses incurred by the City as a result of the Contractor Default, and including all unpaid fees or payments owed to the City by the Contractor under the City Contract, except that Surety's payment under this option shall in no event exceed the limit of the Bond Amount. The Surety may not proceed with this option, in lieu of the options set forth in subparagraphs (a) or (b) above, except upon the express written consent of the City, which consent may be withheld by the City for any reason.
5. The Surety shall proceed under Paragraph 4 above within ten (10) business days after notice from the City to the Surety of the Contractor Default, formal termination of the Contract or the Contractor's right to complete the City Contract, except that the Surety shall proceed within twenty-four (24) hours after notice, where the notice states that immediate action by the Surety is necessary to safeguard life or property.
6. If the Surety fails to proceed in accordance with Paragraphs 4 and 5 above, then the Surety shall be deemed to be in default on this Performance Bond three business days after receipt of written notice from the City to the Surety demanding that the Surety perform its obligations under this Performance Bond. Thereafter, if notice to the Surety is without effect, the City shall be entitled to enforce any legal or equitable remedy available to the City. If the Surety has denied liability, in whole or in part, the City shall be entitled without further notice to Surety to enforce any legal or equitable remedies available to the City.

7. After the City has terminated the City Contract or the Contractor's right to complete the City Contract, and if the Surety is proceeding under subparagraphs 4(a) or 4(b) above, then the responsibilities of the Surety to the City shall not be greater than those of the Contractor under the City Contract, and the responsibilities of the City to the Surety shall not be greater than those of the City under the City Contract. The Surety shall be obligated to the limit of Bond Amount as set forth on the front page, subject, however, to a commitment by the City for payment to the Surety of the Balance of the Contract Price in mitigation of costs and damages on the City Contract. The Surety shall be obligated, without duplication, for:
 - a. The responsibilities of the Contractor for correction of defective or unsuitable work and performance and completion of the City Contract;
 - b. Additional legal, design professional, and delay costs incurred by the City as a result of the Contractor's Default, and as a result of the Surety's actions or failures to act under Paragraph 4 above;
 - c. Liquidated damages as specified in the City Contract, or, if no liquidated damages are specified in the City Contract, actual damages and consequential damages incurred by the City as a result of delayed performance or non-performance of City Contract by the Contractor or the Surety; and
 - d. Payment of all unpaid and due and owing fees or payments owed to the City under the City Contract at the time of the Contractor Default.
8. To the extent of payment to the Surety of the Balance of the Contract Price, the Surety shall defend, indemnify, and hold harmless the City from all claims, suits, causes of actions, and demands (including all costs of litigation and a reasonable attorney's fee), which are brought against the City by the Contractor or any other party and which arise from or by reason of payment to the Surety the Balance of the Contract Price.
9. The Surety hereby waives notice of any change or modification to the City Contract, including changes of time, or changes to related subcontracts, purchase orders, and other obligations.
10. Any proceeding, suit, or claim, legal or equitable, under this Performance Bond shall be instituted in the U.S. District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Philadelphia County and shall be instituted within two years of the date on which the Surety refuses or fails to perform its obligations under this Performance Bond, in accordance with Paragraphs 4 and 5 above. If the provisions of this Paragraph are void or prohibited by law, the minimum limitations period available to sureties as a defense in the jurisdiction of the proceeding, suit, or claim shall be applicable.
11. All notices to the Surety or the Contractor shall be mailed or delivered to the respective addresses shown on the signature page. In the event of a change in the address of the Surety or the Contractor, such party shall promptly provide notice to the City and the other party, with such notice to include the City Contract No. and this Performance Bond No.
12. When this Performance Bond has been furnished to the City in compliance with the Public Works Contractors' Bond Law of 1967, 8 P.S. § 191, et seq., any provision in this Performance Bond which conflicts with the statutory or legal requirement of such statute shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein.
13. The law controlling the interpretation or enforcement of this Performance Bond shall be Pennsylvania law.
14. Definitions
 - a. Balance of the Contract Price: The total amount payable by the City to the Contractor under the City Contract after all proper adjustments have been made, including change orders and credits due the City, reduced by all valid and proper payments made to or on behalf of the Contractor under the City Contract and reduced further by all direct costs and expenses incurred by the City as a result of the Contractor Default, including costs of additional supervision or inspection by the City of the Contractor's work under the City Contract and fees and expenses paid to consultants or others hired by the City for purposes of monitoring or investigating the Contractor's work under the City Contract.

- b. City Contract: The agreement between the City and the Contractor identified on the front page.

- c. Contractor Default: In the case of City Contracts for Public Works, "Contractor Default" shall mean the failure or refusal of the Contractor, after written notice from the City, to cure or remedy, or commence to cure or remedy, a Violation of City Contract (as defined in the City's Standard Contract Requirements for Public Works Contracts) within three (3) working days from receipt of such notice, or within twenty-four (24) hours from receipt of such notice, where immediate action by the Contractor is necessary to safeguard life or property. In the case of all other City Contracts, "Contractor Default" shall mean the occurrence of an "event of default" or a "termination for cause" as defined or provided for in the City Contract's terms, conditions, and provisions.

CONTRACTOR AS PRINCIPAL:

SURETY:

Signature: _____

Signature: _____

Title: _____

Attorney-In-Fact
 (*Attach Power of Attorney)

Date: _____

Date: _____

Address: _____

Address: _____

(Corporate Seal)

(Surety Seal)

EXHIBIT B

Waste Management of Pennsylvania, Inc. Economic Opportunity Plan

For Waste Disposal Services

I. Introduction, Definitions and Diversity Practices

A. Waste Management of Pennsylvania, Inc. ("WM") is a proposed contractor for disposal services for the City. The services include the receipt of certain waste materials at permitted waste transfer facilities located in Philadelphia, processing of waste materials, transportation of waste to landfills and final disposal or disposition of the waste. The term of the proposed service agreement is four years with a City option to renew the agreement on an annual basis for an additional three years.

