

# Wayne County Municipal Waste Management Plan 2020-2029

## Wayne County Solid Waste Department



## FINAL PLAN

February 2020



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## ACKNOWLEDGEMENTS

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## MATERIAL DEFINITIONS & ABBREVIATIONS

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### MATERIAL DEFINITIONS

In Pennsylvania, waste originating from residential, municipal, and institutional establishments, construction and demolition activities, medical waste from health care facilities, biosolids, ash residue, asbestos, and sewage sludge from municipal wastewater treatment fall within the State regulatory framework for municipal waste management. The following material definitions are derived from Title 25, PA Code, Chapter 271, except where specified.

- **Municipal Waste** – The Pennsylvania regulatory definition for garbage, refuse, industrial lunchroom or office waste and other material, including solid, liquid, semisolid or contained gaseous material resulting from operation of residential, municipal, commercial or institutional establishments and community activities; and sludge not meeting the definition of residual or hazardous waste under this chapter from a municipal, commercial or institutional water supply treatment plant, wastewater treatment plant or air pollution control facility.
- **Municipal Solid Waste (MSW)** - A term commonly used in reference to conventional trash and source-separated recyclables from households, businesses and institutions.
- **Recycling or Recyclables** – Materials separated, collected, and/or recovered from the municipal waste stream for sale or reuse, including metals, glass, paper, plastics and other materials that would otherwise be disposed or processed as municipal waste.
- **Residual Waste** – Garbage, refuse, other discarded material or other waste, including solid, liquid, semisolid or contained gaseous materials resulting from industrial, mining and agricultural operations; and non-hazardous sludges from an industrial, mining or agricultural water supply treatment facility, wastewater treatment facility or air pollution control facility. The term does not include coal refuse as defined in the Coal Refuse Disposal Control Act (52 P. S. § 30.51—30.66).
- **Special Handling Waste** — Solid waste that requires the application of special storage, collection, transportation, processing, or disposal techniques due to the quantity of material generated or its unique physical, chemical or biological characteristics. The term includes dredged material, sewage sludge, infectious waste, chemotherapeutic waste, ash residue from a solid waste incineration facility, friable asbestos-containing waste, PCB containing waste and waste oil that is not hazardous waste.
- **Special Items** – Sometimes referred to as “hard-to-recycle materials,” special items are materials that are routinely generated and usually require special storage, collection, processing, and transportation for recycling and/or disposal. Special items are typically targeted for recovery for recycling and/or to assure proper handling. Examples include bulk items, tires, household hazardous waste, electronics, appliances, scrap metal, construction and demolition materials. *The term Special Items is not defined in the PA Code.*
- **Sewage Sludge** – Liquid or solid sludges or other residues from a municipal sewage sludge collection or treatment system; and liquid or solid sludges and other residues from septic and holding tank pumping from commercial, institutional, or residential establishments. Sewage sludge that has been treated to meet pollutant and pathogen requirements for land application and surface disposal (e.g., land-applied as fertilizer) is referred to as “biosolids.”
- **Construction/Demolition (C/D) Waste** – Solid waste resulting from the construction or demolition of buildings and other structures, including, but not limited to, wood, plaster, metals, asphaltic substances, bricks, block, and unsegregated concrete. The term does not include the following if they are separate from other waste and are used as clean fill: (i) Uncontaminated soil,

## **MATERIAL DEFINITIONS & ABBREVIATIONS**

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rock, stone, gravel, brick and block, concrete and used asphalt, (ii) Waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material.

- **Processed Medical Waste** - Regulated medical and chemotherapeutic municipal and residual waste generated in the diagnosis, treatment, immunization, or autopsy of human beings or animals, in research pertaining thereto, in the preparation of human or animal remains for internment or cremation, or in the production or testing of biologicals. Waste resulting from the production or use of antineoplastic agents used to inhibit or stop the growth of malignant cells or to kill malignant cells.
- **Ash Residue** – Powdery residue left after the burning of a substance.
- **Asbestos** – A heat-resistant fibrous silicate mineral that can be woven into fabrics and is used in fire-resistant and insulating materials such as brake linings.

## **ABBREVIATIONS**

### *Abbreviation      Explanation*

<b>CY</b>	Cubic Yard
<b>C/D</b>	Construction and Demolition
<b>EPA</b>	Environmental Protection Agency
<b>E-Waste</b>	Electronic Waste
<b>GHG</b>	Greenhouse Gas
<b>GPD</b>	Gallons per Day
<b>GVW</b>	Gross Vehicle Weight
<b>HDPE</b>	High-Density Polyethylene
<b>HHW</b>	Household Hazardous Waste
<b>ICW</b>	Infectious and Chemotherapeutic Waste
<b>KAB</b>	Keep America Beautiful
<b>KPB</b>	Keep Pennsylvania Beautiful
<b>LDPE</b>	Low-Density Polyethylene
<b>MGD</b>	Million Gallons per Day
<b>MRF</b>	Material Recovery Facility
<b>MSW</b>	Municipal Solid Waste
<b>MTCE</b>	Metric Tons of Carbon Equivalent
<b>MTCO2E</b>	Metric tons of Carbon Dioxide Equivalent
<b>OCC</b>	Old Corrugated Containers
<b>ONP</b>	Old Newspaper
<b>O&amp;M</b>	Operation and Maintenance
<b>PADEP</b>	Pennsylvania Department of Environmental Protection
<b>PBR</b>	Permit by Rule

## MATERIAL DEFINITIONS & ABBREVIATIONS

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### *Abbreviation*   *Explanation*

<b><i>PEC</i></b>	Pennsylvania Environmental Council
<b><i>PET</i></b>	Polyethylene Terephthalate
<b><i>PP</i></b>	Polypropylene
<b><i>PS</i></b>	Polystyrene
<b><i>RFP</i></b>	Request for Proposal
<b><i>RMW</i></b>	Regulated Medical Waste
<b><i>SWAC</i></b>	Solid Waste Advisory Committee
<b><i>MWMP</i></b>	Municipal Waste Management Plan
<b><i>TPY</i></b>	Tons per Year
<b><i>WARM</i></b>	Waste Reduction Model (EPA)
<b><i>WM</i></b>	Waste Management
<b><i>WTE</i></b>	Waste-to-Energy
<b><i>WWTP</i></b>	Wastewater Treatment Plant

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# CHAPTER 1 – INTRODUCTION

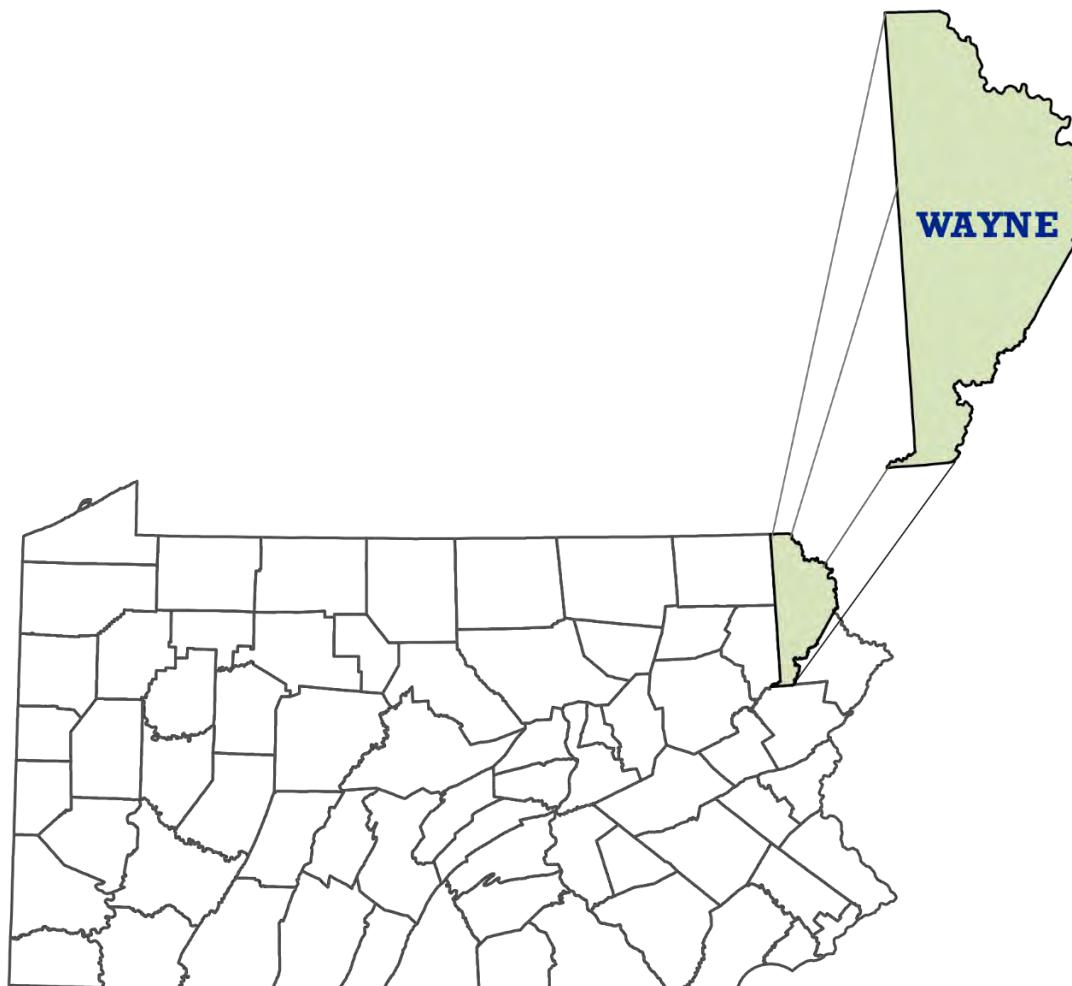
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## 1.1 BACKGROUND

Wayne County is a rural county located in northeastern Pennsylvania (Figure 1-1). The County contains twenty-eight (28) local municipalities, including twenty-two (22) second-class townships and six (6) boroughs. The County population is approximately 50,000, a figure that is increased by 3,500 to 4,000 prisoners housed in the three (3) in-County prisons. The County is the longest county measured north to south in Pennsylvania. There are approximately 75 miles of highway from its northern border with Broome County, New York, to its southern border with Monroe County, Pennsylvania. Valued land features and visitor attractions include the Pocono Mountains, Lake Wallenpaupack, and the Upper Delaware River.

The County Solid Waste Department, through its operation of the Recycling Center in Berlin Twp., offers comprehensive recycling services to County residents. These recycling services supplement private sector disposal and recycling services and provide residents and businesses access to affordable and beneficial waste reduction and recycling opportunities. The County Solid Waste Department, Board of County Commissioners, municipal representatives, County GIS Department, and Solid Waste Advisory Committee (SWAC) contributed to shaping Plan outcomes, goals, and strategies.

Figure 1-1 Wayne County Location Map



# CHAPTER 1 – INTRODUCTION

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## 1.2 PLAN REQUIREMENTS

Wayne County is required by Pennsylvania state law to develop a Municipal Waste Management Plan (Plan) and to update its Plan every ten (10) years. This Plan document updates the 2009 Wayne County Plan and covers the 2020 – 2029 planning period. The Plan is a guidance document that establishes Wayne County’s goals and objectives for solid waste management, including strategies and programs to implement responsible management of municipal solid waste (MSW) and to recover recyclable materials. This Plan update has been developed through Wayne County’s Solid Waste Department in coordination with the Wayne County Board of Commissioners. All counties are required to submit their Plans to the Pennsylvania Department of Environmental Protection (PADEP) for review and approval.

