

FINAL

**SOLID WASTE TRANSPORTATION AND DISPOSAL AGREEMENT**

Between

**RICELLI ENTERPRISES, INC.**

And

**MONTGOMERY-OTSEGO-SCHOHARIE  
SOLID WASTE MANAGEMENT AUTHORITY**

Dated as of January 1, 2006

# TRANSPORTATION AND DISPOSAL AGREEMENT

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## **SOLID WASTE TRANSPORTATION AND DISPOSAL AGREEMENT**

THIS SOLID WASTE TRANSPORTATION AND DISPOSAL AGREEMENT (the "Agreement") made and entered into as of the 1st day of January, 2006, by and between Riccelli Enterprises, Inc., with its office at the address set forth at Section 9.10 hereof (the "Contractor"), and the Montgomery-Otsego-Schoharie Solid Waste Management Authority, with its office situate at Route 7, P.O. Box 160, Howes Cave, New York 12092 (the "Authority").

### **RECITALS:**

**WHEREAS**, the Authority was created pursuant to Title 13-aa of the New York Public Authorities Law entitled the Montgomery-Otsego-Schoharie Solid Waste Management Authority Act (the "Act") and is authorized by Section 2041-d thereof to collect, receive, extract, transport, process, dispose of, sell, store, convey, recycle and deal with, in any lawful manner and way, Solid Waste and any products or by-products thereof, and in addition to contract with corporations or Persons for such purposes; and

**WHEREAS**, the Authority is enabled by the Act and by agreement with the Participating Counties to designate by lawful procedure the site or sites for disposal of solid waste generated within the Participating Counties; and

**WHEREAS**, the Authority and the Contractor desire to enter into an agreement whereby the Contractor will receive at one or more of the Authority Transfer Stations, as designated herein, certain solid waste generated from within the Authority's Service Area as well as waste that is generated from areas outside the Service Area, and the Contractor will transport such solid waste to the Disposal Facility designated herein, or such other Authority approved solid waste disposal facility, which is authorized and legally permitted to operate under all applicable federal, state and local laws; and

**WHEREAS**, the Contractor will perform certain other transportation services for the Authority; and

**WHEREAS**, the Contractor is under contract with the owner and operator of the disposal facilities described at Exhibit B and will provide disposal services as well as transportation services as contemplated herein; and

**WHEREAS**, the Authority has agreed to pay the Contractor for such transportation and disposal services in accordance with the terms of this Agreement;

**NOW, THEREFORE**, in consideration of the premises and of the mutual obligations undertaken herein, the Contractor and the Authority agree as follows:

## ARTICLE I - DEFINITIONS

### **Section 1.01**      **Definitions.**

For purposes of this Agreement, the following words and phrases shall be given the respective interpretations and meanings set forth below.

**“Additional Disposal Facility”** means any of the solid waste disposal facilities listed as such at Exhibit B to this Agreement, but subject to the conditions set forth in Sections 3.01(j), 3.02 and 9.08 hereof.

**“Additional Disposal Facility Subcontractor”** means any subcontractor listed at Exhibit B hereto as a landfill owner which has been approved by the Authority in accordance with Section 3.01(j) hereof and which is the owner of an Additional Disposal Facility (or the operator of such facility under a valid long-term agreement approved by the Authority).

**“Additional Disposal Facility Subcontract”** means a subcontract with respect to an Additional Disposal Facility dated as set forth at Exhibit B, between the Contractor and the Additional Disposal Facility Subcontractor.

**“Agreement Date”** means the date first above written as of which this Agreement is executed.

**“Alternate Primary Disposal Facility”** means any duly licensed or permitted solid waste disposal facility, other than the Primary Disposal Facility and any Additional Disposal Facility, which meets all of the terms and conditions of this Agreement, and which has been approved by the Authority upon a written request by the Contractor. Such request by the Contractor shall be made only in the event of conditions caused by Uncontrollable Circumstances as defined herein. An Alternate Primary Disposal Facility shall be one owned and operated by the Contractor unless the Authority has approved the landfill owner and the terms of the Contractor’s subcontract with the landfill owner, including such additional assurances as the Authority shall require to assure the performance of such subcontract.

**“Authority Fault”** means the unexcused nonperformance or malperformance or negligent or willful act or omission of the Authority or its agents, or employees.

**“Authority Hauler(s)”** means any Person permitted by the Authority to deliver solid waste to the Authority's Transfer Stations.

**“Authority Transfer Stations”** means as of any date, one or more of the transfer stations operated by the Authority for the acceptance of Authority Waste and Recyclables and designated at Exhibit B for purposes of this Agreement.

**“Authority Uniform Tracking Document”** means a document prepared by the Authority and delivered to the Contractor with each load of solid waste which provides a verifiable record which provides the location from which shipment is made, the date and time

the load was staged along with the gross, tare and net weight.

**“Authority Waste”** means Solid Waste, including MSW, and, to the extent determined by the Authority, Construction and Demolition Debris, Commercial Waste and Industrial Waste, but excluding Recyclables and Unacceptable Waste; in each case received at the Authority Transfer Stations, inspected by the Authority, sorted and loaded onto the Contractor’s transfer trailers as required by this Agreement. Authority Waste may include waste generated either within or outside the Service Area.

**“Billing Period”** means each calendar month in each Billing Year beginning with the Commencement Date.

**“Billing Year”** means each twelve-month period commencing on January 1<sup>st</sup> of each succeeding year during the term of this Agreement; provided, however, that the first Billing Year shall commence on the Commencement Date.

**“Business Day”** means each Monday, Tuesday, Wednesday, Thursday, Friday and Saturday, which is not a Legal Holiday.

**“CERCLA”** means the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C Section 901, *et.seq.*, as it may be amended from time to time.

**“Change in Law”** means either (a) the enactment, adoption, promulgation, modification or repeal, after the Commencement Date of this Agreement, of any Federal or State law or regulation, County or other local law or ordinance, code, rule or regulation, Authority action, rule or regulation, or other legislation or regulation which establishes requirements affecting the collection, processing, transporting and/or disposal of solid waste which are more burdensome than the most stringent requirements in effect in the State of New York on the Commencement Date for this Agreement, or (b) the imposition, after the Commencement Date for this Agreement, of any conditions in the issuance or renewal of any official permit, license or approval necessary for operation of any of the Authority Transfer Stations or the Disposal Facility or with respect to the disposal of Authority Waste, which are more burdensome than the most stringent requirements in effect on the Commencement Date. In no event shall a change in federal, state or local tax law be considered a Change in Law.

**“Commencement Date”** means the date January 1, 2006.

**“Commercial Waste”** has the meaning specified in 6NYCRR Part 360 as amended or revised.

**“Contractor”** means Riccelli Enterprises, Inc. with its office for the conduct of business at the address specified at Section 9.10 hereof, and its successors and assigns to the extent permitted by this Agreement.

**“Contractor Fault”** means the unexcused nonperformance or malperformance or negligent or willful act or omission of the Contractor or its agents, employees or subcontractors.

**“Construction and Demolition Debris”** has the meaning specified in 6NYCRR Part 360 as amended or revised.

**“Counties”** means the participating Counties of Montgomery, Otsego and Schoharie, in the State of New York.

**“DEC”** means the New York State Department of Environmental Conservation and/or its successor.

**“Disposal Facility”** means the Primary Disposal Facility, or an Alternate Primary Disposal Facility, and any Additional Disposal Facility.

**“Disposal Facility Subcontractor”** means the Primary Subcontractor, or a Subcontractor under an approved Subcontract for an Alternate Primary Disposal Facility, or a Subcontractor under an approved Subcontract for any Additional Disposal Facility.

**“Environmental Conditions”** means the discharge, as defined in 6 NYCRR 360 Part 360, leaking, disposal or release into the environment of any garbage, leachate, refuse, contamination (all as defined in 6 NYCRR Part 360), or Hazardous Waste; or the release or threatened release of a contaminant into the environment requiring corrective action and/or remediation as defined in 6 NYCRR Part 360 and/or CERCLA.

**“Event of Default”** means any one or more of the events described in Section 7.02 or 7.03, as applicable.

**“Hazardous Waste”** means any material, substance or waste which, by reason of its composition or characteristic, is (a) toxic or hazardous substance or material as defined in the Solid Waste Disposal Act, 42 U.S.C. §§6901 ,et seq., section 6(e) of the Toxic Substances Control Act, 15 U.S.C. §2605(e) or the New York Environmental Conservation Law, §§27-0701-0703 (McKinney 1984), as any such provisions are replaced or amended, and regulations promulgated and finalized thereunder or (b) special nuclear material, source material, or by-product material within the Atomic Energy Act of 1954, as amended. If any governmental agency or unit now or hereafter having appropriate jurisdiction shall identify as hazardous waste a material, substance, or waste which was not, as of the Commencement Date, identified as a hazardous waste, then such material, substance or waste shall be considered a hazardous waste for purposes of this Agreement as of the effective date of any such determination.

**“Industrial Waste”** has the meaning specified in 6NYCRR Part 360 as amended or replaced from time to time.

**“Legal Holiday”** means New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**“Material Recovery Facility”** means any of the material recovery facilities designated from time to time by the Authority for the receipt of Recyclables. The material recovery

facilities designated by the Authority as of the Agreement Date are set forth at Exhibit B. Any Material Recovery Facility shall have a valid permit for the operation of such facility.

**“MSW”** has the meaning specified in 6NYCRR Part 360 as amended or replaced from time to time.

**“Party”** or **“Parties”** means either or both of the Contractor or the Authority, as the context appears.

**“Person”** means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof.

**“Primary Disposal Facility”** means the Disposal Facility set forth at Exhibit B, with respect to which the Contractor and any Primary Subcontractor have made the commitment set forth at Section 3.01(a) and 3.02(g).

**“Primary Subcontract”** means the subcontract dated as of the date set forth at Exhibit B between the Contractor and the Primary Subcontractor providing for transportation or disposal as set forth at Exhibit B.

**“Primary Subcontractor”** means the entity, if any, identified at Exhibit B as the Primary Subcontractor for transportation or for disposal, with offices for the conduct of business at the address set forth at Exhibit B.

**“Recyclables”** means Solid Waste that exhibits the potential to be used repeatedly, as determined by the Authority from time to time in its discretion in compliance with applicable state laws and regulations.

**“Residual Waste”** means any material originating within the Service Area which meets the definition of “Solid Waste” herein but which, due to either its characteristics or handling requirements, is designated by the Authority as better managed separate and segregated from other solid waste and which, therefore, will not be processed through the tip floor at one of the Authority Transfer Stations, but may be delivered to the Disposal Facility directly from the point of generation. Such Residual Waste may include, but is not limited to, Commercial Waste, Industrial Waste, Construction and Demolition Debris, and Sludge, but shall not include Hazardous Waste or Unacceptable Waste.

**“Scale”** means the Authority's weigh scales located at the Authority Transfer Stations.

**“Schedule”** means any exhibit or schedule attached hereto and incorporated in this Agreement, unless otherwise expressly indicated by the terms of this Agreement.

**“Section”** means a section of this Agreement.

**“Service Area”** means the geographic area comprising the Counties of Montgomery,

Otsego and Schoharie.

