

**A SEPARATE CONTRACT WILL BE USED
FOR EACH AWARDING MUNICIPALITY**

CONTRACT

THIS AGREEMENT, made this 3rd day of March, 200⁴~~3~~ by and between the
Township of Newton, in the County of Lackawanna and Commonwealth of
Pennsylvania, a Municipal Corporation, hereinafter referred to as the "**MUNICIPALITY**".

AND

Waste Management of Pennsylvania, Inc 13 Peggy Parkway Dunmore Pa
Lackawanna County and Commonwealth of Pennsylvania

hereinafter referred to as the "**CONTRACTOR**".

WITNESSETH:

WHEREAS, the **MUNICIPALITY** has solicited Bids for the collection, disposal and recycling
of Municipal Solid Waste generated with the **MUNICIPALITY** for a period of three (3) Contract
Years and General Conditions have been set forth, which Conditions are incorporated herein by
reference; and

WHEREAS, a Bid dated November 20th, 2003 in accordance with such advertisement
and conditions has been submitted by the **CONTRACTOR**, said Bid being incorporated by
reference; and

WHEREAS, **MUNICIPALITY** and **CONTRACTOR** are desirous of entering into a Contract
one with the other in accordance with said Bid; and

NOW, THEREFORE, in consideration of the following mutual agreements, it is understood
and agreed as follows:

1. **CONTRACTOR** is hereby granted the sole and exclusive license and privilege within
the **MUNICIPALITY** and shall furnish all personnel, labor, equipment, trucks and all other items
necessary to provide for the collection, transportation and disposal or recycling of residential

Municipal Solid Waste as specified and to perform all of the work called for and described in the Contract Documents.

2. The Contract Documents shall include the following documents, and this Contract does hereby expressly incorporate same herein as fully as if set forth verbatim in this Contract.

- a. Request for Bids.
- b. Instructions to Bidders.
- c. General Conditions/Scope of Work, Forms and attachments therein referred.
- d. Contractor's Bid.
- e. Certificate(s) of Insurance.
- f. Performance Bond.
- g. Guarantee.
- h. Township/Borough Ordinance No. 2004-1.
- i. This Instrument.
- j. Any addenda or changes to the foregoing documents agreed to by the parties hereto.

3. All provisions of the Contract Documents shall be strictly complied with and conformed to by the **CONTRACTOR**, and no amendment to this Contract shall be made except upon the written consent of the parties, which consent shall not be unreasonably withheld. No amendment shall be construed to release either party from any obligation of the Contract Documents except as specifically provided for in such amendment.

4. This Contract is entered into subject to the following conditions:

- a. The **MUNICIPALITY** shall have no duty or responsibility whatsoever to see that every person or residential establishment within the **MUNICIPALITY** shall not permit any other collector of residential Municipal Solid Waste to operate within the **MUNICIPALITY**.
- b. The **CONTRACTOR** shall procure and keep in full force and effect throughout the term of this Contract all of the insurance policies specified in and required by the General Conditions. Current Certificates of Insurance shall be furnished to the **MUNICIPALITY** as required.

c. Force Majeure:

1. Neither **CONTRACTOR** nor **MUNICIPALITY** shall be responsible or liable for, and shall be excused from, a failure to perform under this Agreement only to the extent that such failure and Force Majeure is beyond the reasonable control of the party relying on Force Majeure as justification for such failure.
2. For this paragraph, "perform under this Agreement" by a party means that party's respective duties, obligations, or complying with any condition required of that party under this Agreement. For the **CONTRACTOR**, "perform under this Agreement" includes performance at all alternate landfills.
3. "Party", for the **CONTRACTOR**, includes all subsidiary or affiliated corporations and alternate landfills.
4. "Force Majeure" means any of the following acts, events or conditions, or any combination of acts, events, or conditions, that prevents or inhibits a party from performing under this Agreement and which applies equally to others situated similarly to these parties. Such acts, events, or conditions shall be limited to the following:
 - i. Acts of God or natural catastrophes, such as fires, earthquakes, landslides, explosions, nuclear accidents or incidents.
 - ii. Severe weather, such as lightning, hurricanes, tornadoes, blizzards, or floods.
 - iii. Wars, blockades, insurrections, riots or civil disturbances, acts of public enemies, extortions, sabotage, or similar occurrences.

- iv. Any exercise of the power of eminent domain, condemnation, or other taking by the action of any governmental body or authority.
- v. Any act of any governmental body, authority, or agency, including any federal, state or local court or administrative board of law judge, including, but not limited to, subsequent change in statutes, rules, regulations, requirements, permits, approvals, orders, actions, and/or judgments, and the suspension, interruption, termination, or failure to renew or issue any permit, license, consent, authorization, or approval, provided that any such act is a material change in the general legal conditions which are the basis for this Contract and which substantially impairs the **CONTRACTOR'S** actual operations and performance of the Contract, beyond mere economical hardship. Furthermore, such acts shall not include acts which require only this **CONTRACTOR**, its affiliates and subsidiaries, and disposal sites under this Contract to correct, abate, comply, or upgrade to meet the requirements of any environmental law relating to the collection and disposal of MSW and recycling.

