

CCOPY

**AMENDED AND RESTATED LEASE AGREEMENT**

**TROY LOCAL DEVELOPMENT CORPORATION, LANDLORD  
AND  
COUNTY WASTE TRANSFER CORP., TENANT**

For the premises located at  
799 Burden Avenue, City of Troy, State of New York

**AMENDED AND RESTATED LEASE AGREEMENT**

**THIS AMENDED AND RESTATED LEASE AGREEMENT** (the "Agreement") is dated as of January 1, 2009 by and between TROY LOCAL DEVELOPMENT CORPORATION, a domestic Not-For-Profit Corporation having an address of City Hall, One Monument Square, Troy, New York 12180 (the "Landlord") and COUNTY WASTE TRANSFER CORP., a New York corporation having its principal place of business at PO Box 790, Clifton Park, New York 12065 (the "Tenant").

**WITNESSETH**

**WHEREAS**, Troy Local Development Corporation (as successor in interest to Portec Rail Products, Inc., former fee owner of the Premises, as further defined herein) is the landlord under a certain Lease Agreement dated as of September 1, 2006 by and between Portec Rail Products, Inc., as landlord, and Troy Transfer, LLC, as tenant, which Lease Agreement was assigned to Troy Local Development Corporation by Portect Rail Products, Inc. by an Assignment and Assumption of Lease, dated as of May 31, 2007, as amended by First Amendment to Lease Agreement, dated as of December 1, 2007 (collectively, the "Lease Agreement"); and

**WHEREAS**, the rights, title and interests of tenant under the Lease Agreement, as amended, were assigned to County Waste Transfer Corp. by Troy Transfer, LLC pursuant to an Assignment and Assumption of Lease (the "Assignment and Assumption of Lease"), dated as of December 18, 2007, such Assignment and Assumption of Lease having been undertaken upon consent of the Landlord pursuant to a certain Consent and Release Agreement (the "Consent and Release Agreement"), dated as of December 1, 2007 (the Lease Agreement, the Assignment and Assumption of Lease and Consent and Release Agreement being collectively referred to hereinafter as the "Underlying Lease Agreements"); and

**WHEREAS**, the Landlord and the Tenant desire to amend and restate the Underlying Lease Agreements as of the date of this Agreement; and

**NOW, THEREFORE**, in consideration of the rentals to be paid hereunder and the other mutually covenants and agreements contained herein, the Landlord and Tenant hereby agree as follows:

**ARTICLE I**  
**DEMISE OF PREMISES; TERM; USE OF PREMISES AS A**  
**SOLID WASTE TRANSFER STATION**

A. Demise of Premises. Landlord hereby leases to Tenant, upon the terms, covenants and conditions set forth in this Agreement, the land and improvements located at the intersection of Burden Avenue and Water Street in the City of Troy, Rensselaer County, New York consisting of approximately **13.5** acres and more particularly described in **Exhibit A** attached hereto and incorporated herein (the "Premises", being a portion of TMID No. 111.76-1-1). The Premises demised herein shall exclude the approximately 1 acre area of property comprising a certain "slag hill" and two piles of soil and debris located on or near the slag hill, the location of which is also more particularly described in **Exhibit A**. Everywhere in this Agreement where the term Premises is used or referred to shall mean the Premises as described in this Section 1.1.

B. Term. The Term of this Agreement (the "Term") shall commence on the date hereof (the "Effective Date") and shall expire on the last day of the calendar month immediately preceding the fifteenth (15<sup>th</sup>) anniversary of the first day of the calendar month following the date upon which the term commences (the "Lease Expiration Date"). In the event that Landlord has not sold the Premises on or before the Lease Expiration Date, and provided the Tenant is not in default under the terms of this Agreement, Tenant shall have a right to renew this Agreement for up to two (2) additional five (5) year terms ("Extended Term"). To exercise this renewal option, Tenant shall give Landlord written notice of renewal at least one (1) year prior to the Lease Expiration Date or the termination of the Extended Term.

C. Use of Premises as a Solid Waste Management Facility. It is understood and agreed that the Tenant shall use the Premises as a Solid Waste Management Facility, together with associated offices, and for any other related activity or business to which Landlord has consented in its reasonable discretion, provided Tenant shall have appropriate permits for the same, and for no other purpose. During the term of this Agreement, the Tenant and its designated haulers will be permitted to deliver to the Premises, for handling and subsequent transfer, only municipal solid waste ("MSW") and construction and demolition materials ("C&D") pursuant to and in accordance with the limits and protocols provided under the New York State DEC Permit Number 4-3817-00111/00004, attached hereto as **Exhibit C** (hereinafter, the "Permit"), which MSW and C&D shall not contain (i) any hazardous, radioactive, toxic, medical, hospital or laboratory waste; (ii) industrial waste; (iii) liquids or sludges; (iv) tires; (v) friable asbestos; and (vi) any waste which because of its composition, characteristics or quality is ineligible for acceptance at the Premises pursuant to any applicable federal, state or local law, regulation or permit.

With respect to post-processing materials being removed from the Premises, the Landlord will work with Tenant cooperatively to establish acceptable routes for acceptance and removal of debris from the Premises via one or more agreed multi-modal routes, switching point(s) and/or Landlord-approved trucking route(s) to be mutually established by the Landlord and the Tenant.

## ARTICLE II RENTS REQUIRED; NET LEASE

Section 2.1. Rent. Tenant agrees to pay Landlord, without diminution, deduction or set-off whatsoever and without prior notice or demand, as fixed annual rent for the Premises the sum noted in the schedule below, which shall be paid in monthly installments each in advance upon the first day of each calendar month during the term hereof:

### Full Fixed Rent

|                  |             |               |
|------------------|-------------|---------------|
| Months 1-12      | \$54,000/yr | \$4,500/month |
| Months 13-24     | \$60,000/yr | \$5,000/month |
| Months 25-36     | \$66,000/yr | \$5,500/month |
| Months 37-48**   | \$66,000/yr | \$5,500/month |
| Months 49-60**   | \$66,000/yr | \$5,500/month |
| Months 61-72**   | \$66,000/yr | \$5,500/month |
| Months 73-84**   | \$66,000/yr | \$5,500/month |
| Months 85-96**   | \$66,000/yr | \$5,500/month |
| Months 97-108**  | \$66,000/yr | \$5,500/month |
| Months 109-120** | \$66,000/yr | \$5,500/month |
| Months 121-132** | \$66,000/yr | \$5,500/month |
| Months 133-144** | \$66,000/yr | \$5,500/month |
| Months 145-156** | \$66,000/yr | \$5,500/month |
| Months 157-168** | \$66,000/yr | \$5,500/month |
| Months 169-180** | \$66,000/yr | \$5,500/month |

If the first renewal option is exercised

|                  |             |               |
|------------------|-------------|---------------|
| Months 181-192** | \$66,000/yr | \$5,500/month |
| Months 193-204** | \$66,000/yr | \$5,500/month |
| Months 205-216** | \$66,000/yr | \$5,500/month |
| Months 217-228** | \$66,000/yr | \$5,500/month |
| Months 229-240** | \$66,000/yr | \$5,500/month |

If the second renewal option is exercise

|                  |             |               |
|------------------|-------------|---------------|
| Months 241-252** | \$66,000/yr | \$5,500/month |
| Months 253-264** | \$66,000/yr | \$5,500/month |
| Months 265-276** | \$66,000/yr | \$5,500/month |
| Months 277-288** | \$66,000/yr | \$5,500/month |
| Months 289-300** | \$66,000/yr | \$5,500/month |

\*\* The rent amounts for these years shall be increased (but never decreased) each year by a percentage equal to the increase in the Consumer Price Index (herein referred to as "CPI") which shall be determined by dividing the CPI as of three (3) months prior to the beginning of the lease

year for which the rental adjustment is to be made by the CPI as it existed three (3) months prior to the beginning of the lease year then ending. For purposes of determining fixed rent amount, the CPI to be utilized shall be that published by the Bureau of Labor Statistics of the U.S. Department of Labor, using the U.S. City Average, all Urban Consumers (1982 – 1984 = 100). This CPI adjustment shall be made for each lease year for which the adjustment is to be made as above determined. Notwithstanding the foregoing, in no event shall the fixed rent for any lease year for which a Consumer Price Index adjustment is applicable be less than the fixed rent for the immediately preceding lease year. In the event the CPI referred to above is no longer published, then a comparable index which measures inflationary factors, and the corresponding decrease in the purchasing power of the United States Dollar, shall be selected by Landlord and the CPI adjustments shall be based upon such index. If a CPI adjustment is to be made for any lease year(s), then Landlord shall notify Tenant in writing of the amount of the increased fixed rent for such lease year(s), and if Landlord fails to so notify Tenant within ninety (90) days after the commencement of such lease year, Tenant shall continue paying the previously applicable fixed rent through the remainder of such lease year.

Section 2.2. Net Lease. The rights to, use, occupancy and maintenance of the Premises by the Tenant beginning December 18, 2007 shall be without cost or expense to the Landlord. It is the intention herein that the rental as provided under this Agreement is a net rental to Landlord and Tenant agrees to pay any and all charges of every kind, nature and description, including but not limited to, real estate taxes, assessments, water, sewer, utilities, services, insurance and repairs, both ordinary and extraordinary and relating to the Premises or any portion thereof. However, notwithstanding anything in the foregoing to the contrary, Tenant shall in no event be responsible for curing or cleaning up, or expending any monies related to any environmental conditions existing on, in or under the Premises prior to December 18, 2007.

Section 2.3 Place of Payment. All rent herein provided shall be payable to and at the office of Landlord or as otherwise directed by Landlord in writing.

Section 2.4 Late Payment. If, during the term of this Lease, Landlord does not receive any monthly installment of the fixed rent or additional rent or any other charge hereunder within fifteen (15) days of when the same is due and payable, Tenant shall pay to Landlord, in addition to such installment of fixed rent or additional rent or any other charge, without notice or demand by Landlord, a sum equal to five percent (5%) of the payment due, said additional sum payable as herein required being the agreed liquidated damages for Tenant's late payment of any installment not paid when due. Nothing contained in this Section 2.4 shall be construed to be a limitation of or in substitution of Landlord's rights and remedies under the default provisions of this Lease. In addition to other remedies which Landlord may have under this Lease, if Tenant shall fail to pay any installment of rent or additional rent within fifteen (15) days after first due hereunder, interest at the rate of twelve percent (12%) per annum shall accrue from and after such fifteen (15) day period, and such interest shall be deemed to accrue as additional rent hereunder and shall be paid to Landlord upon demand made from time to time, but in any event no later than the time of payment of the delinquent sum.