This agreement is subject to Chapter 17-1600 of The Philadelphia Code, which requires the development and implementation of "Economic Opportunity Plan(s)" for certain classes of contracts and covered agreements as defined in Section 17-1601. The Economic Opportunity Plan ("Plan") memorializes WM's best and good faith efforts to provide meaningful and representative opportunities for Minority Business Enterprises ("MBEs"), Woman Business Enterprises ("WBEs") and Disabled Business Enterprises ("DSBEs") (collectively, "M/W/DSBEs" which also includes firms designated as Disadvantaged Business Enterprises or "DBEs" ¹) and an appropriately diverse workforce in connection with the Agreement.

This Agreement is subject to the Plan requirements as described in Section 17-1603 (1). Accordingly, WM makes a legally binding commitment to abide by the provisions of this Plan which include WM's commitment to exercise its best and good faith efforts throughout the contract term to provide meaningful and representative contracting opportunities for M/W/DSBEs and to employ an appropriately diverse workforce which should include minority and female persons.

B. For the purposes of this Plan, MBE, WBE, DBE and DSBE shall refer to certified businesses so recognized by the City of Philadelphia through its Office of Economic Opportunity ("OEO"). Only the work or supply effort of firms that are certified as M/W/DSBEs by an OEO approved certifying agency² or identified in the OEO Registry will be eligible to receive credit as a Best and Good Faith Effort. In order to be counted, certified firms must successfully complete

¹ "DBE" or "Disadvantaged Business Enterprise" means a socially and economically disadvantaged minority or woman owned business that is certified under 49 C.F.R. Part 26. If WM makes solicitation(s) and commitment(s) with a DBE, WM shall indicate which category, MBE or WBE, is submitted for counting.

² A list of "OEO approved certifying agencies" can be found at www.phila.gov/oEO

and submit to the OEO an application to be included in the OEO Registry which is a list of registered M/W/DSBEs maintained by the OEO and available online at www.phila.gov/oEO/directory. If a firm is certified by an approved certifying agency, a copy of that certification should be furnished with the proposal.

C. WM shall not discriminate on the basis of race, color, religion, sex, national origin, sexual orientation, gender identity, ancestry, age, or handicap in the award and performance of contracts pertaining to this Agreement. WM has submitted a statement summarizing current and past practices relating to its diversity practices. Attachment "A" to this Plan provides additional information summarizing past diversity practices. WM is committed to achieving and maintaining the diversity goals established within this Economic Opportunity Plan

WM verifies that all information submitted to the City including without limitation, the Plan and all forms and attachments thereto, are true and correct and are notified that the submission of false information is subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities. WM and its Subcontractors also acknowledge that if awarded a contract/subcontract resulting from this agreement, it is a felony in the third degree under 18 Pa.C.S. Section 4107.2 (a)(4) if, in the course of the contract/subcontract, WM and/or its Participant(s) fraudulently obtains public moneys reserved for or allocated or available to minority business enterprises or women's business enterprises.

II. Goals

For this Plan, the term "Best and Good Faith Efforts," the sufficiency of which shall be in the sole determination of the City, means: efforts, the scope, intensity and appropriateness of which are designed and performed to foster meaningful and representative opportunities for participation by M/W/DSBEs and achieve an appropriately diverse workforce. Best and Good Faith Efforts are rebuttably presumed met, when a WM makes commitments within the M/W/DSBE Participation Ranges established for this Proposal and commits to employ a diverse workforce.

A. M/W/DSBE Participation Ranges

The contract services to be provided by WM include two main components: the disposal of the City's solid waste, and the transportation of the City's solid waste to the disposal facilities. Commencing in 2013, a third component will be provided, namely the processing of a portion of the City's waste into WM SpecFuel pellets. The actual disposal of the City's solid waste, and the creation of the WM SpecFuel pellets, will occur at WM's wholly-owned landfills and waste-to-energy facility in Bucks County, Pennsylvania, and at the WM SpecFuel processing facility to be constructed at the Forge Transfer Station complex within the City, and thus the actual disposal and WM SpecFuel components provide no opportunity for subcontracted services. However, the transportation of the City's waste from the WM transfer facilities located within the City to the disposal facilities, and the transportation of WM SpecFuel pellets once

fabricated, provide a meaningful opportunity to subcontract services to certified M/W/DSBE transportation firms. Accordingly, as a benchmark for WM's expression of its Best and Good Faith Efforts to provide meaningful and representative opportunities for M/W/DSBEs in the contract, the following participation ranges have been developed for the transportation component of the contract services. These participation ranges represent, in the absence of discrimination in the solicitation and selection of M/W/DSBEs, the percentage of MBE, WBE and DSBE participation that is reasonably attainable on this contract through the exercise of WM's Best and Good Faith Efforts. In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (e.g. MBE and WBE and DSBE or WBE and DSBE) will only be credited toward one participation range as either an MBE or WBE or DSBE. The firm will not be credited toward more than one category. These ranges are based upon an analysis of factors such as the size and scope of the contract and the availability of MBEs, WBEs and DSBEs to perform various elements of the contract:

	MBE	WBE
All Waste and WM SpecFuel Pellet Transportation Services	25-50%	25-50%

In addition to City waste, WM handles approximately 700 TPD of commercial waste at our Forge Transfer Station and approximately 700 TPD of commercial waste at our Philadelphia Transfer Station.

Under the award of the agreement by the City of Philadelphia, Waste Management will use certified MBE/WBE firms to haul 100% of the City waste from the transfer station facilities to its landfills and WTE facility. In addition, WM commits to utilize certified MBE/WBE firms to haul 100% of the non-City commercial waste to and from each of the transfer station facilities to WM's landfills or WTE. By adding the non-City commercial waste to its MBE/WBE commitment, WM is nearly doubling the volume of materials to be hauled by certified MBE/WBE firms. Moreover, once the Waste Management Spec Fuel Facility is operational, 100% of the transportation of the pellets will be handled by MBE/WBE firms, further expanding WM's MBE/WBE commitment. The allocations of each are included in the table below.