Municipal waste management primarily entails collection, transportation, disposal, and processing, as regulated under the Solid Waste Management Act, Act 97 of 1980 (Act 97). Wayne County is required by Act 97 and the Pennsylvania Municipal Waste Planning, Recycling and Waste Reduction Act, Act 101 of July 28, 1988, as amended, and Chapter 272 of the PA. Code 25, to implement its County Plan. This Plan adheres to the “Guidelines for the Development and Implementation of County Municipal Waste Management Plan Revisions,” Document Number 254-2212-504 (2009). The primary purpose of the Plan per regulations is to:

- (1) Ensure the county has sufficient processing and disposal capacity for its municipal waste for 10 (ten) years.
- (2) Ensure a full, fair, and open discussion of alternative methods of municipal waste processing or disposal.
- (3) Ensure maximum feasible waste reduction and recycling of municipal waste or source-separated recyclable material.
- (4) Shift the primary responsibility for developing and implementing municipal waste management plans from municipalities to counties.
- (5) Conserve resources and protect public health, safety, and welfare from the short and long-term dangers of transportation, processing, treatment, storage, and disposal of municipal solid waste.

**Non-substantial Plan Revision:** This 10-year Plan update (2020 – 2029) was designated as a non-substantial Plan revision by PADEP. Essential elements of the Plan revision include:

- ◆ Waste and recycling program descriptions
- ◆ Waste generation data including waste diversion to recycling
- ◆ 10-year waste projections and estimated disposal capacity requirements
- ◆ Executed disposal capacity agreements that secure adequate disposal capacity for the projected county-generated MSW estimated for the 10-year planning period
- ◆ Public participation including the formation of a Solid Waste Advisory Committee (SWAC) and meetings to provide feedback on solid waste issues

This non-substantial plan revision shall be deemed approved within thirty (30) days of receipt by PADEP unless PADEP responds in writing.

## 1.3 INTEGRATED SOLID WASTE MANAGEMENT

Under Pennsylvania requirements and as described in this Plan, the County is obligated to implement its Plan in support of an effective County solid waste system. The Commonwealth Court supports integrated solid waste management, where counties implement programs to avoid the costs of disposal. Wayne County’s integrated waste management system functions at a regional scale and relies on in-county and

## CHAPTER 1 – INTRODUCTION

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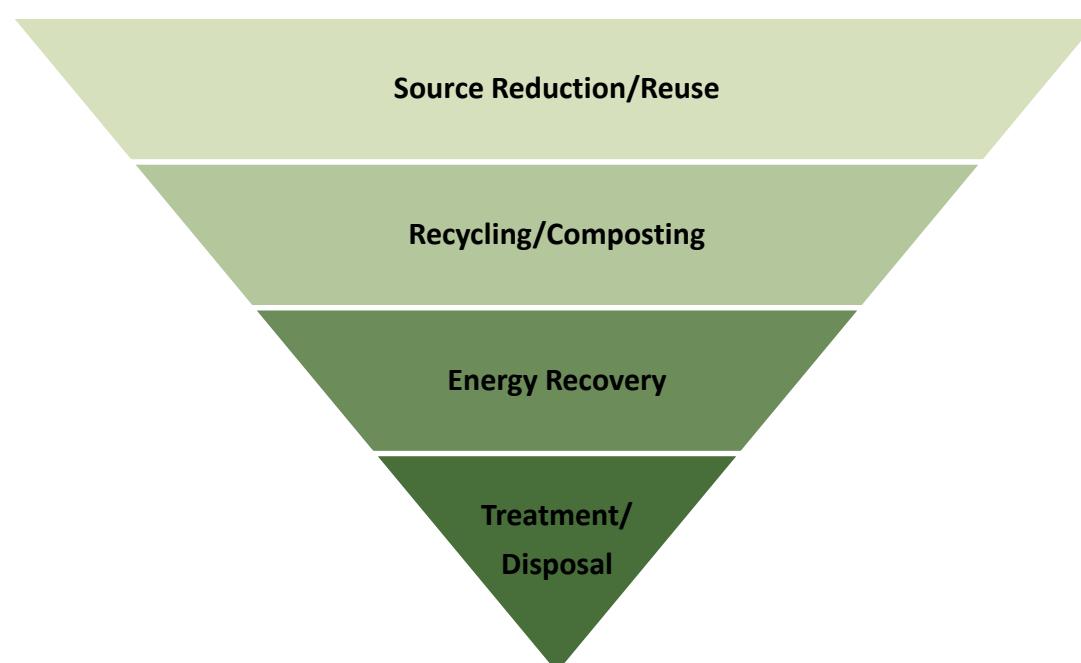
out-of-county collectors and processors. The activities of waste generators, collectors, processors, and stakeholders influence the waste system.

Municipal waste is managed primarily through hauling and transfer, landfill disposal, and recyclables processing. Some organics are diverted to compost facilities or grinding operations. Essential operations include collection, transportation, processing, and disposal as described below:

- ◆ **Collection.** The private sector primarily performs the collection of residential and commercial/institutional municipal waste. The public and private sectors perform recyclables collection. The County, municipalities, and private sector waste collectors determine collection methods and containers used at the collection point. County and municipal ordinances, along with Act 101 of 1988 and other solid waste regulations and market conditions influence municipal waste collection and service levels.
- ◆ **Transportation.** The transportation of municipal and residual waste generated in Pennsylvania to processing or disposal facilities is regulated by PADEP and the Pennsylvania Department of Transportation (PennDOT) under the Waste Transportation Safety Act (Act 90). Waste haulers, including companies who transport construction and demolition (C&D) wastes, roofing material, landscape wastes, and companies transporting significant quantities of materials from manufacturing operations are subject to regulation.
- ◆ **Processing/Disposal.** Public and private operators of municipal waste transfer, processing, and disposal facilities in Pennsylvania must have permits from PADEP to build, operate, expand, and close facilities. Landfills, waste-to-energy facilities, compost facilities, and recyclables processors require permits. Pennsylvania counties and local municipalities are required to direct waste to permitted disposal or processing facilities.

The U.S. EPA, PADEP, and Commonwealth Court support an integrated approach prioritizing waste reduction and avoided costs. This approach is illustrated in **Figure 1-2** below, which shows the U.S. EPA Waste Management Hierarchy.

**Figure 1-2 U.S. EPA Waste Management Hierarchy**



# CHAPTER 1 – INTRODUCTION

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The County manages MSW following the hierarchy of management and best practices presented below to the extent practicable and feasible:

- **Source Reduction** – Avoiding waste through waste elimination and/or reuse practices.
- **Recycling/Composting** – Recovering materials and then processing or converting materials, eventually to new or different products.
- **Avoided Cost** – Source reduction, recycling, and composting can avoid costs and impacts associated with solid waste collection, transportation, and disposal at landfills. In addition to avoided landfill disposal fees, diverting recoverable commodities, including appliances, tires, and electronics that are commonly dumped, reduces the high costs of clean up after they've been improperly discarded.
- **Energy Recovery** – Energy recovery processes may include combustion, gasification, pyrolysis, anaerobic digestion, and landfill gas (LFG) recovery. There are no waste-to-energy facilities designated via contract to process County-generated municipal waste.

The County's role within an integrated waste management system aligns with PADEP guidelines and Commonwealth Court decisions supporting county involvement in solid waste management as part of protecting public health, safety, and welfare and responsibly managing solid waste system costs.

## 1.4 PLANNING GOALS AND OBJECTIVES

The goals and objectives for this Plan over the 10-year planning period are to:

1. Provide County residents access to waste collection, disposal, and recycling opportunities.
2. Advance socially, economically, and environmentally responsible materials management;
3. Protect Wayne County's natural resources and lands; and
4. Protect the health, safety, and welfare of County citizens and businesses.
5. Encourage affordable waste and recycling services that avoid or minimize the cost of disposal as feasible through recycling and reuse.

This Plan identifies the challenges, opportunities, and strategies for solid waste management and provides a roadmap for integrated waste management over the next ten (10) years.

## CHAPTER 2 – DESCRIPTION OF WASTE

---

### 2.1 INTRODUCTION

In Pennsylvania, waste originating from residential, municipal, and institutional establishments, construction and demolition activities, medical waste from health care facilities, ash residue, asbestos, and sewage sludge are categorized as “municipal wastes,” under the broader category of solid waste. This Chapter describes the quantities of Wayne County’s historical and current generation of municipal wastes. The total municipal waste generation figures include recycled materials diverted from the disposed waste stream. Residual waste quantities are provided to assure sufficient disposal capacity is available for residual waste generated in Wayne County. **Figure 2-1** depicts the waste categories.

County demographics influence waste generation, waste composition, and overall performance and requirements of County waste systems. **Figure 2-2** summarizes Wayne County’s demographic information, including the number of residential, commercial and industrial establishments and supplemental demographic information. The average annual quantities (tons) from 2014-2018 presented in this Chapter represent the preliminary basis for projecting the annual tons of municipal waste requiring management and “disposal capacity” over the 10-year planning period (2020 – 2029). Waste projections are included in Chapter 3 and are calculated using the average annual quantities of municipal and residual waste and the annual percentage change in the County population.

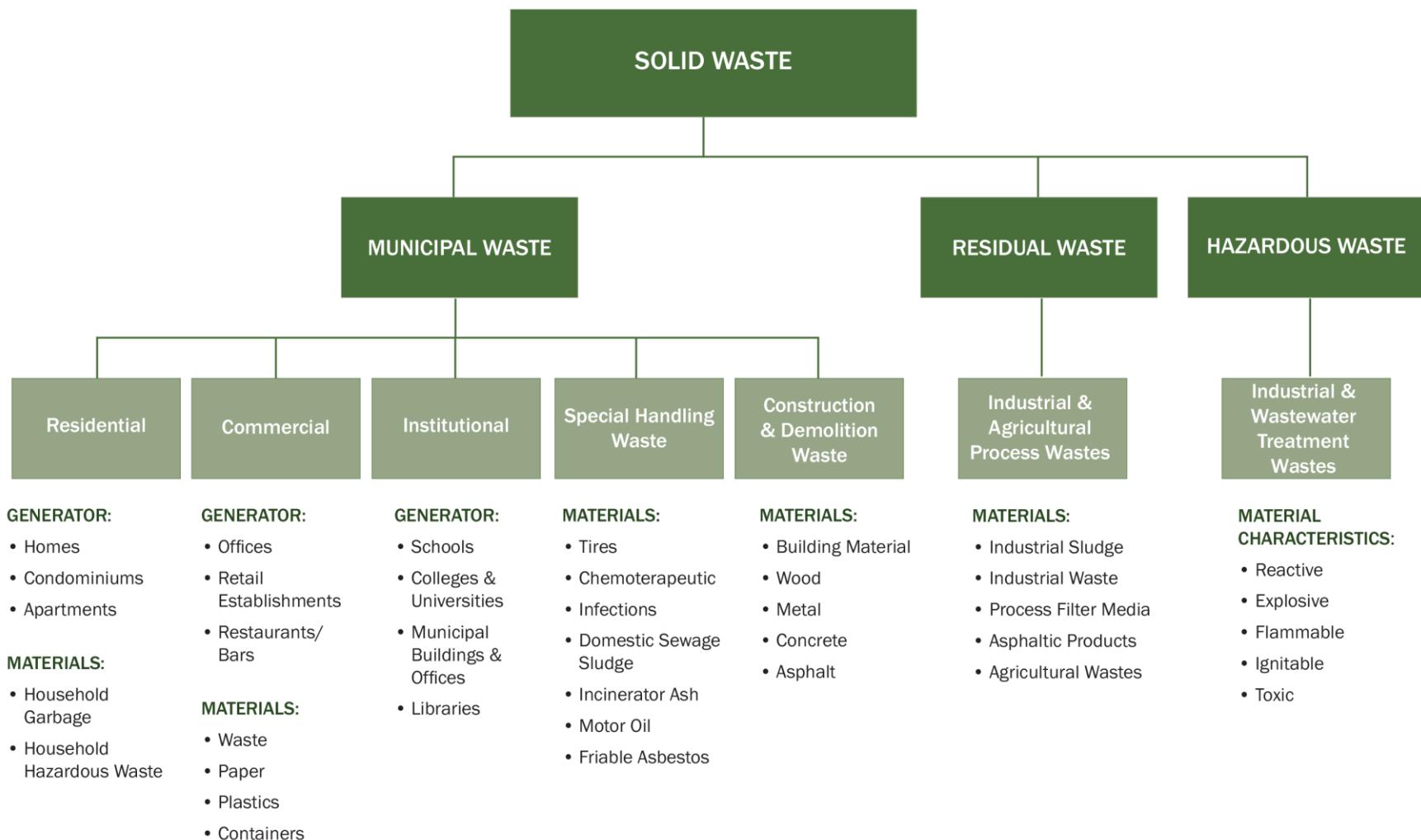
### 2.2 MUNICIPAL SOLID WASTE (MSW)