Section 2.5 Additional Rental Requirements. Each and every payment and expenditure, other than fixed rent, which is required to be paid by Tenant under this Lease, shall be deemed to be additional rent hereunder, whether or not the provisions requiring payment of such amount specifically so state, and shall be payable, unless otherwise provided in this Lease, on demand by Landlord and in the case of the nonpayment of any such amount, Landlord shall have, in addition to all of its rights and remedies, all of the rights and remedies available to Landlord hereunder or by law in the case of nonpayment of rent. Tenant covenants to timely pay during the Term hereof all real estate taxes, assessments for public improvements, water sewer and other rents, rates and charges, and charges for public utilities which become due and payable out of or with respect to the Premises or any part thereof. Tenant shall provide Landlord with receipts evidencing payment of all such items within twenty (20) days after written request for same by Landlord.

Section 2.6 Additional Consideration from Tenant to Landlord. In addition to the Rental Payments and any additional rental requirements of Tenant contained herein, the Tenant shall provide and/or undertake the following:

(a) Lease Modification Payment. Prior to or commensurate with the execution and delivery of this Agreement, Tenant shall pay to Landlord the sum ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) as a one-time lease modification payment, plus certain costs of Landlord, as set forth within Section 25.6, herein.

(b) Initial Permit Expansion Approval. Tenant shall obtain written approval of Landlord in advance of seeking any solid waste permit expansion at the Premises beyond those set forth within the Permit. Such prior approval shall be granted by the Landlord upon mutual agreement by the Landlord and Tenant.

(c) Fixed MSW and C&D Tipping Fee. (i) For a period of five (5) years commencing on the date first set forth above, Tenant shall accept at the Premises from the Landlord or the Landlord's Designee all of the MSW and C&D collected and transported by the Landlord or the Landlord's designee on its owned and/or operated waste collection vehicles pursuant to the following tipping fee schedule:

|   |                |
|---|----------------|
| Commencement of lease through December 31, 2009 | \$60 per ton   |
| January 1, 2010 through December 31, 2010       | \$58 per ton   |
| January 1, 2011 through December 31, 2011       | \$59 per ton   |
| January 1, 2012 through December 31, 2012       | \$60 per ton   |
| January 1, 2013 through December 31, 2013       | \$60 per ton * |
| January 1, 2014 through December 31, 2014       | \$60 per ton * |

\* Fixed Fee to be adjusted to reflect CPI changes, as described within the above Section 2.1.

(ii) During the term hereof, Tenant shall accept at the Premises from the Landlord or the Landlord's Designee all recycling materials collected and transported by the Landlord or the Landlord's designee on its owned and/or operated waste collection vehicles at no charge.

(iii) Landlord shall provide Tenant at least five (5) days written notice identifying any designee pursuant to this Section 2.6(c), such Notice to include evidence of insurance as may be required herein.

(iv) The Tipping Fee schedule set forth in Section 2.6(c)(i) is subject to the following conditions:

(a) Tenant's responsibility to accept MSW and C&D delivered to the Premises by the Landlord and/or the Landlord's designee shall not terminate if the Premises is closed or otherwise rendered unusable as a result of any law, order, and act of God or otherwise (hereinafter, a "Closure Event"). Within two (2) days of any Closure Event, Tenant shall notify Landlord and any then-appointed Landlord Designees of same and direct that any and all MSW and C&D be directed to Tenant's transfer station located in Clifton Park, New York, whereat Tenant shall accept MSW and C&D deliveries of Landlord and Landlord Designee's within applicable amounts and limitations as set forth herein. The happening of a Closure Event shall not affect the respective rights and liabilities of the Landlord and Tenant as to transactions and matters arising prior to the date of a Closure Event. In the event the use of the premises is temporarily closed for a period exceeding ninety (90) days, the term of this agreement shall be extended for the same number of days equal to the temporary closure; and

(b) If an invoice becomes more than ten (10) past due, a late fee of one and one-half (1.5%) percent of the invoice amount may be assessed; and

(c) Landlord or the Landlord's Designee shall keep the following insurance in full force and effect during the entire term of the Tipping Fee provisions:

Workers Compensation

|            |             |
|------------|-------------|
| Coverage A | Statutory   |
| Coverage B | \$2,000,000 |

Automobile Insurance (including owned and non-owned vehicles)

|               |                            |
|---------------|----------------------------|
| Bodily Injury | \$2,000,000 per Occurrence |
|---------------|----------------------------|

|                 |                            |
|-----------------|----------------------------|
| Property Damage | \$2,000,000 per Occurrence |
|-----------------|----------------------------|

Comprehensive General Liability

|               |                             |
|---------------|-----------------------------|
| Bodily Injury | \$2,000,000 Each Occurrence |
|---------------|-----------------------------|

|                 |                             |
|-----------------|-----------------------------|
|                 | \$2,000,000 Aggregate       |
| Property Damage | \$2,000,000 Each Occurrence |
|                 | \$2,000,000 Aggregate       |

The insurance policy shall be endorsed to identify Tenant as an additional insured and shall provide for thirty (30) days prior written notice of termination, cancellation or material change in coverage.

### **ARTICLE III INSURANCE REQUIREMENTS**

Section 3.1 Required Policies. Tenant, at its sole cost and expense, shall provide and keep in force, and shall deliver to Landlord copies of the following policies or certificates of insurance, which must be reasonably acceptable to Landlord:

- (a) Insurance full replacement value against loss or damage or injury or destruction of the buildings at the Premises resulting from fire, or from any hazard included in the so-called extended coverage endorsement, naming Landlord and Landlord's mortgagee, if any, as their interests appear. Notwithstanding the foregoing, in the event fire/hazard insurance is not available at commercially reasonable rates for any building(s) other than the office building or the new building to be constructed by Tenant at the Premises, neither Landlord nor Tenant shall be required to obtain such insurance. Tenant shall, however, in all instances, obtain insurance for the office building and the new building to be constructed by Tenant at the Premises.
- (b) Comprehensive general liability insurance with respect to occurrences arising on or about the Premises (covering personal injury, death and property damage) with limits of not less than One Million Dollars (\$1,000,000.00) per person, Two Million Dollars (\$2,000,000.00) per occurrence, and One Million Dollars (\$1,000,000.00) for damage to property, naming Landlord as an additional insured and containing an environmental impairment liability coverage endorsement having a retroactive date of March 20, 2004 and providing that the asbestos exclusion will not apply to claims arising from the following non-friable asbestos containing material: packings, gaskets, resilient floor covering, asphalt roofing products, siding and wallboard.
- (c) Insurance of all of Tenant's personal property located in or on the Premises, including, but not limited to, inventory, trade fixtures, floor coverings and furniture and improvements, which shall be insured against loss or damage by fire with extended coverage (all-risk casualty insurance), contain all standard extended and supplemental coverage clauses including malicious damage and explosion (if available) applicable to the Premises, and be in an amount equal to at least eighty percent (80%) of the property replacement cost.

Section 3.2 Insurance Companies and Policy Provisions. All insurance policies required to be maintained by Tenant shall be written by reputable, financially responsible

insurance companies, shall protect Landlord, Landlord's mortgagee, if any, and Tenant, as their respective interest may appear, and shall provide that any loss otherwise payable thereunder shall be payable notwithstanding any act of negligence of Landlord or Tenant which might, absent such agreement, result in a forfeiture of all or part of the payment of such loss.

Section 3.3 Failure to Obtain Insurance. If Tenant fails to obtain and maintain any such insurance or to deliver any of the certificates as required in the Lease, Landlord may but shall not be obligated to, on five (5) days prior written notice to Tenant, procure such insurance for a term not exceeding one (1) year at the expense of Tenant and pay the cost thereof. Such cost, if paid by Landlord, shall be deemed additional rent and shall be payable by Tenant to Landlord upon demand, together with interest thereon until repaid by Tenant at a rate equal to twelve percent (12%) per annum.

Section 3.4 Cancellation. Each policy or certificate of insurance required under this Lease shall contain an agreement by the insurer that such policy shall not be changed or cancelled without at least thirty (30) days prior written notice to Tenant, Landlord and the holder of any mortgage to which the interest of Landlord in the Premises is subject, provided that Tenant shall have been notified in writing of the name and address of such mortgagee.

Section 3.5 Waiver of Subrogation. Landlord and Tenant and all parties claiming under them mutually release and discharge each other from all claims and liabilities for damage to or loss of land and improvements thereon or personal property arising from or caused by any hazard covered by insurance maintained by the party hereto owning or having custody of such property, regardless of the cause of such damage or loss. Each of the parties to this Lease agree to have a subrogation clause attached to and made a part of the insurance policy or policies in force at the Premises in the following or an equivalent form: "This insurance shall not be invalidated should the insured waive in writing, prior to loss, any or all rights of recovery against any other party for a loss occurring to the property described herein."

#### **ARTICLE IV USE OF PREMISES**

Section 4.1. It is understood and agreed that the Tenant shall use the Premises as a Solid Waste Transfer Station and Management Facility, together with associated offices, and for any other related activity or business to which Landlord has consented in its reasonable discretion, provided Tenant shall have appropriate permits for the same, and for no other purpose.

Section 4.2. Use of Premises. Tenant shall use and occupy the Premises only for a Solid Waste Transfer Station and Management Facility for which Tenant possesses all required and current permits (whether Federal, State and/or local). Tenant shall not handle nor allow to be handled on the Premises Hazardous Materials (as hereafter defined) or medical waste. Notwithstanding the foregoing, Tenant may handle non-friable asbestos on the Premises so long as such handling is done in accordance with and pursuant to the Permit from the New York State Department of Environmental Conservation ("DEC"). Tenant shall be solely responsible for closing the facility authorized by the Permit and such closure shall comply with the requirements

of the Permit and any other requirements lawfully imposed by the DEC. Tenant shall provide Landlord with copies of the complete Permit and bond required by the Permit, including all renewals of both the bond and the Permit.

