

MUNICIPAL WASTE DISPOSAL SERVICE CONTRACT

THIS MUNICIPAL WASTE DISPOSAL SERVICE CONTRACT (hereinafter referred to as the "Contract")
entered this 9th day of August, 2012, by and between

THE COUNTY OF CUMBERLAND and, THE CUMBERLAND COUNTY RECYCLING & WASTE AUTHORITY,
Cumberland County, Pennsylvania, hereinafter jointly referred to as the "County"
Waste Management of Pennsylvania, Inc. AND Shade Landfill
(Name of Facility/Parent Company) hereinafter referred to as the "Contractor"

whose permitted landfill Permit No 101421 issued by PA DEP
is located in Shade Township (Municipality)(ies),
Somerset PA
County, State.

WITNESSETH:

WHEREAS, the Cumberland County Board of Commissioners, acting through the Cumberland County Recycling & Waste Authority, have developed and adopted the 1990 Municipal Waste Management Plan for Cumberland County and its revisions in 2000 and 2012 in accordance with the requirements of the Pennsylvania Municipal Waste Planning, Recycling and Waste Reduction Act of 1988 ("Act 101"); and,

WHEREAS, the municipalities in Cumberland County have duly approved and ratified this 1990 Municipal Waste Management Plan for Cumberland County pursuant to the requirements of section 501 of Act 101; and,

WHEREAS, this 1990 Municipal Waste Management Plan for Cumberland County and its revisions in 2000 and 2012 requires that all Municipal Waste generated within Cumberland County must be disposed only at a Municipal Waste processing and disposal facility that is designated by the County pursuant to this plan to insure the availability of adequate permitted processing and disposal capacity for the Municipal Waste generated in Cumberland County; and

WHEREAS, Act 101, requires the County, as part of its plan, to provide for assurance for capacity or the processing and disposal of all Municipal Waste expected to be generated within the County for a period of at least the next ten (10) years, and further requires the County to execute and submit to the Department, contracts evidencing the implementation of its approved Plan and insuring sufficient available processing or disposal capacity; and,

WHEREAS, the Contractor wishes to be designated by the County as one of the Municipal Waste processing or disposal facilities where the Municipal Waste generated within Cumberland County must be disposed; and,

WHEREAS, the Contractor is willing to guarantee the availability of adequate, permitted processing or disposal capacity for such waste and the costs for such services for a ten-year contract period in exchange for such designation by the County; and,

WHEREAS, the County and the Contractor now desire to enter into this Contract in order to effectuate the goals of the Municipal Waste Management Plan for Cumberland County and to further set forth the agreements between the parties with respect thereto;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the parties' intent to be legally bound under the Uniform Written Obligations Act, 33 Pa.C.S. § 6, the undersigned hereby agrees as follows:

I. DEFINITIONS

Unless the context clearly indicates otherwise, the following words and terms, as used in this Contract, shall have the following meanings:

Acceptable Waste -Waste that Contractor is permitted to manage, process, store and/or dispose at the Landfill or Resource Recovery Facility, in accordance with its Permit for a Solid Waste Disposal and/or Processing Facility, which was issued by the Pennsylvania Department of Environmental Protection ("DEP") or the equivalent regulatory agency in the state where the facility is located and under applicable Pennsylvania law or that in which the facility is located, including, but not limited to, the Pennsylvania Solid Waste Management Act and the rules and regulations promulgated thereunder; and waste which is not inconsistent with the Landfill or Resource Recovery Facility's Waste Acceptance Policy as defined herein.

Act 101 - The Pennsylvania Municipal Waste Planning Recycling and Waste Reduction Act of 1988.

Affiliate Any individual or entity that controls, is controlled by, or is under common control with a party to this Contract, or in the case of a sole proprietor, any blood relative or employee of the contractor, as designated by this Contract.

Bulky Waste (White Goods) -Large items of Refuse, including, but not limited to, appliances, furniture, auto parts, trees, branches or stumps which may require special handling due to their size, shape or weight.

Commercial Waste -All solid waste originating from commercial establishments engaged in non-manufacturing or non-processing business, including, but not limited to, stores, markets, office buildings, restaurants, shopping centers and theaters.

Construction Demolition Waste - Municipal Solid waste resulting from the Construction or Demolition of buildings and other structures, including, but not limited to, wood, plaster, metals, asphaltic substances, bricks, block and unsegregated concrete.

Contract -The Municipal Waste Disposal Service Contract, between the County and the Contractor.

Contractor -The Facility and Parent Company identified as such on the first page of this contract or any permitted successors, assigns, or affiliates.

County -The County of Cumberland, Pennsylvania, acting by and through the Cumberland County Cumberland County Board of Commissioners and the Cumberland County Recycling & Waste Authority or their designated representative.

Cumberland County - a fourth class county located in the Commonwealth of Pennsylvania

Cumberland County Recycling & Waste Authority - An authority, created by the Cumberland County Board of Commissioners under the the Pennsylvania Municipality Authorities Act (53 Pa. C.S.A. Ch. 56), delegated with the responsibility of developing and implementing the Cumberland County Municipal Solid Waste management Act and associated programs and services.

Department or DEP The Pennsylvania Department of Environmental Protection (DEP).

Domestic or Residential Waste -Solid waste comprised of Garbage and Rubbish, which normally originates from residential private households or apartment houses.

Garbage -Putrescible animal or vegetable wastes resulting from the handling, preparation, cooking, serving or consumption of food and food containers.

Hauler and Waste Collector -Any person, firm partnership, association or corporation, including any municipality, engaged in the business of collecting and transporting municipal solid waste to processing or disposal facilities.

Hazardous Waste -A solid waste or combination of solid wastes which, because of its quantity, concentration or physical, chemical or infectious characteristics may: (1) cause or significantly contribute to an increase in mortality or an increase in morbidity in either an individual or the total population; or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed or otherwise managed; or (3) is otherwise defined as "hazardous" by any Federal or State statute or regulation.

Industrial Waste -Solid waste resulting from manufacturing and industrial processes, including, but not limited to, those carried out in factories, foundries, mills, processing plants, refineries, mines and slaughterhouses.