Forge TS		
City Contract	TAC	850 TPD
	WB	300 TPD
Other Waste	WB	700 TPD
PTS		
City Contract	WB	600 TPD

Other Waste	WB	700 TPD
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100% of the fuel purchased for the Forge will be purchased from Filly Oil.

TAC is certified as a MBE firm.

WB Services and Filly Oil are both certified WBE firms.

B. Employment Goals

WM agrees to use its Best and Good Faith Efforts to employ an appropriately diverse workforce which includes minority persons and females at all tiers of employment and management. For this Plan, an appropriately diverse workforce is one which reflects the local availability of professionals possessing the requisite education, licenses, where appropriate, and skills to work on this agreement.

WM shall use its Best and Good Faith Efforts to employ a workforce that has 50% City Residents for work that occurs in Philadelphia.

III. WM Responsiveness and Responsibility

A. WM identified all its M/W/DSBE commitments and evidence its agreement to employ a diverse workforce on the form entitled, "Antidiscrimination Policy Solicitation for Participation and Commitment" The firms identified on this form constitute a representation by WM, that the M/W/DSBE is capable of completing the subcontract with its own workforce, and that WM has made a legally binding commitment with the firm. The listing of the M/W/DSBE firm by WM further represents that if WM is awarded the contract, WM will subcontract with the listed firm(s) for the work or supply effort described and the dollar/percentage amount(s) set forth on the form. In calculating the percentage of M/W/DSBE participation, WM shall apply the standard mathematical rules in rounding off numbers. In the event of inconsistency between the dollar and percentage amounts listed on the form, the percentage will govern. WM is to maintain the M/W/DSBE percentage commitments throughout the term of the contract which shall apply to the total amount of the contract and any additional increases. In the event WM's contract is increased by change order and/or modification, or amendment, it shall be the responsibility of WM to apply its Best and Good Faith Efforts to the amended amount in order to maintain any participation ranges committed to on the total dollar amount of the contract at the time of contract completion.

1. Commercially Acceptable Function

An offeror such as WM that enters into a subcontract with an M/W/DSBE shall be considered to have made a Best and Good Faith Effort in that regard only if its

M/W/DSBE subcontractor performs a commercially acceptable function ("CAF"). An M/W/DSBE is considered to perform a CAF when it engages in meaningful work or supply effort that provides for a distinct element of the subcontract (as required by the work to be performed in accordance with the agreement), where the distinct element is worthy of the dollar amount of the subcontract and where the M/W/DSBE carries out its responsibilities by actually performing, managing and supervising the work involved; M/W/DSBE subcontractors must perform at least twenty percent (20%) of the cost of the subcontract (not including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own employees.

The City may evaluate the amount of work subcontracted, industry practices and any other relevant factors in determining whether the M/W/DSBE is performing a CAF and in determining the amount of credit the WM receives towards the participation ranges. For example, a WM using an M/W/DSBE non-stocking supplier (i.e., a firm that does not manufacture or warehouse the materials or equipment of the general character described by the agreement and required under the contract) to furnish equipment or materials will only receive credit towards the participation ranges for the fees or commissions charged, not the entire value of the equipment or materials furnished.

B. Upon award, letters of intent, quotations, and any other accompanying documents regarding commitments with M/W/DSBEs, including the M/W/DSBE Participation and Workforce Commitments Form, become part of the contract. M/W/DSBE commitments are to be memorialized in a written subcontract agreement and are to be maintained throughout the term of the contract and shall apply to the total contract value (including approved change orders and amendments). Any change in commitment, including but not limited to termination of the subcontract, reduction in the scope of committed work, substitutions for the listed firms, changes or reductions in the listed dollar/percentage amounts, must be pre-approved in writing by OEO. Throughout the term of the contract, WM is required to continue its Best and Good Faith Efforts.

C. The submission of the "Antidiscrimination Policy Solicitation for Participation and Commitment" Form was an element of proposal responsiveness. OEO may request information and documentation in support of compliance with this Plan.

1. Solicitation may have been directed to both qualified M/W/DSBEs registered with OEO and qualified M/W/DSBEs certified by agencies approved by OEO. WM must provide a list of all certification directories used for soliciting participation for this Agreement. WM must determine with reasonable certainty if the M/W/DSBEs are interested by taking appropriate steps to follow up on initial solicitations; one time contact, without follow up, is not acceptable; and

2. WM provided interested M/W/DSBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation; and

3. WM negotiated in good faith with interested M/W/DSBEs. WM using good business judgment will consider a number of factors in negotiating with subcontractors, including M/W/DSBE subcontractors, and will take a firm's price and capabilities as well as the objectives of the Plan into consideration; and

4. Documentation of the following:

i. Any commitments to use M/W/DSBEs in its proposal for subcontracted services and materials supply even when WM would otherwise prefer to self-perform/supply these items; and

ii. Correspondence between the WM and any M/W/DSBE(s) related to this Proposal; and

iii. Attendance logs and/or records of any scheduled pre-proposal meeting; and

5. Certification and evidence that the following actions were taken or documentation of the following, or an explanation why these actions were not taken or why documentation does not exist:

i. Any arms length business assistance provided to interested M/W/DSBEs; and

ii. Solicitation through job fairs, newspapers, periodicals, advertisements and other organizations or media that are owned by M/W/DSBEs and/or focus on M/W/DSBEs; and

iii. Telephone logs of communications related to this Agreement; and

iv. Notification of and access to proposal documents at the WM's office or other office locations for open and timely review; and

v. WM sought assistance from the Urban Affairs Coalition, Careerlink Philadelphia, Opportunity Industrial Center and the Philadelphia Workforce Development Corporation to perform employment outreach; and

vi. WM published its policy of nondiscrimination in the hiring, retention and promotion of employees; and

vii. Any agreement with a training program that targets the employment of minority persons, disabled persons and women.