Section 4.3. Compliance with all Laws. In connection with the conduct of Tenant's and any other related business' use of and operation at the Premises, Tenant shall comply and shall ensure the related business complies with all present and future laws, ordinances, requirements and regulations of the federal, state, county and city governments or other legal or public authorities, boards, bureaus or departments including but not limited to the Americans with Disabilities Act, and of insurance organizations insofar as they relate to the Premises. Tenant shall indemnify and hold harmless Landlord of and from all fines, penalties, claims, suits and costs of every kind and nature arising out of any act or omission of Tenant, any related business and their agents, contractors or invitees, that is a violation of, or non-compliance with the same. Tenant shall not be in default under this section if it challenges the legal enforceability of a guideline or requirement and is diligently pursuing such challenge. Notwithstanding the foregoing, with regard to existing buildings on the Premises other than the office building and any new building to be constructed by Tenant at the Premises, if compliance with building and zoning laws or any other laws affecting such buildings is mandated by a governmental authority, Tenant shall, in its discretion, either comply or demolish the building, provided the demolition is done in compliance with all applicable laws, ordinances, requirements and regulations of the federal, state, county and city governments or other legal or public authorities, boards, bureaus or departments and of insurance organizations.

Section 4.4. Access. Landlord or its agent shall have the right to enter any part of the Premises upon reasonable notice to Tenant to view and inspect the Premises, except for inspections related to health and safety which may be conducted without notice. Landlord shall also have the right upon 24 hours notice to enter the Premises at all reasonable hours during the term to show the Premises to prospective purchasers, and within six (6) months prior to the expiration of this Lease to show the Premises to prospective lessees.

## **ARTICLE V** **CONDITION OF PREMISES; REMOVAL OF EQUIPMENT AND IMPROVEMENTS**

Section 5.1. As Is. Tenant has physically occupied the Premises since January 2, 2008 and assumed rights, title and obligations of prior tenants as of December 18, 2007 pursuant to the Underlying Lease Agreements. In executing this Agreement, Tenant accepts the Premises in its present condition "AS IS" without representation or warranty from Landlord with respect to condition or suitability for Tenant's intended use (as defined and set forth herein). THE LANDLORD MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE PREMISES OR THAT IT IS OR WILL BE SUITABLE FOR THE TENANT'S PURPOSES OR NEEDS.

Section 5.2. Equipment. Tenant shall have the right at any time to remove from the Premises and dispose of, free and clear of any right or claim of Landlord, or any person claiming

by, through or under Landlord, any machinery and equipment, trade fixtures, apparatus, furniture, furnishings and all temporary structures, installed at any time by or for Tenant on or about the Premises which are used or provided for use in connection with Tenant's business operations and are not used or provided for use in connection with the operation, maintenance and protection of the Premises, as such ("Tenant's Equipment"). In the event of such removal, Tenant shall repair any damage occasioned by such removal. Any such Tenant's Equipment which shall not be so removed upon the termination of this Lease shall become the property of and be subject to disposition by Landlord.

**Section 5.3. Improvements.** Any improvements placed on the Premises by Tenant that become permanently affixed to the Premises or cannot be reasonably removed at the end of the term without damaging the Premises shall become the property of Landlord, except that Tenant may remove any of Tenant's Equipment; provided, however, that in the event of such removal, Tenant shall repair any damage to the Premises occasioned by such removal.

**Section 5.4. Landlord's Liability.** Other than damages directly resulting from Landlord's gross negligence or misconduct, Landlord shall not be liable for any injury or damage to any person or property at any time from any cause whatsoever that may at any time arise from the use or occupancy of the Premises by Tenant or any related business from and after January 2, 2008, including but not limited to, ice or water damage (whether from pipes or any other source).

## **ARTICLE VI** **MAINTENANCE AND REPAIRS**

**Section 6.1** Tenant shall, during the Term of this Lease and at its sole cost and expense, operate and maintain the Premises in good order and repair as the Premises existed on December 18, 2007, including but not limited to the parking lot and driveways, structural and non-structural components of all buildings, the heating, ventilation, air conditioning and plumbing systems. Tenant shall not commit or suffer to be committed any waste upon or about the Premises, and shall promptly, as its sole cost and expense, make all necessary repairs and replacements to the Premises and appurtenances thereto. Notwithstanding the foregoing, with regard to existing buildings on the Premises other than the office building and any new buildings constructed by Tenant at the Premises, if compliance with building and zoning laws or any other laws affecting such buildings is mandated by a governmental authority, Tenant shall, in its discretion and at its sole cost and expense, either comply or demolish the building, provided the demolition is done in compliance with all applicable laws, ordinances, requirements and regulations of the federal, state, county and city governments or other legal or public authorities, boards, bureaus or departments and of insurance organizations.

## ARTICLE VII ALTERATIONS AND IMPROVEMENTS

Section 7.1 Limitations. Tenant agrees that it shall not make any material alterations of or material improvements to the Premises without Landlord's prior written consent and only upon compliance with the following conditions:

(a) No alterations, interior additions or construction shall reduce the fair market value of the Premises below its value immediately before the same were made, shall decrease the size or square foot floor area or impair the structural integrity of any buildings that are part of the premises.

(b) Any alterations, interior additions or construction (i) shall be constructed with due diligence, in a good and skillful manner and in full compliance with all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, lawful directions and requirements of all governments, departments, commissions, boards, courts, authorities, and agencies, which now or at any time hereafter may reasonably be applicable to the Premises or any part thereof, or any use or conditions of the Premises or any part thereof (hereinafter collectively referred to as the "Legal Requirements") and all terms of any insurance policy covering or applicable to the Premises or any part thereof, all reasonable requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Premises or any part thereof or any use or condition of the Premises or any part thereof, and (ii) shall be promptly and fully paid for by Tenant. Tenant shall not be in default under this section if it challenges the legal enforceability of a guideline or requirement and is diligently pursuing such challenge.

(c) All alterations and improvements made by Tenant shall be at its sole cost and expense.

(d) All alterations and improvements made by Tenant shall immediately and without reservation vest with and become the property of Landlord upon expiration of this Lease or the earlier termination hereof.

## ARTICLE VIII ENVIRONMENTAL MATTERS

Section 8.1 Definitions.

(a) **Environment:** Any water or water vapor, any land including land surface or subsurface, air, fish, wildlife, biota and all other resources.

(b) **Environmental Laws:** All federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes,

and the common law, relating to pollution and/or the protection of the Environment and/or the health and safety of any persons and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Material and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto. Tenant shall not be in default under this section if it challenges the legal enforceability of a guideline or requirement and is diligently pursuing such challenge.

(c) **Environmental Proceedings:** Any environmental proceedings, whether civil (including actions by private parties), criminal, or administrative proceedings, relating to the Premises.

(d) **Governmental Authority:** Any federal, state, county or municipal government, or political subdivision thereof, any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality, or public body, or any court, administrative tribunal, or public utility.

(e) **Hazardous Material:** Means and includes gasoline, petroleum, asbestos containing materials, explosives, radioactive materials or any hazardous or toxic material, substance or waste which is defined by those or similar terms or is regulated as such under any Law of any Governmental Authority having jurisdiction over the Project or any portion thereof or its use, including: (i) any "hazardous substance" defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. § 9601 (14) as may be amended from time to time, or any so called "superfund" or "superlien" Law, including the judicial interpretation thereof; (ii) any "pollutant or contaminant" as defined in 42 U.S.C.A. § 9601 \*33); (iii) any material now defined as "hazardous waste" pursuant to 40 C.F.R. Part 260; (iv) any petroleum, including crude oil or any fraction thereof; (v) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel; (vi) any "hazardous chemical" as defined pursuant to 29 C.F.R. Part 1910; and (vii) any other toxic substance or contaminant that is subject to any other Law or other past or present requirement of any Governmental Authority. Any reference above to a Law, includes the same as it may be amended from time to time, including the judicial interpretation thereof.

(f) **Laws:** Collectively, all federal, state and local laws, statutes, codes, ordinances, orders, rules and regulations, including judicial opinions or precedential authority in the applicable jurisdiction.

**Section 8.2 Covenants.** With respect to Tenant's rights to, use and occupancy of the Premises, and the conduct of Tenant's related businesses thereon from and after December 18, 2007, Tenant shall:

(a) Comply, and cause all other persons on or occupying the Premises to comply, with all Laws relating to Hazardous Material;

(b) Not install, use, generate, manufacture, store, treat, release or dispose of, nor permit the installation, use, generation, storage, treatment, release or disposal of, Hazardous Material on, under or about the Premises, other than the customary use and handling of petroleum products in compliance with any applicable Environmental Laws;

(c) Immediately advise Landlord in writing of:

(i) Any and all Environmental Proceedings and any correspondence or Other documents received by Tenant pertaining to compliance with Environmental Laws;

(ii) The presence of any Hazardous Material on, under or about the Premises installed, generated, treated, stored, disposed or released by Tenant or by any other party, including Landlord;

(iii) Any remedial action taken by, or on behalf of, Tenant in response to Any Hazardous Material on, under or about the Premises or to any Environmental Proceedings;

(iv) The discovery by Tenant of the presence of any Hazardous Material on, under or about any real property or bodies of water adjoining or in the vicinity of the Premises; and

(v) The discovery by Tenant of any occurrence or condition on any real Property adjoining or in the vicinity of the Premises that could cause the Premises or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Premises under any Environmental Laws relating to Hazardous Material;

(vi) Applications or other materials submitted to any governmental agency in compliance with Environmental Laws;

(vii) Any permit, license, approval, amendment or modification thereto granted pursuant to Environmental Laws;

(d) Unless undertaken in compliance with all Environmental Laws and pursuant to express written consent of Landlord, not install or allow to be installed any tanks on, at or under the Premises, other than those two (2) new tanks were installed by the Tenant during calendar year 2008 in connection with and in furtherance of the Permit and that certain tank installed by the Tenant during calendar year 2008 in connection with that certain container maintenance building to be situated upon the Premises. Said three (3) tanks installed upon and within the Premises (hereinafter, the "Allowable Tanks") to be operated and maintained by and at the exclusive cost of the Tenant pursuant to and in conformance with all Environmental Laws. The Allowable Tanks shall be removed from the Premises in accordance with all applicable Environmental Laws prior to the surrender of the Premises by Tenant to Landlord in accordance with the terms of this Agreement.