**“Service Fee”** means the cost per ton or per load payable by the Authority to the Contractor for the transportation and disposal of Authority Waste received at the Authority Transfer Stations, for the transportation of Recyclables received at the Authority Transfer Stations, as applicable, or for the disposal of Residual Waste delivered directly to the Disposal Facility.

**“Sludge”** means has the meaning specified in 6 NYCRR Part 360 as amended or replaced from time to time.

**“Solid Waste”** has the meaning specified in 6 NYCRR Part 360 as amended or replaced from time to time;

**“State”** means the State of New York and all of its appropriate administrative, contracting and regulatory agencies and offices.

**“Subcontractor”** means the Primary Subcontractor, an Additional Disposal Facility Subcontractor, an Alternate Primary Disposal Facility Subcontractor, or any other subcontractor to the Contractor with respect to its obligations under this Agreement permitted by Section 9.08.

**“Ton”** means two thousand (2,000) pounds.

**“Unacceptable Waste”** means Hazardous Waste, and such other material, substance or waste identified by a governmental agency or unit as unacceptable for disposal in a New York State permitted MSW or construction/demolition landfill under Federal or State Law, Rule or Regulation.

**“Uncontrollable Circumstance”** means any act, event or condition, other than a labor strike, that has had, or may reasonably be expected to have, a direct material adverse effect on the rights or the obligations of a Party under this Agreement, or a direct material adverse effect on the operation of the Authority Transfer Stations or the Disposal Facility, or on the delivery of Authority Waste to the Disposal Facility, if such act, event or condition is beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party under this Agreement. Such acts or events shall include, but shall not be limited to, the following:

(a) an act of God (except normal weather conditions for the geographic area of the Facility), hurricanes, tornados, epidemic, landslide, lightning, earthquake, flood, fire or explosion or similar occurrence; or an act of the public enemy, war, blockade, insurrection, riot, general unrest, or restraint of government and people, civil disturbance or similar occurrence;

(b) the order, or injunction and/or judgment of any federal, state or local court, administrative agency or governmental body with jurisdiction over the performance of either Party's obligations under this Agreement; excepting decisions interpreting federal, state and local tax laws; provided that such order or judgment shall not be the result of the neglect or

willful action or inaction of the Party relying thereon, and neither the contesting in good faith of any such order or judgment nor the failure to so contest such order or judgment shall be construed as a willful or negligent action or inaction of such Party;

(c) a Change in Law; or

(d) suspension, termination or interruption of utilities, water and sewer lines and power transmission lines to the Authority Transfer Stations or the Disposal Facility (for reasons other than Contractor Fault) which are required for and essential to the operation of the such facilities.

**“Week”** means a period commencing Sunday at 12:01 a.m. and ending on midnight of the following Saturday.

## ARTICLE II - CONDITIONS PRECEDENT

### **Section 2.01**      **General.**

All rights, obligations and liabilities of the Authority hereunder shall be subject to the satisfaction by the Contractor of the conditions precedent set forth in Section 2.02, (i) on or before the date of execution and delivery of this Agreement, dated as of the date of such execution and delivery; and (ii) on or before the Commencement Date, dated as of the Commencement Date. The Authority shall have the right to waive any such condition in its discretion. All rights, obligations and liabilities of the Contractor hereunder shall be subject to the satisfaction by the Authority of the conditions precedent set forth in Section 2.03 on or before the Commencement Date. The Contractor shall have the right to waive any such condition in its discretion.

### **Section 2.02**      **Conditions to Authority Obligations.**

(a) The Contractor shall have delivered to the Authority a certificate of an authorized officer of the Contractor, to the effect that each of the representations of the Contractor set forth in Section 9.03 are true and correct as if made on such date and an opinion of counsel to the Contractor, in customary form and acceptable to the Authority to the effect set forth in clauses (a) through (e) of Section 9.03.

(b) No action, suit, proceeding or official investigation shall have been overtly threatened or publicly announced or commenced by any Person or federal, state or local governmental authority or agency other than the Authority in any federal, state or local court, that seeks to enjoin, assess civil or criminal penalties against, assess civil damages against, or obtain any judgment, order or consent decree with respect to the Authority or the Contractor or Primary Subcontractor as a result of the Contractor's or Primary Subcontractor's participation or intended participation in any transaction contemplated by this Agreement; provided that any such action, suit, proceeding or investigation would, if adversely determined, materially affect this Agreement, or the performance by the Parties of their respective obligations hereunder or the transactions contemplated hereby. This paragraph 2.02 (b) shall include, without limitation,

any action, suit, proceeding or official investigation which is criminal in nature or which challenges the validity, binding effect or enforceability of this Agreement.

(c) No change shall have occurred after the Agreement Date in any applicable federal, state or local law, or any applicable federal, state or local rule, regulation or ordinance thereunder, or in the interpretation thereof by any applicable regulatory authority, that would make the execution or delivery by the Authority or the Contractor of this Agreement, or would make compliance by the Authority or the Contractor with the terms and conditions of this Agreement or the consummation by the Authority or the Contractor of the transactions contemplated hereby, a violation of such law, rule, regulation or ordinance.

(d) No change shall have occurred after the Agreement Date in any applicable federal, state or local law, or any applicable federal, state or local rule, regulation or ordinance thereunder, or in the interpretation thereof by any applicable regulatory authority, that would make the execution or delivery by the Primary Subcontractor or the Contractor of the Primary Subcontract, or would make compliance by the Subcontractor or the Contractor with the terms and conditions of the Primary Subcontract or the consummation by the Primary Subcontractor or the Contractor of the transactions contemplated hereby, a violation of such law, rule, regulation or ordinance.

(e) All applicable permits, licenses and authorizations necessary for the Contractor's transportation of Authority Waste and Recyclables and Residual Waste shall be in full force and effect.

(f) All applicable permits, licenses and authorizations necessary for the Contractor's disposal of solid waste at the Disposal Facility shall be in full force and effect.

(g) The Primary Subcontract shall be in full force and effect.

(h) The Contractor shall have submitted evidence reasonably satisfactory to the Authority that there has been no material adverse change in the Contractor's or Subcontractor's financial condition since the date of the statements provided to the Authority in response to the Authority's Request for Proposals.

(i) As of the date of execution and delivery of this Agreement, the Contractor shall have delivered to the Authority certificates of insurance with respect to the coverage required by this Agreement and satisfactory to the Authority, together with all amendments of, and renewals of the underlying policies of insurance for which such certificates of insurance are evidence; such certificates shall name the Authority as an additional insured under each of such policies of insurance maintained by the Contractor and Subcontractor. If required by the Authority, the Contractor shall have delivered updated certificates as of the Commencement Date.

(j) As of the date of execution and delivery of this Agreement, the Contractor shall have submitted the proposal security required by Section 9.05(a) of this Agreement, and as of the date not less than twenty (20) days prior to the Commencement Date, the Contractor shall have submitted the performance bond required by Section 9.05(b) of this Agreement.

(k) The Additional Disposal Facility Subcontracts listed at Exhibit B shall be in full force and effect.

**Section 2.03**                    **Conditions to Contractor's Obligations**

(a) The Authority shall have delivered to the Contractor a certificate of the Authority, dated as of the Commencement Date, to the effect that each of the representations of the Authority set forth in Section 9.02 are true and correct as if made on such date and an opinion of counsel to the Authority, in customary form, to the effect set forth in clauses (a) and (b) of Section 9.02;

(b) No action, suit, proceeding or official investigation shall have been overtly threatened or publicly announced or commenced by any Person or federal, state or local governmental authority or agency other than the Contractor or Subcontractor or related party in any federal, state or local court, that seeks to enjoin, assess civil or criminal penalties against, assess civil damages against or obtain any judgment, order or consent decree with respect to the Authority or the Contractor as a result of the Authority's participation or intended participation in any transaction contemplated hereby; provided that any such action, suit, proceeding or investigation would, if adversely determined, materially affect this Agreement, or the performance by the Parties of their respective obligations hereunder or the transactions contemplated hereby;

(c) No change shall have occurred after the Agreement Date in any applicable federal, state or local law, or any applicable federal, state or local rule, regulation or ordinance thereunder, or in the interpretation thereof by any applicable regulatory authority, that would make the execution or delivery by the Authority or the Contractor of this Agreement, or would make compliance by the Authority or the Contractor with the terms and conditions of this Agreement or the consummation by the Authority or the Contractor of the transactions contemplated hereby, a violation of such law, rule, regulation or ordinance.

(d) The DEC shall renew permits allowing the operation by the Authority of the Authority Transfer Stations, to the extent any such permits would expire prior to the Commencement Date.

**ARTICLE III - DELIVERY AND DISPOSAL OF SOLID WASTE**

**Section 3.01**                    **Contractor Responsibilities.**

(a) The Contractor shall accept, receive, transport and dispose of all Authority Waste from the Authority Transfer Stations; and the Contractor shall also accept any Residual Waste coordinated through the Authority and delivered directly from the point of generation in the Service Area to the Disposal Facility. It is understood that Authority Waste may include Solid Waste generated outside the Service Area.

(b) Unless otherwise requested by the Authority from time to time, the Contractor

shall accept, receive and transport all Recyclables received at the Authority Transfer Stations to the particular Material Recovery Facility specified by the Authority for each such load. Recyclables are to be loaded by the Authority into Contractor's transfer trailers. 'The Contractor shall unload the transfer trailers at the Material Recovery Facility in accordance with the accepted operating practice at that facility. The Authority may designate additional or alternate Material Recovery Facilities upon notice to the Contractor.

(c) The Contractor, its Subcontractor(s), and their subsidiaries or affiliates shall not knowingly accept, receive, transport and/or dispose of any Solid Waste, Construction and Demolition Debris, Commercial Waste or Industrial Waste generated in the Service Area that is not delivered directly through the Authority Transfer Stations and loaded by the Authority for shipment to the Disposal Facility, other than material which constitutes Residual Waste authorized by the Authority to be delivered directly to the Disposal Facility.

(d) The Contractor's obligations under Sections 3.02 and/or 3.03 may be performed pursuant to a Subcontract approved by the Authority in accordance with this Agreement, but in any event the Contractor remains directly responsible for performance of all obligations under this Agreement.

(e) The Contractor shall comply with the requirements of Section 3.03 hereof. The Contractor shall cause the Primary Subcontractor to comply with the requirements of Section 3.02 hereof. The Contractor shall provide to the Authority a certified copy of the Primary Subcontract evidencing such requirements; the Primary Subcontract shall name the Authority as a third party beneficiary and shall be assignable to the Authority; and the Primary Subcontract shall not be amended without notice to and consent of the Authority.

(f) The Contractor shall not enter into any subcontracts for performance of its obligations under this Agreement, other than the Primary Subcontract, without the prior written approval of the Authority.