Institutional Waste Solid waste originating from institutions including, but not limited to, public buildings, hospitals, nursing homes, orphanages, schools and universities.

Landfill -The Contractor's permitted landfill identified on the first page of this contract.

Leaf Waste -Leaves, garden residues, shrubbery and tree trimmings, and similar material, but not including grass clippings.

Municipal Recycling Program A source separation and collection program for recycling Municipal Waste, or a program of designated drop-off points or collection centers for recycling Municipal Waste, that is operated by or on behalf of a municipality. The term shall include any source separation and collection program for composting leaf waste that is operated by or on behalf of a municipality. The term does not include any program for recycling construction and demolition waste or sludge from sewage treatment plants or water supply treatment plants.

Municipality -Any city, borough, incorporated town, township or county or any municipal authority-created by any of the foregoing.

Municipal Waste or Solid Waste -Garbage, Refuse, industrial lunchroom or office waste and other material, including solid, liquid, semi-solid or contained gaseous material, (but excluding Hazardous Waste) resulting from operation of residential, municipal, commercial or institutional establishments or from community activities; and any sludge not meeting the definition of residual or hazardous waste from a municipal, commercial or institutional water supply treatment plant, wastewater treatment plant or air pollution control facility. The term does not include source separated recyclable materials or material approved by DEP for beneficial use.

Operator Any person or municipality that operates a municipal solid waste processing or disposal facility.

Owner - The person or municipality who is the owner of record of a solid waste processing or disposal facility.

Pennsylvania Municipality Authorities Act (53 Pa. C.S. Ch. 56)- the law governing municipal authorities in Pennsylvania.

Permit -A permit issued by the Pennsylvania DEP to operate a Municipal Waste disposal, processing or transfer station facility.

Permit Area -The area of land and water within the boundaries of the permit, which is designated on the permit application maps as approved by the Pennsylvania DEP, or equivalent regulatory agency in the state in which the facility is located.

Proposal - Complete response to the Request for Proposals for Municipal Waste Processing and Disposal Services that was submitted by Contractor to the County.

"Put or Pay" - A requirement to guarantee delivery of predetermined quantities of waste to a facility which also requires payment to the facility regardless of whether or not the waste was delivered for processing and disposal.

Recycling - The collection, separation, recovery and sale or reuse of metals, glass, paper, leaf waste, plastics and other materials which would otherwise be disposed or processed as Municipal Waste.

Refuse -Discarded waste materials in a solid or semi-liquid state, consisting of Garbage, Rubbish or a combination thereof.

Remaining Permitted Capacity -At any time the remaining weight or volume of Municipal Waste that can be disposed at a permitted Municipal Waste disposal or processing facility. The term shall only include the weight or volume capacity for which the Pennsylvania DEP (or the equivalent regulatory agency in state which the facility is located) has issued a permit.

Residual Waste -Any Garbage, Refuse, other discarded material or other waste, including solid, liquid, semi-solid or contained gaseous material resulting from industrial, mining and agricultural operations and any sludge from an industrial, mining or agricultural water supply treatment facility, wastewater treatment facility or air pollution control facility, if it is not hazardous.

Resource Recovery Facility -A facility that provides for the extraction and utilization of materials or energy from Municipal Waste that is generated off-site, including, but not limited to, a facility that mechanically extracts materials from Municipal Waste, a combustion facility that converts the organic fraction of Municipal Waste to usable energy and any chemical or biological process that converts Municipal Waste into a fuel product or other usable material. The term does not include methane gas extraction from a Municipal Waste landfill, nor any separation and collection center, drop-off point or collection center for recycling Municipal Waste, or any source separation or collection center for composting leaf waste.

Rubbish -Non-putrescible solid wastes consisting of combustible and non-combustible materials including leaf wastes.

Sewage Sludge -The coarse screenings, grit and dewatered or air-dried sludges, septic and holding tank pumpings and other residues from municipal and residential sewage collection and treatment systems.

Stabilized Sewage Sludge -Sewage sludge that has been treated to reduce odor potential and the number of pathogenic organisms. Treatment methods include anaerobic and aerobic digestion, composting, lime stabilization and chlorine stabilization.

Tipping Fee -The schedule of fees established by the owner or operator of a transfer station, sanitary landfill, processing and/or resource recovery facility for accepting various types of solid waste for processing or disposal.

Unacceptable Waste -Any material that by reason of its composition, characteristics or quality, is ineligible for disposal at the Landfill or Resource Recovery Facility pursuant to the provisions of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. S2605 (e), the Pennsylvania Solid Waste Management Act, 35 P.S. S6018.101, et seq., or other applicable Federal, State or local law; or any other material that the Contractor concludes would require special handling or present an endangerment to the Landfill or Resource Recovery Facility, the public health or safety, or the environment.

II. SCOPE OF CONTRACT

1. Designation as Disposal site

In consideration of Operator's Covenants and this Agreement, the County hereby agrees to include operator's Landfill or Resource Recovery Facility in its Plan as a designated non-exclusive processing or disposal facility for Municipal Waste generated in the County.

2. Effective Date

This Contract shall become effective on the date set forth below. The contractor shall begin providing Municipal Waste processing and disposal, service for the County under the terms and conditions of this Contract on January 1, 2012 or such date as the Landfill or Resource Recovery Facility with a pending permit application receives a permit approved by the DEP (or the equivalent regulatory agency in state which the facility is located) for receipt of Municipal Waste under the Permit.

3. Term of contract

The term of this Contract shall commence on the effective date, and shall terminate on the earlier of (a) any event, the effect of which is to permanently terminate the validity of the DEP (or the equivalent regulatory agency in state which the facility is located) Permit for the Landfill or Resource Recovery Facility, or (b) Ten (10) years, or (c) terminated in writing by consent of both parties.

4. Compliance with Applicable Laws

The parties to the Contract agree that the laws of the Commonwealth of Pennsylvania shall govern the validity, construction, interpretation and effect of the Contract. The Contractor shall conduct the service of Municipal Waste processing and disposal as provided by for by the Contract in compliance with all applicable federal and state regulations and laws. The contract and the work to be performed as described herein is also subject to the provisions of all pertinent municipal ordinances which shall be made a part thereof with the same force and effect as if specifically set out therein.