“Municipal solid waste (MSW)” is a term commonly used to describe routinely generated non-hazardous garbage and source-separated recyclables originating from households, businesses, institutions, and industries. The municipal solid waste generation often correlates to population density, commercial density and waste generation activities – concentrations of people and businesses and certain types of industrial activities increase waste generation. **Figure 2-3** illustrates the current residential population density for Wayne County. Southcentral portions of Wayne County have higher population density and are expected to generate higher quantities of municipal waste than less densely populated municipalities to the north.

## CHAPTER 2 – DESCRIPTION OF WASTE

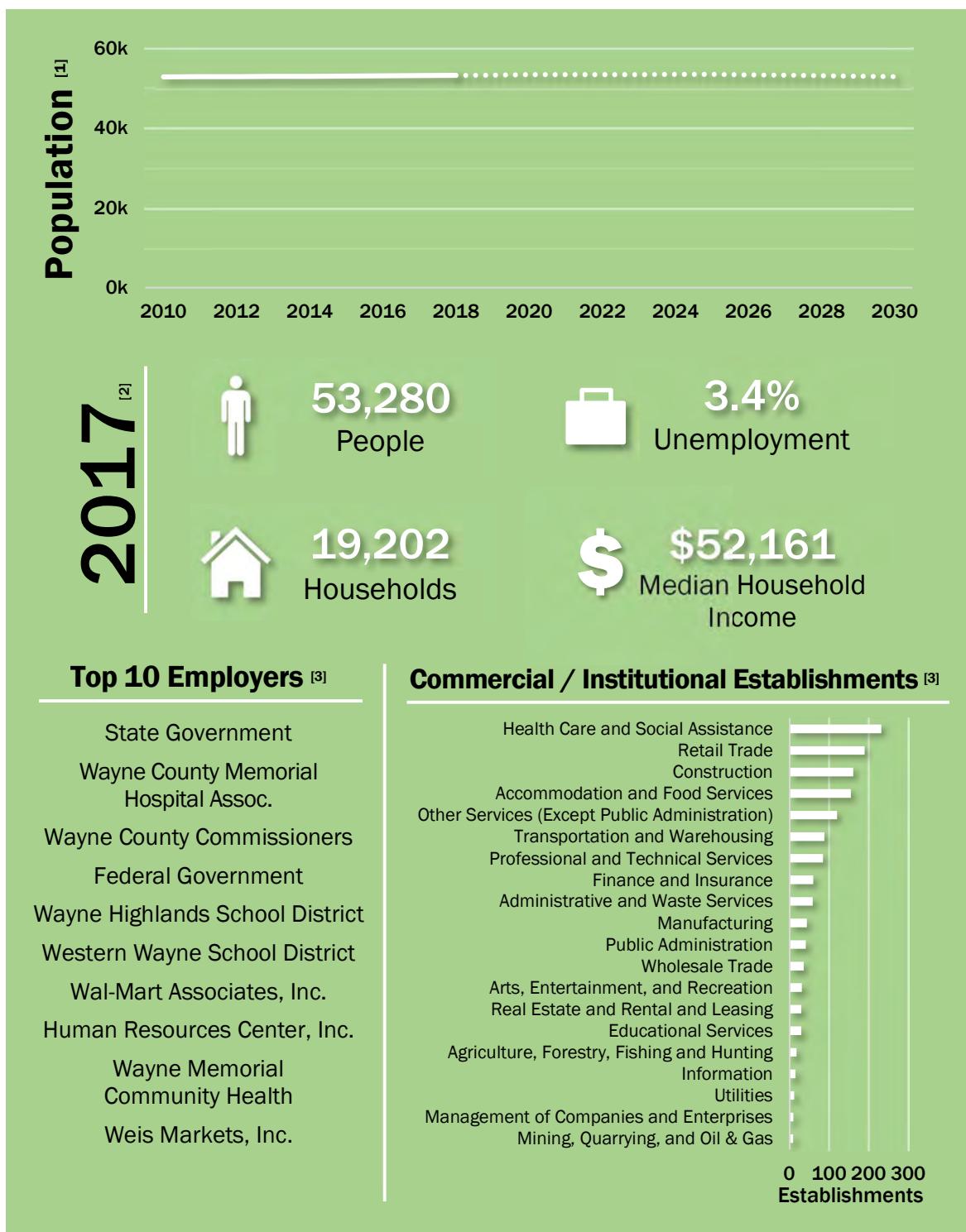
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Figure 2-1 Waste Categories



## CHAPTER 2 – DESCRIPTION OF WASTE

Figure 2-2 Wayne County Demographic Profile



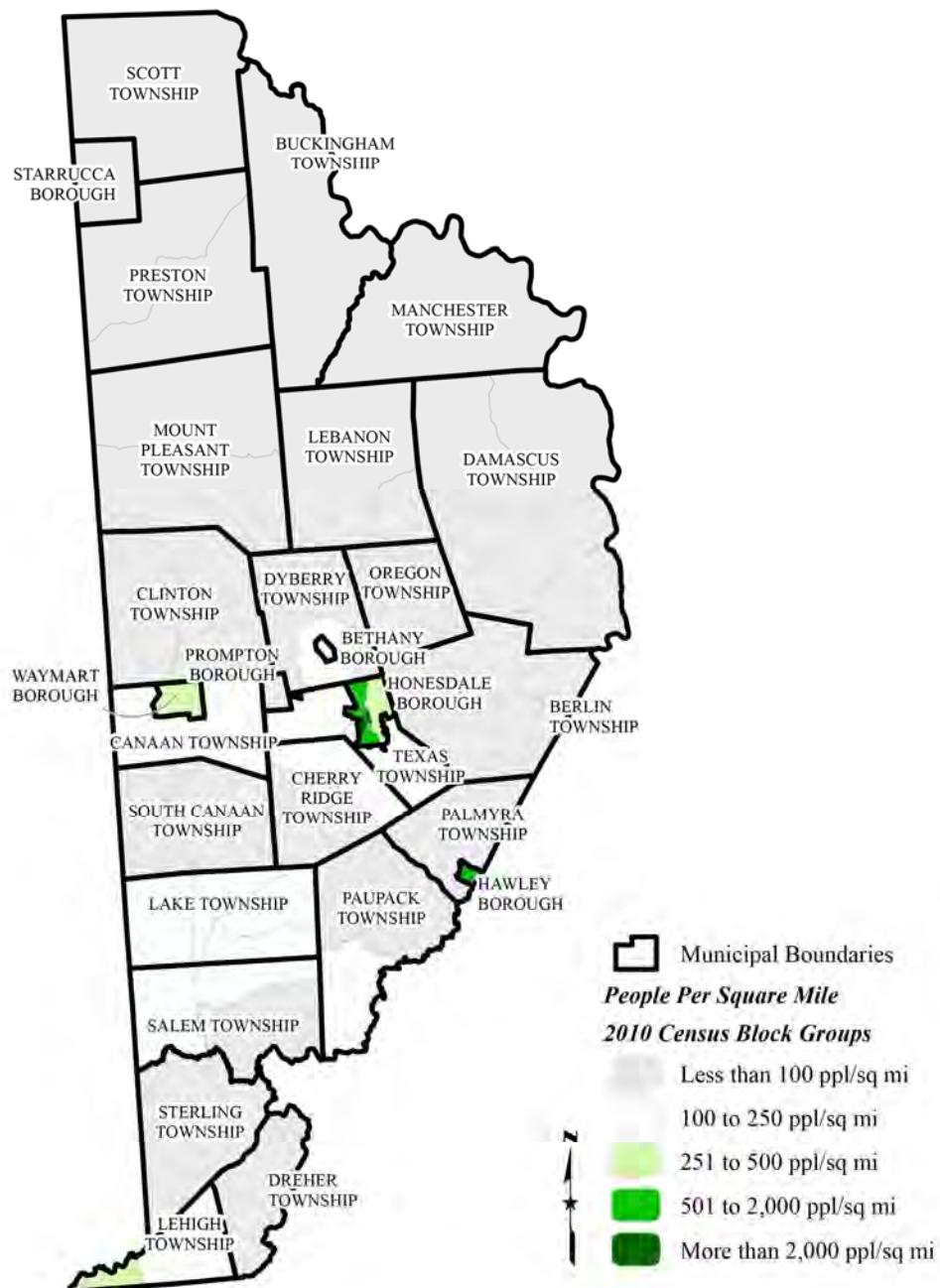
[1] Center for Rural Pennsylvania (2013). *Pennsylvania Population Projections, 2010-2040*

[2] U.S. Census Bureau (2017). *2017 American Community Survey*

[3] Pennsylvania Department of Labor and Industry (2019). *Wayne County Profile*

## CHAPTER 2 – DESCRIPTION OF WASTE

Figure 2-3 Wayne County Population Density



Source: Wayne County Department of Planning/GIS Department. (2010). *U.S. Census Population Data*

After generation, MSW is either disposed or separated for diversion to recycling. **Table 2-1** displays the per capita MSW generation rates calculated from reported landfilled and recycled quantities for Wayne County, as well as a national average MSW generation rate as published by the U.S. EPA. **Table 2-2** reveals that the MSW generation rate calculated from Wayne County reported quantities is markedly lower than the national average. While rural areas like Wayne County can have slightly lower generation rates than the national average, the divergence shown in **Table 2-1** is too significant to correlate to demographic or socioeconomic factors. Since the total quantities of reported

## CHAPTER 2 – DESCRIPTION OF WASTE

municipal waste (tons) have decreased significantly and the population and industrial density have remained relatively the same, it is believed Wayne County municipal waste is underreported, and the PADEP Waste Destination reports are not a reliable source of data. Planning projections will be based on the published national average MSW generation rates, not reported quantities.