(g) The Contractor shall provide reports annually on the anniversary of the date of this Agreement and from time to time at the request of the Authority which contain the following information:

The remaining capacity of the Disposal Facility (in tons and cubic yards of solid waste, excluding any allowance for cover materials, etc.);

The number of tons of Authority material anticipated to be delivered;

The number of tons of non-Authority material anticipated to be delivered by other deliverers;

Daily records of the number of tons of material previously delivered by the Authority and by others;

The number of tons of remaining capacity reserved for the Authority at the Primary Disposal Facility;

The number of tons of remaining capacity reserved for other entities, pursuant to all agreements entered into by Contractor or Primary Subcontractor, including renewal terms;

The number of tons of material anticipated to be delivered by parties without

contracts (spot market customers);

Not less than once each year, a certification of the remaining capacity of the Primary Disposal Facility, performed by a licensed professional engineer.

(h) The Contractor shall provide to the Authority, immediately upon receipt, a copy of any notices of violation, orders, complaints or related communications or documents from any and all regulatory bodies having jurisdiction over the Contractor or any Subcontractor or the Disposal Facility. The Contractor shall provide to the Authority upon request the results of any testing or monitoring undertaken by the Contractor or any Subcontractor with respect to the Disposal Facility along with the consulting engineer's interpretation of such results.

(i) The Contractor shall include in its daily ticket listing the actual destination of each load transported to a Disposal Facility or Materials Recovery Facility.

(j) With respect to any Additional Disposal Facility, (i) prior to use of any such facility, the Contractor shall have submitted to the Authority evidence acceptable to the Authority of the Contractor's ownership of the Additional Disposal Facility, control under an acceptable long-term operating agreement, or the Contractor has submitted to the Authority a certified copy of any Additional Disposal Facility Subcontract in full force and effect as of the date hereof, and no such operating agreement or subcontract shall be amended without the prior written consent of the Authority, which may be withheld in its discretion; (ii) the Contractor and any applicable Additional Disposal Facility Subcontractor shall ensure that at all times such facility constitutes a duly licensed or permitted solid waste disposal facility, which meets all of the terms and conditions of the Agreement, (iii) such facility shall at all times be owned and operated by the owner identified at Exhibit B or their successors and assigns to the extent approved by the Authority in its discretion, (iv) any Additional Disposal Facility Subcontract shall meet the requirements of Section 9.08; (v) the Authority shall have approved the terms of any Additional Disposal Facility Subcontract with the disposal facility owner (or operator under a long term agreement) if different from the Contractor, including any rider required to acknowledge the terms of this Agreement; (vi) there shall be delivered to the Authority the certificates of insurance required by Section 9.04 with respect to such Additional Disposal Facility and with respect to any such Subcontractor; (vii) the Contractor shall provide or cause each Additional Disposal Facility Subcontractor to provide, monthly reports and annual summaries indicating the amount of Authority Waste and Residual Waste actually delivered to each applicable Additional Disposal Facility; and (viii) the Contractor and the owner of the Additional Disposal Facility shall have provided such additional assurances as the Authority shall require to assure the performance of this Agreement and any applicable Subcontract. The delivery of Authority Waste to an Additional Disposal Facility shall be subject to the Authority's approval of all such agreements and certificates and the receipt of such additional information as the Authority shall request from time to time in its discretion. The Authority reserves the right to withdraw approval of any Additional Disposal Facility in the event that the

Contractor or any Subcontractor fails to comply with the Agreement or such Additional Disposal Facility Subcontract.

- (k) The Contractor expressly represents that the Primary Disposal Facility listed at Exhibit B has the capacity and operational capability to assure performance of all obligations under the applicable Subcontract and this Agreement for the full term of this Agreement.

**Section 3.02                      Responsibilities As To Disposal.**

(a) The Contractor shall cause its Primary Subcontractor to accept and dispose of all Authority Waste; and to accept any Residual Waste coordinated through the Authority and delivered directly from the point of generation in the Service Area to the Disposal Facility as described in Section 3.03(h).

(b) The Contractor and any Primary Subcontractor and their subsidiaries or affiliates shall not knowingly accept, receive, transport and/or dispose of any Solid Waste, Construction and Demolition Debris, Commercial Waste or Industrial Waste generated in the Service Area that is not delivered directly through the Authority Transfer Stations and loaded by the Authority for shipment to the Disposal Facility, other than material which constitutes Residual Waste authorized by the Authority to be delivered directly to the Disposal Facility.

(c) The Contractor shall cause the Primary Subcontractor to properly maintain the Disposal Facility and dispose of Authority Waste and Residual Waste in conformance with all applicable laws, regulations, permits and accepted operating practices at no added cost to the Authority.

(d) The Contractor shall cause the Primary Subcontractor to obtain and maintain at its own expense all necessary licenses and permits in order to enable it to perform its obligations under this Agreement and comply with all conditions thereof and of the Subcontract or Subcontracts.

(e) The Primary Disposal Facility shall maintain operating hours to facilitate the unloading of material and the timely return of the trailers to the Authority Transfer Stations to meet the requirements set forth in Section 3.03. The Primary Disposal Facility shall be open on all Business Days.

(g) The Contractor shall cause the Primary Subcontractor to commit landfill space at the Primary Disposal Facility for the waste anticipated to be delivered by the Authority for the maximum period covered under this Agreement. The Contractor or Primary Subcontractor shall issue a Letter of Commitment to the Authority annually with the first such document due on or before the Commencement Date. The Letter of Commitment is to set forth the matters described in Section 3.01(g). The Letter of Commitment shall also include a report on any and all permit renewal or permit applications activity being undertaken with respect to the Primary Disposal Facility.

(h) The Contractor shall cause its Subcontractors to provide to the Authority, immediately upon receipt, a copy of any notices of violation, orders, complaints or related communications or documents from any and all regulatory bodies having jurisdiction over the Primary Subcontractor or the Disposal Facility. The Contractor shall cause its Subcontractor to provide to the Authority upon request the results of any testing or monitoring undertaken by the Contractor or the Subcontractor with respect to the Disposal Facility along with their consulting engineer's interpretation of such results.

(i) The Contractor shall cause the Primary Subcontractor to comply with the requirements of this Agreement, including without limitation the commitments set forth at Sections 3.02(g) and (k), regardless of the amount of waste that may be delivered to any Additional Disposal Facility. The Contractor shall cause the Primary Subcontractor to provide annual Commitment updates required by Section 3.02(g) of the Agreement with respect to the Primary Landfill evidencing the capacity of the Primary Landfill to accept all Authority Waste and Residual Waste. Such updates shall not rely upon any space commitment at an Additional Disposal Facility unless the Authority has consented in writing, which may be withheld in the Authority's sole discretion.

(j) The Primary Subcontractor shall continue to provide disposal services under the Disposal Facility Subcontract, at the rates set forth in Section 4.01, in the event that the Authority has the right to terminate this Agreement as a result of an Event of Default by Contractor. In such event, the Authority may make payments directly to the Primary Subcontractor.

**Section 3.03**                    **Contractor Responsibilities As To Transportation Services.**

(a) The Contractor shall (i) provide all necessary tractors and transfer trailers to receive Authority Waste at the Authority Transfer Stations and transport such waste to the Disposal Facility; (ii) provide sufficient tractors and trailers to allow the Authority to operate within the requirements of its permits and applicable regulations; (iii) be prepared to respond immediately to any increase in waste flow. Empty trailers must be present at all times at all sites to allow for loading during all operating hours for the respective transfer stations. No waste should need to be left on the tip floors of the transfer stations at the end of the normal workday due to a lack of trailers. The Contractor agrees to attend a monthly meeting, which may be by conference call, regarding waste flow and other matters regarding performance, at which available waste trend information will be reviewed. The Contractor remains responsible for determining the quantity of trailers required at each station. Sufficient equipment must be provided so as to assure proper maintenance and repair of such equipment at all times. Said equipment shall be in good and serviceable condition, shall meet all DOT, OSHA and other applicable standards with all required permits and licenses, and shall be compatible with the needs of the Authority. The Authority may require the delivery of such proofs as it may deem necessary from time to time regarding the condition of the equipment. The Contractor shall cooperate with the Authority in the Authority's equipment inspection program to track the condition of equipment upon arrival and departure. The equipment inspection form will be provided by the Authority and may be amended or supplemented from time to time by the Authority. The Authority shall have the right, but not the obligation, to inspect equipment at

any time and from time to time, and to reject any equipment not found by the Authority to be in good operating condition as documented on the Authority's equipment inspection form. Any such rejections shall not alter the Contractor's obligations under this section.

(b) The Contractor shall provide all necessary tractors and transfer trailers to receive Recyclables at the Authority Transfer Stations and transport such Recyclables to the designated Material Recovery Facilities. Said equipment shall be in good and serviceable condition, shall meet all DOT, OSHA and other applicable standards with all required permits and licenses, and shall be compatible with the needs of the Authority. The Authority may require the delivery of such proofs as it may deem necessary from time to time regarding the condition of the equipment.

(c) The Contractor and any Primary Subcontractor and their subsidiaries or affiliates shall not knowingly accept, receive, transport and/or dispose of any Solid Waste, Construction and Demolition Debris, Commercial Waste or Industrial Waste generated in the Service Area that is not delivered directly through the Authority Transfer Stations and loaded by the Authority for shipment to the Disposal Facility, other than material which constitutes Residual Waste authorized by the Authority to be delivered directly to the Disposal Facility.

(d) [Intentionally Omitted.]

(e) The Contractor shall unload the transfer trailers at the Disposal Facility and assure that such Authority Waste is properly disposed of in conformance with all applicable laws, regulations and accepted operating practices at no added cost to the Authority.

(f) The Contractor shall unload the transfer trailers at the Material Recovery Facilities in conformance with the accepted operating practice of the facility at no added cost to the Authority.

(g) The Contractor shall obtain and maintain at its own expense all necessary licenses and permits in order to enable it to perform its obligations under this Agreement and comply with all conditions thereof and of the Subcontract.

(h) The Contractor shall place trailers at demolition or commercial/industrial sites upon the request by the Authority to facilitate direct loading of construction and demolition materials or other Residual Waste, or at the option of the Authority shall provide trailers upon request by the Authority at any of the Authority Transfer Stations to allow the Authority to facilitate this service with its own personnel. Under these circumstances, the trailer will be taken first to an Authority Transfer Station for scaling prior to loading and again prior to shipping to the Disposal Facility, provided that the Disposal Facility scale may be used upon prior written approval of the specific load by the Authority's Executive Director. If the Contractor is requested to provide a tractor and driver in addition to the trailer, a \$90 per hour surcharge may be imposed by the Contractor to the extent loading is not completed within one hour of arrival at the third party site at the time and place specified by the Authority, unless otherwise specifically agreed by the Authority and the Contractor. No other added charge will be imposed by the Contractor or Primary Subcontractor.

**Section 3.04**                    **Weighing of Solid Wastes; Weigh Scale Records.**

(a)     The Authority shall operate and maintain Scales located at each of the Authority Transfer Stations. The Scales will be certified by the Sealer of Weights & Measures appointed by each respective County. The Authority shall also produce Scale records for the purposes of determining and recording the total tons of solid waste loaded on transfer trailers leaving the Authority Transfer Stations, and for all billing.

(b)     Disputes with respect to the occurrence of Scale records shall be resolved pursuant to the provisions of Section 7.01.