III. Evaluation of Responsiveness and Responsibility

A. Evaluation and Determination

M/W/DSBE Contracting and Vending Participation Levels: the basis for each determination will be the total dollar amount of the bid/contract OR the total dollar amount of the bid/contract for the identified Agreement task.

Minority/Female/Local Resident Employment Participation Levels: the basis for each determination will be the total on-site field employee hours divided by the number of minority, female and local residents' employee hours anticipated to be performed on the Contractor's payroll, and each of the Contractor's on-site subcontractors payrolls.

B. Administrative Reconsideration

1. If the OEO determines that the WM has not made sufficient Best and Good Faith Efforts, the WM will be notified that its proposal is nonresponsive and may file a written appeal with OEO within forty-eight (48) hours of the date of notification. The decision of OEO may be appealed in writing within forty-eight (48) hours of the date of the OEO's decision to the Chief Operating Officer of the Commerce Department or his designee whose decision shall be final. If it is determined that the WM did not make sufficient Best and Good Faith Efforts, its Proposal will be rejected.

2. Notwithstanding compliance with the requirements set forth herein, the City reserves the right to reject any or all proposals as deemed in the best interest of the City.

IV. Compliance and Monitoring of Best and Good Faith Efforts

A. WM agrees to cooperate with OEO in its compliance monitoring efforts, and to submit, within the time limits prescribed by OEO, all documentation which may be requested by OEO relative to the awarded contract, including the items described below. WM must provide as required and maintain the following contract documentation for a period of three (3) years following acceptance of final payment under the contract:

- Copies of signed contracts and purchase orders with M/W/DSBE subcontractors;
- Evidence of payments (cancelled checks, invoices, etc.) to subcontractors and suppliers to verify participation;
- Telephone logs and correspondence relating to M/W/DSBE commitments.

B. Prompt Payment of M/W/DSBEs

1. WM shall within five (5) business days after receipt of a payment from the City for work performed under the contract, deliver to its M/W/DSBE subcontractors their proportionate share of such payment for work performed (including the supply of materials). In connection with payment of its M/W/DSBE subcontractors, WM agrees to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.
2. Each month of the contract term and at the conclusion of the contract, WM shall provide to the OEO documentation reconciling actual dollar amounts paid to M/W/DSBE subcontractors to M/W/DSBE commitments presented in the Plan.

C. Oversight Committee

1. For this agreement, the City, in its sole discretion, may establish a Agreement Oversight Committee consisting of representatives from the WM and the City ("Committee"). The Committee will meet regularly to provide advice for the purpose of facilitating compliance with the Plan.
2. If an agreement Oversight Committee is established, the City will convene meetings of the Committee no later than one (1) month after issuance of the Notice To Proceed.

V. Remedies and Penalties for Non-Compliance

A. WM agrees that its compliance with the requirements of the Plan is material to the contract. Any failure to comply with these requirements may constitute a substantial breach of the contract. It is further agreed and understood that in the event the City determines that WM hereunder has failed to comply with these requirements the City may, in addition to remedies reserved under Section 17-1605 of The Philadelphia Code, any other rights and remedies the City may have under the contract, or any bond filed in connection therewith or at law or in equity, exercise one or more of the remedies below, which shall be deemed cumulative and concurrent:

- a. Withhold payment(s) or any part thereof until corrective action is taken.
- b. Terminate the contract, in whole or in part.
- c. Suspend/Debar WM from proposing on and/or participating in any future City contracts for a period of up to three (3) years.

- d. Recover as liquidated damages, one percent of the total dollar amount of the contract for each one percent (or fraction thereof) of the commitment shortfall. **(NOTE:** The "total dollar amount of the contract" shall include approved change orders, amendments and for requirements contracts shall be based on actual quantities ordered by the City.)

The remedies enumerated above are for the sole benefit of the City and City's failure to enforce any provision or the City's indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of the City's rights in connection with any contract resulting from this agreement nor shall it give rise to actions by any third parties including identified M/W/DSBE subcontractors. No privity of contract exists between the City and the M/W/DSBE subcontractor identified in any contract resulting from this agreement. The City does not intend to give or confer upon any such M/W/DSBE subcontractor(s) any legal rights or remedies in connection with subcontracted services under any law or Executive Order or by any reason of any contract resulting from this agreement except such rights or remedies that the M/W/DSBE subcontractor may seek as a private cause of action under any legally binding contract to which it may be a party.

[See Forms on following pages; these Forms, as completed by WM, must be submitted with the Proposal as a matter of Responsiveness and Responsibility]

DATE: _____	Waste Management of Pennsylvania, Inc. By: _____ Title: _____
	Office of Economic Opportunity
DATE: <u>5/9/2012</u>	By: <u>Angela Dowd Burton</u> Title: <u>Executive Director</u>

EXHIBIT “C”

DESIGNATED TRANSFER STATION(S) AND/OR DESIGNATED DISPOSAL FACILITY(IES)

I. Designated Transfer Station(s):

A. Location(s):

	<u>Name</u>	<u>Address</u>	<u>City/State</u>
1.	Forge Transfer Station	5245 Bleigh Ave.	Philadelphia, PA 19136
2.	Philadelphia Transfer Station and Recycling Center	3605 Grays Ferry Ave.	Philadelphia, PA 19146

II. Designated Disposal Facility(ies):

Contractor has designated the following Disposal Facility(ies) for the disposal of Municipal Solid Waste under this Agreement. Upon incorporation of a Disposal Facility listed below into the City’s Act 101 Plan, such Disposal Facility shall become a Designated Disposal Facility.