**Table 2-1 Wayne County MSW Generation per Capita, 2014-2018**

	2014	2015	2016	2017	2018	5-year Average	U.S. Average <sup>[4]</sup>
Landfilled MSW (tons) <sup>[1]</sup>	20,572	20,140	17,175	16,664	18,439	18,598	NA
Recycled MSW (tons) <sup>[2]</sup>	9,618	5,887	6,510	9,247	8,432	7,939	NA
<b>Total MSW (tons)</b>	<b>30,190</b>	<b>26,027</b>	<b>23,685</b>	<b>25,911</b>	<b>26,871</b>	<b>26,537</b>	NA
Population <sup>[3]</sup>	53,097	53,127	53,204	53,280	53,357	NA	NA
Tons Per Capita	0.57	0.49	0.45	0.49	0.50	0.50	0.818

[1] Source: PA DEP Waste Destination Reports.

[2] Source: Wayne County Annual Recycling Reports.

[3] Source: U.S. Census Bureau

[4] Source: U.S. EPA, Advancing Sustainable Materials Management, 2018.

NA: "Not applicable"

### 2.3 MUNICIPAL WASTE QUANTITIES

This section presents historical waste quantities derived from PADEP Waste Destination Reports. Licensed waste haulers are required to report the origin and type of waste upon arrival, and weigh-in, at permitted Pennsylvania municipal waste disposal or processing facilities. PADEP Waste Destination Reports compile reported disposal quantities (in tons) for each permitted facility. **Table 2-2** and **Figure 2-2** and supporting text explain the reported quantities of waste disposed for Wayne County, including the reported quantities of source-separated recyclable materials.

**Table 2-2 Reported Municipal Waste and Recyclables, 2014-2018 (tons)**

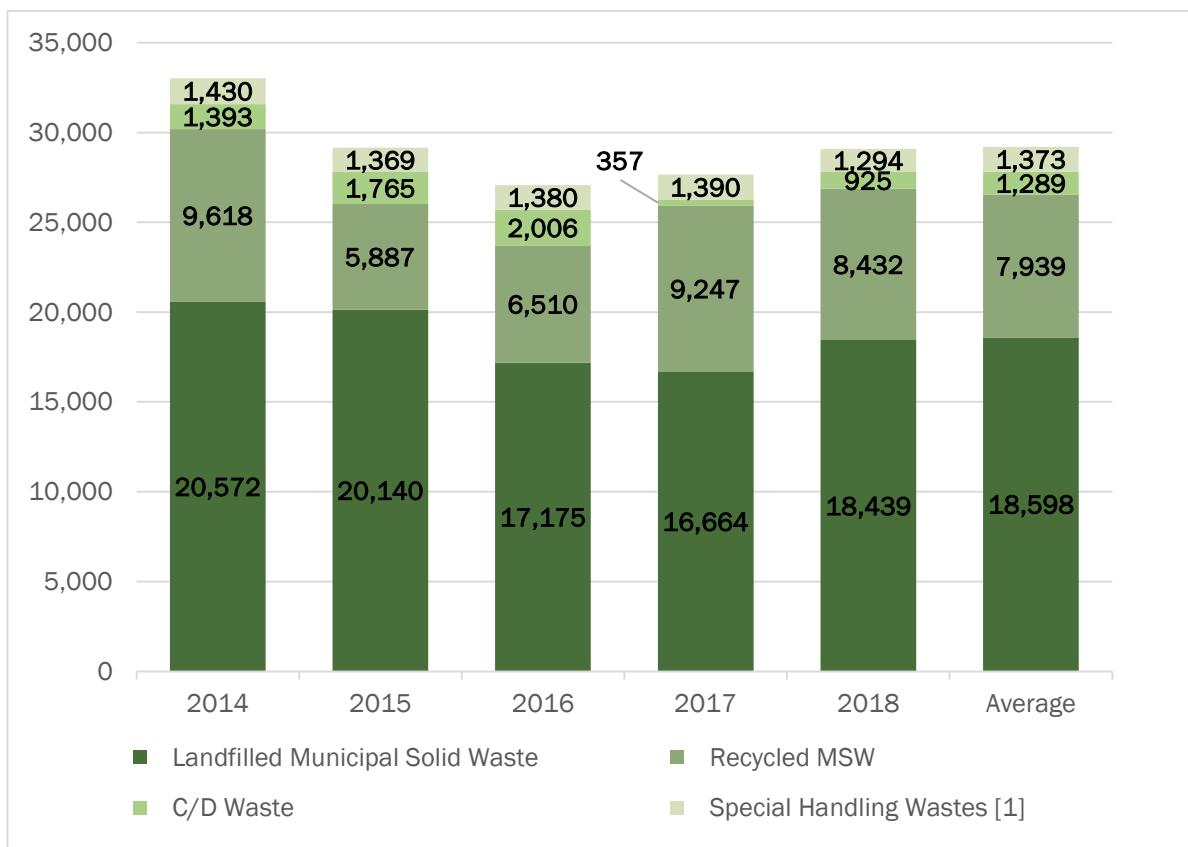
	2014	2015	2016	2017	2018	Average
Landfilled Municipal Waste <sup>[1]</sup>	20,572	20,140	17,175	16,664	18,439	18,598
Landfilled C/D <sup>[1]</sup>	1,393	1,765	2,006	357	925	1,289
<u>Landfilled Special Handling Wastes</u> <sup>[1]</sup>	<b>1,430</b>	<b>1,369</b>	<b>1,380</b>	<b>1,390</b>	<b>1,294</b>	<b>1,372</b>
Sewage Sludge	1,405	1,355	1,367	1,390	1,294	1,362
Asbestos	25	14	13	0	0	10
Processed Medical Waste	0	0	0	0	0	0
Ash Residue	0	0	0	0	0	0
<b>Total Municipal Waste Disposed</b>	<b>23,395</b>	<b>23,274</b>	<b>20,561</b>	<b>18,411</b>	<b>20,658</b>	<b>21,260</b>
Residual Waste Disposed <sup>[1]</sup>	508	423	234	241	439	369
<b>Total Municipal &amp; Residual Waste Disposed</b>	<b>23,903</b>	<b>23,697</b>	<b>20,795</b>	<b>18,652</b>	<b>21,097</b>	<b>21,629</b>
Source Separated Recyclables <sup>[2]</sup>	9,618	5,887	6,510	9,247	8,432	7,939

[1] Source: PADEP County Waste Destination Reports.

[2] Source: County Annual Recycling Reports.

## CHAPTER 2 – DESCRIPTION OF WASTE

Figure 2-4 Historical Wayne County Municipal Waste and Recyclables Generation (tons)



[1] Special Handling Waste includes sewage sludge, asbestos, processed medical waste, and ash residue. Only sewage sludge and asbestos have reported quantities.

### 2.4 CONSTRUCTION/DEMOLITION (C/D) WASTE

C/D includes solid waste resulting from the construction or demolition of buildings and other structures. C/D generation and disposed quantities often fluctuate significantly year to year based on construction and demolition activity. Based on reported C/D waste quantities for 2014 through 2018, Wayne County disposes an average of approximately 1,300 tons of C/D per year. **Figure 2-2** depicts that disposed C/D comprises only a small share of total reported Wayne County municipal waste. The Keystone Sanitary Landfill in Lackawanna County is the primary destination for C/D.

The improper management of C/D material contributes to illegal dumping and roadside litter in Wayne County. A portion of contractors, residents, and visitors illegally discard C/D on residential, commercial, and State-owned properties.

### 2.5 SEWAGE SLUDGE

Sewage sludge is the solid, semi-solid, or liquid material remaining after processing wastewater in a treatment plant. Septage is the liquid collected from septic tanks on on-lot wastewater treatment systems. Sewage sludge and septage are subject to municipal waste planning requirements. Sewage sludge (including septage) is classified as a special handling waste.

While Wayne County is primarily rural, there are densely populated areas served by municipal wastewater collection and treatment systems. On-lot septic systems are the standard wastewater collection method used in areas without sewer conveyance infrastructure to wastewater treatment

## CHAPTER 2 – DESCRIPTION OF WASTE

plants. Some trailer parks, senior care facilities, commercial, and industrial facilities pre-treat wastewater on-site to remove pollutants, and to separate liquid and solid fractions for transportation and final disposal. Septage generated in on-lot systems and other septic tanks is pumped and hauled to municipal wastewater treatment plants for disposal or treated for land application as biosolids on agricultural lands. Dewatered sludges or “cake” are disposed in landfills. As shown in **Table 2-2**, Wayne County disposed an average of 1,362 tons per year of dewatered sewage sludge at permitted Pennsylvania municipal waste landfills between 2014 and 2018. Reported quantities of sewage sludge have remained relatively stable over the five years. The 1,362 average annual tons disposed from 2014-2018 will form the basis for projecting sewage sludge disposal quantities over the 10-year planning period.

**Table 2-3** lists the registered residential septage transporters operating in Wayne County, including the reported annual average gallons pumped for each registered hauler. None of the septage haulers operating in Wayne County land-apply biosolids. **Table 2-4** lists the WWTPs serving Wayne County. There is ample sewage sludge treatment capacity available. Correlating to minimal population change and available WWTP capacity, there have been no significant wastewater treatment facility expansions in the County in recent years.

**Table 2-3 Registered Septage Haulers, 2018**

Company	Municipality of Registration	Average Annual Gallons	Land Application (Yes/No)
Avalanche Septic Services	Sterling Township	1,000,000	No
Koberlein, Inc.	Berlin Township	5,000,000	Yes
Septic Surgeons	Manchester Township	50,000	No
Sobolak Septic Service	Damascus Township	30,000	No
Tarantino Transportation	Lake Township	300,000	No

Source: PADEP Active Residential Septage Hauler List (February, 2018)

**Table 2-4 Wayne County Wastewater Treatment Plants, 2019**

Wayne County WWTPs	Permitted Daily Capacity (GPD)	Average Daily Capacity	Average Annual Sewage Sludge Disposed (tons)
Beach Lake Municipal Authority	99,000	40,000	64
Central Wayne Regional Authority	2,200,000	1,300,000	770
Hawley Area Authority	200,000	100,000	NA [1]
Southern Wayne County Water & Sewer Authority	1,755,000	500,000	40
Wallenpaupack Lake Estates	650,000	120,000	900
Waymart Area Authority	815,000	761,000	90

Source: MSW Consultant's phone survey of WWTP's (2019)

[1] Liquid sludges sent to Hazelton WWTP for processing, not landfilled.

## **CHAPTER 2 – DESCRIPTION OF WASTE**

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### **2.6 ASBESTOS**

Asbestos is a heat-resistant fibrous silicate mineral defined as special handling municipal waste. Annual quantities of disposed asbestos from Wayne County vary from year to year. The yearly average of asbestos disposal is ten (10) tons, with no asbestos reported at permitted disposal facilities in 2017 and 2018.

### **2.7 PROCESSED MEDICAL WASTE**

Processed medical waste is defined as special handling waste and includes regulated medical and chemotherapeutic wastes. Hospitals are the primary generators of medical wastes. Nursing homes, clinics, dental and medical offices generate small quantities. PADEP licenses and maintains records of active medical waste transporters operating in Pennsylvania. Medical facilities individually arrange for handling, transportation, treatment, and disposal and are regulated by state and federal laws. The primary medical facilities in the County include the Wayne Memorial Hospital and Wayne Memorial Community Health Centers located in the Borough of Honesdale.

No processed medical waste from Wayne County has been reported at permitted Pennsylvania municipal waste disposal facilities in the past six (6) years.

### **2.8 ASH RESIDUE**

Ash residue, including ash resulting from the incineration of regulated medical wastes and asbestos, is defined as special handling waste. No ash residue has been reported for Wayne County over the past six (6) years.