**Section 3.05**                    **Authorized Rejections.**

(a)     The Authority shall have the obligation to reject deliveries of Unacceptable Waste received at the Authority Transfer Stations by or on behalf of the Authority;

(b)     The Contractor or its Disposal Facility Subcontractor shall have the right to reject deliveries of Unacceptable Waste and Unacceptable Recyclables at the Authority Transfer Stations or at the Disposal Facility.

**Section 3.06**                    **Unauthorized Rejections.**

(a)     If the Contractor or Disposal Facility Subcontractor rejects Authority Waste or Residual Waste delivered to the Authority Transfer Stations and/or at the Disposal Facility, or if the Contractor rejects Recyclables delivered to the Authority Transfer Stations, for any reason other than those set forth in Section 3.05, (i) the Authority shall not be required to pay the Service Fee to the Contractor with respect to such Authority Waste, Residual Waste or Recyclables; (ii) such rejection shall constitute an Event of Default by the Contractor; and (iii) in addition to any other remedy which the Authority may have hereunder, the Contractor shall be obligated to pay the Authority for direct and reasonable costs incurred by the Authority, for the total of the transportation and disposal charges per ton incurred by the Authority for each such ton.

**Section. 3.07**                    **Alternate Disposal Facility.**

The Contractor shall not change the Disposal Facility without the prior written approval of the Authority. Such change shall be made only in situations arising from Uncontrollable Circumstances. In the event an Alternate Primary Disposal Facility is approved, the Authority shall be obligated to pay the Contractor only the Service Fee specified in this Agreement, regardless of whether the Contractor incurs additional costs in connection with the Alternate Primary Disposal Facility.

## ARTICLE IV - SERVICE FEE

### Section 4.01      Service Fee.

(a) Payment. On and after the Commencement Date and for the term of this Agreement, the Authority shall pay the Service Fee to the Contractor on a monthly basis and within thirty (30) days of receipt by the Authority of the Contractor's invoice submitted in accordance with this Agreement, for actual tonnage or loads delivered. The Contractor must invoice the Authority for amounts payable under this Section by the end of each calendar month following the Commencement Date for the preceding calendar month.

(b) Contractor's Periodic Reports. The Contractor shall be responsible for providing the following:

- (i) a daily ticket listing faxed from the Disposal Facility showing each load accepted by the Disposal Facility from the Authority. This listing is to show the date of acceptance, the load slip number (produced by the Authority for each load shipped) the tons shown on the load slip, the cost for disposal for the load, an identifying number for the trailer (usually provided by the Authority) and a total charge for each days activities; and
- (ii) a daily ticket listing faxed from the Contractor showing each load transported to the Disposal Facility. This should show the date transported, the Disposal Facility, the load slip number, the weight of the load, the cost for transportation, and identifying number for the trailer and a total charge for each days activities. These daily listings shall serve as the backup for the monthly billing.
- (iii) such reports as to Recyclables transported to Material Recovery Facilities as shall be determined from time to time by the Authority.
- (iv) The information to be shown and the format of the Contractor's daily reports may be adjusted based on mutual agreement between the Authority and the Contractor.

(c) Service Fee Computation.

(i) The Service Fee for Authority Waste shall be per ton of Authority Waste received by the Contractor at the Authority Transfer Stations and shall include transport to and disposal of such waste at the Disposal Facility. Only the weights from the Authority's Scales shall be used for billing.

(ii) For Authority Waste, the Authority agrees to a minimum load requirement of 20 tons as averaged on a monthly basis. The average is calculated by taking the total tons transported and disposed of per month divided by the total number of loads transported and disposed per month. If the average is less than 20 tons the penalty will be calculated as follows: (I) difference between 20 tons and the average as calculated above; (II) times total number of loads transported and disposed; and (III) times the Service Fee. The Authority does not guarantee the flow of any given amount of waste.

(iii) The Service Fee for Recyclables shall be per load of Recyclables received by the Contractor at the Authority Transfer Stations and shall include transport of such Recyclables to the designated Material Recovery Facility. There shall be no minimum load requirement for Recyclables.

(d) Service Fee Schedule. Service Fees shall be as set forth at Exhibit C.

(e) Rate Adjustment. (i) Except as provided in subsection (iii) below, there will be no adjustment of the Service Fee for transportation or disposal services provided under this Agreement.

(ii) If there is an Uncontrollable Circumstance, the Contractor shall be responsible for obtaining an Alternate Primary Disposal Facility acceptable to the Authority, provided that in no event shall the Service Fees be adjusted as a result of such Uncontrollable Circumstance or such Alternate Primary Disposal Facility.

(iii) In the event that, for any given week during the contract term, the average weekly retail price per gallon for low sulfur diesel fuel equals or exceeds \$4.50 at the non-government rate according to U.S. Department of Energy published sources for the Central Atlantic Region (“Overage”), then the Service Fee in effect with respect to such weekly period shall be increased by an overage charge solely for that week (“Overage Charge”) equal to 10% of the pro-rated amount of the Service Fee payable with respect to such weekly period for every \$0.50 increase in the per gallon cost of fuel. For example, the Overage Charge shall be computed as follows:

Average Price Retail Low-Sulfur Diesel Fuel	Overage Charge
\$4.50-4.99/gal.	10% of Service Fee
\$5.00-5.49/gal.	20% of Service Fee
\$5.50-5.99/gal	30% of Service Fee

(f) Continuation of Subcontract. In the event that the Authority has the right to terminate this Agreement as a result of an Event of Default by Contractor, the Authority may elect to continue the Primary Subcontract for the remaining term of this Agreement. In such event, the Service Fee rates payable to the Primary Subcontractor for disposal of Authority Waste and Residual Waste shall be the same as the per ton rates specified at Section 4.01(c) for disposal of Residual Waste, and the Authority may at its option make payment directly to the Primary Subcontractor.

## ARTICLE V - OPERATION OF TRANSFER STATIONS

### Section 5.01            Transfer Station Operations.

(a) Discharge and Inspection of Waste. After receiving waste at the Transfer Stations, the Authority shall inspect and remove Unacceptable Waste on the tipping floor, sort the waste where appropriate, and load the Authority Waste onto the Contractor's transfer trailers

at the Transfer Stations.

(b) Loading of Waste. The Authority shall gather the Authority Waste from the tipping floor of the Authority Transfer Stations and load it into the Contractor's transfer trailers for shipment to the Disposal Facility; transfer trailers shall be fully tarped before being staged for shipment to the Disposal Facility.

(c) Loading of Recyclables. The Authority shall load the Recyclables into the Contractor's transfer trailers for shipment to the Material Recovery Facility; transfer trailers shall be fully tarped before being staged for shipment to the Material Recycling Facility.

(d) Weighing of Transfer Trailers. The Authority shall cause each loaded transfer trailer to be weighed on New York State certified scales located adjacent to the Authority Transfer Stations before departure from the Authority Transfer Stations, to determine the tonnage of waste delivered to Contractor at the Authority Transfer Stations and disposed at the Disposal Facility or Material Recovery Facility, as applicable. Billing will be based on Authority scale records maintained at the Main Office in Howes Cave (with a copy sent with each load).

(e) Staging Area. The Authority shall provide to Contractor reasonably sufficient staging areas at the Authority Transfer Stations to allow for temporary parking of tractors and transfer trailers as necessary for Contractor's performance under this Agreement prior to departure to the Disposal Facility or Material Recovery Facility and after their return to the Authority Transfer Stations.

(f) Transport of Trailers. Contractor will transport (or cause its Authority approved Subcontractor, if any) to transport all loaded transfer trailers to the Disposal Facility or Material Recovery Facility, as applicable, and Contractor will return or provide for the return of the transfer trailers to the Authority Transfer Stations for staging and reloading of Authority Waste or Recyclables.

(g) Equipment. The Contractor shall procure and maintain at its expense all necessary equipment to transport the Authority Waste to the Disposal Facility, and to dispose of the Authority Waste at the Disposal Facility, and to transport the Recyclables to the Material Recovery Facilities. Based on the Contractor's knowledge of the Authority system and the Contractor's knowledge of the volumes of waste received at the Authority Transfer Stations, and based upon ongoing coordination with the Authority staff, the Contractor shall at all times maintain and have available adequate numbers of tractors and transfer trailers to receive and remove daily all Authority Waste delivered to the Authority Transfer Stations. This shall include an adequate number of stand-by transfer trailers to ensure: (1) continuous loading during regular hours of operation, (2) removing all waste from the transfer stations by the end of the regular operating day, (3) ability to meet daily and seasonal fluctuations in waste volume, and (4) maintenance and repair of all equipment. All equipment provided by the Contractor shall be in good and serviceable condition, shall meet all DOT, OSHA and other standards with all required permits and licenses, and shall be compatible with the needs of the Authority and operated by the Contractor in accordance with safe, accepted, and standard practice. The

Contractor shall consult with Authority staff prior to purchase of additional equipment to be sure to accommodate the needs of all the stations and provide for safe operations and compliance with the Authority Transfer Station permit conditions.

(h) Hours of Operation. Current hours of operation for the Authority Transfer Stations are as set forth at Exhibit B. The Authority reserves the right to make adjustments to these hours of operation as necessary. The Contractor and its Subcontractor shall have the right to enter the Transfer Stations' staging areas prior to and after the aforesaid operating hours as necessary for the return and pick-up of empty and loaded transfer trailers; provided that they shall be obligated to secure all facilities upon departure as required by the conditions of the Authority Transfer Station operating permits.

(i) Permit Conditions. This Agreement is subject to the applicable conditions for operation set forth in the Authority Transfer Station permits.

(j) Operating Procedures. The Contractor and each Landfill Subcontractor acknowledge that MOSA will adopt and amend operating procedures for its transfer stations from time to time in accordance with applicable permit requirements and state and federal regulations. Such operating procedures will include without limitation the following.

- (i) MOSA is permitted to mix MSW, Commercial Waste and Industrial Waste so long as any such Industrial Waste stream has been properly profiled for at least one Disposal Facility in accordance with applicable DEC regulations, and DEC has approved such Industrial Waste stream for acceptance at one or more of MOSA's transfer stations. Copies of all waste profiles provided through MOSA to a Disposal Facility will be provided to the Contractor. MOSA acknowledges that a Landfill Subcontractor may request additional information to the extent required by its own permit and its own standard operating procedures in order to approve a profile, provided that in such event the Landfill Subcontractor shall provide copies of all such documentation to MOSA with a copy to the Contractor. The Contractor and Landfill Subcontractors agree not to contest such mixing of waste in its trailers, and no additional charge or differential rate will be imposed with respect to such waste.
- (ii) In the event that isolated items of otherwise Unacceptable Waste such as tires or white goods are found upon unloading of a trailer at a Disposal Facility, the Contractor may pass on the standard charge imposed by the Disposal Facility for unloading and appropriate disposal or recycling of such items in accordance with the Disposal Facility's permit requirements and applicable state and federal regulations. Alternatively, the Contractor may return such items to MOSA for appropriate disposal or recycling at no additional cost.

**Section 5.02**                    **Use of the Transfer Stations.**

(a) The Authority intends to keep the Authority Transfer Stations open for receiving Authority Waste and Recyclables during the hours of operation described in Exhibit B, as amended from time to time, any the Business Days during the term of this Agreement. Subject to applicable state regulations and/or conditions contained in any permit issued thereunder, or conditions contained in any labor agreement, the Authority may receive such Authority Waste and Recyclables at the Authority Transfer Stations at additional times and in such cases the Authority will notify the Contractor in advance that its transportation and disposal services are required on such days.