5. Breach of Contract

If the Contractor fails to materially perform in a satisfactory manner in accordance with applicable Permit requirements or regulations the County shall have the right to demand in writing adequate assurances from the Contractor that steps have been or are being taken to rectify the situation. Within ten (10) days of receipt of any such demand the Contractor must submit to the County a written statement that explains the reasons for the non-performance or delayed, partial or substandard performance during that period and any continuance thereof. The Contractor shall also have the option to appear before the County to present any such explanation. Upon the failure of the contractor to

submit a statement or failure of the Contractor to correct any such condition within fifteen (15) days after responding to the demand by the County, unless the County has agreed to a longer period (which agreement will not be unreasonably withheld), the County may, except under the conditions of force majeure, as defined herein, assess liquidated damages to the Contractor in accordance with the provisions stated herein and/or to terminate the Contract, and as a remedy make demands under any remedy available to the County as provided by law.

6. Penalties and Actual Damages

A. It is hereby understood and mutually agreed by and between the Contractor and the County that the Municipal Waste processing and disposal services to be performed under this Contract are vital for the protection of public health and welfare *and* it is further understood and agreed that the services to be performed under this Contract will be commenced on the date specified in this Contract.

B. It is hereby understood and mutually agreed by and between the Contractor and the County that reporting of complete and accurate data in the format required by this Contract is vital to evidence the implementation of Cumberland County's approved Plan and the continued availability of sufficient processing or disposal capacity *and* it is further understood and agreed that the reports to be submitted under this Contract in the format required will be received by the County on the dates specified in this Contract.

C. If the Contractor neglects, fails or refuses to provide the Municipal Waste processing and disposal services in accordance with the terms and provisions of the Contract, and as a result thereof there is a disruption or termination of the Municipal Waste processing and disposal services to be performed by Contractor under this Contract, then the Contractor does hereby agree, as a partial consideration for the awarding of the Contract, to pay to the County an amount to be determined as hereinafter set forth as actual damages for such breach of Contract for each and every calendar day that such service is disrupted or terminated.

D. The amount of actual damages shall be equal to any additional total waste disposal cost (i.e., any disposal cost in excess of the amount that haulers normally would have paid for disposal of the same amount of waste at the Contractors' Landfill or Resource Recovery Facility under the contract), if any, plus any additional total waste transportation costs (i.e., any transportation cost in excess of the amount that haulers normally would have paid for transporting the same amount of waste to the Contractors' Landfill or Resource Recovery Facility) if any, that the haulers have incurred for transportation and disposal of the Municipal Waste to an alternative processing or disposal facility or transfer station.

E. The Contractor shall not be responsible for the payment of any actual damages whenever the County determines that the Contractor was without fault and the Contractor's reasons for the breach of Contract are acceptable. Furthermore, the Contractor shall not be responsible for any actual damages under the conditions of force majeure as defined herein.

F. If the Contractor neglects, fails or refuses to provide the complete and accurate reports in the format required by the County in accordance with the terms and provisions of Section IV of the Contract, then the Contractor does hereby agree, as a partial consideration for the awarding of the Contract, to pay to the County an amount to be determined as hereinafter set forth as penalties for such breach of Contract for each and every calendar day that such reports in the format required by the County are late, incomplete, inaccurate or insufficient.

G. The amount of penalties shall be calculated at the rate of \$300 per day for each and every calendar day past the required date for submission. If more than one report required in Section IV of the Contract is to be submitted on the same calendar day then the amount of penalties shall be calculated separately for each and every report that is late, incomplete, inaccurate or insufficient or improperly formatted.

7. Force Majeure

Neither the Contractor nor the County shall be liable for the failure to perform their duties and obligations under the Contract or for any resultant damages, loss or expense, if such failure was the result of an act of God, riot, insurrection, war, catastrophe, natural disaster or any other cause which was beyond reasonable control of the Contractor or the County and which the contractor or County was unable to avoid by exercise of reasonable diligence.

8. Assignment of Contract

No transfer or assignment of the Contract or any right accruing under the Contract shall be made in whole or in part by the Contractor without prior express written approval by the County (which approval shall not be unreasonably withheld). The delegation of any Contract duties will require the written consent of the surety for the Contractor's performance bond, since such delegation will not relieve the Contractor or his surety of any liability and/or obligation to perform. In the event of any delegation of a duty, the delegate shall assume full responsibility and liability for performance of that duty without affecting the Contractor's liability, and shall be responsible for compliance with and performance of all terms and conditions of this contract including but not limited to provisions for sureties and assurances of availability of 10-year service.

9. Change of Ownership

In the event of any change of control or ownership of the Contractor's facilities the County shall maintain the right to hold the original owner solely liable. However, the County, at its option may determine that the new ownership can adequately and faithfully perform the duties and obligations of the Contract for the remaining term of the Contract, and elect to execute a novation, which will allow the new ownership to assume the rights and duties of the Contract and release the former ownership of all obligations and liabilities. The new ownership would then be solely liable for the performance of the Contract and any claims or liabilities under the Contract.

10. Waivers

A waiver by either party of any breach of any provisions of the Contract shall not be taken or held to be a waiver of any succeeding breach of such provisions or as a waiver of any provision itself. No payment or acceptance of compensation for any period subsequent to any breach shall be deemed a waiver of any right or acceptance of defective performance.

11. County's Obligations

County shall not be obligated by the terms of this Contract to guarantee the delivery to Contractor's Landfill or Resource Recovery Facility of any minimum quantities of Municipal Waste or payment for any services provided by Contractor to any hauler.

12. Illegal and Invalid Provisions:

In the event any term, provision or other part of the Contract should be declared illegal, inoperative, invalid or unenforceable such term or provision shall be amended to conform to the appropriate laws

or regulations. In the case of illegal or invalid provisions, the remainder of the Contract shall not be affected and shall remain in full force and effect.