(e) Not create or permit to continue in existence any lien upon the Premises imposed pursuant to any Environmental Laws as a result of acts of Tenant, any related business or any party acting on either's behalf or at either's request;

(f) Not change or alter the present use of the Premises unless Tenant shall have notified Landlord thereof in writing and Landlord shall have determined, in its sole and absolute

discretion, that such change or modification will not result in the presence of Hazardous Material on the Premises in question in such a level that would increase the potential liability for Environmental Proceedings;

(g) Promptly comply with any request by Landlord that Tenant:

- (i) Provide information or access to the Premises in connection with alleged or potential violation of Environmental Laws; and
- (ii) Provide signatures, acknowledgments, affidavits and otherwise cooperate as reasonably required by Landlord to obtain any approvals from Governmental Authorities; and

(h) Not perform excavation or other activities on the Premises that would result in the disturbance or exposure of subsurface soils, materials or conditions below one foot from the ground surface unless such activities are first approved by Landlord or are otherwise ordered by any governmental agency having jurisdiction over the Premises, provided Tenant has provided at least twenty (20) days prior written notice to Landlord of such order.

**Section 8.3 Indemnification.** Tenant shall protect, indemnify, defend and hold Landlord and all successors to Landlord's interest in the Premises, and all directors, officers, employees and agents of the aforementioned indemnified parties, harmless from and against any and all actual or potential claims, liabilities, damages (direct or indirect), losses, fines, penalties, judgments, awards, costs and expenses (including, without limitation, reasonable attorneys' fees and costs and expenses of investigation) (collectively, "Expenses") which arise out of or relate in any way to any breach of any representation, warranty or covenant contained herein, or any Environmental Proceedings or any use, handling, production, transportation, disposal, release or storage of any Hazardous Material in, under or on the Premises, whether by Tenant or any other person, arising from Tenant's use and occupancy of the Premises from and after December 18, 2007. Tenant's obligations hereunder are in addition to those set forth within the Underlying Lease Agreements, shall survive the expiration of this Agreement, and shall be binding upon Tenant's heirs, successors and assigns.

**Section 8.4 Landlord and Tenant Liability and Indemnifications.** Landlord and Tenant hereby acknowledge and restate their respective obligations, responsibilities and indemnifications as set forth within that certain Consent and Release Agreement, dated as of December 1, 2007, and that certain Assignment and Assumption of Lease, dated as of December 18, 2007. Further, it is expressly agreed among Landlord and Tenant that Tenant shall bear no financial risk or liability with respect to any environmental condition associated with the Premises that is determined to have resulted from activities or omissions occurring prior to April 1, 2001.

Landlord shall protect, indemnify, defend and hold Tenant and all Landlord-approved successors to Tenant's interest in the Premises, and all directors, officers, employees and agents of the aforementioned indemnified parties, harmless from and against any and all actual or potential claims, liabilities, damages (direct or indirect), losses, fines, penalties, judgments, awards, costs and expenses (including, without limitation, reasonable attorneys' fees and costs

and expenses of investigation) (collectively, "Expenses") which arise out of or relate in any way to any breach of any representation, warranty or covenant contained herein, or any Environmental Proceedings or any use, handling, production, transportation, disposal, release or storage of any Hazardous Material in, under or on the Premises, whether by Tenant or any other person, arising from Tenant's use and occupancy of the Premises from any time prior to April 1, 2001. Landlord's obligations hereunder shall survive the expiration of this Lease and shall be binding upon its heirs, successors and assigns.

Section 8.5 Remediation. In the event that Landlord is required by any governmental agency having jurisdiction over the Premises to clean-up or remediate any such Pre-Existing Conditions, Landlord may do same and to the extent that Tenant may continue to operate its businesses as substantially being operated prior to the commencement of such clean-up or remediation, this Lease shall remain unmodified and in full force and effect. In the event that Tenant cannot operate its businesses as substantially being operated prior to the commencement of such clean-up or remediation, Tenant shall have the right to terminate this Lease upon thirty (30) days written notice to Landlord. In no event shall Landlord be responsible to Tenant for any business interruption, relocation costs or other expenses or costs in the event Landlord is required to clean-up or remediate.

## ARTICLE IX NOTICES

Section 9.1 Whenever it is provided in this Lease that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the parties by the other, or whenever either of the parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto or to the Premises, each such notice, demand, request, consent, approval or other communication shall be in writing and shall be effective for any purpose only if given or served as follows:

By hand with proof of delivery or by mailing by certified mail, postage prepaid, return receipt requested, or by reputable overnight courier such as Federal Express, addressed to:

If to Tenant:

County Waste Transfer Corp.  
PO Box 790  
Clifton Park, New York 12065  
Attn: Scott Earl, President

If to Landlord:

Troy Local Development Corporation  
One Monument Square  
Troy, New York 12180  
Attn: Chairman

With a copy to:

Harris Beach PLLC  
677 Broadway, Suite 1100  
Albany, New York 12207  
Attn: Justin S. Miller, Esq.

Section 9.2 Service. Every notice, demand, request, consent, approval or communication hereunder shall be deemed to have been given or served the day after it is sent, if sent by overnight courier, or three (3) days after the time that the same shall have been actually deposited in the United States mails, postage prepaid, as aforesaid, except that notice by certified mail, return receipt requested, shall be deemed effective on the date such receipt is dated by the Post Office or service is refused. Service by hand shall be deemed given on the date delivered.

## ARTICLE X ASSIGNMENT AND SUBLEASING

Section 10.1 Tenant Assignment and Subleasing. Tenant affirms that there currently are no subtenants at the Property. Tenant shall not assign this Agreement or sublet all or any portion of the Premises without Landlord's prior written consent, which consent will not be unreasonably withheld or delayed so long as the business(es) to which this Lease is assigned or to which all or a portion of the Premises are sublet are related in nature and ownership to Tenant, and so long as such business(es) comply with the other terms and provisions of this Agreement. Unless specifically released by Landlord, Tenant shall continue to remain liable for payment of all rent and other obligations required under this Agreement, including acceptance of MSW and C&D at the premises delivered by Landlord and/or Landlord's Designee. In the event Landlord agrees to expend funds to facilitate the sublease of all or a portion of the Premises, which Landlord shall have no obligation to do, Tenant shall pay to Landlord that portion of the rent generated by such subletting to offset all amounts expended by Landlord.

Section 10.2 Landlord Assignment and Subleasing. The parties hereto agree and acknowledge that the Landlord, as a not-for-profit corporation established to benefit the City of Troy, New York (the "City"), may seek to assign this Agreement to another City affiliate and/or enter into one or more transactions relating to the Premises with the Troy Industrial Development Authority ("TIDA"). Tenant hereby consents to Landlord's assignment of this Agreement to any other City-controlled or affiliate entity and/or the establishment of leasehold or other interest(s) to be held by TIDA in furtherance of the long term ownership structure and management of the Land and Premises. Landlord agrees and acknowledges that any such assignment or TIDA interest in the Land and/or Premises shall not modify or alter the terms of this Agreement, nor shall any such assignment or interest interfere with Tenant's contemplated use of the Premises, as allowed pursuant to the terms hereof.

## ARTICLE XI

### DAMAGE, OR DESTRUCTION; CONDEMNATION

Section 11.1. General. If at any time during the Term hereof, the Premises or any part thereof shall be taken by condemnation or destroyed or damaged by fire or the elements or other casualty, this Lease, except as otherwise herein expressly provided, shall continue in effect, subject to the provisions of this Article, and Tenant shall continue to pay all rents as provided herein.

Section 11.2. Condemnation. If the whole of the Premises shall be taken for any public or quasi-public use under any statute or by right of eminent domain or by private purchase in lieu thereof, then this Lease shall automatically terminate as of the date that possession had been taken. In the event of a partial taking (or purchase) of the Premises pursuant to which more than 25% of the Premises are so taken (or so purchased) or if as result of a taking (or purchase) of any part of the Premises 25% or more of the aggregate ground floor area in the buildings on the Premises shall be removed from usability for their then-current or intended purpose then Tenant shall have the right, but not the obligation, to terminate this Lease by giving written notice of such termination to Landlord on or prior to the date one hundred eighty days after the date of such taking (or purchase), and upon the giving of such notice of termination the term of this Lease shall expire and come to an end on the last day of the calendar month in which such notice shall be given, with the same force and effect as if said day had been originally fixed herein as the expiration date of the term of this Lease. In the event this Lease shall terminate or shall be terminated, the rental shall, if and when necessary, be adjusted to the day of the taking (or purchase) and neither party shall have any further right or liabilities hereunder.

(i) In the event of a taking (or purchase) resulting in the termination of this Lease pursuant to the provisions of Section 11.1, the parties hereto agree to cooperate in applying for and in prosecuting any claim for such taking and further agree, that the aggregate net award, after deducting all expenses and costs, including attorney fees, incurred in connection therewith, payable to both Landlord and Tenant shall be paid to Tenant (or if required, to any Mortgagee) and distributed as follows:

(a) so much of such net award as is available for distribution shall first be paid to the holder or holders of any Mortgage or Mortgages, if any, to the extent of the then unpaid principal amount of such Mortgage or Mortgages; and

(b) then, the balance (herein called the "Fund") of the award, if any, remaining after such payment to the holders of any Mortgage or Mortgages, if any, pursuant to Subparagraph (a) of this Subsection 11.2(i), shall be divided between Landlord and Tenant by first paying to Landlord an amount out of the Fund equal to Landlord's Share and then Tenant shall be paid the entire balance thereof remaining after such payment to Landlord; provided, however, that if such balance of the Fund shall be less than Tenant's Minimum Share, then, Landlord shall be paid a fraction of the Fund the numerator of which shall be Landlord's Share and the denominator of which shall be the sum of Landlord's Share and Tenant's Minimum Share, and Tenant shall be paid the balance of the Fund remaining after such payment to Landlord.

The term "Landlord's Share" shall mean an amount equal to the Fund multiplied by a fraction, the numerator of which is the number of years (or portion thereof) theretofore expired during the term and the denominator of which shall be the number of years described in Article 1 herein.