A. Location(s):

	<u>Name</u>	<u>Address</u>	<u>City/State</u>
	1. Tullytown Resource Recovery Facility	200 Bordentown Rd.	Tullytown, PA 19007
PA	2. GROWS North Landfill	1000 New Ford Mill Rd	Morrisville, 19067
	3. Wheelabrator Falls	1201 New Ford Mill Rd.	Morrisville, PA 19067
	4. WM SpecFuel Facility	5245 Bleigh Ave.	Philadelphia, PA 19136

Exhibit "D"

Maximum Daily Quantity

I. Maximum Daily Quantity in Tons Per Day (TPD):

<u>Name</u>	<u>Maximum Daily Quantity</u>
1. Philadelphia Transfer Station	600 TPD
2. Forge Recycling and Transfer Station and/or WM SpecFuel Facility	1,150 TPD

EXHIBIT “E”

DISPOSAL FEES

Disposal Rates for Municipal Solid Waste

Fiscal Year 2013 Disposal Rate \$57.95 per ton for Municipal Solid Waste Accepted at the Philadelphia Transfer Facility and Recycling Center, Forge Transfer Facility, and WM SpecFuel Facility.

Fiscal Year 2013 Disposal Rate \$ 57.95 for direct delivery of Municipal Solid Waste to the GROWS North Landfill and Tullytown Landfill, and Wheelabrator Falls waste-to-energy facility.

Disposal Rates for Residual Waste

Fiscal Year 2013 Disposal Rate \$57.95 for delivery of Residual Waste to the GROWS North Landfill and Tullytown Landfill.

Escalation Rates

Fiscal Year 2014 – 2019 rates shall be escalated for each year using the formula provided below:

Using the month of April as the base index for the Consumer Price Index (CPI) All Urban Consumers – US. The annual change in the CPI index multiplied by 0.75. This annual escalation rate shall be capped at 3%.

Acceptance of Municipal Solid Waste will be either at the GROWS North or Tullytown Resource Recovery Facility Landfills, or Wheelabrator Falls waste-to-energy facility.

For Residual Waste delivered to GROWS North or Tullytown Landfills, the material must meet the residual waste requirements of both the PADEP and the respective Site Permits.

Note:

The entire disposal fee (Disposal Fee) for each Ton of City Municipal Solid Waste delivered to the Contractor’s Transfer Station(s) or Disposal Facility(ies) shall be the amount stated above which includes applicable the Act 101 of 1988 Recycling Fee and Act 90 of 2002 Growing Greener Fee. If these fees are changed or eliminated the Disposal Fee shall be amended.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WASTE MANAGEMENT

Permit
For
Solid Waste Disposal and/or Processing Facility
FORM NO. 8

Permit No. 101376
Date Issued April 26, 2004
Date Expired April 26, 2014

Under the provisions of the Pennsylvania Solid Waste Management Act of July 7, 1980, Act 97, a permit for a solid waste disposal and/or processing facility in the City of Philadelphia is granted to Waste Management of Pennsylvania, Inc., 5245 Bleigh Avenue, (Penn Forge Complex) Philadelphia, PA 19136

This permit is applicable to the facility named as The Forge Recycling and Resource Recovery Center and described as:

Latitude - 40° 01', 23"

Longitude - 75° 01', 26"

This permit is subject to modification, amendment and supplement by the Department of Environmental Protection and is further subject to revocation or suspension by the Department of Environmental Protection for any violation of the applicable laws or the rules and regulations adopted thereunder, for failure to comply in whole or in part with the conditions of this permit and the provisions set forth in the application No. 101376 which is made a part hereof, or for causing any condition inimical to the public health, safety or welfare.

See Attachment for waste limitations and/or special conditions.



FOR THE DEPARTMENT OF
ENVIRONMENTAL PROTECTION

THIS PERMIT IS NON - TRANSFERABLE

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WASTE MANAGEMENT

**Permit
For
Solid Waste Disposal and/or Processing Facility
FORM NO. 8**

Permit No. 101290
Date Issued March 22, 2005
Date Expires March 22, 2015

Under the provisions of the Pennsylvania Solid Waste Management Act of July 7, 1980, Act 97, a permit for a solid waste disposal and/or processing facility in the City of Philadelphia in the County of Philadelphia is granted to Waste Management of Pennsylvania, Inc.

3605 Grays Ferry Avenue, Philadelphia, PA 19146

This permit is applicable to the facility named as: Philadelphia Transfer Station and Recycling Center and described as:

Latitude - 39°56'27"

Longitude - 75°12'07"

This permit is subject to modification, amendment, and supplement by the Department of Environmental Protection (Department) and is further subject to revocation or suspension by the Department for any violation of the applicable laws or the rules and regulations adopted thereunder, for failure to comply in whole or in part with the conditions of this permit and the provisions set forth in the Application No. 101290 which is made a part hereof, or for causing any condition inimical to the public health, safety, or welfare.

See Attachment for waste limitations and/or special conditions



FOR THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

THIS PERMIT IS NON - TRANSFERABLE

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WASTE MANAGEMENT

**Permit
For
Solid Waste Disposal and/or Processing Facility
FORM NO. 8**

Permit No. 101494
Date Issued May 23, 2011
Date Expired May 23, 2015

Under the provisions of the Pennsylvania Solid Waste Management Act of July 7, 1980, Act 97, a permit for a solid waste disposal and/or processing facility at (municipality) Borough of Tullytown and Falls Township in the County of Bucks is granted to (applicant) Waste Management of Pennsylvania, Inc.

(address) 1000 New Ford Mill Road
Morrisville, PA 19067

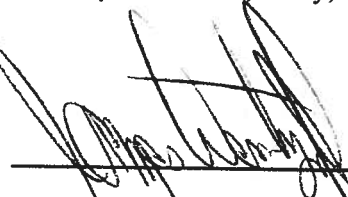
This permit is applicable to the facility named as Tullytown Resource Recovery Facility (TRRF) Landfill, including the Eastern, Southern, and Western Expansion Areas, and described as:

Latitude - 40° 08' 02"

Longitude - 74° 48' 10"

This permit is subject to modification, amendment, and, supplement by the Department of Environmental Protection (Department) and is further subject to revocation or suspension by the Department for any violation of the applicable laws or the rules and regulations adopted thereunder, for failure to comply in whole or in part with the conditions of this permit and the provisions set forth in the application No. 101494 which is made a part hereof, or for causing any condition inimical to the public health, safety, or welfare.