13. Joint and Severable Liability

If, after the date hereof, the Contractor is comprised of more than one individual, corporation or other entity, each of the entities comprising the Contractor shall be jointly and severally liable.

14. Binding Effect

The provisions, covenants and conditions of the Contract shall apply to and bind the parties, their legal heirs, representatives, successors and assigns.

15. Entire Agreement /Amendments to the Contract

The provisions of this Contract, together with the Agreements and exhibits incorporated by reference, shall constitute the entire Municipal Waste Disposal Capacity Contract between the County and the Contractor, superseding all prior disposal capacity agreements or contracts, if any, except as otherwise provided in this Contract. No amendment or modifications of the terms and conditions of the Contract shall be effective unless such amendment or modification is in writing and signed by authorized representatives of all parties entitled to receive a right or obligated or perform a duty under the Contract. A signed original amendment to the Contract shall be furnished to all parties to be attached to the original Contract. The County and the Contractor agree that any existing Municipal Waste disposal contracts between them are hereby rendered null and void and superseded by this Contract. Any existing Host County Fee Agreements between the parties shall remain in full force and effect notwithstanding any provisions of this Contract.

16. Merger Clause

The Contract shall constitute the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, including, without limitation, the Request For Proposals (RFP) submitted by Contractor, shall be without effect on the construction of any provisions or terms of the final contract if they alter, vary or contradict the Contract.

17. Notices

All notices, demands, requests and other communications under this contract shall be deemed sufficient and properly given if in writing and delivered in person, or by recognized carrier service to the following addresses, or sent by certified or registered mail, postage prepaid, with return receipt requested, 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, Sunday or day on which United States mail is not delivered:

**County: Cumberland County Recycling and Waste Authority
7 Irvine Row, Carlisle, PA 17013 Attention: Mr. Thomas Imphong, Executive Director**

Contractor Notice Address as shown on Form B.

Either party may, by like notice, designate any further or different addresses to which subsequent notices shall be sent. Any notice under this Contract 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 duly authorized officer or employee.

III. SERVICE, OPERATIONS AND PERFORMANCE

1. Services of the Contractor

The Contractor agrees to accept and process and (dispose) specified quantities and types of Municipal Waste originating from sources located in Cumberland County, in accordance with all applicable Federal, state and local regulations. Nothing herein shall prohibit any Contractor from entering into any separate contract with another person or municipality to provide such waste collection and/or transportation services.

2. Types and Quantities of Municipal Waste

The specific types and quantities of Municipal Waste that will be accepted at the Contractor's facility under this contract shall be those as listed in Form B:

Annual adjustments to the maximum Municipal Waste quantities may be permitted if the request for adjustments is made in writing at least sixty (60) days in advance of the anniversary of the effective date of the Contract. Any quantity adjustment request will be mailed to the County by United States Postal Service, Certified Mail. If an authorization is approved, it will be considered an amendment to this Contract and the adjusted quantities will supersede those previously in effect.

3. Maximum Tipping Fees or Rate Schedule

The maximum rate or tipping fee to accept the various types of Municipal Waste shall be as listed on Form A.

4. Delivery of Wastes

The Municipal Waste to be accepted at the Contractor's facility under this Contract will be delivered to the Contractor's facility by municipal and/or private waste haulers. The waste haulers responsible for delivering the Municipal Waste that will be accepted under the contract will be those required to be authorized by the Pennsylvania Waste Transportation Safety Act 90 as well as those regularly engaged in the business of waste transportation but are exempt. Only Municipal Waste materials delivered to the Contractor's facility by authorized and such exempt waste haulers shall count towards any maximum waste quantity limits under the Contract. Contractor shall be responsible for obtaining a current list of the authorized waste haulers from the appropriate State agency.

5. Minimum Hours of Operation

Unless mutually agreed upon otherwise by the Contractor and the County, the Contractor will accept delivery of Municipal Waste from waste haulers authorized by the Pennsylvania Waste Transportation Safety Act 90 during the hours shown on Form B, excluding generally recognized business holidays, including without limitation (President's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas and New year's Day). In the event of any lengthy travel time from sources in the County to an out-of-county disposal facility, the Contractor will be required to exhibit flexibility in the operating hours for accepting wastes from Cumberland County. The Contractor shall have complete discretion to make additional arrangements for accepting waste at any earlier or later hours and/or on Sundays.

6. Complaints

The Contractor shall receive and respond to all complaints from waste transporter authorized by the Pennsylvania Waste Transportation Safety Act 90 regarding the acceptance of waste materials at his

facility. Any complaints received by the County will be directed to the Contractor. In the event the Contractor cannot satisfactorily resolve a complaint within five (5) days after receipt of the complaint, the County shall have the right to demand a written explanation or satisfactory resolution of the complaint pursuant to the breach of contract provisions herein.

7. Municipal Recycling Programs

The County and individual municipalities in Cumberland County shall have the right to establish and operate any municipal recycling programs, including drop-off recycling centers and curbside collection programs, to source separate and remove recyclable materials from the Municipal Waste stream prior to the delivery of the waste to the Contractor's facility. The Contractor shall notify the County in the event Contractor becomes aware that materials that are being collected by the County in its recycling program are being routinely delivered to Contractor for waste disposal. The Contractor shall cooperate with the County in reaching the Commonwealth of Pennsylvania's Recycling goals.

8. Title to Solid Waste

Except in the case where any unacceptable waste or Hazardous Waste is delivered to the Contractor's facility, the title to the Municipal Waste and any benefits of marketing any materials or energy recovered from the Municipal Waste shall pass to the Contractor upon delivery of the waste to the Contractor's facility and acceptance of the waste by the Contractor.

9. Unacceptable or Hazardous Waste

The Contractor shall have the right and discretion to inspect and reject any such Hazardous and/or Unacceptable waste delivered to the facility by the haulers registered by the county. The waste haulers authorized by the Pennsylvania Waste Transportation Safety Act 90 shall be responsible for the prompt removal and disposal of any such unacceptable waste and shall bear all costs associated with the subsequent removal, transportation and disposal of such Hazardous and/or Unacceptable waste.