The term "Tenant's Minimum Share" shall mean an amount equal to Tenant's total costs and expenses, of every kind and nature, not compensated for by insurance, incurred and paid in connection with and for the construction, repair and replacement (if any) of all buildings and other improvements on the Premises at any time and from time to time (hereinafter referred to as "Tenant's Building Costs") less the total net proceeds of any award theretofore received by Tenant from any (and all) prior partial takings (or purchases) and the amount of the net award paid to the holders of any Mortgage or Mortgages pursuant to subparagraph (a) of Subsection 11.1(i) with respect to such taking (or purchase) and with respect to any (and all) prior partial takings. In the event that Tenant shall at the time of such taking (or purchase) be unable to certify and establish the amount of Tenant's Building Costs or shall, in its sole discretion, elect not to attempt to certify or otherwise establish the same, Tenant's Building Costs shall, at Tenant's option, be either (i) deemed to be an amount equal to \$20.00 multiplied by the aggregate number of square feet of floor space at any time and from time to time constructed (including major repairs and replacements not compensated for by insurance or condemnation proceeds) on the Premises; or (ii) determined by arbitration (in accordance with the rules then obtaining of the American Arbitration Association) in Rensselaer County, New York.

(ii) Less than Total Taking.

(a) In the event of a partial taking (or purchase) not resulting in the termination of this Lease pursuant to the provisions of Section 11.1, Tenant may, at Tenant's own cost and expense, make all repairs to the buildings and improvements on the Premises affected by such taking (or purchase) to the extent necessary to restore the same to a complete architectural unit (to the extent permitted, however, taking into consideration the amount of land remaining after any such taking or purchase), provided, however, that Tenant shall not be obligated to expend an amount in excess of the proceeds of the net award available to Tenant for such purposes, as hereinafter provided.

(b) All compensation available or paid to Landlord and Tenant upon such a partial taking (or purchase), shall be paid to Tenant for the purpose of paying towards the cost of such restoration, or, in the event that the parties hereto agree that only a portion of the aggregate award is sufficient to so restore, then only such portion as agreed upon shall be paid to Tenant for such purpose and the balance shall be distributed pursuant to Subsection 11.1(i) above.

(c) All compensation available or paid to Landlord and Tenant upon such a partial taking (or purchase) in excess of the amount thereof needed by Tenant to repair and restore the buildings and improvements shall be distributed in the same manner as is provided in Section 11.1(i) except that Landlord's Share shall be reduced by a proportion corresponding to the proportion of the total square footage of land of the Premises so taken (or purchased) and Tenant's Minimum Share shall be reduced by a proportion corresponding to the proportion of the total floor area of all buildings on the Premises so taken (or purchased); and except that all compensation for any temporary taking shall be distributed to Tenant without participation by Landlord.

Section 11.3 Partial Damage to Premises. If any new building or office building located on the Premises shall be partially damaged by fire or other cause and the damage may be repaired

within one hundred eighty (180) days after the date of such damage, any debris shall be removed from the Premises at Tenant's sole cost and expense, and the damages shall be repaired by and at the expense of Tenant to the extent there are insurance proceeds to complete the repairs. The fixed rent until such repairs can be completed shall be apportioned according to the part of the Premises which is usable by Tenant. No penalty shall accrue for reasonable delay on account of labor troubles or any other cause beyond Tenant's control. Tenant may, but shall not be required to, rebuild, repair or replace any part of the furniture, equipment, fixtures or other improvements Tenant may have placed or installed on the Premises. In the event of partial damage to any building other than any new building or the office building, Tenant shall, at its sole cost and expense, remove all debris from the Premises but shall not be required to repair the damage unless such repair is required for the operations of Tenant's business.

**Section 11.4 Total Damage to Premises.** If any new building or office building located on the Premises are totally damaged or rendered wholly untenable by fire or other causes and Tenant shall decide not to rebuild or shall decide to demolish the same, then, in any such event, Tenant shall, at its sole cost and expense, remove all debris from the Premises and may within ninety (90) days of such fire or other causes give Landlord a notice in writing of such decision and thereupon, the term of this Lease shall expire by lapse of time upon the third day after such notice is given ("Lease Expiration Date"), except with respect to obligations and liabilities of Tenant hereunder, actual or contingent, which have arisen on or prior to the Lease Expiration Date, upon payment of all additional rent and other sums then due and payable hereunder to and including the Lease Expiration Date, the same as if such day were the day of the expiration of the term, and Tenant shall vacate and surrender the Premises to Landlord. If Tenant does not rebuild the new building or the office building, the insurance proceeds available for same shall be made available to Landlord for the purpose of rebuilding the improvements to the Premises or reimbursing Landlord for the loss. In the event of total damage to any building other than any new building or the office building, Tenant may not terminate this Lease and shall, at its sole cost and expense, remove all debris from the Premises but shall not be required to rebuild unless such rebuilding is required for the operation of Tenant's business.

**Section 11.5 Insurance Proceeds.** Any insurance proceeds under the policies carried by Tenant as required by this Lease shall be made available to the party completing the restoration and/or repair of the Premises in the event of damage. Notwithstanding any other provisions of this Lease, in no event shall Landlord or Tenant be required to spend more money for restoration or repairs than it receives as proceeds of insurance.

## **ARTICLE XII** **INDEMNIFICATION AND NON-RECOURSE PROVISIONS**

**Section 12.1** Tenant shall defend, indemnify and save harmless Landlord against and from any and all liability, loss, damages, expenses, causes of actions, suits, judgments and claims, including Landlord's reasonable attorney's fees, by or on behalf of any person, governmental authority or any other entity arising from the use or occupancy of the Premises by Tenant or the negligence or willful omissions or wrongdoing of Tenant, its agents, servants or employees, invitees or any concessionaires, subtenants or other persons claiming through or under Tenant from and after December 18, 2007. Notwithstanding any other provisions of this Lease to the contrary, Tenant shall not be considered responsible for, or contractually obligated to respond to, or indemnify Landlord for, from or against, any contaminant or Hazardous Material conditions, or other contravention of Environmental Laws, that may be discovered on the Premises at any time and which are determined to have been caused or created by the acts or omissions of Landlord, or

Landlord's predecessors, or any other person or entity present at or in possession of the Premises prior to Tenant, or any person or entity responsible through them, prior to January 2, 2008 ("Pre-existing Conditions"). The signatories to this Lease reserve all rights, claims and defenses associated with any investigations and/or remediation requirements of such Pre-Existing Conditions.

**Section 12.2 NON-RE COURSE PROVISIONS. NOTWITHSTANDING ANY OTHER TERM OR CONDITION CONTAINED IN THIS AGREEMENT:**

(a) This Agreement is executed by the Landlord solely for the purpose of subjecting its fee ownership in the Premises to the leasehold interest to the Tenant pursuant to the terms hereof and for no other purpose. The obligations and agreements of the Landlord contained herein shall not constitute or give rise to an obligation of the State of New York or the City of Troy, New York, and neither the State of New York nor the City of Troy, New York shall be liable hereon. All obligations of the Landlord hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Premises, and neither the members of the Landlord nor any person executing this Agreement on its behalf shall be liable personally under this Agreement, including any past, present, or future member, officer, agent, servant, or employee, as such, of the Landlord or of any successor or political subdivision, either directly or through the Landlord or any such successor, all such liability of such members, officers, agents (except for the Tenant), servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Agreement and related instruments evidencing the interest it secures. Any judgment or decree shall be enforceable against the Landlord only to the extent of its interest in the Premises and any such judgment shall not be subject to execution on or by a lien on assets of the Landlord other than its interest in the Premises.

**ARTICLE XIII  
DEFAULT; TERMINATION**

**Section 13.1 Termination in Event of Default.** If, at any time during the Lease term, any one or more of the "Events of Default" listed below shall occur, Landlord may give a written termination notice to Tenant specifying the date on which this Lease shall terminate. On that date, the Lease term shall terminate and all rights of Tenant under this Lease shall cease, unless the default shall have been fully remedied to the reasonable satisfaction of Landlord on or before the termination date specified in the notice and the expiration of any cure periods. All costs incurred by Landlord, including reasonable attorneys' fees occasioned by any default of Tenant, shall constitute additional rent and Tenant's obligations will survive to the extent provided below.

**Section 13.2. Event of Default.** An "Event of Default" occurs if:

- (a) Tenant fails to pay any fixed rent or additional rent within fifteen (15) days of the date it is due.
- (b) Tenant assigns this Lease or sublets all or any portion of the Premises without Landlord's prior written consent.
- (c) Tenant fails to perform any of its other obligations under this Lease (i.e., other than those obligations that are covered by 13.2 (a) and (b) above) and the failure continues for more than thirty (30) days after Tenant receives written notice from Landlord or the failure, or, if the default cannot

reasonably be cured within thirty (30) days, Tenant fails to commence the cure within the thirty (30) days and diligently prosecutes it to completion.

(d) The Premises is abandoned or vacated by Tenant.

(e) Tenant at any time makes a general assignment for the benefit of creditors; Tenant is adjudicated bankrupt or insolvent; a petition is filed by or against Tenant to have Tenant adjudged a bankrupt, or a petition is filed by or against Tenant for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days after the filing thereof); a trustee or receiver is appointed to take possession of substantially all of Tenant's assets or its interest in this Lease (unless possession is restored to Tenant within thirty (30) days after such appointment); the attachment, execution or levy against, or other judicial seizure of, substantially all of Tenant's assets or of Tenant's interest in this Lease (unless the same is discharged within thirty (30) days after issuance thereof).

Section 13.3 Summary Proceedings. If this Lease is terminated pursuant to any of the above Events of Default, Landlord may, at any time, re-enter the Premises and remove Tenant and its property either by summary proceedings or by another suitable action or proceeding.

Section 13.4 Expenses. In case of any termination or re-entry, Tenant shall pay to Landlord the rent and any other charges required to be paid up to the time of termination or re-entry and shall also pay all expenses which Landlord may have incurred or may thereafter incur for legal expenses, brokerage commissions, and all other costs incurred by Landlord to prepare the Premises for reletting and for the actual reletting of the Premises.

Section 13.5 Credit for Other Rent Received. If the Lease is terminated as described above, Tenant agrees to be liable for the amounts of rent and other charges that would have become due if the Lease had not been terminated or if Landlord had not re-entered, which liability it is expressly covenanted shall survive the issuance of any action to secure possession of the Premises or any other termination of this Lease. Landlord shall have, receive and enjoy as its sole and absolute property without right or duty of account therefore to Tenant, any and all sums collected by Landlord as rent or otherwise upon re-letting said Premises after Landlord shall resume possession thereof as hereinbefore provided, including, without limitation upon the generality of the foregoing, any amounts by which the sum or sums so collected shall exceed the continuing liability of Tenant under this Lease. If the Premises are relet by Landlord, Tenant shall be entitled to a credit up to the amount of rent, additional rent, and other charges due under the Lease from the rent received by Landlord in reletting the Premises after deduction of all costs and expenses incurred in the reletting including, but not limited to, legal expenses, attorneys' fees, brokerage commissions and all other costs paid or incurred by Landlord for such termination, re-entry or legal proceedings and for restoring the Premises to good order and condition and for altering or otherwise preparing same for re-letting.