See Attachment for waste limitations and/or Special Conditions.



FOR THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

THIS PERMIT IS NON - TRANSFERABLE

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WASTE MANAGEMENT

Permit
For
Solid Waste Disposal and/or Processing Facility
FORM NO. 8

Permit No. 101680
Date Issued November 15, 2007
Date Expired November 15, 2014

Under the provisions of the Pennsylvania Solid Waste Management Act of July 7, 1980, Act 97, a permit for a solid waste disposal and/or processing facility at (municipality) Falls Township in the County of Bucks is granted to (applicant) Waste Management Disposal Services of Pennsylvania, Inc. at (address) 1000 New Ford Mill Road, Morrisville, PA 19067

This permit is applicable to the facility named as G.R.O.W.S. North Landfill and described as:

Latitude - 40°, 09', 44

Longitude - 74°, 46', 35"

This permit is subject to modification, amendment, and supplement by the Department of Environmental Protection (Department) and is further subject to revocation or suspension by the Department for any violation of the applicable laws or the rules and regulations adopted there under, for failure to comply in whole or in part with the conditions of this permit and the provisions set forth in the application No. 101680, which is made a part hereof, or for causing any condition inimical to the public health, safety, or welfare.

See Attachment for waste limitations and/or Special Conditions.



FOR THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

THIS PERMIT IS NON - TRANSFERABLE

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WASTE MANAGEMENT

**Permit
For
Solid Waste Disposal and/or Processing Facility
FORM NO. 8**

Permit No. 400633
Date Issued May 29, 2002
Date Expired May 29, 2012

Under the provisions of the Pennsylvania Solid Waste Management Act of July 7, 1980, Act 97, a permit for a solid waste disposal and/or processing facility at (municipality) Falls Township in the County of Bucks is granted to (applicant) Wheelabrator Falls, Inc.
1201 New Ford Mill Road
Morrisville, PA 19067

This permit is applicable to the facility named as Wheelabrator Falls Recycling and Energy Recovery Facility and described as: Wheelabrator Falls Resource Recovery Facility Incinerator.

Latitude - 40° 09' 44"

Longitude - 74° 46' 01"

This permit is subject to modification, amendment and supplement by the Department of Environmental Protection and is further subject to revocation or suspension by the Department of Environmental Protection for any violation of the applicable laws or the rules and regulations adopted thereunder, for failure to comply in whole or in part with the conditions of this permit and the provisions set forth in the application No. 400633 which is made a part hereof, or for causing any condition inimical to the public health, safety or welfare.

See Attachment for waste limitations and/or special Conditions



FOR THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

Re 30(GJE02WM)127-20

THIS PERMIT IS NON - TRANSFERABLE

GUARANTY

This Guaranty is made as of _____ day of _____, 2012, by WASTE MANAGEMENT, INC., a corporation, having its principal office at 1001 Fannin Street, Suite 400, Houston, TX 77002 (“Guarantor”).

The background of this Guaranty is as follows:

A. Pursuant to City Ordinance, Waste Management of Pennsylvania, Inc. (“Contractor”), a corporation and wholly-owned indirect subsidiary of Guarantor, has entered into a Waste Disposal Agreement (the “Agreement”), dated as of the date of this Guaranty, with the City of Philadelphia (the “City”), pursuant to which Contractor has agreed to perform all obligations under the Agreement including, but not limited to, the disposal of the City's municipal solid waste as set forth in the Agreement;

B. The award of the Agreement to Contractor was made by the City after participation by Contractor in a procurement process. As part of this procurement process, Contractor was obligated to secure the execution of this Guaranty by Guarantor;

C. The City would not execute the Agreement with Contractor without the execution of this Guarantee.

Therefore, in consideration of and as an inducement for the granting, execution and delivery of the Agreement, and for other good and valuable consideration, Guarantor, intending to be legally bound hereby, irrevocably and unconditionally agrees as follows:

1. Guarantor hereby guarantees to the City the full and prompt payment of any and all sums and charges payable by Contractor, its successor and assigns, under the Agreement, and the full, faithful and prompt performance and observance of all the covenants, terms, conditions and agreements provided in the Agreement to be performed and observed by Contractor, its successors and assigns; Guarantor does hereby become surety to the City, its successors and assigns for and with respect to all the aforesaid obligations of Contractor under the Agreement. Guarantor hereby covenants and agrees to and with the City, its successors and assigns, that if default shall at any time be made by Contractor, its successors and assigns, in the payment of any sums or charges payable by Contractor under the Agreement or in the performance of any of the covenants, terms, conditions or the agreements contained in the Agreement, Guarantor will forthwith pay such sums or charges to the City, its successors and assigns, and any arrears thereof, and will forthwith faithfully perform and fulfill (or arrange for such performance or fulfillment of) all of such covenants, terms, conditions and agreements, and will forthwith pay to the City all damages and all costs and expenses that may arise in consequence of any default by Contractor, its successors and assigns, under and in accordance with the Agreement (including, without limitation, all attorneys' fees and court costs incurred by the City or caused by any such default and/or by the enforcement of this Guaranty, whether or not suit is actually instituted).

Except as limited by this Guaranty, Guarantor may raise defenses to its liability to the City under the Guaranty in sections 2, 3 and 4 that are available to Contractor under the Agreement.

Nothing in this section shall prohibit or limit Guarantor from performing obligations assumed or arising in the Guaranty by or through corporate affiliates or subsidiary companies. The amount of this Guaranty is equal to all obligations of the Contractor under the Agreement.