### **2.9 RESIDUAL WASTE**

Residual waste is generated as a by-product of an industrial process, and Wayne County is not regulated to manage residual wastes under this Plan. The average annual quantity of disposed residual waste reportedly originating in Wayne County was 369 tons from 2014 to 2018. Act 101 requires that the county planning process consider the effects of residual waste disposal on available waste disposal capacity at facilities receiving county municipal waste.

## CHAPTER 3 – DESCRIPTION OF FACILITIES

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This Chapter identifies the facilities currently responsible for processing and disposal, and processing and transfer of municipal solid waste (MSW) generated in Wayne County<sup>1</sup>. There are no MSW landfills or incinerators located within Wayne County. Wayne County does not direct municipal waste to one or more processing facilities. The distribution of county-generated municipal waste to processors is market-driven, and primarily affected by the proximity to transfer stations and landfills. The Alliance Landfill and Keystone Sanitary Landfills are the primary disposal facilities.

The Beach Lake Transfer Station is located in Wayne County and serves as a primary consolidation facility for County-generated municipal waste and some recyclables. Based on a 5-year reported average (2014 – 2018) Beach Lake transfer facility receives approximately 14,000 tons of municipal waste from Wayne County annually that is transferred for landfill disposal.

Alliance Landfill, Keystone Sanitary Landfill, and Chrin Brothers Sanitary Landfill process construction and demolition waste (C/D). Sewage sludges are processed at Keystone Sanitary Landfill. Most residual waste is processed at the Alliance Landfill and Keystone Sanitary Landfill. Drop-off recyclables are primarily managed at the County-owned Recycling Center, where materials are bulked and then transferred to processing facilities and markets located outside of the County. **Table 3-1** lists the primary disposal facilities processing County-generated MSW and residual waste.

**Table 3-1 Municipal Solid Waste Disposal Facilities**

<b>Alliance Landfill, Inc.</b>	<b>Keystone Sanitary Landfill</b>
398 South Keyser Avenue Taylor, PA 18517 Lackawanna County	P. O. Box 249, Dunham Drive Dunmore, PA 18512 Lackawanna County
<b>Grand Central Sanitary Landfill, Inc.</b>	
1963 Pen Argyl Road Pen Argyl, PA 18072 Northampton County	

Note: Facilities not accepting waste regularly or receiving less than five (5) tons of waste per year are not listed.

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<sup>1</sup> [List of PA Municipal Waste Landfills and Resource Recovery Facilities](#)

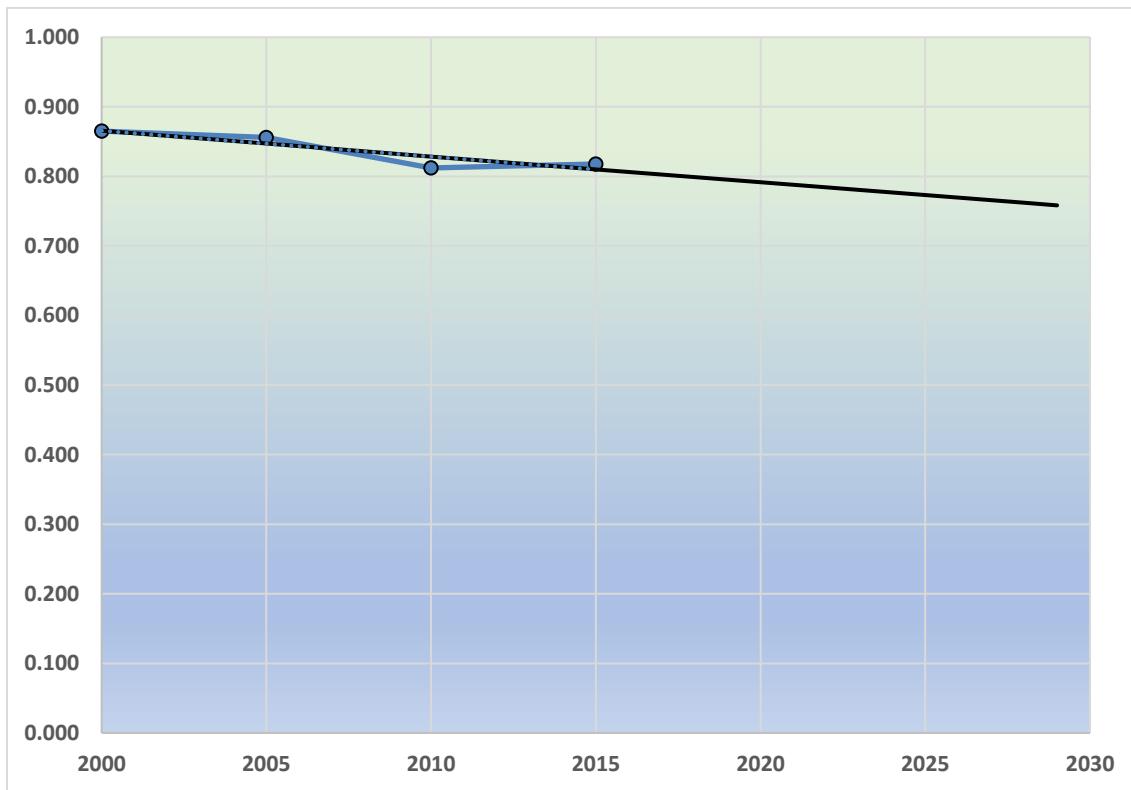
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## CHAPTER 4 – ESTIMATED FUTURE DISPOSAL CAPACITY

This Chapter presents the estimated amount of County MSW requiring landfill disposal for the planning period (2020-2029), with consideration of diversion to recycling. Waste and recycling projections are valuable to planning and management of the County municipal solid waste system and are a required component of this Plan. The municipal waste projections are based on U.S. EPA waste trend data, County recycling reports, PADEP waste destination reports, and population projection from the Center for Rural Pennsylvania.

The MSW generation rates calculated using reported quantities in PADEP Waste Destination Reports are markedly lower than the national average, suggesting the underreporting of the landfilled waste generated by Wayne County. To develop realistic MSW generation rates and projections, MSW Consultants used the US EPA time series per capita generation rates that were updated to reflect national average MSW generation rates since 1999. A linear trendline was applied to published EPA generation rate estimates for 2000, 2005, 2010, and 2015 (Figure 4-1). The points along the trendline represent MSW generation rates that reflect Wayne County's projected disposal capacity needs through 2029. The projected MSW generation starts at 0.865 tons per year per capita in 2019 and declines to 0.758 tons per year by 2029.

**Figure 4-1 U.S. EPA National Average per Capita Waste Generation Rates and Trendline**



Source: U.S. EPA, Advancing Sustainable Materials Management (2018). 2000, 2005, 2010, 2015 datapoints

## CHAPTER 4 – ESTIMATED FUTURE DISPOSAL CAPACITY

**Table 4-1** presents a daily per capita municipal waste generation rate for the year 2019 using EPA’s waste generation rates, estimated county recycling rates, and population estimates in pounds per day, based on the U.S. EPA’s Sustainable Materials Management time series<sup>1</sup>. The daily per capita MSW generation rate is 4.36 pounds per day and includes recyclables but excludes C/D waste and special handling wastes (e.g., sewage sludge, regulated medical waste, ash residue asbestos, and residual waste).

**Table 4-1 Wayne County MSW Generation Estimates (2019)**

Total MSW Generation (tons)	42,496
Recycled MSW (tons) <sup>[1]</sup>	9,274
Population	53,434
Daily Per Capita MSW Generation (pounds per day)	4.36

[1] Estimated 2017 per capita recycling rate applied to the 2019 population.

**Table 4-2** presents the projected population, per capita MSW generation rates, and the quantity of municipal and residual waste requiring disposal for the 10-year planning period (2020 – 2029). Projected recycled quantities are subtracted from the projected MSW generation to calculate projected MSW requiring disposal. Projections of C/D, sewage sludge, and asbestos quantities requiring disposal are calculated using the annual average quantity disposed in 2014-2018 (from **Table 4-1**) as the 2019 estimate and applying the percent change in population for each of the years 2020-2029. A slight decline is projected for population and MSW generation, which produces the reduction in projected municipal waste disposal quantities shown in **Table 4-2** and is illustrated graphically in **Figure 4-2**.

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<sup>1</sup> U.S. EPA. Advancing Sustainable Materials Management: 2015 Fact Sheet, Assessing Trends in Material Generation, Recycling, Composting, Combustion with Energy Recovery and Landfilling in the U.S., July, 2018.

## CHAPTER 4 - ESTIMATED FUTURE DISPOSAL CAPACITY

**Table 4-2 Wayne County Projected Municipal Waste Requiring Disposal**

Year	Municipal Waste (tons)										
	County Population <sup>[1]</sup>	Municipal Solid Waste				Special Handling Waste				Municipal Waste Requiring Disposal	Total County Waste Requiring Disposal
		Generation per Capita <sup>[2]</sup>	MSW Generated <sup>[3]</sup>	Recycled MSW <sup>[4]</sup>	Disposed MSW <sup>[5]</sup>	C/D <sup>[6]</sup>	Sewage Sludge <sup>[6]</sup>	Asbestos <sup>[6]</sup>	Residual Waste <sup>[6]</sup>		
2019	53,434	0.795	42,496	9,274	33,223	1,293	1,366	10	35,892	370	36,262
2020	53,511	0.792	42,359	9,287	33,072	1,295	1,368	10	35,746	370	36,116
2021	53,531	0.788	42,177	9,290	32,887	1,295	1,369	10	35,561	371	35,932
2022	53,551	0.784	41,995	9,294	32,701	1,296	1,369	10	35,376	371	35,747
2023	53,572	0.781	41,813	9,298	32,515	1,296	1,370	10	35,192	371	35,563
2024	53,592	0.777	41,630	9,301	32,329	1,297	1,370	10	35,007	371	35,378
2025	53,612	0.773	41,447	9,304	32,143	1,297	1,371	10	34,821	371	35,192
2026	53,495	0.769	41,159	9,284	31,875	1,294	1,368	10	34,547	370	34,918
2027	53,379	0.766	40,872	9,264	31,608	1,292	1,365	10	34,275	370	34,645
2028	53,262	0.762	40,586	9,244	31,342	1,289	1,362	10	34,003	369	34,372
2029	53,146	0.758	40,301	9,224	31,077	1,286	1,359	10	33,732	368	34,100

[1] Source: Center for Rural Pennsylvania, 2013. US Census (2010) and projections for every five years starting 2015, interpolated for years in between

[2] Source: MSW Consultant's trendline fit to EPA's municipal waste generation rates for 2000, 2005, 2010 and 2015. *Advancing Sustainable Materials Management: Facts and Figures*

[3] Projected municipal solid waste generation rate per capita multiplied by the population