Section 13.6 Amounts added as Additional Rent. If Landlord at any time is compelled to pay or elects to pay any sum of money by reason of the failure of Tenant to comply with any provision of this Lease, or if Landlord is compelled to incur any expense, including reasonable attorneys' fees and disbursements, in instituting or defending any action commenced by reason of any default of Tenant, the sums paid by Landlord and any damages incurred by Tenant shall be deemed additional rent under this Lease and shall be due from Tenant to Landlord on the first day of the month following the incurring of the expense.

Section 13.7 No Waiver. No failure by Landlord to insist upon the strict performance of any covenants in this Lease or to exercise any rights after an Event of Default and no acceptance of full or partial rent during the continuation of an Event of Default shall be a waiver by Landlord of any Event of Default.

Section 13.8 Accelerated Rent. Notwithstanding anything herein to the contrary, Landlord and Tenant mutually agree that in the event of any uncured default in the payment of rent or uncured default in any of the terms and conditions of this Lease, then the whole of the rent for the whole of the term of this Lease shall at the sole option of Landlord be accelerated and immediately become due and payable.

Section 13.9 Waiver of Right of Redemption. Tenant hereby waives any right of redemption under any present or future law and, no receipt of monies by Landlord from Tenant after the termination of this Lease in any lawful manner shall reinstate, continue or extend the term of this Lease, or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy; it being agreed that after the service of notice to terminate this Lease or the commencement of a suit or summary proceedings, or after final order or judgment for the possession of the Premises, Landlord may demand, receive and collect any monies due thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such monies collected being deemed payments on account of the use and occupation of the Premises, or at the election of Landlord, on account of Tenant's liability hereunder.

Section 13.10 Waiver of Trial by Jury. Landlord and Tenant, so far as permitted by law, waive and will waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim or injury or damage.

Section 13.11 No Right to Claim Future Rent Not Due. In the event of the institution of any action to secure possession of the Premises pursuant to any of the provisions of this Lease because of the default of Tenant, or in the event that this Lease be terminated by Landlord pursuant to any of the provisions of this Lease, Tenant will not claim or assert that such termination or any action to secure possession of the Premises has cancelled or has affected the liability of Tenant to continue to pay the amount of rent herein reserved on the regular rent days herein first above provided, it being expressly agreed that notwithstanding any such action to secure possession of the Premises or termination of this Lease, Tenant shall nevertheless continue to be liable for and to pay when due to Landlord the sums herein reserved as rent.

Section 13.12 Surrender of Possession. Tenant agrees at the end of the term of this Lease or its earlier termination as provided by this Lease, Tenant shall peaceably surrender possession of the Premises and deliver the Premises to Landlord in same condition as leased, normal wear and tear excepted, free of all tenancies, liens and encumbrances. Although normal wear and tear for the new building shall be based upon its use as a transfer station, at the termination of the Lease it shall nonetheless be surrendered structurally sound and in usable condition.

## **ARTICLE XIV SUBORDINATION; ATTORNMENT**

Section 14.1 Subordination. The right of Tenant under this Lease shall be subject and subordinate to the lien of all present or future mortgage or other encumbrance upon Landlord's fee ownership of the Premises. This clause shall be self-operative but, in any event, Tenant hereby agrees to execute and deliver within fifteen (15) days of demand any Subordination Agreement required by Landlord's mortgagee.

Section 14.2 Attornment. In the event of foreclosure of any mortgage of deed in lieu of foreclosure, Tenant shall attorn to the purchaser in foreclosure, the party named in any deed in lieu of foreclosure, or such other transferee in foreclosure of in lieu thereof, and shall recognize party as the Landlord under this Lease.

## **ARTICLE XV ESTOPPEL LETTER**

Section 15.1. Right to Request. Tenant shall, at any time and from time to time within twenty (20) days after request by Landlord, certify by written instrument duly executed, acknowledged and delivered to Landlord, any information pertaining to or arising out of this Lease, provided such facts are true and ascertainable. If the facts are not ascertainable or true, then Tenant shall so state in writing.

Section 15.2. Failure to Deliver. Upon the failure of Tenant to deliver such certificate within the time above specified, such failure shall be deemed tantamount to the delivery of the certificate by Tenant to Landlord to the effect that the Lease is valid and substituting and in full force and effect and that Landlord, at the time, is not in default under any of the terms of the Lease.

## **ARTICLE XVI NO SET-OFFS**

Section 16.1 Except as expressly set forth herein, the fixed rent, additional rent and all other sums payable by Tenant hereunder shall be paid without notice, demand, counterclaim, set-off, deduction or defense and without abatement, suspension, deferment, diminution or reduction, it being the intention that the obligations of Landlord and Tenant hereunder shall be separate and independent covenants and agreements, and the obligations and liabilities of Tenant hereunder except as otherwise specifically set forth in this Lease, shall in no way be released, discharged or otherwise affected by (a) any damage to or destruction of any condemnation of the Premises or any part thereof except as provided in this Lease; (b) any restriction or prevention of or interference with any use of the Premises or any part thereof provided that Tenant's use is not adversely affected; (c) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Landlord, or any assignee of Landlord's interest in the Lease; or (d) any claim which Tenant has or might have against Landlord or any such assignee; excluding, however, any total or partial dispossess or eviction of Tenant by reason of the existence of any title in or to the Premises which is superior to that of Landlord.

## **ARTICLE XVII FORCE MAJEURE**

Section 17.1 If Landlord or Tenant shall be delayed in, or prevented from, the performance of any obligation hereunder by reason of any cause beyond Landlord's or Tenant's reasonable control, including fire or other casualty, strike, lockout, breakdown, abnormally adverse weather conditions, accident, order or regulation of or by any governmental authority, or because of war, insurrection, or other public emergency, or for any cause due to an act of neglect of one of the parties to this Lease, then and in such events only the performance of non-negligent party shall be excused during the period of such delay or prevention, and the Lease shall not terminate.

## **ARTICLE XVIII QUIET ENJOYMENT**

Section 18.1. Provided Tenant is not in default of the terms and conditions of this Lease, Tenant may peaceably and quietly enjoy the Premises without nuisance or interference of Landlord or any other person except as is specifically provided in this Lease.

## **ARTICLE XIX HOLDOVER**

Section 19.1 Should Tenant continue to occupy the Premises after the expiration of the term hereunder or after a forfeiture incurred, whether with or without the consent of Landlord, and without executing a new lease, such holding over shall not constitute a renewal or extension of this Lease but such holding over shall be an unlawful detainer and Tenant shall be subject to immediate eviction and removal and Tenant shall pay for any period during which Tenant remains in the Premises after the term ends, as liquidated damages, a sum equal to twice the fixed rent at the rate in effect at the end of the expired term.

## **ARTICLE XX MEMORANDUM OF LEASE**

Section 20.1. This Agreement (or a memorandum thereof) shall be recorded or filed, as the case may be, in the Office of the Clerk of Rensselaer County, New York, or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.

## **ARTICLE XXI GUARANTY OF LEASE**

Section 21.1. The obligation of Landlord to perform under the provisions of this Lease is expressly conditioned upon the due execution and delivery to Landlord by Tenant of the Guaranty of Lease in the form set forth in Exhibit B attached hereto and made a part hereof.

## **ARTICLE XXII** **COVENANT AGAINST LIENS**

Section 22.1. Neither party will do, or fail to do, anything that will cause a lien to be filed on the other party's interest in the Premises.

Section 22.2. Discharge of Liens and Encumbrances. The Tenant shall not permit or create or suffer to be permitted or created any lien upon the Premises or Facility or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Premises or Facility or any part thereof except any liens existing on the date hereof. This provision shall not prohibit the securing of any liens approved by the Landlord in writing. Notwithstanding the provisions of this Section 22.2, the Tenant may in good faith contest any such lien. In such event, the Tenant, with prior written notice to the Landlord, may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Landlord shall notify the Tenant to promptly secure payment of all such unpaid items by filing the requisite bond, in form and substance satisfactory to the Landlord, thereby causing a lien to be removed.

## **ARTICLE XXIII** **EVENTS OF DEFAULT; CONDITIONAL LIMITATIONS; REMEDIES**

Section 23.1. Definition. Each of the following events shall be an "Event of Default" or "Default" hereunder:

If Tenant shall fail to make any payment (or any part thereof) as and when due hereunder and such failure shall continue for a period of ten (10) days after written notice; or If Landlord shall fail to maintain the Premises as provided in this Lease or fails to comply with any other terms of this Lease and if such failure shall continue for a period of five (5) days after notice (in the case of a life-threatening or hazardous condition) or forty-five (45) days after notice (in the case of any other condition) unless such failure requires work to be performed, acts to be done or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such five (5) -or forty five (45)-day period, in which case no Event of Default shall exist as long as Landlord shall have commenced curing the same within the five (5) - or forty-five (45)-day period and shall diligently and continuously prosecute the same to completion within one hundred eighty (180) days (subject to Unavoidable Delays) from said notice.

Section 23.2. Enforcement of Performance. Subject to the provisions of Articles hereof; if an Event of Default occurs, either party may elect to proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by the other party of the applicable provisions of this Lease, and/or to recover damages.

Section 23.3. Expiration and Termination of Lease.

If an Event of Default occurs, either party at any time thereafter, that such Event of Default remains uncured, may, at its option, give the other party and any Leasehold Mortgagee notice stating that this Lease and the Term shall terminate on the date specified in such notice, which date, unless otherwise provided herein, shall not be less than ten (10) days after the giving of the notice, and in such event, this Lease and the Term and all rights of the other party under this Lease shall expire and terminate

as if the date specified in the notice were the Lease Expiration Date, and Tenant shall quit and surrender the Premises forthwith.

In case of any such default, termination, expiration, taking by condemnation and/or dispossess by summary proceedings or otherwise of this Lease, Tenant shall be compensated for the future benefit to Landlord derived from the repairs made to the transformer and any accessory components thereto, as said repaired items remain on the Premises, as amortized over the useful life of the items, calculated on a straight line basis from the date of the termination, expiration and/or taking of this Lease forward, including consideration of any depreciation in value during the Term hereof.