10. Basis and Method of Payment

A. The County shall not be responsible for the direct payment of any tipping fees to the Contractor under the Contract. All tipping fees shall be paid directly by the municipal and/or private waste haulers, which deliver the waste to the Contractor's facility.

B. The Contractor shall be responsible for the billing and collection of all tipping fees from the waste haulers. The method of billing and collection arrangements between the waste haulers and the Contractor shall comply with all applicable Federal and State laws governing such commerce and business activities.

C. The County shall not be responsible for failure of any waste hauler, authorized or otherwise, to pay the Contractor's tipping fees and no such fees will be paid by the County. In the event County is notified of repeated delinquency or non-payment by any waste hauler of Contractor's tipping fees, County may enforce any remedies, which may be available to the County.

D. The Contractor shall not charge a tipping fee to any waste hauler authorized by the Pennsylvania Waste Transportation Safety Act 90, as well as those regularly engaged in the business of waste transportation but are exempt, that is greater than the maximum rates established by this Contract for each type of waste. Nothing in this Contract shall be construed to prevent or preclude the Contractor from negotiating alternate tipping fees with any waste hauler provided such fees do not exceed the maximum rates under this Contract.

11. Rate Escalation and Adjustments

A. If Contractor desires to adjust the maximum rate or tipping fee for disposal of each type of Municipal Waste under the Contract in excess of the amount provided in Form A in the RFP submitted by Contractor to the County, the Contractor may request the consent of the County for such increase by providing the County with at least 60 days advance written notice of the proposed increase. Consent to any proposed increase shall be at the sole discretion of the County. The notice of proposed increase to the County shall be delivered to the County by United States Postal Service, Certified Mail on or before October 1 of the year prior to the proposed effective date of the increase.

B. Unless the County and Contractor mutually agree to an alternate date, all annual rate adjustments shall become effective on January 1st of each year of the Contract to be consistent with the starting dates and new contract periods of most Municipal Waste collection contracts.

C. The Contractor may also request consent of the County at any time for additional rate or fee adjustments on the basis of unforeseen changes in operating costs resulting from any new or revised federal, state or local laws, ordinances, regulations or permit requirements, which were not in effect at the time when the original Contract was awarded. The Contractor shall have the burden of preparing and submitting any necessary information to support and document any such rate adjustments. The County shall have the right to inspect, by itself or by an independent auditor, any pertinent financial records that document the need for a rate adjustment using audit standards similar to the Federal procurement regulations. The County shall also have the right to modify the amount of a rate increase requested, modify the effective date of a rate adjustment or to reject a rate increase petition for lack of justification.

D. In the event that any one rate adjustment petition for unforeseen changes in the operating costs of the processing or disposal facility, as set forth in paragraph C above, or the cumulative impact of several such rate adjustment petitions, results in a rate increase greater than 25 percent of the base tipping fee under this contract, the County at its discretion shall have the right to solicit new Municipal Waste, processing and disposal service proposals and the right to terminate this Contract, if in the judgment of the County, more favorable disposal contracts can be secured from other facilities.

E. All annual rate adjustments shall be calculated on only the actual operating cost for the Contractor's processing and disposal facility. All annual rate adjustments as set forth in , demonstrated and included with Form A represent the total tipping fee including any and all fees, taxes, and surcharges as described. Any fixed pass-through or add-on surcharges or costs, such as the \$3.25/ton surcharge for the recycling fund, post-closure trust fund and County or host municipality benefit fee imposed on Pennsylvania landfill facilities by Act 101 (\$3.00/ton surcharge for resource recovery facilities), or any other surcharge or pass-through cost imposed by any host county or municipality, will be deducted from the maximum rate or tipping fee prior to calculating any annual rate adjustment.

12. RESERVED County Administration/Recycling Surcharge

In the event that legislation should be enacted during the period of this contract authorizing the County to assess fees or surcharges for the administration and implementation of its solid waste and recycling programs the County reserves all such rights and privileges to negotiate and collect such fees from the Contractor.

IV. RECORD KEEPING AND REPORTING REGULATED WASTE

1. The Contractor will be required to install and maintain a scale to weigh all incoming waste to the contractor's Municipal Waste processing, Landfill or Resource Recovery Facility or, in the case of a transfer station, to weigh all Municipal Waste delivered to the County designated processing or disposal facility by the transfer station. The scale used to weigh Municipal Waste shall conform to the Weights and Measurement Act of 1965 (73 P.S. sections 1651- 1692) and applicable regulations thereunder; the operator of the scale shall be a licensed public weighmaster under the Public Weighmasters Act (13 P.S. sections 1771-1796) and any regulations.

2. Daily Operational Records

The Contractor shall make and maintain an operational log for each day that Municipal Waste is received, processed or disposed. At a minimum, the following information shall be recorded in the daily operational log:

- A. The total weight of each type of Municipal Waste received at the facility from all sources;
- B. The County from which the Solid Waste originated, or if the waste originated from outside the state, the state from which the waste originated; and
- C. The name of each waste hauler or transporter delivering Municipal Waste to the facility.

3. Quarterly Operation Reports

The Contractor shall prepare and submit on forms approved by the County a quarterly operation report. The quarterly operation reports shall be submitted to the County on or before the 20th day of April, July, October and January of each year for the preceding three (3) month calendar period ending on the last day of March, June, September and December, respectively. At a minimum, the following information shall be included in each quarterly operation report:

- A. The total weight of each type of Municipal Waste received from all sources within the County during each month of the quarterly reporting period;
- B. The names of the waste haulers or transporters and self-haulers that delivered waste originating from sources in Cumberland County.
- c. A summary of the total weight, by municipality, of each type of Municipal Waste received each month from each waste hauler or transporter and self-hauler delivering waste originating from sources in Cumberland County;
- D. A summary of the total weight of each type of Municipal Waste received each month from all waste haulers and self-haulers delivering waste originating from sources in Cumberland County; and
- E. A summary of the total weight, by municipality, of Municipal Waste received from each municipality in Cumberland County delivering Municipal Waste to the Contractor during each month.