(b) Contractor shall have access to and may use the Authority Transfer Stations solely for the performance of its required services under this Agreement, provided that Contractor shall not interfere with Authority's operations at the Authority Transfer Stations. If not previously terminated under Article VIII of this Agreement, Contractor's use of the Authority Transfer Stations shall terminate at the end of the term of this Agreement or any extension thereof.

(c) Title to the Authority Transfer Stations shall remain in the name of the Authority.

(d) Contractor shall not encumber the Authority Transfer Stations with any liens and encumbrances and, except as otherwise authorized by this Agreement, Contractor shall not remove or damage any part of the physical structure of the Authority Transfer Stations, or permit the use of the Authority Transfer Stations or any part thereof by others, except as may be authorized by the Authority in writing in advance.

(e) Contractor shall not construct or install any capital improvement or make any structural alterations in the Authority Transfer Stations without the advance written approval of the Authority. Capital improvements or structural alterations as used herein means any alteration or improvement to the structure of the building or the surrounding real property that, after completion, cannot be removed without substantial loss of value or major damage to the premises. Any such capital improvements or structural alterations shall become the property of the Authority.

**Section 5.03**                    **Maintenance of Transfer Stations.**

(a) The Authority shall maintain the Authority Transfer Stations and the scales in a manner reasonably necessary to fulfill its obligations under this Agreement.

(b) The Contractor shall utilize the Transfer Stations in a manner so as to cause no damage or degradation to the facilities and the Contractor shall on a daily basis return the areas of the Authority Transfer Stations used by the Contractor to a clean and usable condition and in compliance with all applicable permit conditions.

(c) Except as provided in Section 5.03(b), the Authority shall be responsible for snow and ice removal, facility and scale operating conditions, grounds maintenance, mud and

dust control and removal of litter outside the Authority Transfer Stations.

(d) The Authority shall be responsible for payment of leachate disposal costs with respect to the Authority Transfer Stations.

## **ARTICLE VI - INDEMNIFICATION**

### **Section 6.01 Indemnification.**

(a) The Contractor agrees that it shall defend, protect, indemnify, and hold harmless the Authority and its respective Board members, employees and agents, (the "Authority Indemnified Parties") from and against any and all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, including the payment of reasonable attorneys' fees of the Authority Indemnified Parties, and the Contractor shall defend the Authority and the Authority Indemnified Parties in any lawsuit or other litigation, including appeals, for personal injury to, or death of, any person or persons, or for loss or damage to property arising out of the negligent acts or omissions or willful misconduct of the Contractor in the performance (or nonperformance) of the Contractor's obligations under this Agreement.

(b) The Contractor further agrees that the Authority shall not be liable, solely as a result of entering into this Agreement or authorizing the disposal of Authority Waste or Residual Waste, at the Disposal Facility, for the costs incurred in the closing, capping or remediation of the Disposal Facility or for any claims, damages, including natural resource damages, or any loss arising from any Environmental Conditions at the Disposal Facility or which may arise under any Federal, State or Local Law, statute, rule or regulation or by reason of any action, charge, lawsuit, prosecution, order or judgment commenced, pursued or obtained by the United States Government or by any agency of the State of New York or any other state or by any local government having jurisdiction and the Contractor shall indemnify, defend, protect and hold harmless the Authority and the Authority Indemnified Parties against and from all liabilities, obligations, damages, penalties, claims, costs and expenses of every nature which may be imposed on or incurred by or asserted against them or any of them in connection with the Environmental Conditions existing on or at the Disposal Facility.

(c) The Contractor is not, however, required to protect, indemnify or hold harmless the Authority or any Authority Indemnified Party for loss or claim resulting from performance (or nonperformance) of the Authority's obligations under this Agreement or the negligence or willful misconduct of the Authority. The Contractor's aforesaid indemnity is for the benefit of the Authority and the Authority Indemnified Parties;

(d) The Authority agrees that it shall protect, indemnify and hold harmless the Contractor, any of their affiliated companies, and their respective officers, members, employees, agents and sub-contractors (the "Contractor Indemnified Parties") from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions and reasonable attorneys' fees, and shall defend the Contractor Indemnified Parties in any suit, including appeals, for personal injury to; or death of, any person or persons, or for loss

or damage to property arising out of the grossly negligent acts or omissions or willful misconduct of the Authority in the performance (or nonperformance) of the Authority's obligations under this Agreement. The Authority is not, however, required to defend, protect, indemnify or hold harmless any Contractor Indemnified Party for loss or claim resulting from performance (or nonperformance) of the Contractor's obligations under this Agreement or the negligence or willful misconduct of any Contractor Indemnified Party. The Authority's aforesaid indemnity is for the exclusive benefit of the Contractor Indemnified Parties, and in no event shall such indemnity inure to the benefit of any third Person.

- (e) Section 6.01 shall survive the termination or expiration of this Agreement.

## **ARTICLE VII - DISPUTE RESOLUTION AND EVENTS OF DEFAULT**

### **Section 7.01            Payment Disputes.**

(a) If any Party shall dispute an amount owing to any other Party, including the amount of any quantity of solid waste serving as a basis for billing pursuant to Article III of this Agreement, such Party shall:

- (1) give notice to the other Party of such disputed amount, together with sufficient information to allow the other party to understand the nature of the dispute, which notice is to be in writing and shall be delivered on or before the due date of the amount disputed; and
- (2) pay all undisputed amounts on the due date.

If the Parties are unable to resolve any such payment dispute within thirty (30) days of the date of such notice, either party may take such action as may be permitted pursuant to the further provisions of Article VII and Article VIII.

(b) Covenant to Continue Performance. During resolution of any payment dispute under this Section 7.01, the Contractor and the Authority shall continue to perform their respective obligations under this Agreement without interruption or slowdown.

### **Section 7.02            Events of Default by Contractor.**

The following shall constitute Events of Default on the part of the Contractor:

- (a) The failure of the Contractor, other than due to Authority Fault, to accept the Authority Waste at the Authority Transfer Stations and/or to transport Authority Waste or Residual Waste to the Disposal Facility and/or to dispose of such solid waste at the Disposal Facility pursuant to this Agreement;
- (b) The failure of the Contractor, other than due to Authority Fault, to accept the Recyclables at the Authority Transfer Stations and/or to transport Recyclables to the designated

Materials Recovery pursuant to this Agreement;

(c) The suspension or revocation of any license or permit necessary for the performance of obligations under this Agreement;

(d) Any warranty, representation, certification, financial statement or other information made or furnished to induce the Authority to enter into this Agreement, or made or furnished, at any time, in or pursuant to the terms of this Agreement or otherwise by the Contractor, or by any person who guarantees or who is liable for any obligation of the Contractor under this Agreement, shall prove to have been false or misleading in any material respect when made;

(e) The Contractor's default under the performance bond or failure to provide or maintain the performance bond required by Section 9.05;

(f) The failure of the Contractor to maintain the insurance upon the terms required by Section 9.04 of this Agreement and provide the certificates of such insurance as required by such section;

(g) The Contractor's being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property, or (ii) a bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding instituted by or against the Contractor under the laws of any jurisdiction, which proceeding has not been dismissed within thirty (30) days, or (iii) any action or answer by the Contractor approving of, consenting to, or acquiescing in, any such proceeding, or (iv) the levy of any distress, execution or attachment upon the property of the Contractor which shall substantially interfere with its performance hereunder;

(h) The default in the performance or observance of any of the Contractor's other obligations under this Agreement and the continuance thereof for a period of thirty (30) days after written notice given to the Contractor by the Authority; or

(i) The failure of the Contractor to meet the conditions to Contractor's Obligations as set forth in Section 2.02 (a) through (j) of the Agreement.

**Section 7.03**                    **Events of Default by Authority.**

The following shall constitute Events of Default on the part of the Authority:

(a) The failure on the part of the Authority to pay all amounts due and payable under this Agreement that are not the subject of dispute (provided the Authority has notified the Contractor of such dispute) to the Contractor under this Agreement when due.

(b) (i) the Authority's being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or

consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property, or (ii) a bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding instituted by or against the Authority under the laws of any jurisdiction, which proceeding has not been dismissed within thirty (30) days, or (iii) any action or answer by the Authority approving of, consenting to, or acquiescing in, any such proceeding, or (iv) the levy of any distress, execution or attachment upon the property of the Authority which shall substantially interfere with its performance hereunder; or

(c) The default in the performance or observance of any of the Authority's other obligations under this Agreement and the continuance thereof for a period of thirty (30) days after written notice given to the Contractor by the Authority;

**Section 7.04**                    **Remedies for Breach.**

Upon the occurrence of an Event of Default, and at any time thereafter during the continuation of such Event of Default, the Issuer may exercise any right or remedy available to it in law or equity to exercise any right or remedy available to it in law or equity to enforce all rights under this Agreement, including any one or more of the remedial steps set forth below:

(a) take any action at law or in equity to enforce performance and observance of any obligation, agreement or covenant of the Contractor under this Agreement;

(b) after prior written notice to the Contractor, unless the giving of such notice would prejudice the Authority (as determined in its sole discretion), perform or cause to be performed for the account of the Contractor any covenant in the performance of which the Contractor is in default or make any payment for which the Contractor is in default. The Contractor shall pay to the Authority upon demand any amount paid by the Authority in the performance of such covenant. Any amounts which shall have been paid by reason of failure of the Contractor to comply with any covenant or provision of this Agreement, including reasonable counsel fees, incurred in connection with prosecution or defense of any proceedings instituted by reason of default of the Contractor, shall bear interest at the Default Rate, but in no case higher than the highest rate permitted by law, from the date of payment by the Authority until paid by the Contractor and shall be secured by the performance guarantees described in Section 9.05;

(c) if an Event of Default occurs, or the Contractor threatens to commit an Event of Default, the Authority shall have the right and remedy, without posting bond or other security, to have the provisions of this Agreement specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such Event of Default will cause irreparable injury to the Authority and that money damages will not provide an adequate remedy therefore;

(d) terminate this Agreement as provided in Article VIII.

This Section 7.04 shall survive termination of this Agreement.

**Section 7.05**                    **No Remedy Exclusive.**

No right or remedy herein conferred or reserved is intended to be exclusive of any other available rights and remedy or remedies, but each and every such right and remedy shall be cumulative and shall be in addition to every other right and remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right, remedy, privilege or power accruing upon any default shall impair any such right, remedy, privilege or power or shall be construed to be a waiver thereof, but any such right, remedy, privilege or power may be exercised from time to time and as often as may be deemed expedient. No notice, other than such notice as may be required in this Agreement, shall be required precedent to the exercise of any right or remedy hereunder or at law, in equity or pursuant to statute. This Section 7.05 shall survive termination of this Agreement.