#### **ARTICLE XXIV** **ENTIRE AGREEMENT OF PARTIES**

Section 24.1. Entire Agreement of Parties. This Lease, together with the Exhibits, Schedules and Appendices hereto, contain all of the promises, agreements, conditions, inducements, and understandings between Landlord and Tenant concerning the Premises, and merges and supersedes all prior negotiations, understandings and agreements relating thereto, and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between them other than as expressly set forth herein or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the parties hereto.

Section 24.2. No Broker. No Broker was involved in this transaction.

#### **ARTICLE XXV** **MISCELLANEOUS PROVISIONS**

Section 25.1. No Waiver. No oral statement or prior written matter shall have any force or effect. No waiver by either party of any breach by the other of any of its obligations, agreements or covenants hereunder shall be deemed to be waiver of any subsequent breach of the same or any other covenant, agreement or obligation, nor shall any forbearance by either party to seek a remedy for any breach by the other be deemed a waiver by either party of its rights or remedies with respect to such breach. The acceptance by Landlord of any rent accruing before or after any remedies provided in the Lease shall be cumulative and shall not in any way abridge, modify or preclude any other rights or remedies to which Landlord may be entitled either at law or in equity.

Section 25.2. Agreement to Provide Information. The Tenant agrees, whenever requested by the Landlord, to provide and certify or cause to be provided and certified, without delay, such information concerning the Tenant, the Tenant's employment history and statistics related thereto, the Premises and/or Facility and other topics necessary to enable the Landlord to make any report required by law or governmental regulation or as otherwise reasonably requested by the Landlord.

Section 25.3. Books of Record and Account; Financial Statements. The Tenant at all times agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Tenant relating to the Premises and/or Facility.

Section 25.4. Compliance With Orders, Ordinances, Etc. The Tenant agrees that it will, throughout the term of this Lease Agreement, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations,

permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Premises and/or Facility or any part thereof, or to any use, manner of use or condition of the Premises and/or Facility or any part thereof. Notwithstanding the provisions of this Section 25.4, the Tenant may in good faith contest the validity of the applicability of any requirement of the nature referred to above. In such event, the Tenant may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom. The Tenant will endeavor to give notice of the foregoing to the Landlord but failure to do so shall not be a breach of this Lease Agreement.

Section 25.5 Depreciation Deductions and Investment Tax Credit. The parties agree that the Tenant shall be entitled to all depreciation deductions with respect to any depreciable property in the Facility pursuant to Section 167 of the Internal Revenue Code and to any investment credit pursuant to Section 38 of the Internal Revenue Code with respect to any portion of the Premises and/or Facility which constitutes "Section 38 Property."

Section 25.6 Agreement to Pay Attorneys' Fees and Expenses. In the event the Tenant should default under any of the provisions of this Lease Agreement and the Landlord should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Tenant shall, on demand therefor, pay to the Landlord, the reasonable fees of such attorneys and such other expenses so incurred. In addition, and commensurate with the execution and delivery of this Agreement, Tenant shall pay the reasonable attorneys fees of Landlord in connection with the negotiation, drafting and delivery of this Agreement.

Section 25.7. Successors and Assigns. The provisions of the Lease shall extend to and be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, successors and assigns.

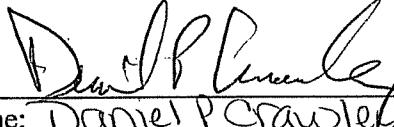
Section 25.8. Severability. The sections of the Lease are intended to be severable. If any section or provision of the Lease shall be held to be unenforceable by any Court of competent jurisdiction, the Lease shall be construed as though such section had not been included in it. If any section or provision of the Lease shall be subject to two constructions, one of which would render such section or provision invalid, then such section shall be given the construction which would render it valid.

Section 25.9. Governing Law. This Lease shall be governed by the laws of the State of New York.

Section 25.10. Counterparts. This Lease may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, this Lease has been duly executed by Landlord and Tenant as of the date first above written.

LANDLORD:  
TROY LOCAL DEVELOPMENT CORP.

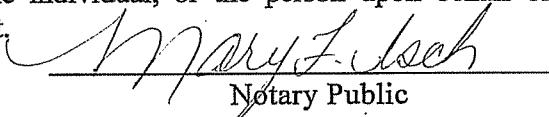
By:   
Name: Daniel P. Crawley  
Title: President

TENANT:  
COUNTY WASTE TRANSFER CORP.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF RENSSELAER )

On the 23rd day of January, 2009, before me, the undersigned, personally appeared Daniel Crawley, Chairman of the Troy LDC, 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.

  
Mary F. Isch  
Notary Public

MARY F. ISCH  
NOTARY PUBLIC, State of New York  
No. 01154729938  
Qualified in Saratoga County  
My Commission Expires Dec. 31, 2010

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF RENSSELAER )

On the \_\_\_ day of \_\_\_\_\_, 2009, before me, the undersigned, personally appeared Tony Dawson, 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

IN WITNESS WHEREOF, this Lease has been duly executed by Landlord and Tenant as of the date first above written.

LANDLORD:  
TROY LOCAL DEVELOPMENT CORP.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TENANT:  
COUNTY WASTE TRANSFER CORP.

By: *S & CL*  
Name: SCOTT T. EARL  
Title: TAX MEMBER

STATE OF NEW YORK )  
) ss:  
COUNTY OF RENSSELAER )

On the      day of     , 2009, before me, the undersigned, personally appeared Daniel Crawley, Chairman of the Troy LDC, 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 )  
) ss:  
COUNTY OF RENSSELAER )

On the 25 day of January, 2009, before me, the undersigned, personally appeared Scott Earl, 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

LAWRENCE R. SCHILLINGER  
Notary Public, State of New York  
No. 4985458

Qualified in Albany County  
Comm. Examin. *19 Dec 19 2001*

## EXHIBIT "A"

ALL the following two parcels of land situate in the City of Troy, County of Rensselaer and State of New York bounded and described as follows:

### PARCEL I

ALL THAT TRACT OR PARCEL OF LAND SITUATE WITH THE BUILDINGS AND IMPROVEMENTS THEREON ERECTED, IN THE CITY OF TROY, COUNTY OF RENSSELAER AND STATE OF NEW YORK THE ABOVE DESCRIBED BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING at a point in of intersection of the Northerly line of Water Street with the Easterly Right-of-way line of the former Troy & Greenbush Railroad Association (now lands of Conrail) THENCE North 36° 32' East along said railroad right of way, a distance of 53.29 feet to a point; THENCE South 80° 11' East, again along said railroad right of way, a distance of 35.0 feet to a point; THENCE North 36° 32' East, again along said railroad right of way, a distance of 111.30 feet to a point; THENCE along lands conveyed to New York Power & Light Corp. (Book 527 of Deeds at Page 026) the following four (4) courses:

South 36° 11' East, a distance of 50.38 feet to a point;

North 88° 51' East, a distance of 150.00 feet to a point;

North 12° 02' East, a distance of 200.20 feet to a point;

North 77° 58' West, a distance of 107.30 feet to a point in the above mentioned Easterly Conrail right of way; THENCE Northerly, along said railroad right of way the following twelve (12) courses:

North 32° 28' East, a distance of 104.80 feet to a point;

North 22° 32' East, a distance of 254.0 feet to a point;

North 67° 35' West, a distance of 71.5 feet to a point;

North 20° 57' East, a distance of 106.67 feet to a point;

North 31° 03' East, a distance of 56.0 feet to a point;

North 62° 51' East, a distance of 40.22 feet to a point;

North 34° 15' East, a distance of 66.5 feet to a point;

North 07° 27' East, a distance of 56.6 feet to a point;

North 11° 44' East, a distance of 101.8 feet to a point;

North 34° 50' East, a distance of 85.0 feet to a point;

North 38° 00' West, a distance of 18.0 feet to a point;

North 17°57' East, a distance of 44.69 feet to the Northerly Bank of the Wynants Kill; THENCE Easterly along the Northerly bank of the Wynants Kill as it winds and turns to a point in said Northerly Bank which is distant 509.03 feet measured South 55° 42' 20" East from the last described point (in the Easterly right of way line of Conrail); THENCE North 21° 22' West, a distance of 53.0 feet to the southwest corner of the former Chas. McConville dwelling and store (now the "South End Tavern"); THENCE North 66°33' East, along the South wall of said building, a distance of 45.60 feet to the Southeast corner thereof; THENCE South 20° 29' 30" East, along the Westerly line of Burden Avenue, a distance of 218.76 feet to a point; THENCE South 16° 06' West, along the West line of Water Street, a distance of 518.10 feet to the point of curvature of a curve to the right having a central angle of 78° 47' 55" and a radius of 455.0 feet; THENCE Southerly and westerly, along said curve which is along the line of Water Street, an arc distance of 625.76 feet to a point; THENCE North 85° 00' West, again along the North line of Water Street, a distance of 207.79 feet to a point; THENCE North 74° 07' 40" West, again along said line of Water Street, a

235256 1092630.1

distance of 258.83 feet to the Point and Place of Beginning. Containing 15.9 Acres of land, more or less.

**PARCEL 2**

ALSO ALL THAT TRACT OR PARCEL OF LAND SITUATE, WITH THE BUILDINGS AND IMPROVEMENTS THEREON ERECTED, IN THE CITY OF TROY, COUNTY OF RENSSELAER AND STATE OF NEW YORK THE ABOVE DESCRIBED BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING at a point of intersection of the Southerly line of Water Street with the Easterly Right of Way line of the former Troy & Greenbush Railroad Association (now lands of Conrail), said point being distant 40 feet measured South 15° 52' 20" West from the Point of Beginning of the above described 15.9± Acre parcel; THENCE South 04° 07' 20" East, along said railroad right of way a distance of 42.0 feet to a point; THENCE South 83° 23' 20" East, a distance of 244.2 feet to a point in the Southerly line of Water Street, aforesaid, THENCE North 74° 07' 40" West, along said street line of distance of 255.84 feet to the Point and Place of Beginning. Containing 5,030 square feet of land, more or less.