4. Annual Operation Report

The Contractor shall prepare and submit on forms approved by the County an annual operation report for each calendar year or other fiscal year approved by the County. The annual operation report shall be submitted to the County on or before June 30th of each year unless an alternate submission date is approved by the County. At a minimum, the following information shall be included in the annual operational report:

- A. The total weight of each type of Municipal Waste received from all sources during the annual reporting period;
- B. The names of the waste haulers or transporters and self- haulers that delivered waste originating from sources in Cumberland County;
- C. A summary of the total weight, by municipality, of each type of Municipal Waste received each month from each waste hauler or transporter and self-hauler delivering waste originating from sources in Cumberland County; and
- D. A summary of the total weight, by municipality, of each type of Municipal Waste received each month from all waste haulers delivering waste originating from sources in Cumberland county;
- E.. For Municipal Waste landfills, a description of the capacity or volume used during the past year and the remaining permitted capacity based upon the annual topographic survey information;
- F. A current Certificate of Insurance as evidence of continuing insurance coverage for public liability insurance as required under the Contract;
- G. For resource recovery or Municipal Waste processing facilities, the name and the location of the landfill disposal facilities where any bypassed wastes, unprocessable waste and waste by-products, such as incinerator ash, were ultimately disposed;
- H. Copies of all notices of violation, civil penalty assessments and/or administrative orders issued by federal, state or county regulatory authorities to the owner and/or operator of the facility during the year; and
- I. If available to the Contractor, Certificate of good standing- from its bonding company.
- J. The annual operating reports that must be prepared and submitted to the DEP by Pennsylvania processing and disposal facilities (or equivalent regulatory agency in the state in which the facility is located) may constitute acceptable information for portions of the annual operating report for the purposes of the Contract, provided they are accompanied by completed and accurate forms approved by the County along with any required supporting information.

5. Administrative Inspections

Upon reasonable notice, and during regular business hours, the County and its authorized representatives shall have access to Contractors' logs and records pertaining to the quantities and sources of Municipal Waste for the purpose of verifying compliance with the terms and conditions of this Contract.

6. Special Reporting Requirements

The Contractor shall provide written notification to the County of any permit modification applications for the following types of permit changes, on the same date the application is first submitted to the Pennsylvania DEP (or equivalent regulatory agency in the state in which the facility is located):

- A. Changes in the permitted site volume or capacity,
- B. Changes in the permitted average and/or maximum daily waste volume or loading rates,
- C. Changes in the excavation contours or final contours, including the final elevations and slopes,
- D. Changes in the permitted acreage, and

E. Changes in ownership.

V. PUBLIC LIABILITY INSURANCE REQUIREMENTS

1. Insurance Requirement

The Contractor shall be required to maintain in full force and effect throughout the term of the Contract, and any renewal or extension thereof a general liability insurance policy to provide continuous coverage against third party claims for property damage and personal injury, as specified in Chapter 271 of the DEP's Municipal Waste Management Regulations (Pennsylvania Bulletin, Vol. 18, No. 15, April 9, 1988) and the following section. The effective date of the required insurance policy shall be prior to the initiation of any waste disposal services under this Contract. Contractor shall cause County to be added as an additional insured on all policies of insurance required under the terms of this Contract.

2. Proof of Insurance Coverage

The Contractor shall be required to submit to the County proof of insurance coverage upon execution of the Contract. At a minimum, the proof of insurance shall consist of a certificate of insurance which:

A. States the name of the insurance company, the insured owner and facility covered by the policy.

B. Identifies the kinds of coverage provided by the policy and the amounts of coverage, exclusive of legal costs.

C. Identifies the beginning and ending dates for the policy.

D. Specifies that a minimum 120-day period written notice shall be given by the insurer to the County and the Owner, by certified mail, before any cancellation or other termination of the policy becomes effective.

E. States that the insurer is liable for payment on the policy without regard for the bankruptcy or insolvency of the insured.

F. Be signed by an authorized, licensed agent of the insurance company.

3. Maintenance of Insurance Coverage

The Contractor shall be required to submit to the County a current certificate of insurance as evidence of continuous insurance coverage as part of the annual operation report required under the Contract. The annual certificate of insurance shall contain the same information and provisions as specified in the original proof of insurance certificate under the requirements of the preceding paragraph. Failure to submit the required proof of insurance or to maintain the required minimum insurance coverages would be considered a default by the Contractor in accordance with the provisions of the Contract.

VI. NONDISCRIMINATION

Neither the Contractor nor any subcontractor nor any person(s) acting on his behalf shall discriminate against any person because of race, sex, age, creed, color, religion, national origin or any other protected category.

VII. INDEMNIFICATION

The Contractor or its successors and assigns shall indemnify and save harmless the County, their officers, agents, servants and employees from and against any and all suits, actions, legal proceedings, claims,

demands, damages, costs, expenses and attorney fees resulting from any willful or negligent act or omission of the Contractor or its successors or assigns, its officers, agents, servants and employees in the performance of this Contract; provided however, that the Contractor or its successors and assigns shall not be liable for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses and other attorney fees arising out of the award of this Contract or the willful or negligent act or omission of the County, their officers, agents, servants and employees.

VIII. PERMITS

The Contractor shall be responsible for obtaining any and all permits necessary for the construction and operation of the Municipal Waste processing and disposal facilities required to comply with the terms and conditions of the Contract, and any and all costs or expenses of obtaining such permits. Failure to obtain and maintain permits shall constitute a breach of this Contract.

IX. Right-to-Know Law

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

Unless the Contractor provides the County in writing, with the name and contact information of another person, the County shall notify the Contractor's Project Coordinator using the Contractor information provided by the Contractor in the legal contact information provided in this Contract, if the County needs the Contractor's assistance in any matter arising out of the Right-to-Know LAW ("RTKL"). The Contractor shall notify the County in writing of any change in the name or the contact information within a reasonable time prior to the change.