**ARTICLE VIII - TERMINATION AND REMEDIES**

**Section 8.01**                    **Termination by the Authority.**

(a) The Authority may terminate this Agreement if, within a period of thirty (30) days after the Contractor shall have received written notice from the Authority that an Event of Default has occurred under Section 7.02(a), (b), (d) or (h) of this Agreement, the Contractor has not remedied such Event of Default or, if such event is one not reasonably curable within 30 days, the Contractor has not commenced and continued to pursue with due diligence a remedy for any such Event of Default and has not cured such Event of Default within ninety (90) days.

(b) The Authority may terminate this Agreement immediately without notice upon an Event of Default of the character described in Section 7.02 (c), (e), (f), (g) or (i) of this Agreement.

(c) After a vote for dissolution of the Authority by the NYS Senate and Assembly, and upon the effective date thereof, this Agreement shall become null and void at the option of the Authority. In such event of dissolution as herein described, damages shall be collected as the amount currently due the Contractor for services to and including the effective date of the dissolution.

**Section 8.02**                    **Termination by the Contractor.**

(a) The Contractor may terminate this Agreement if, within a period of thirty (30) days after the Authority shall have received written notice from the Contractor that an Event of Default has occurred under Section 7.03 (a) or (c) of this Agreement, and the Authority has neither remedied, or, if such event is one not reasonably curable within 30 days, the Authority has not commenced and continued to pursue with due diligence a remedy for any such Event of Default and has not cured such Event of Default within ninety (90).

(b) The Contractor may terminate this Agreement immediately without notice upon

an Event of Default of the character described in Section 7.03 (b) of this Agreement.

## ARTICLE IX - MISCELLANEOUS

### **Section 9.01**            **Term.**

Unless sooner terminated pursuant to this Agreement, or unless extended as provided in this Section 9.01, this Agreement shall continue in effect until the fifth anniversary of the Commencement Date.

### **Section 9.02**            **Representations of the Authority.**

The Authority represents to the Contractor that:

(a) The Authority is duly organized and existing in good standing under the laws of the State of New York and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement;

(b) The Authority has the requisite power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof by the Authority (i) has been duly authorized, (ii) will not violate any judgment, order, law or regulation applicable to the Authority, and (iii) does not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Authority under any agreement or instrument to which the Authority is a party or by which the Authority or its assets may be bound.

### **Section 9.03**            **Representations of the Contractor.**

The Contractor hereby represents to the Authority as of the date of the Agreement and as of the Commencement Date that:

(a) The Contractor is duly organized under the laws of the State of New York, and is duly organized and qualified to do business in the State of New York; further, the Contractor is duly organized and qualified to do business wherever necessary to carry on the business and operations contemplated by this Agreement and to fully perform its obligations under this Agreement;

(b) The Contractor has the requisite power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof, (i) has been duly authorized by its members, (ii) does not require the approval of any governmental officer or body, other than those permits or approvals contemplated to be obtained before the Commencement Date, (iii) will not violate any judgment, order, law or regulation applicable to the Contractor or violate any provisions of the Contractor's articles of incorporation or bylaws, and (iv) does not constitute a default under or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Contractor under any

agreement or instrument to which the Contractor is a party or by which the Contractor or its assets may be bound;

(c) This Agreement has been duly executed and delivered and constitutes a legal, valid and binding obligation of the Contractor and its members, fully enforceable in accordance with its terms; and

(d) There is no action, suit or proceeding, at law or in equity, before any court or by any governmental authority, pending or, to the best of the Contractor's knowledge, threatened against the Contractor and/or its members, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Contractor of its obligations hereunder or the other transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the Contractor in connection with the transactions contemplated hereby, or which imperils the assets of Contractor necessary to Contractor's full and unhindered performance of its obligations under this Agreement.

(e) The Contractor and Primary Subcontractor have each duly executed the Primary Subcontract and all of the foregoing representations are true as to the Primary Subcontractor.

#### **Section 9.04            Insurance.**

(a) Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the Contractor hereby agrees to effectuate the naming of the Montgomery-Otsego-Schoharie Solid Waste Management Authority (the Authority) as an additional insured on the Contractor's insurance policies to the extent of Contractor's indemnity obligations under this Agreement, with the exception of worker's compensation;

- (b) The policies naming the Authority as an additional insured shall:
- (i) be an insurance policy from an A.M. Best rated "A" or better, New York State admitted insurer;
  - (ii) provide for 30 days notice of cancellation or material change;
  - (iii) state that the Contractor's coverage shall be primary coverage for the Authority for its Board, employees, agents and volunteers.

(c) The policies required under this Agreement are as follows:

(1) Statutory workers compensation insurance, employers' liability and disability insurance, as required under the laws of the State of New York for all of Contractor's employees engaged in work provided for under this Agreement.

(2) Comprehensive general liability insurance with contractual liability endorsement covering each and every obligation including the indemnity obligations contained in Section 6.01 of this agreement in not less than the following limits:

**Bodily injury liability:**            \$2,000,000 each person

\$3,000,000 each occurrence

**Property damage liability:** \$2,000,000

(3) Automobile liability (comprehensive coverage): \$2,000,000 each accident

(d) Prior to the commencement of any work hereunder, Contractor shall furnish to the Authority certificates or, upon request by the Authority, policies including all endorsements, showing that such insurance is in force and the premiums due thereunder have been paid. No liability policy shall contain any provisions for exclusion for liability forming part of the standard basic unamended and unendorsed form of policy, and no exclusion will be permitted in any event if it conflicts with the coverage expressly required hereby, and, in addition, no policy shall contain any exclusion from bodily injury or sickness, disease or death of any employee of Contractor which would conflict with or in any way impair coverage under the contractual liability endorsement covering the liability of Contractor under this agreement. Contractor acknowledges that failure to obtain such insurance on behalf of the Authority constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the Authority. In the event of Contractor's failure to furnish and maintain such insurance, the Authority may, at its option, terminate this Agreement with Contractor or take out and maintain such insurance for and in the name of Contractor and deduct the cost thereof from moneys otherwise due Contractor under this Agreement.

Compliance by Contractor with the foregoing requirements to carry insurance and furnish certificates and policies shall not relieve Contractor from liability assumed under any provision of this Agreement except as otherwise provided;

(e) The Contractor agrees to indemnify the Authority for any applicable deductibles contained in such policies.

**Section 9.05**                    **Performance Guarantees.**

(a) Proposal Security. To secure the Contractor's obligation to comply with all conditions set forth in Section 2.02 hereof, Contractor shall furnish to the Authority (i) a surety bond from a New York State admitted surety rated "A" or better by A.M. Best and approved by the Authority, or (ii) a letter of credit from a commercial bank authorized to do business in New York State whose short term obligations are rated A-1+ by Moody's Investor's Service or SP-1+ by Standard & Poor's, and approved by the Authority; in each case in the aggregate amount of \$250,000, and in form and substance acceptable to the Authority. Such surety bond or letter of credit shall provide that Contractor shall faithfully perform its obligations under Section 2.02 with respect to the conditions to the Commencement Date, including without limitation the Contractor's obligations to provide for the delivery of the performance guarantee required by Section 9.05(b) hereof. Such surety bond shall remain in place and in full effect in the event Contractor is merged into a separate entity or in the event Contractor sells its business and or its assets or a part of its assets necessary to its full performance of its obligations under such section.

(b) Contractor shall furnish to the Authority and maintain in effect during the term of this Agreement, including option periods, (i) a surety bond from a New York State admitted surety rated "A" or better by A.M. Best and approved by the Authority, or (ii) a letter of credit from a commercial bank authorized to do business in New York State whose long term obligations are rated A or better by Moody's Investor's Service or A or better by Standard & Poor's, and approved by the Authority; in each case in the aggregate amount of \$1,000,000, and in form and substance acceptable to the Authority. Such surety bond or letter of credit shall provide that Contractor shall faithfully perform its obligations under this Agreement, including without limitation the Contractor's obligations to provide for transportation and disposal. Such performance bond shall remain in place and in full effect in the event Contractor is merged into a separate entity or in the event Contractor sells its business and or its assets or a part of its assets necessary to its full performance of its obligations under this Agreement.

c Such bonds or letters of credit shall have a term equal to the initial term or any applicable option period, unless otherwise approved in writing by the Authority Board, in which case a replacement or renewal bond or letter of credit shall be provided not less than 90 days prior to expiration of the then-current instrument.

**Section 9.06**                    **Compliance with Laws.**

Contractor shall comply, and shall cause any Primary Subcontractor and any other Subcontractor to comply, with all Federal, State, County, and local laws, rules and regulations and with any permits issued thereunder in connection with its transportation and disposal obligations under this Agreement and with all aspects of the Montgomery-Otsego-Schoharie Solid Waste Management System.

**Section 9.07**                    **Assignment.**

This Agreement may not be assigned by the Contractor without the prior written consent of the Authority. This Agreement may not be subcontracted without the prior written consent of the Authority except as expressly set forth in Section 9.08. No Subcontract may be assigned or subcontracted without the prior written consent of the Authority.

**Section 9.08**                    **Subcontracts.**

(a) The Contractor has submitted to the Authority a certified copy of the Primary Subcontract in full force and effect as of the Agreement Date. The Contractor shall comply with the terms of the Primary Subcontract. The Contractor shall cause the Primary Subcontractor to comply with the terms of the Primary Subcontract and the applicable terms of this agreement, including without limitation Section 3.02 and 3.03 hereof.

(b) The Contractor has submitted to the Authority a certified copy of the Additional Facility Subcontracts listed at Exhibit B. Such Subcontracts shall include a rider in the form attached at Exhibit D and shall otherwise be in form and substance approved by the Authority. The Contractor shall cause each Additional Facility Subcontractor to comply with the terms of its Subcontract and the applicable terms of this Agreement.

(c) Except in an emergency, which impairs or immediately threatens to impair Contractor's performance hereunder, Contractor shall not award a contract for any other subcontractor without the prior written approval of the Authority. Any request for approval of a subcontractor shall include a copy of the terms of the proposed contract and the proposed award to the subcontractor, together with such other information as the Authority may reasonably require. The Authority may deny approval of any proposed subcontract in its discretion. Without limiting the foregoing, the Authority may deny approval of a proposed subcontract on the ground that the proposed subcontractor:

- (i) does not have adequate financial resources;
- (ii) does not have the necessary licenses and permits;
- (iii) is unable to comply with the required or proposed performance schedule;
- (iv) does not have a satisfactory record of performance;
- (v) does not have the necessary organization, experience, operational controls and technical skills or the ability to obtain them;
- (vi) does not have the necessary production, and technical equipment and facilities or the ability to obtain them;
- (vii) is not eligible to receive an award under applicable laws and regulations.

(d) Approval of a subcontract shall not relieve Contractor from any of its obligations under this Agreement.

(e) No subcontract awarded by Contractor in an emergency shall have a term exceeding 30 days unless such period is extended in writing by the Authority, and any subcontractor shall comply with all other requirements of this Agreement. Contractor shall give the Authority immediate notice of any such emergency subcontract.

#### **Section 9.09**                    **Sale of Disposal Facility.**

Contractor agrees to cause its Primary Subcontractor to commit to the Authority sufficient air space at the Disposal Facility to dispose of the Authority Waste received by Contractor at the Authority Transfer Stations and the Residual Waste during the initial term of this Agreement, and for each of the option periods thereafter. This commitment shall remain and be binding upon any successor to Contractor and Primary Subcontractor. Contractor shall advise any potential purchaser of the Disposal Facility, or any potential purchaser of substantially all of the assets of Contractor, of this commitment and shall include or cause to be included such commitment in any agreement relating to such purchase.