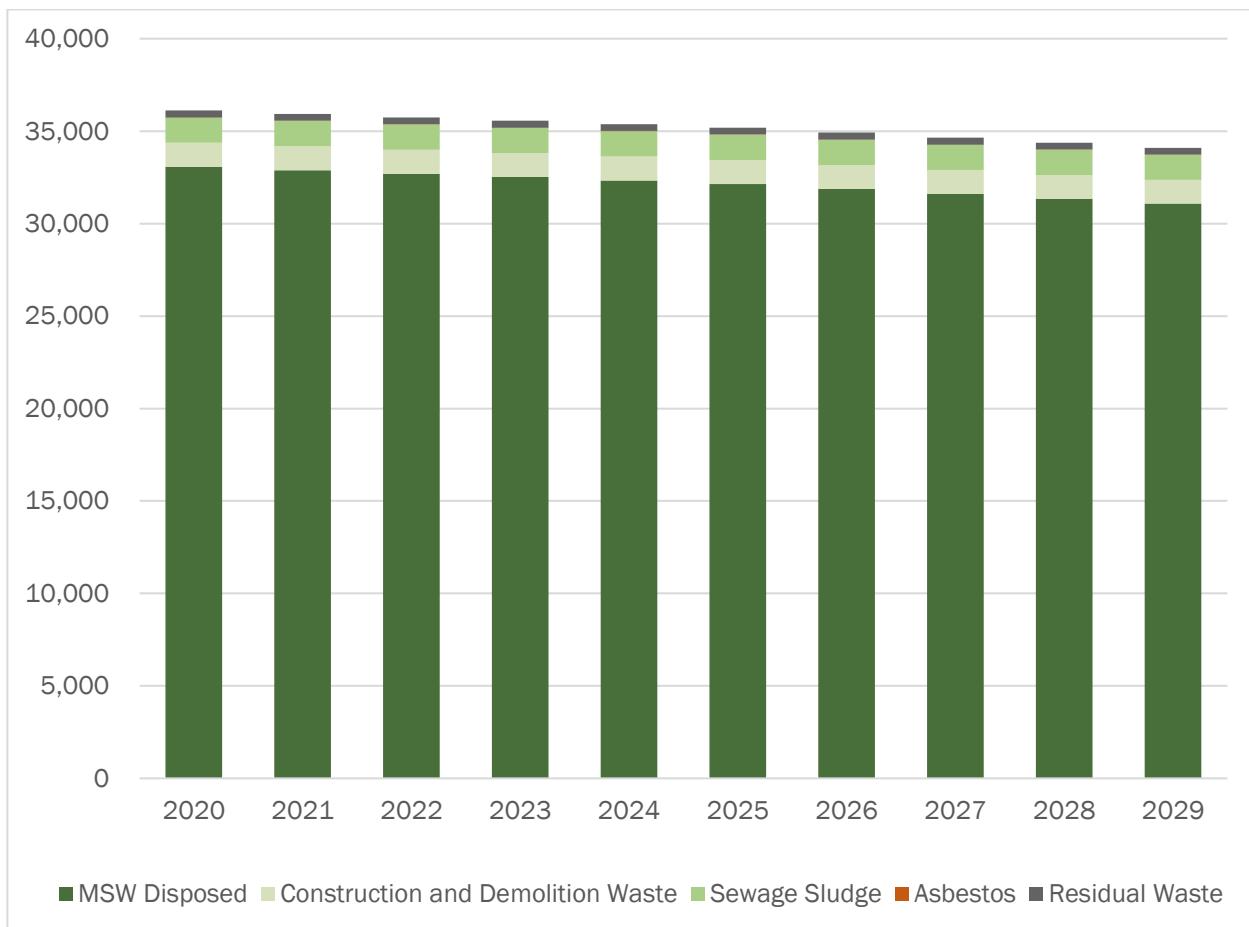
[4] Estimated 2017 per capita recycling rate applied to projected population

[5] Projected MSW generation minus projected MSW Recycled

[6] Applies annual percent change in projected population to average of the reported waste disposal from the period 2014-2018

## CHAPTER 4 - ESTIMATED FUTURE DISPOSAL CAPACITY

Figure 4-2 Wayne County Projected Waste Requiring Disposal (2020 – 2029)



Important observations about the projected disposal capacity for Wayne County include:

- **PADEP Waste Destination Reporting Inaccuracy.** Total municipal waste generation, as reported to PADEP, may not reflect actual generated quantities from Wayne County due to inaccurate reporting by transfer stations and/or landfills.
- **Impact of Recycling on Disposal Capacity Requirements:** Recycling efforts in Wayne County decrease annual landfill disposal requirements by approximately 9,000 to 10,000 tons per year or more with additional recycling efforts. Residential, commercial, municipal, and institutional recycling programs reduce landfill-bound waste, thus reducing disposal costs (e.g., landfill tip fees).
- **Future Disposal Capacity Needs:** Wayne County requires disposal of about 30,000 to 35,000 tons of municipal waste per year over the 10-year planning period.
- **Potential for Variation in Disposal Capacity:** Unforeseen conditions including solid waste market fluctuations, national and regional economic trends and incidents, inaccurate reporting of disposal quantities, natural and manmade disasters, and new State legislation may impact the quantities of waste requiring disposal.

## **CHAPTER 4 - ESTIMATED FUTURE DISPOSAL CAPACITY**

- **County Generation Rates:** The estimated County MSW generation rates align with national averages and are reasonable estimates for planning. MSW generation is anticipated to remain relatively consistent with minimal changes in population and minimal modifications to commercial/industrial generation rates. MSW projections are expected to follow the trend of gradually decreasing per capita waste generation, which is influenced by stagnant population growth in Wayne County and light-weighting of the municipal waste stream.

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# CHAPTER 5 - RECYCLING

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## CHAPTER 5 – RECYCLING

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### 5.1 RECYCLING REQUIREMENTS

Act 101 of 1988 (Act 101) establishes requirements for residential and commercial recycling in the Commonwealth. The law delegates specific duties to the County and its municipalities and includes provisions to protect the interests of private sector scrap and recycling operations. Act 101 emphasizes county responsibility to ensure that proper waste management policies and practices are developed and implemented and requires recycling data to be reported by the counties to PADEP. The County is required to develop and implement a Plan that demonstrates the County will strive to attain 35 percent diversion to recycling.

Act 101 directs local municipalities (e.g., boroughs, townships, and cities) to implement waste reduction and diversion programs. Municipalities with populations of 10,000 or more, and those with 5,000 or more and a population density of greater than 300 people per square mile, are required to implement curbside recycling programs, including the regular collection of at least three (3) recyclable materials, plus leaf waste at least once in the spring and once in the fall. There are no mandated communities located in Wayne County required to provide curbside recycling. Some municipalities offer voluntary recycling programs.

### 5.2 RECYCLING CHALLENGES

Recycling in rural Wayne County is challenging when compared to recovering commodities in densely populated suburban and urban areas. Challenges facing cost-effective and successful recycling programs in Wayne County include:

- ◆ **Limited Access.** Wayne County has minimal infrastructure to collect and process recyclables; therefore, access to recycling services and recyclables processing is limited.
- ◆ **Elevated Recycling Costs.** A combination of factors elevates recycling costs. Correlated to low housing and business density, Wayne County generates relatively small quantities of recoverable commodities that are distributed across a large area. Transportation distances between generation or collection points and material processors increase labor and operational expenses that elevate the cost of recyclables recovery.
- ◆ **Reduced Recyclable Commodity Values:** Since early 2018, under its National Sword policy, China has banned most scrap metals and rejected other recyclable commodities exceeding an extremely strict contamination rate of .05 percent. The decline in sale values for recyclables had a significant impact on annual sale revenues that are vital to sustain the Recycling Center.
- ◆ **Competition for Recyclables:** In the past 10 years, the emergence of single-stream recycling has increased the number of households that rely on curbside recycling. While this is a beneficial service, materials and revenue are diverted from the County Recycling Center.
- ◆ **Special Item Recovery.** Limited access and elevated costs affect items requiring special handling including items like electronics that may be recovered for recycling. Discouraged by the inconvenience of self-hauling materials to distant processor or the high cost per pickup at the curbside, potentially recyclable materials like appliances and electronics are disposed illegally.
- ◆ **Limited Funding.** The operation and maintenance of the Wayne County Recycling Center and drop-off site collection program costs over \$300,000 annually. The County has a small tax base and General Funds are dedicated to support important social services to benefit local communities, residents and businesses. Even with Act 101 Recycling Grants, recyclables sales revenues, General Funds, user fees for certain commodities and services, and the recovery of the Sustainability Fee the Recycling Center operates on a tight budget making it difficult to withstand market fluctuations and unforeseen costs. Funding limitation makes it challenging to expand recycling services.

# CHAPTER 5 – RECYCLING

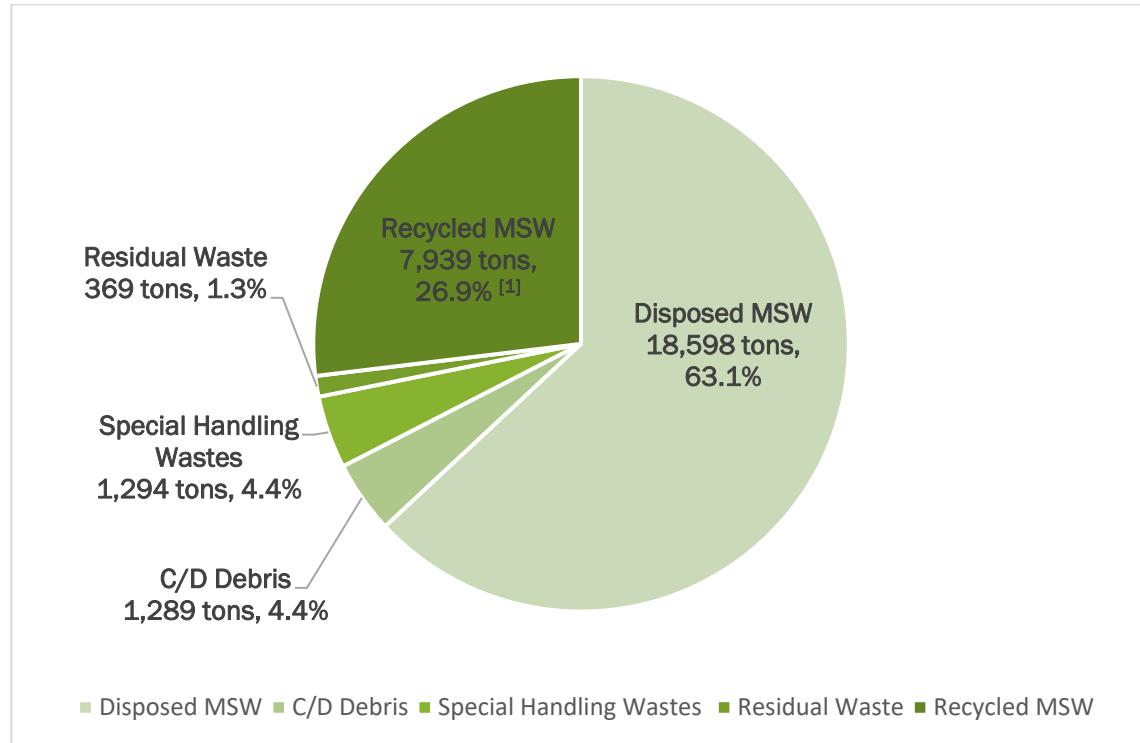
## 5.3 RECYCLING SYSTEM OVERVIEW

Despite transportation, market, and economic barriers that make recycling difficult, the County and its local municipalities play an active role in shaping and providing cost-effective and responsible materials management, particularly for the residential sector. Important recycling activities or programs in Wayne County include:

- ◆ The Wayne County Recycling Center in Berlin Township operated by the Wayne County Solid Waste Department.
- ◆ Fourteen (14) municipalities host drop-off sites for recycling. Containers are serviced by the Wayne County Solid Waste Department and materials are processed at the Recycling Center.
- ◆ Eight (8) municipalities report recycling at some businesses or schools or other institutions.
- ◆ Wayne Highlands School District operates a County-Owned "Rocket" food composter on-site.

**Figure 5-1** reflects the distribution of disposed municipal solid wastes, residual waste, special handling waste, and recycled materials based on a five-year historical average (2014-2018). “Special handling wastes” are aggregated and include sewage sludge, processed medical waste, asbestos, and ash residue (no tonnage reported).