Force Majeure shall not include labor difficulties or disputes, strikes, stoppages, interruptions, picketing, or other concerted labor actions.

- d. The prices as set forth by the **CONTRACTOR** in his/her Bid shall not be changed during the period of this Agreement except as outlined in the Bid Documents.

5. The **CONTRACTOR** shall provide collection vehicles designed and maintained so as to be leakproof, easily loaded, readily emptied, mechanically sound and easily cleaned; they shall be sanitation vehicles with metal body construction, water tight, of compaction and shall be kept thoroughly cleaned and painted.

6. **CONTRACTOR** and its employees shall exercise every reasonable care in handling of trash and recycling receptacles and shall not willfully or negligently break, deface or injure same.

CONTRACTOR'S employees shall eliminate unnecessary noise in the collection of trash and recyclables.

7. The **CONTRACTOR** shall be regarded as an independent Contractor, and not as an agent of the **MUNICIPALITY** and shall be solely responsible for any and all damage to property and persons or accidents which may occur to any person or persons in consequence of the act of the **CONTRACTOR** or his/her employees and shall indemnify, hold harmless and defend the **MUNICIPALITY** against and from all suits or actions of every kind and description.

8. In the event that any provision or portion of any Contract Document shall be found to be invalid or unenforceable, then such provision or portion thereof shall be reformed in accordance with applicable laws. The invalidity or unenforceability of any provision or portion of any Contract Document shall not affect the validity or enforceability of any other portion of the Contract Documents.

9. The work to be performed under this Contract shall be commenced on or about January 1, 2004 under General Conditions Section 3.5, if awarded the Recycling Program, and January 1, 2004, for the Residential MSW Collection and Disposal Program, and shall continue for a period of up to and including December 31, 2008 (termination date of Contract) as more fully provided in the Contract Documents.

10. The **CONTRACTOR** expressly agrees to protect, exonerate, defend, indemnify and save harmless the **BOROUGH** and /or **TOWNSHIP**:

- a. From any and all costs or liabilities, claims or demands whatsoever legal or otherwise, that may have arisen out of, or result from acts of commission or

omission of the **CONTRACTOR** or his sub-contractors or materialmen, their agents, servants, or employees, directly or indirectly out of the performance of this Agreement or contracts executed pursuant thereto or arising out of acts of omission or commission by any person whatsoever.

- b. From any and all costs or liabilities, claims and demands whatsoever, legal or otherwise, which may arise or have arisen out of the **CONTRACTOR'S** actions or and from any and all loss, damage, costs, expense or liability based on personal injury or death or loss or damage to property suffered or incurred by any person, firm or corporation (including the parties hereto) and arising out of or attributable to the Contract and performance or nonperformance thereunder.

CONTRACTOR agrees that it will not join the **MUNICIPALITY** as a third party defendant in any legal action alleging costs or liabilities due to the aforesaid which may be instituted by any party against **CONTRACTOR**. The **MUNICIPALITY** shall give prompt notice to **CONTRACTOR** of any claim asserted against the **MUNICIPALITY** (in whatever capacity named) which, if sustained, may result in liability on **CONTRACTOR** hereunder; provided, however, that the failure on the part of the **MUNICIPALITY** to give such notice shall not relieve **CONTRACTOR** from its obligation to protect, exonerate, defend and indemnify and save the **MUNICIPALITY** harmless as aforesaid, and, in case any action or proceeding be brought against the **MUNICIPALITY** by reason of any such claim, **CONTRACTOR**, upon notice from the **MUNICIPALITY** covenants and agrees to resist or defend such action or proceeding by counsel satisfactory to the **MUNICIPALITY**, provided, however,

MUNICIPALITY will cooperate and assist in the defense of such action or proceeding if reasonably requested to do so by **CONTRACTOR** and at the expense of **CONTRACTOR**.

IN WITNESS WHEREOF, the parties have executed this **CONTRACT** this 3rd day of

March, 200⁴~~3~~

ATTEST:

MUNICIPALITY

Francine D. Miller
Secretary

By: Dan Mattson

By: [Signature]

By: [Signature]

ATTEST:

[Signature]
ASST. Secretary

CONTRACTOR:

WASTE MANAGEMENT OF PENNSYLVANIA, INC.

By: [Signature]
RICHARD GODSHALL, VICE PRESIDENT

CONSENT AND JOINDER N/A

_____, being the **GUARANTOR** of the **CONTRACTOR** consents to and agrees to be bound by the terms hereof, including but not limited to Paragraph 10 hereof.

WITNESS/ATTEST:

GUARANTOR

By: _____