#### **Section 9.10**                    **Notices Generally.**

Unless specifically provided elsewhere in this Agreement, at least thirty (30) days prior written notice shall be required to be given by one Party to the other Party of any breach of this Agreement by the other Party or failure to fulfill any requirement of this Agreement by a Party, in order to allow the Party receiving such notice to cure any such breach or to allow such Party time to prepare for, question or contest the fact that any such requirement of this Agreement has

not been fulfilled.

All notices, demands, requests and other communication hereunder shall be deemed sufficient and properly given if in writing and delivered in person to the following addresses or sent by certified or registered mail, postage prepaid with return receipt requested, or delivered by national overnight courier service, at such addresses; provided, if such notices, demands, requests or other communications are sent by mail, they shall be deemed as given on the third day following such mailing which is not a Saturday, or day on which United States mail is not delivered:

- (a) If to the Authority:  
Montgomery-Otsego-Schoharie Solid Waste Management Authority  
Gilbert L. Chichester, Executive Director  
P.O. Box 160  
Howes Cave, New York 12092

Authority General Counsel  
Christine M. Chale, Esq.  
Rappport, Meyers, Whitbeck, Shaw & Rodenhausen, LLP  
436 Union Street  
Hudson, New York 12534

- (b) If to the Contractor:  
Riccelli Enterprises, Inc.  
6131 E. Taft Road  
P.O. Box 6418  
North Syracuse, New York 13212

Any Party may, by like notice, designate any further or different addresses to which subsequent notices shall be sent. Any notice hereunder signed on behalf of the notifying Party by a duly authorized attorney at law shall be valid and effective to the same extent as if signed on behalf of such Party by a duly authorized officer or employee.

**Section 9.11**                    **Relationship of the Parties.**

No Party shall have any responsibility to perform services for or to assume contractual obligations, which are the obligation of the other Party; and nothing herein shall constitute any Party as a partner, agent or representative of any other Party, or be deemed to create any fiduciary relationship between the Parties.

**Section 9.12**                    **Waiver.**

Unless otherwise specifically provided by the terms of this Agreement, no delay or failure to exercise a right resulting from any breach of this Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the Party granting such waiver. If any representation, warranty or covenant contained in this Agreement

is breached by any Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive, either expressly or impliedly, any other breach under this Agreement.

**Section 9.13**                    **Enforcement by bond trustee.**

The Contractor acknowledges and agrees that this Agreement and any Subcontract may be assigned by the Authority to, and enforceable by, the trustee under any trust indenture securing the Authority's bonds, for the benefit of the holders of such bonds.

**Section 9.14**    **Article and Section Captions; References.**

The article and section headings and captions contained herein are included for convenience only and shall not be considered a part hereof or affect in any manner the construction or interpretation hereof. Except as otherwise indicated, all references herein to Sections and Articles are to sections, and articles of this Agreement.

**Section 9.15**                    **Amendment.**

No amendment, modification or change in this Agreement shall be effective unless same shall be in writing and duly executed by the Parties.

**Section 9.16**                    **Agreement Governed by New York Law.**

This Agreement shall be governed by the laws of the State of New York; any legal proceedings commenced under this Agreement or required to enforce the terms of this Agreement shall be commenced in the Supreme, Court of the State of New York with venue in the County of Schoharie.

**Section 9.17**                    **No Other Agreements.**

This Agreement contains the entire understanding between the Parties with respect to the subject matter hereof and supersedes any negotiations, proposals, understandings or agreements, oral or written, prior to the Agreement Date between the Authority and Contractor with respect to the services contemplated hereby.

**Section 9.18**                    **Successors and Assigns.**

This Agreement shall be binding upon and inure to the benefit of the Authority and the Contractor, and their respective successors and assigns, provided that Contractor shall not assign this agreement without the prior written approval of the Authority. Nothing in this agreement shall act to confer third party beneficiary rights on any person or entity not a Party to this Agreement.

**Section 9.19**            **Execution of Documents.**

This Agreement shall be executed in any number of original counterparts, any of which shall be regarded for all purposes as an original and all of which shall constitute but one and the same instrument.

**Section 9.20**            **Severability.**

In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal or unenforceable in any respect, the Authority and the Contractor shall negotiate in good faith and agree to such amendments, modifications or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement, as so amended, modified, supplemented or otherwise affected by such action, shall remain in full force and effect.

**Section 9.21**            **Special Conditions.**

The special conditions set forth at Exhibit A are hereby incorporated by reference.

**IN WITNESS WHEREOF**, the Authority and Contractor have caused this Agreement to be duly executed by their authorized officers, and the Authority and Contractor have caused this Agreement to be dated as of the date and year first written above.

**MONTGOMERY-OTSEGO-SCHOHARIE  
SOLID WASTE MANAGEMENT AUTHORITY**

**By:** \_\_\_\_\_  
Gilbert L. Chichester, Executive Director

**RICCELLI ENTERPRISES, INC.**

**By:** \_\_\_\_\_

**STATE OF NEW YORK            )**  
**COUNTY OF SCHOHARIE        )ss.:**

On this \_\_\_ day of \_\_\_\_\_, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared GILBERT L. CHICHESTER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
**NOTARY PUBLIC**

**STATE OF NEW YORK            )**  
**COUNTY OF \_\_\_\_\_ )ss.:**

On this \_\_\_ day of \_\_\_\_\_, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
**NOTARY PUBLIC**

## EXHIBIT A

### STANDARD CLAUSES FOR AUTHORITY CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, “the contract or “this contract”) agree to be bound by the following clauses which are hereby made a part of the contract (the word “Contractor” herein refers to any party other than the Authority, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. **NON-ASSIGNMENT CLAUSE.** This contract may not be assigned, and no part or portion may be subcontracted, by the Contractor nor may its right, title or interest therein be assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the Authority and any attempts to assign the contract without the Authority's written consent are null and void.

2. **WORKERS' COMPENSATION BENEFITS.** This contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

3. **NON-DISCRIMINATION REQUIREMENTS.** In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

4. **EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Article 15-A of the Executive Law, if this contract is: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of

\$25,000, whereby a contracting agency is committed to expend, or does expend, funds in return for labor, services, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (b) a written agreement in excess of \$100,000 whereby a contracting agency is committed to expend, or does expend, funds for the acquisition, construction, demolition, replacement, major repair, or renovation of real property and improvements thereon, or (c) a written agreement in excess of \$100,000 whereby the owner of a State-assisted housing project is committed to expend, or does expend, funds for the acquisition, construction, demolition, replacement, major repair, or renovation of real property and improvements thereon for such project, then:

(1.) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination, and rates of pay or other forms of compensation.

(2.) At the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status, and that agency, union, or representative will affirmatively cooperate in the implementation of the contractor's obligations herein.

(3.) The Contractor shall state, in all solicitations or advertisements for employees, that in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status.

5. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

6. **NON-COLLUSIVE BIDDING REQUIREMENT.** In accordance with Public Authorities Law Section 2878, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the Authority a non-collusive bidding certification on Contractor's behalf.

7. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of this contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership, or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the Authority within five (5) business days of such conviction, determination or disposition of appeal.

8. **SET-OFF RIGHTS.** The Authority shall have rights of set-off. These rights shall include, but not be limited to, the Authority's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing by the contractor to the Authority with regard to this contract, or any other contract with the Authority, including any contract for a term commencing prior to the term of this contract. This also includes amounts due and owing the Authority for any other reason including, without limitation, monetary penalties, adjustments, fees, or claims for damages by the Authority and third parties in connection therewith.

9. **RECORD-KEEPING REQUIREMENT.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts or other evidence directly pertinent to performance under this contract for a period of six (6) years following final payment or to the termination of this contract, whichever is later, and any extensions thereto. The Authority and Attorney General or any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to such books, records, documents, accounts and other evidential material during the contract term, extensions thereof and said six (6) year period thereafter for the purposes of inspection, auditing and copying. "Termination of the contract", as used in this clause 9, shall mean the later of completion of the work of the contract or the end date of the term stated in the contract.

10. **LIABILITY.** Contractor shall be responsible for all damage to life and property due to negligent or otherwise tortious acts, errors or omissions of Contractor, in connection with their services under this contract. Further, it is expressly understood that Contractor shall indemnify and save harmless the Authority from claims, suits, actions, damages, and costs of every name and description resulting from the negligent performance of the services of Contractor under this contract, and such indemnity shall not be limited by reasons of enumeration of any insurance coverage herein provided.

11. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal Supremacy clause requires otherwise.

12. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to

Contractor for late payment shall be governed by Public Authorities Law Section 2880.

13. **NO ARBITRATION AND SERVICE OF PROCESS.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York. Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested.

14. **OBSERVANCE OF LAWS.** The Contractor agrees to observe all Federal, State and local laws and regulations and to procure all necessary licenses and permits.

15. **IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**  
Federal Employer Identification Number and/or Federal Social Security Number:

All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's, i.e., the seller's or lessor's, identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both when the payee has both such numbers. Failure to include the number or numbers may delay payment. Where the payee does not have such number or numbers, the payee must give, on his or her invoice or New York State standard voucher, the reason or reasons why the payee does not have such number or numbers.

Privacy Notification:

(1.) The authority to request the above personal information from a seller of goods or services, or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses, and others who have been delinquent in filing tax returns or may have understated their tax liabilities, and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes, and for any other purpose authorized by law.

(2.) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. This information is maintained in New York State's Central Accounting System by the Director of State Accounts, Office of the State Comptroller, AESOB, Albany, New York 12236.

16. **DISQUALIFICATION TO CONTRACT WITH PUBLIC AUTHORITY.** The Contractor has not been disqualified from selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or any official of any public authority created by the state or any political subdivision, for goods, work or services pursuant to Section 2876 of the Public Authorities Law.

Upon the refusal by a person, when called before a grand jury, head of a state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract, (a) such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or official thereof, for goods, work or services, for a period of five years after such refusal, and (b) any and all contracts made with any public authority or official thereof, since the effective date of Section 2875 of the Public Authorities Law, by such person and by any firm, partnership or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the public authority without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the public authority for goods delivered or work done prior to the cancellation or termination shall be paid.

17. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit, the terms of this Exhibit shall control, except that to the extent required for the purpose of obtaining Federal Aid in connection with this contract, any contract provisions required for Federal Aid projects shall supersede any conflicting provisions.

18. **ENTIRE AGREEMENT.** This contract, together with this Exhibit, constitutes the entire understanding between the parties and there are no other oral or extrinsic understandings of any kind between the parties. This contract may not be changed or modified in any manner except by a subsequent writing, duly executed by the parties hereto.