2. This Guaranty shall be a continuing Guaranty, and Guarantor hereby waives any rights Guarantor may have by reason of any forbearance, modification, waiver, renewal or extension which the City may grant, or to which the City and Contractor may agree, with respect to the Agreement, waives notice of acceptance of this Guaranty, and waives presentment, demand, notice or protest of any kind. Guarantor agrees that its obligations under this Guaranty shall not be terminated, reduced, or affected in any way by reason of the assertion by City against Contractor of any right or remedy for the enforcement of the obligations of Contractor under the Agreement and Guarantor waives notice of any of the foregoing and of default or breach by Contractor of any covenant, condition, or agreement contained in the Agreement. This Guaranty shall continue unless and until the City accepts a successor or substitute Guarantor.

3. The obligations of Guarantor under this Guaranty are primary, absolute, independent, irrevocable and unconditional. This shall be an agreement of suretyship as well as of guaranty. Guarantor's liability hereunder is direct and may be enforced without the City being required to resort to any other rights, remedy or security and this Guaranty shall be enforceable against Guarantor, and Guarantor's administrators, successors and assigns, without the necessity for any suit or proceedings on the City's part of any kind or nature whatsoever against Contractor, its successors and assigns, and without the necessity of any notice of nonpayment, nonperformance or nonobservance or the continuance of any such default or of the City's intention to act in reliance hereon or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives. Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no wise be terminated, affected or impaired by reason of the assertion or the failure to assert by the City against Contractor, or Contractor's successors and assigns, of any of the rights or remedies reserved to the City pursuant to the provisions of the Agreement.

4. The obligations of Guarantor under this Guaranty shall be unconditional and irrevocable, irrespective of either (a) the existence of any security given to secure Contractor's obligations under the Agreement, (b) the sale, assignment or other transfer of all or any portion of the Agreement or any interest of Contractor under the Agreement unless consented to in writing by the City, (c) any defense that may arise by reason of the incapacity or lack of authority of Contractor or Guarantor or the failure of the City to file or enforce a claim against the estate of Contractor in any bankruptcy or other proceeding, or (d) any other circumstances, occurrence or condition, whether similar or dissimilar to any of the foregoing, which might otherwise constitute a legal or equitable defense, discharge or release of a Guarantor or surety. If Contractor defaults under the Agreement and the City is prevented from accelerating the payments, costs and expenses to be paid by Contractor under the Agreement (whether because of Contractor's bankruptcy, insolvency or reorganization or any other reason), the City shall, to the

extent permitted by law, be entitled to receive from Guarantor, upon demand by the City, the sums which would have otherwise been due and payable had such acceleration occurred.

5. Guarantor represents and warrants that (a) Guarantor has either examined the Agreement or has had an opportunity to examine the Agreement and has waived the right to examine it; (b) Guarantor has the full power, authority and legal right to enter into, execute and deliver this Guaranty, all corporate proceedings required to be taken to authorize the execution and delivery of this Guaranty have been taken; (c) this Guaranty is a valid and a binding legal obligation of Guarantor, and is fully enforceable against Guarantor in accordance with its terms, except as such terms may be limited by bankruptcy proceedings or creditors' rights actions; (d) the execution, delivery and performance by Guarantor of this Guaranty will not violate or constitute a default under any other agreement or instrument to which Guarantor is a party or is bound or under Guarantor's articles of incorporation (or similar documents) or bylaws; (e) Guarantor has a direct financial interest in Contractor; and (f) there has been no material adverse change in the financial condition of Guarantor from the financial condition of Guarantor shown on the financial statements delivered to the City by Contractor.

6. Notwithstanding anything contained in this Guaranty or in the Agreement to the Contrary, Guarantor shall be in default under this Guaranty upon the making by Guarantor of an assignment for the benefit of creditors, or the appointment of a trustee or receiver for Guarantor, or for any property of Guarantor, or the voluntary commencement of any proceeding by Guarantor, or the failure to convert in a timely and appropriate manner any proceeding involuntarily commenced against Guarantor under any bankruptcy, reorganization, arrangement, insolvency, readjustment, receivership or similar law, or if any representation or warranty made by Guarantor in this Guaranty is incorrect or fails to state a material fact which is necessary to make the representation or warranty not misleading, or if Guarantor fails to perform any of its obligations under this Guaranty or breaches any of its Covenants under this Guaranty, or if Guarantor causes or suffers to occur a diminution in its Net Worth to less than Two Hundred Fifty Million Dollars (\$250,000,000.00). Upon the occurrence of any such default, the City may, at its option, as to Guarantor, accelerate the charges, payments, costs and expenses for the entire unexpired balance of the term of the Agreement to be paid by Contractor under the Agreement.

For purposes of this Guaranty, the term "net worth" shall mean the total stockholders' equity in said corporation determined in accordance with generally accepted accounting principles consistently applied as of the date of said corporation's most recent annual or quarterly filing with the U.S. Securities and Exchange Commission.

7. Any notice, demand, request or other communication which the City may desire to give to Guarantor with respect to this Agreement shall be deemed sufficient if in writing and mailed by United States registered or certified mail, postage prepaid, addressed to Guarantor at the address of Guarantor set forth in the heading of this Guaranty. No change of address by Guarantor shall be effective as against the City unless Guarantor shall have advised the City of the change of address by a writing, mailed to the City by United States registered or certified mail, return receipt requested, postage prepaid, at the following address:

Commissioner
Streets Department
City of Philadelphia
Municipal Services Building
7th Floor
Philadelphia, Pennsylvania 19102

With a copy to:

City Solicitor
City of Philadelphia
1600 Arch Street
8th Floor
Philadelphia, Pennsylvania 19103

or at such other address as the City may hereafter designate by written notice to Guarantor.