EXCEPTING AND RESERVING THE FOLLOWING:

BEGINNING at the northeasterly corner of lands now or formerly of New York Power & Light as described in a deed recorded in the office of the Rensselaer County Clerk in Book 527 at page 26; thence westerly along the north line of said lands of New York Power & Light, a distance of 107 feet more or less, to the northwesterly corner of said lands of New York Power & Light, at a point in the easterly line of lands now or formerly of Conrail; thence northeasterly along said easterly line of said lands of Conrail, 105 feet more or less to an angle point in said easterly line of said lands of Conrail; thence northerly and continuing along said easterly line of said lands of Conrail, a distance of 182 feet more or less; thence easterly through lands of the Troy Local Development Corporation along a line approximately 10 feet northerly of the bottom of slope of an existing slag heap, a distance of 247 feet more or less; thence southeasterly, continuing through said lands of the Troy Local Development Corporation along a line approximately 10 feet northeasterly of said bottom of slope of an existing slag heap, a distance of 92 feet more or less; thence southerly, continuing through said lands of the Troy Local Development Corporation along a line approximately 10 feet northeasterly of said bottom of slope of an existing slag heap, a distance of 299 feet more or less; thence southwesterly, continuing through said lands of the Troy Local Development Corporation along a line approximately 10 feet southeasterly of said bottom of slope of an existing slag heap, a distance of 104 feet more or less; thence westerly, continuing through said lands of the Troy Local Development Corporation along a line approximately 10 feet southerly of said bottom of slope of an existing slag heap, a distance of 91 feet more or less to a point in the southerly prolongation of the east line of the aforesaid lands of New York Power & Light, said point being 41 feet more or less distant southerly from the southeasterly corner of said lands of New York Power & Light as measured along said southerly prolongation; thence northerly along said southerly prolongation, and along said east line of said lands of New York Power & Light, a distance of 241 feet more or less to the point or place of beginning.

Containing in all 2.5 acres of land being more or less.

EXHIBIT B  
LEASE GUARANTY

LEASE GUARANTY

For good and valuable consideration, County Waste and Recycling Service, Inc., a business corporation duly incorporated and validly existing under the laws of the State of New York with offices at 1927 Route 9, Clifton Park, New York 12065 (the "Guarantor") hereby irrevocably, absolutely and unconditionally guarantees to Troy Local Development Corporation (the "Corporation") and its assigns the full and prompt payment of all indebtedness, liabilities and obligations of the Tenant pursuant to a certain Amended and Restated Lease Agreement between the Corporation, as Landlord, and County Waste Transfer Corp., as Tenant, dated as of November \_\_, 2008 (the "Lease Agreement"), including, without limitation, the payment of the principal amount of the respective obligations and all interest, fees, costs and expenses. The Guarantor further irrevocably, absolutely and unconditionally guarantees to the Corporation and its assigns the performance of obligations contained within the Lease Agreement, as set forth therein. This within guaranty is independent of and in addition to any other guaranty, endorsement, collateral or other agreement held by the Corporation or its and is a guaranty of payment and performance, not of collection.

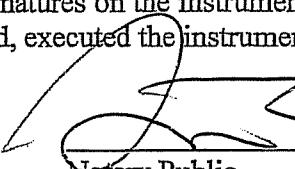
Dated: \_\_\_\_\_

COUNTY WASTE AND RECYCLING  
SERVICE, INC.

By: Scott Earl  
Name: Scott Earl  
Title: President

State of New York  
ss.:  
County of Albany

On the 23 day of January in the year 2009 before me, the undersigned, personally appeared Scott Earl, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public

LAWRENCE R. SCHILLINGER  
Notary Public, State of New York  
No. 4985458  
Qualified in Albany County  
Comm. Expires Aug 15 2009

**EXHIBIT C**

**DEC PERMIT #4-3817-00111/00004**

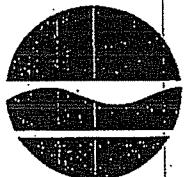
**New York State Department of Environmental Conservation**

**Division of Environmental Permits, Region 4**

1130 North Westcott Road, Schenectady, New York 12306-2014

Phone: (518) 357-2069 • FAX: (518) 357-2460

Website: [www.dec.state.ny.us](http://www.dec.state.ny.us)



Alexander B. Grannis  
Commissioner

June 23, 2008

Ronald P. Benson  
County Waste Transfer Corp.  
1927 Route 9  
Clifton Park, NY 12065

RE: DEC #4-3817-00111/00005  
County Waste Transfer - Troy Facility  
Troy, Rensselaer County

Dear Mr. Benson:

The permit you applied for is enclosed. Please read it carefully and note the special conditions that are included in it. The permit is valid for only those activities expressly authorized therein. Work beyond the scope of the permit and the approved project plans may be considered a violation of the law and subject to appropriate enforcement action.

Please be advised that the Uniform Procedures Regulations (6NYCRR Part 621) provide that an applicant may request a public hearing if a permit is denied or contains conditions which are unacceptable to him/her. Should you object to the permit as issued and are unable to resolve such objections with this office you may, within 30 calendar days of this transmittal, request a hearing in writing from the Regional Permit Administrator. Any such request must be made in writing, within 30 calendar days of the date of permit issuance, and must be addressed to the Regional Permit Administrator at the address listed above. A copy of the request should also be sent to the Chief Administrative Law Judge at NYSDEC, 625 Broadway, 1st Floor, Albany, NY 12233-1550.

If you have any questions on the extent of the work authorized, or your obligations under the permit, please feel free to contact me.

Sincerely,

Nancy M. Baker  
Environmental Analyst 2  
Region 4

Enclosure

cc:  Lawrence Schillinger Schillinger Environmental Associates 5 Palisades Drive Suite 300, Albany, NY 12205  
Dick Forgea DSHM, Region 4  
File

## NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

DEC PERMIT NUMBER  
4-3817-00111/00004

FACILITY/PROGRAM NUMBER(S)



## PERMIT

Under the Environmental  
Conservation Law (ECL)EFFECTIVE DATE  
June 23, 2008

EXPIRATION DATE(S)

July 31, 2013

## TYPE OF PERMIT (Check All Appropriate Boxes)

 NEW RENEWAL MODIFICATION PERMIT TO CONSTRUCT PERMIT TO OPERATEARTICLE 15, TITLE 5:  
PROTECTION OF WATERARTICLE 15, TITLE 15:  
WATER SUPPLYARTICLE 15, TITLE 15:  
WATER TRANSPORTARTICLE 15, TITLE 15:  
LONG ISLAND WELLSARTICLE 15, TITLE 27: WILD,  
SCENIC & RECREATIONAL RIVERS6NYCRR 608:  
WATER QUALITY CERTIFICATIONARTICLE 17 TITLES 7, 8:  
SPDESARTICLE 19:  
AIR POLLUTION CONTROLARTICLE 23, TITLE 27:  
MINED LAND RECLAMATIONARTICLE 24:  
FRESHWATER WETLANDSARTICLE 25:  
TIDAL WETLANDSARTICLE 27, TITLE 7: 6NYCRR 360:  
SOLID WASTE MANAGEMENTARTICLE 27, TITLE 9; 6NYCRR 373:  
HAZARDOUS WASTE MGMTARTICLE 34: COASTAL  
EROSION MANAGEMENTARTICLE 36:  
FLOODPLAIN MANAGEMENTARTICLES 1, 3, 17, 19 27, 37;  
6NYCRR 380: RADIATION CONTROLARTICLE 27, TITLE 3, 6NYCRR 364:  
WASTE TRANSPORTER

OTHER:

PERMIT ISSUED TO:  
County Waste Transfer CorpTELEPHONE NUMBER  
(518) 877-7007ADDRESS OF PERMITTEE  
1927 Route 9, Clifton Park, NY 12065CONTACT PERSON FOR PERMITTED WORK  
Ronald P. Benson

TELEPHONE NUMBER

NAME AND ADDRESS OF PROJECT/FACILITY  
County Waste Transfer Corp.LOCATION OF PROJECT/FACILITY  
799 Burden Avenue, Troy, NYCOUNTY  
Rensselaer.TOWN/CITY/VILLAGE  
Troy

WATERCOURSE/WETLAND NO

NYTM COORDINATES  
E: 606.4 N: 4728.6

## DESCRIPTION OF AUTHORIZED ACTIVITY:

Continued operation of a construction and demolition (C&D) waste transfer station, and recyclable handling and recovery facility, with an approved throughput of 400 tons of material per day. The modification authorizes the acceptance of municipal solid waste (MSW) for transfer at the facility, which will be accomplished within the existing onsite building. Recyclables are to be separated from the waste stream, and the facility will incorporate enclosed tipping floors, areas for separation of recyclables, vehicle parking and administrative offices.

By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, the General Conditions specified (see page 2) and any Special Conditions included as part of this permit.

DEPUTY PERMIT ADMINISTRATOR:  
Nancy M. BakerADDRESS NYS DEC, Region 4 Headquarters  
1130 North Westcott Road, Schenectady, NY 12306

AUTHORIZED SIGNATURE

DATE

6/23/08

Page 1 of 4

### Special Conditions

1. All construction and/or operation of the facility shall conform to the following reports prepared for the permittee by Jeffrey Holt, P.E., Holt Consulting and Schillinger Environmental Associates, LLC
  - A. The application , engineering report and environmental assessment form dated May 2008 (application incorporated and signed May 9, 2008).
  - B. The plans and drawings (dwg. No 08-205 11-1) May 7, 2008
2. Hours of operation shall be limited to Monday through Saturday 7:00 am - 8:00 pm. Operation shall be defined as receipt of or shipment of waste to or from the facility or the processing or handling of solid waste within the facility.
3. The facility shall not accept more than 400 tons per day, average daily tonnage, based on a rolling 30 day average, of mixed municipal solid waste (MSW), non-municipal residues and construction and demolition debris (C&D), not to exceed 600 tons per day on any given day.
4. All solid waste, including MSW and C&D shall be transferred, stored and/or processed in an enclosed area. No waste shall be handled outside of the enclosed building described in the engineering report.
5. The permittee shall submit an annual report to the Department's Region 4 office no later than March 1 of every year providing all information in accordance with section 360-1.4(c).
6. The permittee shall maintain surety in an amount not less than \$48,500 in a format acceptable to the Department in accordance with section 360-1.12.
7. No hazardous waste shall be accepted at the facility. Any unacceptable waste received at the facility shall be handled in accordance with procedures described in Section III, Operational Controls, paragraph (e), Monitoring of Waste of the application dated May , 2008.
8. The facility shall be maintained in a clean and nuisance free manner All necessary steps shall be taken to prevent litter, dust, blowing papers, odors, etc .

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