## **EXHIBIT B**

### TO SOLID WASTE TRANSPORTATION AND DISPOSAL AGREEMENT

Dated as of January 1, 2006

By and Between Riccelli Enterprises, Inc.  
and Montgomery-Otsego-Schoharie Solid Waste Management Authority

### **Transfer Stations, Subcontracts and Additional Provisions**

#### **Authority Transfer Stations Designated for Purposes of this Agreement:**

1. Amsterdam Transfer Station, Route 5S, Amsterdam, New York;
2. Western Transfer Station, Route 5S, Randall, New York;
3. Schoharie Transfer Station, Route 7, Howes Cave, New York;
4. Oneonta Transfer Station, Silas Road, Oneonta, New York; and
5. Northern Transfer Station, Route 28, Cooperstown, New York

#### **Authority Transfer Station Hours of Operation:**

Hours of operation as of the date of the Agreement are as follows. Such hours may be changed from time to time by the Authority; in such event a notice of such change will be provided to the Contractor within a reasonable time following such change:

For the Amsterdam Transfer Station the hours of operation are 7 a.m. - 3:30 p.m. M-F, 8 a.m. – 11:30 p.m. Saturday;

the Western Transfer Station hours of operation are 7 a.m. - 3:30 p.m. M-F, and 8 a.m. to 11:30 p.m. Saturday;

the Schoharie Transfer Station hours of operation are 7 a.m. - 3:30 p.m. M-F, and 8 a.m. to 11:30 p.m. Saturday;

the Oneonta Transfer Station hours of operation are 7:00 a.m. - 3:30 p.m. M-S; and

the Cooperstown Transfer Station hours of operation are 8:00 a.m. - 2:30 Wednesday and Saturday.

#### **Designated Material Recovery Facilities:**

Any of the following, designated from time to time for this Agreement by the Authority:

Ulster County Resource Recovery Facility in Kingston, NY;

FCR, Inc. in Claverack, NY;

Naef Recycling in Syracuse, NY;

Sierra at the Port of Albany, NY; and

Schenectady County MRF in Rotterdam, NY

Such other Material Recovery Facilities as may be designated by the Authority.

#### **Primary Subcontractors:**

**Transportation:**      **None**

**Disposal:**      **Casella Waste Management of NY, Inc.**

The Primary Subcontract dated as of January 1, 2006, between the Contractor and Primary

Subcontractor and on file with the Authority, is approved subject to the following further conditions: (i) The Contractor remains responsible for taking all Authority Waste and Residual Waste pursuant to this Agreement regardless of whether the Primary Subcontractor has terminated or attempted to terminate the Primary Subcontract. The condition in Section 4 (c) of the Primary Subcontract requiring delivery by Contractor of a specified proportion of waste from certain transfer stations is an undertaking of Contractor and not the Authority. The Authority agrees that within five (5) days of receipt of notice from the Primary Subcontractor of an aggregate shortfall in the minimum tonnage required to be delivered by the Contractor under such Section 4 (c), the Authority will provide written notice to the Contractor, with a copy to the Primary Subcontractor, confirming the number of tons leaving each transfer station during such quarter and the number of tons identified on the Authority's tonnage reports as having been delivered to the each Landfill. If the Primary Subcontractor delivers a notice to the Contractor of failure to remedy a shortfall or a notice of termination of the Primary Subcontract as specified in Section 4 (c) of the Primary Subcontract, the Authority may rely on such notice. From and after any date on which the Primary Subcontractor purports to terminate the Primary Subcontract, Contractor expressly consents to the delivery by Authority of Authority Waste or Residual Waste directly to the Primary Subcontractor. In such event, however, Contractor will remain responsible for any additional costs incurred by the Authority as a result of such termination by the Primary Subcontractor. Contractor may seek approval of an Alternate Primary Subcontractor in accordance with Section 3.07 of this Agreement. (ii) In the event that Contractor receives a notice of intent from the Primary Subcontractor pursuant to Section 1(c) of the Primary Subcontract, the Contractor agrees that it will exercise its option to terminate the Primary Subcontract pursuant to such Section 1(c) only upon prior written approval of the Authority. The Authority shall have the right to terminate this Agreement at the end of the 120-day notice period provided by the Primary Subcontractor or at any time thereafter, upon 60 days' notice to the Contractor.

**Primary Disposal Facilities:**

<b><u>Name and Address Of Disposal Facility</u></b>	<b><u>DEC Permit No.</u></b>	<b><u>Owner/Operator</u></b>	<b><u>Subcontract Date</u></b>
Hyland Facility Associates 6653 Herdman Road Angelica, N.Y. 17094	Part 360 Permit # 9-0232- 00003/00002	Owner: Casella Waste Management	January 1, 2006 with Casella Waste Management of N.Y., Inc.
Ontario County Landfill Route 5 & 20 Seneca, N.Y.	Part 360 Permit #3244- 00004/00001-0 Title V permit #8-3244- 0004/00007	Owner: Ontario County Operator: New England Waste Services of N.Y., Inc. (subsidiary of Casella Waste Systems, Inc.	January 1, 2006 with Casella Waste Management of N.Y., Inc.
Painted Post or Hakes Landfill 4376 Manning Ridge Road	Part 360 permit #8-4630- 00010/00001	Owner: Casella Waste Management of N.Y. Inc.	January 1, 2006 with Casella Waste Management of

Painted Post, N.Y. 14870		Operator: Hakes C & D Disposal, Inc.	N.Y., Inc.
Chemung County Solid Waste Mgmt. Dist. 1690 Lake Street, Elmira, N.Y. 14902	Part 360 Permit# 8-0728- 00004/00007-0	Owner: Chemung County Operator: Casella Waste Management of N.Y. Inc.	January 1, 2006 with Casella Waste Management of N.Y., Inc.
Development Authority of the North Country Landfill Rodman, N.Y.	Part 360 Permit # 6-2252-00007100006	Development Authority of the North Country	January 1, 2006 with Casella Waste Management of N.Y., Inc.;

**List of Additional Disposal Facilities, if any:**

<u>Name and Address Of Disposal Facility</u>	<u>DEC Permit No.</u>	<u>Owner/Operator</u>	<u>Subcontract Date</u>
High Acres 425 Perinton Parkway Fairport, NY 14450	1) Title V permit #8-2644-00048/00043; 2) Part 360 permit #8-2644-00048/00032 3) Part 360 permit #8-2644-00048/00021-0	Waste Management of New York, L.L.C.	January 1, 2006
Millseat Landfill Bergin, N.Y.	Part 360 Permit # 8-2648-00014/000001	Owner: Monroe County Operator: Waste Management of N.Y. LLC	January 1, 2006 [Included conditionally pending further written approval by MOSA of the applicable disposal contract between Monroe County and Waste Management]

**EXHIBIT C**  
**To SOLID WASTE TRANSPORTATION AND DISPOSAL AGREEMENT**  
dated as of January 1, 2006  
By and Between Riccelli Enterprises, Inc.  
and Montgomery-Otsego-Schoharie Solid Waste Management Authority

**SERVICE FEES**

**Service Fee  
(Per Ton)**

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Transportation & Disposal (Authority Waste)	\$50.25	\$58.78	\$59.99	\$62.47	\$64.20

**Residual Disposal Rate  
(Per Ton)**

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Residual Waste	\$28.00	\$29.00	\$30.00	\$31.00	\$32.00

The Residual Waste Service Fees above are for wastes delivered directly to the Disposal Facility. The Service Fees do not include transportation; the Service Fees are for disposal only. The waste producer is responsible for arranging for transportation.

**Recyclable Service Fee  
(Per Load)**

Transportation of Recyclables to

	Kingston, NY	Claverack, NY	Syracuse, NY	Port of Albany, NY	Rotterdam, NY
2006	\$400.00	\$350.00	\$550.00	\$275.00	\$300.00
2007	\$450.00	\$400.00	\$600.00	\$325.00	\$350.00
2008	\$500.00	\$450.00	\$650.00	\$375.00	\$400.00
2009	\$550.00	\$500.00	\$700.00	\$425.00	\$450.00
2010	\$600.00	\$550.00	\$750.00	\$475.00	\$500.00

## EXHIBIT D

### To SOLID WASTE TRANSPORTATION AND DISPOSAL AGREEMENT

dated as of \_\_\_\_\_, 2006

By and Between Riccelli Enterprises, Inc.

and Montgomery-Otsego-Schoharie Solid Waste Management Authority

### FORM OF RIDER TO SUBCONTRACT

This is a Rider to that certain agreement dated as of \_\_\_\_\_ (“Subcontract”) by and between \_\_\_\_\_ (Contractor) and \_\_\_\_\_ (Subcontractor) with respect to a portion of the services to be provided by the Contractor to the Montgomery-Otsego-Schoharie Solid Waste Management Authority pursuant to the MOSA Agreement described herein.

The foregoing Subcontract is hereby amended as follows (references to the “MOSA Agreement” mean the Solid Waste Transportation and Disposal Agreement between Contractor and Montgomery-Otsego-Schoharie Solid Waste Management Authority (MOSA):

1. Subcontractor acknowledges that it has been previously provided with a copy of the MOSA Agreement, identical copies of which are attached hereto as **Exhibit "I"** and made a part hereof.
2. Subcontractor agrees to be bound by the special conditions attached to the MOSA Agreement as Exhibit A.
3. This Subcontract is [the “Primary Subcontract”][“Additional Disposal Facility Subcontract”] referred to in the MOSA Agreement. Subcontractor agrees to be bound by and shall comply with all of the requirements of the MOSA Agreement to be performed by the [“Primary Subcontractor”][Additional Disposal Facility Subcontractor] including but not limited to the provisions of Sections 3.01(j), [3.02 or 3.03], 9.04, 9.08 and 9.20 of the MOSA Agreement
4. Subcontractor represents that representations in Section 9.03 of the MOSA Agreement are true as to Subcontractor as of the date of this Subcontract and shall be true as of the Commencement Date.
5. [As to the Primary Subcontract:] The term of this Subcontract shall be the same as the term of the MOSA Agreement, provided that Subcontractor shall continue to provide disposal services to MOSA on the terms provided in the MOSA Agreement, in the event that MOSA has the right to terminate the MOSA Agreement as a result of an Event of Default by Contractor.
6. Upon the occurrence of a default under this Subcontract, either party may exercise any right or remedy available to it in law or equity to enforce all rights under this Subcontract.
7. MOSA shall be a third party beneficiary of this Subcontract and shall be entitled to enforce this Subcontract. This Subcontract may not be assigned by the Subcontractor or Contractor without the prior written consent of the other party and without the prior written

consent of MOSA.

8. This Subcontract shall be governed by the laws of the State of New York; any legal proceedings commenced under this Subcontract or required to enforce the terms of this Subcontract shall be commenced in the Supreme, Court of the State of New York with venue in the County of Schoharie.

9. This Subcontract contains the entire understanding between Subcontractor and Contractor with respect to the subject matter hereof and supersedes any negotiations, proposals, understandings or agreements, oral or written, prior to the date of this Subcontract between Subcontractor and Contractor with respect to the services contemplated hereby. No amendment, modification or change in this Subcontract shall be effective unless same shall be in writing and duly executed by Subcontractor and Contractor, and approved in writing by Authority.

Dated this \_\_\_ day of \_\_\_\_\_, 2006.

[Contractor].

[Subcontractor]

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_

Approved and Accepted as to form:

Montgomery, Otsego, Schoharie Solid Waste Management Authority

By: \_\_\_\_\_  
Its Executive Director