8. All rights and remedies of the City under this Guaranty, the Agreement or by law are separate and cumulative, and the exercise of one shall not limit or prejudice the exercise of any other such rights or remedies. The enumeration in this Guaranty of any waivers or consents by Guarantor shall not be deemed exclusive of any additional waivers or consents by Guarantor which may be deemed to exist in law or equity. No delay or omission by the City in exercising any and remedies shall operate as a waiver thereof. No waiver of any rights and remedies hereunder, and no modification or amendment of this Guaranty shall be deemed made by the City unless in writing and duly signed by the City. Any such written waiver shall apply only to the particular instance specified therein and shall not impair the further exercise of such right or remedy or of any other right or remedy of the City, and no single or partial exercise of any right or remedy under this Guaranty shall preclude any other or further exercise thereof or any other rights or remedy. This Guaranty shall apply to Contractor's obligations pursuant to any extension, renewal, amendment, modification and supplement of or to the Agreement as well as to Contractor's obligations thereunder during the original term thereof in accordance with the original provisions of the Agreement.

9. This Agreement shall be binding upon Guarantor and Guarantor's administrators, successors and assigns, and shall inure to the benefit of the City and its successors and assigns.

10. Guarantor will deliver to the City, within one hundred twenty (120) days after the end of each fiscal year of Guarantor, a copy of the annual audited financial statement of Guarantor, which statement shall be prepared in accordance with generally accepted accounting principles consistently applied and certified by a nationally recognized independent public accountant selected by Guarantor.

11. Guarantor will not sell, transfer or otherwise dispose of all or a substantial part of its assets to, or consolidate with, or merge into, any person or entity (except a wholly owned subsidiary of Guarantor) or permit any other person or entity (except a wholly owned Subsidiary of Guarantor) to merge into Guarantor, unless:

(a) the successor formed by or resulting from such consolidation or merger or to which such sale, lease or other disposition shall have been made shall be a corporation organized under the laws of the United States of America or any state, district or territory thereof,

(b) such successor corporation shall expressly assume in writing the due and punctual performance and observance of all of the terms, covenants and conditions of this Guaranty to be performed or observed by the Guarantor to the same extent as if such successor corporation had originally executed this Guaranty, and

(c) immediately after such consolidation, merger, sale, lease or other disposition the Guarantor or such successor corporation, as the case may be, shall not be in default in the performance or observance of any of the terms, covenants or conditions of this Guaranty, and immediately following such consolidation, merger, sale, lease or other disposition, such successor corporation shall have a net worth at least equal to Two Hundred Fifty Million Dollars (\$250,000,000.00).

12. In the event Guarantor consists of more than one person, firm or corporation, the obligations and liabilities hereunder of such persons, firms and corporations shall be joint and several, and the word "Guarantor" shall mean all or some or any of them.

13. If any provision of this guaranty is held to be invalid or unenforceable by a court of competent jurisdiction, the other provisions of this Guaranty shall remain in full force and effect and shall be liberally construed in favor of the City in order to effect the provisions of this Guaranty.

14. Guarantor agrees that this Guaranty shall be governed by and construed according to the laws of the Commonwealth of Pennsylvania regardless of where the residence or domicile of Guarantor is now or may hereafter be located.

15. Guarantor hereby designates and appoints, without power of revocation, CT Corporation System, 1209 Orange Street, Wilmington, DE 19801, or at 350 North St. Paul Street, Suite 2900, Dallas, TX 75201, as agent for Guarantor upon whom may be served all process, pleadings, notices, complaints or other papers which may be served upon Guarantor as a result of its obligations under this Guaranty. The undersigned does hereby consent that any such action or proceeding against it may be commenced in any court of competent jurisdiction and proper venue within the Commonwealth of Pennsylvania upon said officer with the same effect as if Guarantor were organized or created under the laws of the Commonwealth of Pennsylvania. A copy of any notice, process, pleading, complaint or other papers served pursuant to this paragraph shall also be mailed to Guarantor at its address set forth above in this Guaranty.

IN WITNESS WHEREOF, Guarantor, intending to be legally bound hereby, has caused this Guaranty to be executed by its duly authorized officers and has caused its corporate seal to be hereunto affixed, and duly attested, as of the date first above written.

CORPORATE SEAL:

GUARANTOR

By: _____

Cherie C. Rice
Vice-President and Treasurer

ATTEST: _____

Devina Rankin
Assistant Treasurer

CITY OF HOUSTON, TX:

: SS.

COUNTY OF HARRIS :

On the _____ day of _____, 2012, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Cherie C. Rice, who acknowledged himself/herself to be the Vice President and Treasurer of the Guarantor, Waste Management, Inc., and that he/she, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself as such officer, and desired that the same might be recorded as such.

NOTARY PUBLIC

My Commission Expires:

CITY OF HOUSTON, TX :

: SS.

COUNTY OF HARRIS :

On the _____ day of _____, 2012, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Devina Rankin, who acknowledged himself/herself to be the Assistant Treasurer of the Guarantor, Waste Management, Inc., and that he/she, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself as such officer, and desired that the same might be recorded as such.

WITNESS my hand and seal the day and year aforesaid.

NOTARY PUBLIC

My Commission Expires:

Exhibit “H”

Rules and Regulations at Designated Transfer Station(s) and/or Designated Disposal Facility(ies)

The Designated Transfer Station(s) and/or Designated Disposal Facility(ies) shall be open to accept delivery of Municipal Solid Waste as follows:

- (1) For general disposal:
 - (a) Monday through Friday and on Saturdays following a Holiday 6:30 AM to 7:30 PM.
 - (b) Clean Block Program deliveries on Spring and Summer Saturdays from 10 AM to 6 PM.
- (2) For limited disposal provided notice is given before 4:00 PM on the previous day:
 - (a) From 10 PM. to 6 AM during weekdays.
 - (b) Saturdays from 6:30 AM to 7:30 PM
 - (c) Sundays from 10 AM to 6 PM during emergency situations or when needed (e.g. major snowstorm, natural disaster, labor disruption).