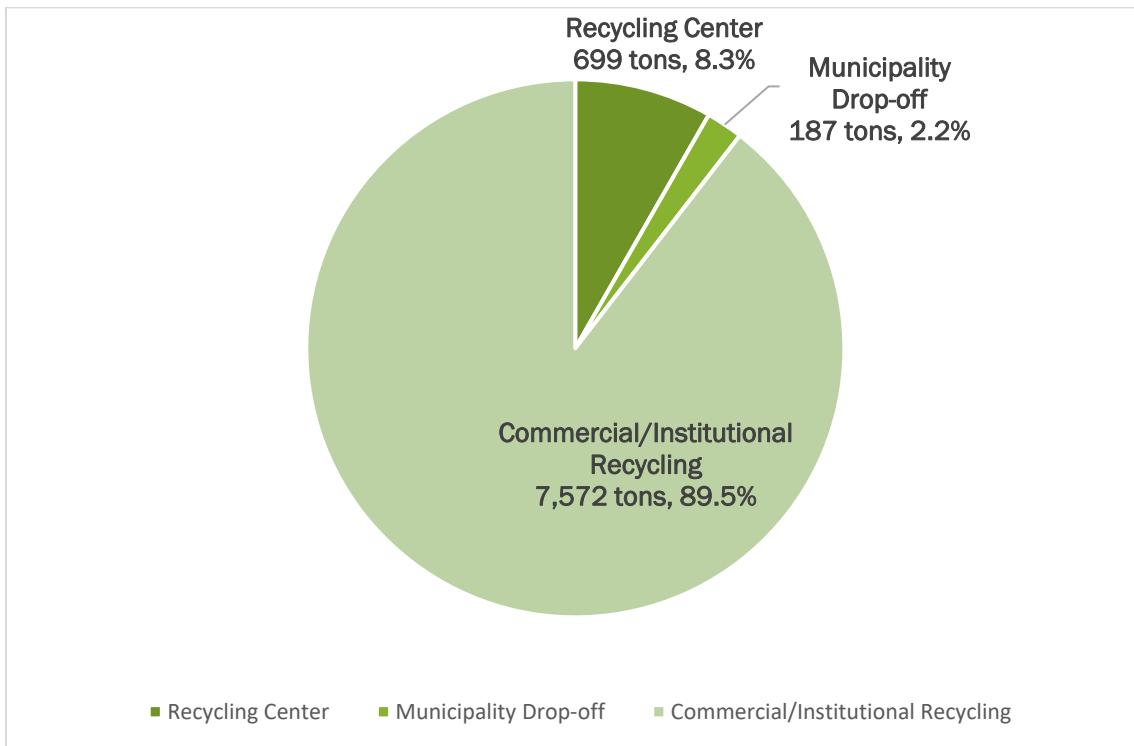
**Figure 5-1 Historical Waste Disposal and Recycling (5-year Average)**



[1] Though 26.9% of the County's aggregate waste is comprised of recycled MSW, this does not represent the County's recycling rate. PADEP does not include residual or special handling wastes when calculating recycling rates.

**Figure 5-2** shows the estimated annual distribution of recovered quantities of recyclables across the primary recycling programs in the County including the Recycling Center, recycling drop-off sites, and commercial/institutional establishments. The figure shows 699 tons (8 percent) recovered via the Recycling Center, 187 tons (2 percent) recovered via the network of drop-off sites, and 7,572 tons (90 percent) recovered from commercial/institutional establishments in 2018.

**Figure 5-2 Recycling Distribution by Program (2018)**



### 5.4 RESIDENTIAL REFUSE AND RECYCLING SERVICES

Residential curbside recycling in Wayne County is limited. With the exception of minimal curbside leaf collection, no Township or Borough operates collection equipment to provide residential curbside collection of recyclable materials. Some residents voluntarily subscribe for curbside recyclables collection service with private haulers. Voluntary drop-off recycling programs in Wayne County are very successful. The majority of waste disposal and final recyclables processing occurs out-of-County.

**Table 5-1** summarizes refuse and recycling services provided by or available in the 28 municipalities within Wayne County based on a survey completed in 2019. None of the municipalities are required to implement a mandated curbside recycling program, and no municipalities provide curbside recyclables collection directly or via municipal-wide contract with a private waste hauler. 26 municipalities have private collectors who offer solid waste collection services to residents. Some residential customers secure curbside recycling services with regular trash service. Drop-off collection programs for recyclables are provided by 14 municipalities, and two (2) municipalities provide drop-off containers for garbage using pay-per-bag programs. Composting and yard waste collection services are not provided by any municipalities, though two (2) municipalities have private collectors offering yard waste collection.

## CHAPTER 5 – RECYCLING

Table 5-1 Residential Municipal Waste & Recycling Service Summary (2019)

Municipality	Municipal Services			Private Services <sup>[5]</sup>			
	Garbage Drop-off	Recycling Drop-off <sup>[1]</sup>	Special Item Drop-off <sup>[2]</sup>	Garbage Collection	Recycling Collection	Yard Waste Collection	Bulky Item Collection
Berlin Twp		✓	✓	✓			
Bethany Boro		✓	✓	✓	✓		
Buckingham Twp			✓ <sup>[3]</sup>	✓			
Canaan Twp		✓		✓	✓		
Cherry Ridge Twp				✓	✓		
Clinton Twp	✓		✓	✓	✓		
Damascus Twp		✓	✓	✓			
Dreher Twp		✓	✓	✓			
Dyberry Twp				✓	✓		
Hawley Boro		✓	✓	✓	✓		✓
Honesdale Boro			✓ <sup>[4]</sup>	✓	✓	✓	
Lake Twp		✓	✓	✓			
Lebanon Twp				✓	✓		
Lehigh Twp			✓	✓	✓		
Manchester Twp		✓	✓ <sup>[3]</sup>	✓			
Mount Pleasant Twp		✓		✓			
Oregon Twp		✓		✓	✓		
Palmyra Twp		✓		✓	✓		
Paupack Twp	✓	✓	✓	✓	✓		
Preston Twp		✓	✓	✓			
Prompton Boro		✓		✓	✓		✓
Salem Twp		✓	✓	✓	✓		
Scott Twp			✓ <sup>[3]</sup>	✓			
South Canaan Twp				✓	✓	✓	
Starrucca Boro				✓			
Sterling Twp		✓	✓	✓	✓		
Texas Twp			✓	✓	✓		
Waymart Boro		✓		✓	✓		
<b>Percent of County Population</b>	<b>11.5%</b>	<b>65.8%</b>	<b>72.3%</b>	<b>100%</b>	<b>67.6%</b>	<b>11.3%</b>	<b>3.1%</b>

Source: Municipality Survey distributed in 2019 as part of Plan development.

[1] Includes 14 County recycling drop-off sites and the Wayne County Recycling Center in Berlin Township.

[2] Special items require special handling and are recovered for recycling and/or to assure proper handling (e.g., bulk items, tires, household hazardous waste, electronics, appliances, scrap metal, C/D materials, etc.)

[3] Preston Township offers this service and allows Buckingham, Manchester, and Scott Townships to participate.

[4] The YMCA in Honesdale Borough administers an electronics collection program open to the public.

[5] Private services reflect the availability of the service with the respective municipality, but participation varies.

## CHAPTER 5 – RECYCLING

**Table 5-2** summarizes the residential drop-off programs provided by municipalities to manage “special items” including electronics, tires, scrap metal and other materials.

**Table 5-2 Residential Special Items Service Summary**

Municipality <sup>[1]</sup>	Freon Appliances	Non-Freon Appliances	C&D Debris	Scrap Metal	Bulky Items	Electronics	Tires
Berlin Twp							✓ <sup>[2]</sup>
Bethany Boro	✓	✓	✓	✓			
Buckingham Twp <sup>[3]</sup>	✓			✓			
Clinton Twp	✓					✓	
Damascus Twp				✓			
Dreher Twp	✓	✓	✓	✓	✓		
Hawley Boro							✓
Honesdale Boro <sup>[4]</sup>							✓
Lake Twp		✓		✓	✓	✓	✓
Lehigh Twp	✓	✓	✓	✓	✓		
Manchester Twp <sup>[3]</sup>	✓			✓			
Paupack Twp	✓	✓	✓	✓	✓		
Preston Twp		✓		✓			
Salem Twp	✓			✓	✓	✓	
Scott Twp <sup>[3]</sup>	✓			✓			
Sterling Twp	✓			✓	✓		
Texas Twp	✓			✓	✓		✓
<b>Percent of County Population</b>	<b>13.8%</b>	<b>49.8%</b>	<b>14.3%</b>	<b>52.5%</b>	<b>45.0%</b>	<b>28.9%</b>	<b>5.5%</b>

Source: Municipality Survey (2019)

[1] Municipalities that do not provide special item drop-off programs are not shown.

[2] Tires accepted at the Wayne County Recycling Center in Berlin Township.

[3] Preston Township allows Buckingham, Manchester, and Scott Townships to participate in this program.

[4] The YMCA in Honesdale Borough administers an electronics collection program open to the public.

## CHAPTER 5 – RECYCLING

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### 5.5 WAYNE COUNTY RECYCLING CENTER AND DROP-OFF SITES

The Wayne County Recycling Center and network of fourteen (14) public drop-off sites for recyclables represents the primary recycling infrastructure in Wayne County (**Figure 5-3**). The Recycling Center is centrally located in Berlin Township, approximately five miles east of Honesdale. The Recycling Center is operated by the Wayne County Solid Waste Department. As illustrated in Figure 5-2, the Recycling Center diverts about 700 tons of recyclables annually. The Recycling Center has containers, material drop-off areas, processing and collection equipment, a scale to weigh loads of materials, an office area for the Recycling Coordinator and administrative staff.