Upon notification from the County that the County requires the Contractor's assistance in responding to a RTKL request for records in the Contractor's possession, the Contractor shall provide the County within 14 calendar days after receipt of such notification, access to, and copies of, any document or information in the Contractor's possession which arises out of the Contract that the County requests ("Requested Information") and provide such other assistance as the County may request in order to comply with the RTKL. If the Contractor fails to provide the Requested Information within 14 calendar days after receipt of such request, the Contractor shall indemnify and hold the County harmless for any damages, penalties, detriment or harm that the County may incur under the RTKL as a result of the Contractor's failure, including any statutory damages assessed against the County.

The County's determination as to whether the Requested Information is a public record is dispositive of the question as between the parties. The Contractor agrees not to challenge the County's decision to deem the Requested Information as Public Record. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, the Contractor will immediately notify the County, and will provide a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL within seven (7) calendar days of receiving the request. If, upon review of the Contractor's written statement, the County still decides to provide the Requested Information, the Contractor will not challenge or in any way hold the County liable for such a decision.

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

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

WITNESS the execution hereof, the parties expressly intending to be legally bound pursuant to the Uniform Written Obligations Act, 33 Pa. C.S. § 6, Contractor and County have caused this contract to be executed by their respective duly authorized agents, as of the date and year first written.

COUNTY OF CUMBERLAND,

BOARD OF COMMISSIONERS

Barbara B. Cross

CHAIR

DATE 8-9-12

James H. McLaughlin

ATTEST:

Jon Burkhardt

CHIEF CLERK

Gregory S. Seltzer

(SEAL)

CUMBERLAND COUNTY RECYCLING & WASTE AUTHORITY

Robert J. Moore

ATTEST:

Walter McNamee

CONTRACTOR

CONTRACTOR:

John S. Skoutelas

WITNESS:

Charles Raudenbush, Jr.

Charles Raudenbush, Jr.

TITLE: John S. Skoutelas

Vice President

Form A – Cost of Disposal

Shade

Maximum Tipping Fees Per Ton For Each Category of Waste The maximum tipping fee shall not exceed the posted gate rate. Include all applicable surcharges, fees, taxes from Legislation, Regulation, or Programs of State, Federal, County or Host Municipalities Show a breakdown of those fees in the following table						
	MSW	Construction Demolition	Sewage Sludge	Approved ICW	Other	Other
Base Tipping Fee (without taxes, and other fees)	See Attached					
List Name of Fee, Tax, Surcharge below.	List Amount for Each Fees, Taxes, Surcharges that will apply to Cumberland County MSW					
Total Tipping Fee including all fees and surcharges						

Shade							
Contract	Municipal	C&D	Sewage Sludge	ICW	Other		
Year	Price / Ton	Price / Ton	Price / Ton	Price / Ton	Price / Ton		
2012	\$ 43.29	\$ 43.79	\$ 43.79	\$ 43.79			
2013	\$ 45.45	\$ 45.98	\$ 45.98	\$ 45.98			
2014	\$ 47.72	\$ 48.28	\$ 48.28	\$ 48.28			
2015	\$ 50.11	\$ 50.69	\$ 50.69	\$ 50.69			
2016	\$ 52.62	\$ 53.22	\$ 53.22	\$ 53.22			
2017	\$ 55.25	\$ 55.88	\$ 55.88	\$ 55.88			
2018	\$ 58.01	\$ 58.67	\$ 58.67	\$ 58.67			
2019	\$ 60.91	\$ 61.60	\$ 61.60	\$ 61.60			
2020	\$ 63.96	\$ 64.68	\$ 64.68	\$ 64.68			
2021	\$ 67.16	\$ 67.91	\$ 67.91	\$ 67.91			

Disposal Site	Type	Gate Rate	PA Fee	Somerset	Shade Twp.	Total Fees	First Yr. Base Rate
BU # 231	Shade	MSW	\$ 53.00	\$ 6.25	\$ 1.70	\$ 1.76	\$ 9.71 \$ 43.29
BU # 231	Shade	C&D	\$ 53.50	\$ 6.25	\$ 1.70	\$ 1.76	\$ 9.71 \$ 43.79

Form B -Reserved Capacity

 FACILITY: Shade Landfill

Types and Quantities of Municipal Solid Waste			Specify tons per day and tons per year			
Year	MSW Only	C&D	Sludge	Other	Other	Total
2012						
Tons Per Day	50	25	2	20		97
Tons Per Year	15,000	7,000	500	6,000		28,500
2013						
Tons Per Day						
Tons Per Year						
2014						
Tons Per Day						
Tons Per Year						
2015						
Tons Per Day						
Tons Per Year						
2016						
Tons Per Day						
Tons Per Year						
2017						
Tons Per Day						
Tons Per Year						
2018						
Tons Per Day						
Tons Per Year						
2019						
Tons Per Day						
Tons Per Year						
2020						
Tons Per Day						
Tons Per Year						
2021						
Tons Per Day						
Tons Per Year	↓	↓	↓	↓		↓

Form B - Part II Reserved Capacity Shade Landfill

Total Combined Quantities of all Accepted Categories of Municipal Waste

YEAR	TOTAL CUMBERLAND MSW TONS PER YEAR (all categories)	PERCENTAGE Reserving Capacity for % of Cumberland MSW Annually	ANNUAL TONS Reserving Capacity for #Tons Cumberland MSW Annually	OPERATING DAYS Estimated Annual Working Days	TONS PER DAY Reserving Capacity for #Tons Cumberland MSW Daily
2012	250,154	11.5%	28,500	310	92
2013	252,555				
2014	254,955				
2015	257,355				
2016	259,964				
2017	262,573				
2018	265,181				
2019	267,790				
2020	270,399				
2021	272,988	↓	↓	↓	↓

Operating hours from 6:00 AM to 6:00 PM Monday through Friday
and from 6:00 AM to 1:00 PM on Saturdays,

Indicate tons of Cumberland County Municipal Waste donated by Contractor per year for non-profit activities including but not limited to road adoptions and open dump clean-ups: 50 tons

Notices

All notices, demands, requests, and other communications under this contract shall be delivered to:

Contractor: Waste Management of Pennsylvania, Inc.

Address: 444 Oxford Valley Road, Suite 220, Langhorne, PA 19047

Attention: Charles Raudenbush, Jr.

With a copy to: Legal Department Attention: Jeff Viola
100 Brandywine Blvd.
Newtown, PA 18940



Land Air Water Legal Solutions LLC

David W. Buzzell
dbuzzell@landairwater.com
610.898.3860

February 13, 2012

Mr. Thomas Imphong, Executive Director
Cumberland County Recycling & Waste Authority
7 Irvine Row
Carlisle, PA 17013

Re: Cumberland County Request for Proposals for
Municipal Solid Waste Disposal Capacity 2012-2021.

Dear Mr. Imphong:

The Pennsylvania Waste Industries Association ("PWIA") submits these comments in response to Cumberland County's Request for Proposals for Municipal Solid Waste Disposal Capacity 2012-2021. PWIA is the Pennsylvania chapter of the National Solid Wastes Management Association, a non-profit organization that represents the interests of the North American waste services industry. PWIA members include both privately held and publicly traded companies, and own and operate numerous commercial solid waste facilities throughout the Commonwealth. In addition to solid waste landfills, our members operate resource recovery facilities, recycling facilities, transfer stations and collection operations. PWIA's missions are to advance the safe, efficient and environmentally responsible management of solid waste, and to promote sound public policy affecting the management of solid waste.

In developing these comments, the following documents were reviewed:

- The Request for Proposals, Municipal Solid Waste Disposal Capacity, 2012-2021, dated on or about December 27, 2011, and prepared for The Cumberland County Recycling & Waste Authority and The Cumberland County Board of Commissioners; and
- The Cumberland County Municipal Waste Management Plan, Final February 1997, prepared by Gannett Fleming, Inc., for the Solid Waste Authority of Cumberland County, as revised April 23, 1999, February 14, 2001, and December 9, 2003 (Resolution No. 2003-28).

Mr. Thomas Imphong, Executive Director
February 17, 2012
Page 2

Based on its review of these documents, PWIA submits the following comments and objections:

First, the timeline of events related to the Request for Proposals for Municipal Solid Waste Disposal Capacity ("RFP") is unclear. As stated in the current and prior versions of the Cumberland County Municipal Waste Management Plan at Section 7.5, and as required under the Municipal Waste Planning, Recycling and Waste Reduction Act ("Act 101"), 53 P.S. §4000.100, *et seq.*, the 10-year plan and draft implementing documents are to be submitted and approved by DEP *before* any individual processing or disposal facility is required to agree to a new 10-year waste disposal capacity agreement. While responses to the RFP are due February 21, 2012, the Effective Date set forth in Section II of the form Municipal Waste Disposal Services Contract indicates that disposal service is to commence January 1, 2012. In contrast, PWIA has been advised that the County is still in the process of developing its Act 101 Plan Revision, which is currently not scheduled to be completed until June 2012. PWIA requests that the sequence of events be clarified and be consistent with the requirements of Act 101.

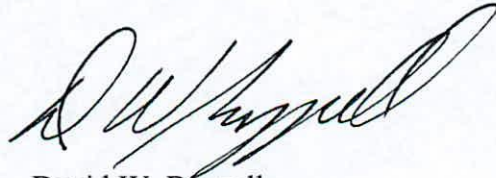
Second, Section 2 of the RFP sets forth a detailed list of Evaluation Criteria, to be utilized by the County of Cumberland and the Cumberland County Recycling & Waste Authority "in evaluating and ranking proposals." While the list is not inconsistent with those utilized in prior RFPs, several of the criteria – such as "Financial Stability," "Regulatory Compliance" and "Technical Design and Operational Plan" -- are within the exclusive jurisdiction of DEP, not County government. The Pennsylvania Department of Environmental Protection ("DEP") is charged by statute and regulation to ensure the financial assurance of each operator and disposal facility in the Commonwealth of Pennsylvania, including both closure and post-closure bonding and pollution liability insurance. See, 35 P.S. §6018.502(e) and §6018.505, and 25 Pa Code §271.301, *et seq.* DEP is specifically vested with the exclusive authority under the Solid Waste Management Act (35 P.S. §6018.101, *et seq.*) and its regulations to investigate the compliance history of an individual applicant to determine, *inter alia*, its "intent, willingness and ability" to comply with the laws of the Commonwealth. These rules and regulations also establish detailed design and operating requirements that are pre-determined by the Commonwealth and DEP to ensure sound and reliable environmentally safe facilities which meet Federal, State and Local regulatory standards for municipal solid waste management. As such, these criteria are effectively subsumed within the RFP criterion "Operating Permit Status and Capacity." To the extent the County is intending to duplicate that effort, it is beyond the scope of the County's authority. As long as a specific processing or disposal facility holds a valid DEP permit, and/or license, which has not been suspended or revoked, that should end the inquiry for the County.

Mr. Thomas Imphong, Executive Director
February 17, 2012
Page 3

Finally, PWIA objects to the solicitation in Section 6 of the RFP, "Voluntary Support for Local Programs," as an inappropriate attempt to circumvent the Pennsylvania appellate case law, and DEP affirmations, establishing that such fees (a/k/a administrative fees, licensing fees, etc.) are a direct violation of Act 101, and any plan or plan revision that requires or even suggests such a fee is unlawful. While couched as "voluntary" and "not part of the evaluation criteria" (see RFP, p.12), the inclusion of the County's solicitation for financial sponsorships within the RFP document strongly suggests a link between the response to the RFP and the Contractor's willingness to provide the requested "support." Moreover, the use of a "separate, sealed envelope" that "does not get opened unless the Contractor's proposal is selected" does not redress the situation. What prevents an aggressive responder from disclosing the content of their generous "support" in an effort to gain a competitive advantage? Once disclosed, it would seem difficult, at best, to re-level the playing field, especially in light of the extensive discussion of financial need and dour consequences to the citizens of Cumberland County if that need is not met. PWIA objects to the inclusion of Section 6 in the RFP.

PWIA thanks you for the opportunity to comment on this RFP. Please do not hesitate to contact me with any questions or concerns.

Very truly yours,



David W. Buzzell

DWB

Cc: Tim O'Donnell, President
Mary Webber