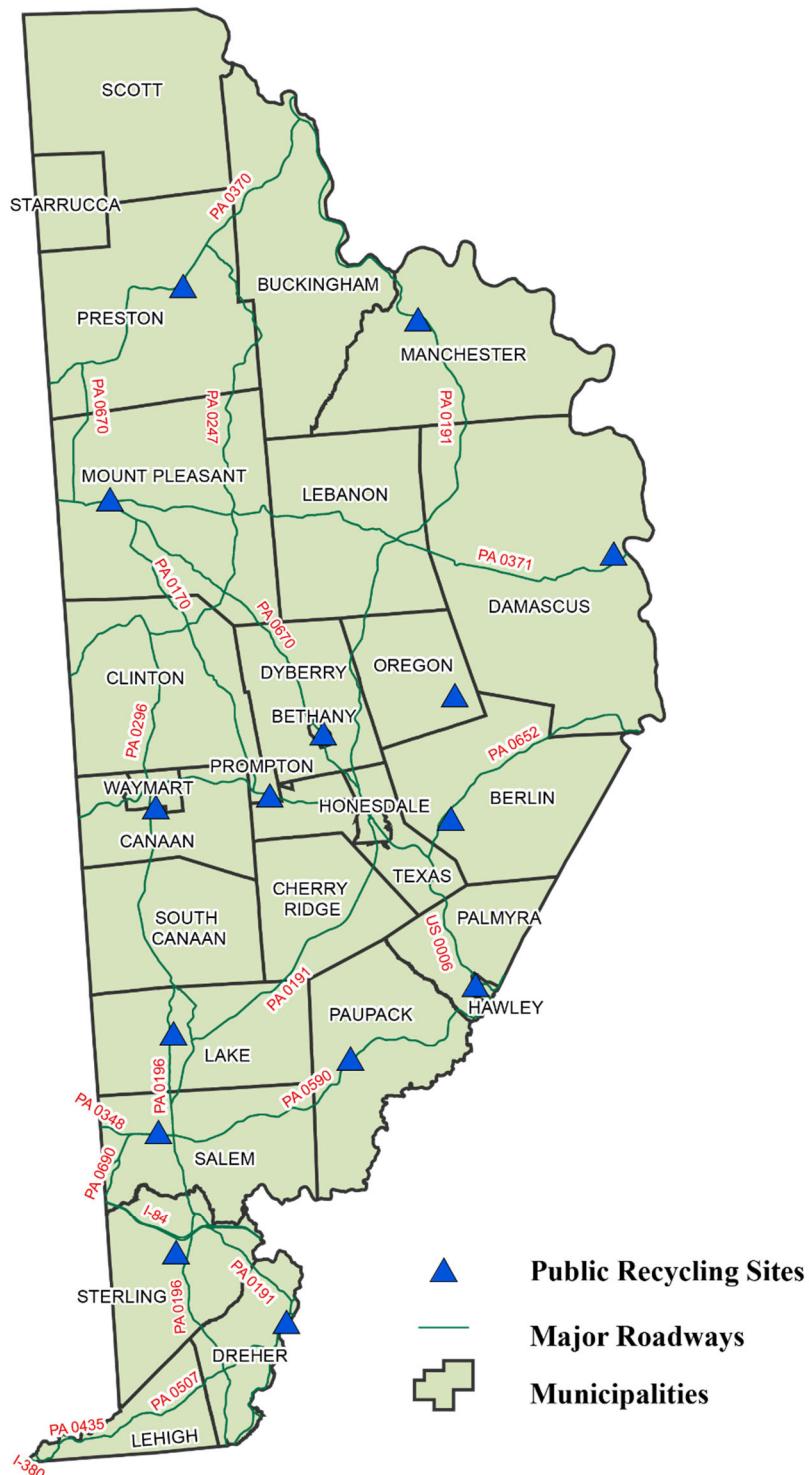
The Wayne County Recycling Center accepts the following materials that are revised as needed:

- **Aluminum cans**
- **Appliances**
- **Brown glass**
- **Chipboard**
- **Clear glass**
- **Corrugated Cardboard**
- **Green glass**
- **Hard cover Books**
- **Junk mail**
- **Kraft paper bags**
- **Magazines**
- **Newspapers**
- **Office paper**
- **Paperback books**
- **Plastic bottles #1**
- **Plastic bottles#2**
- **Scrap metal**
- **Soft plastics**
- **Steel/bimetallic cans**
- **Textiles**
- **Tires**

The Solid Waste Department, in coordination with participating municipalities operates a network of drop-off recycling sites. Most site are located on municipal properties, and several are located at shopping centers. The public drop-off sites include roll-off containers with compartments for different recyclable commodities. Materials accepted at the municipal drop-off sites include:

- **Aluminum cans**
- **Corrugated cardboard**
- **Magazines**
- **Clear glass**
- **Brown glass**
- **Green glass**
- **Newsprint**
- **Plastic #1 bottles**
- **Plastic #2 bottles**
- **Steel/bi-metal cans**

Figure 5-3 Map of Wayne County Recycling Programs



## CHAPTER 5 – RECYCLING

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### 5.6 COMMERCIAL/INSTITUTIONAL RECYCLING

Materials diverted from commercial/institution waste streams are highly variable and correlate to the waste generation characteristics of each establishment. In any given year, roughly fifteen (15) commercial/institutional establishments report recycling as tons diverted annually. Commercial/institutional recycling is provided via collection and/or processing contracts with private waste haulers and/or processors. Cardboard from large chain stores including Wal-Mart, Weis and the Dollar Store, is source-separated. Car batteries are reported from Advanced Auto Parts. Scrap yards provide reports of recycled metal and represent a significant portion of reported recycling efforts in Wayne County.

Commercial/institutional recycling quantities significantly boost recyclables diversion in Wayne County. As shown in **Error!** Not a valid bookmark self-reference. shows the estimated annual distribution of recovered quantities of recyclables across the primary recycling programs in the County including the Recycling Center, recycling drop-off sites, and commercial/institutional establishments. The figure shows 699 tons (8 percent) recovered via the Recycling Center, 187 tons (2 percent) recovered via the network of drop-off sites, and 7,572 tons (90 percent) recovered from commercial/institutional establishments in 2018.

Figure 5-2, commercial/institutional recycling represents ninety (90) percent of reported recycling by weight. **Table 5-3** summarizes commercial/institutional recycling efforts as reported by individual municipalities via a survey in 2019. Eight (8) Wayne County municipalities report that commercial/institutional recycling is provided by some establishments. Six (6) report recycling in commercial establishments and six (6) report recycling is conducted at schools or government buildings.

**Table 5-3 Commercial/Institutional Recycling Service Summary**

Municipality <sup>[1]</sup>	Commercial Recycling	Institutional Recycling
Berlin Twp	✓	
Canaan Twp	✓	✓
Damascus Twp	✓	
Dreher Twp	✓	✓
Honesdale Boro	✓	✓
Preston Twp		✓
Salem Twp	✓	✓
Texas Twp		✓

Source: Municipal survey (2019)

<sup>[1]</sup> Only municipalities indicating some commercial/institutional recycling programs are shown.

### 5.7 YARD WASTE AND LEAF COLLECTION

Residential yard ward waste collection and diversion to recycling in Wayne County is limited due to these conditions:

- ◆ Collection costs are increased due to sparse housing density.
- ◆ No in-county permitted compost sites are available.
- ◆ Residents compost leaves and trimmings naturally in place, which is easier and more cost-effective than other alternatives.

# CHAPTER 5 – RECYCLING

Few municipalities offer curbside leaf and/or yard waste collection services, and there are no registered compost or land application sites (e.g., farms) accepting yard waste or leaves in the County. As needed, private companies including landscapers, construction companies, tree companies, and wood mills, manage wood and yard wastes. Most yard wastes in Wayne County are not recovered for processing, and since no permitted compost facilities are reporting to the County, quantities are unknown.

## 5.8 RECYCLING POTENTIAL

An estimated 50 percent of the County's municipal solid waste stream is comprised of materials that are recyclable or compostable. Many factors, including the following, influence the types and quantities of material that can be feasibly diverted to reuse or recycling:

- ◆ Level of involvement by local and county governments
- ◆ Costs (e.g., fees, revenues, grant funding, etc.)
- ◆ Recyclables collection and hauling service levels
- ◆ Access to end-markets and processing capability
- ◆ Implementing mechanisms (e.g., contracts, collection service, ordinances, regulations)

**Table 5-4** presents estimates of recyclables and non-recyclables in Wayne County's waste stream, which clarifies the total tons of potentially recyclable material. Using EPA waste generation rates and 2019 population data, an estimated 21,300 tons of recyclables and 21,100 tons of non-recyclable waste is generated annually. The reported five-year annual recycling average for 2014-2018 was 7,939 tons which reflects a realistic recyclable capture rate for a rural county.

**Table 5-4 Wayne County Annual Recycling Potential**

Material	% of MSW <sup>[1]</sup>	Estimated Tons in MSW <sup>[2]</sup>
Glass (Clear and Colored)	4.4%	1,900
Aluminum Cans	0.5%	200
Steel and Bimetallic Cans	0.7%	300
Newsprint	2.6%	1,100
Office Paper	1.7%	700
Corrugated Paper	11.9%	5,100
Plastic (PET, HDPE only)	4.2%	1,800
Yard Waste	13.2%	5,600
Tires	2.2%	900
Appliances	2.6%	1,100
Wood	6.2%	2,600
Recyclables Subtotals	50.3%	21,300
Non-recyclable Material	49.7%	21,100
<b>MSW Totals</b>	<b>100.0%</b>	<b>42,400</b>

[1] Source: U.S. EPA. *Advancing Sustainable Materials Management: 2015 Tables and Figures Assessing Trends in Material Generation, Recycling, Composting, Combustion with Energy Recovery and Landfilling in the U.S.* July 2018. MSW Generation applied to year 2019 population estimates.

[2] Estimated tons rounded to the nearest hundredth.

## CHAPTER 5 – RECYCLING

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### 5.9 RECYCLING PROGRAM ENVIRONMENTAL BENEFITS

Recycling ensures the proper processing of materials which conserves landfill space, saves natural resources and reduces energy and gas resources consumed during material manufacturing – all of which help to reduce greenhouse gas emissions or “carbon footprint.” Additionally, the County’s waste management system strives to minimize illegal dumping, prevent community blight, protect waterways, and preserve land and property values. Integrated recycling and resource conservation encourage community development and growth through tourism and recreation while providing numerous direct and indirect benefits.

**Table 5-5** summarizes the environmental benefits of county, municipal, and commercial recycling activities based on the County’s five-year averages for disposed waste and recyclables (2014-2018) data in the U.S. EPA Waste Reduction Model (WARM).

**Table 5-5 Wayne County Recycling Environmental Benefits (5-year Average)**

Benefit	Metric
Quantity Recycled	7,939 tons
Net Reductions in Greenhouse Gas Emissions	6,155 Metric Tons of Carbon Equivalent (MTCE) 22,568 Metric Tons of Carbon Dioxide Equivalent (MTCO2e)
Net Energy Savings	116,837 Million British Thermal Units (BTUs)

Source: U.S. EPA Waste Reduction Model (WARM)-Version 15. May 2019.

### 5.10 MEASURES TO ACHIEVE 35 PERCENT DIVERSION

Using 2019 estimates for MSW generation and recycling applied to the population, **Wayne County’s recycling rate is 21.2 percent**. This recycling rate is calculated using the following formula:

$$\text{Recycling Rate} = \frac{\text{Recycled MSW} + \text{Recycled C/D}}{\text{Total MSW} + \text{Total C/D}}$$

This rate is an excellent recycling rate for a large, rural county with minimal curbside recycling and limited access to recyclables processors. As detailed in **Table 5-4**, there are many additional tons available for recycling in the County’s waste stream.

On a case by case basis and as resources allow, Wayne County pursues cost-effective programs to increase its diversion rate toward the Pennsylvania recycling goal of thirty-five (35) percent. It is vital to the County that existing, new and enhanced recycling programs provide a clear benefit to Wayne County, its residents and/or businesses and are economically sustainable. As feasible, the County will explore opportunities to improve and expand proper waste disposal and recycling services to residents and businesses and priorities the following planning and implementation initiatives to enhance waste diversion (**Table 5-6**):

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**Table 5-6 Measures to Increase Waste Diversion**

<b>Increase/Diversify Funding</b>	<ul style="list-style-type: none"><li>Evaluate funding sources to support proper solid waste management and waste diversion to assure sustainability for existing, enhanced, and proposed programs (e.g., Grants, General Funds, User Fees, cost-sharing, donations, in-kind services).</li></ul>
<b>Operating Efficiency</b>	<ul style="list-style-type: none"><li>As feasible, evaluate and implement measures to improve the operating efficiency of the Wayne County Recycling Center.</li></ul>
<b>Enhance Recycling Center Services</b>	<ul style="list-style-type: none"><li>As feasible, evaluate and implement new and/or enhanced recycling services provided by the Wayne County Recycling Center. Examples identified during Plan development include Electronics, household hazardous waste and Styrofoam (densified).</li></ul>
<b>Drop-off Program Efficiency</b>	<ul style="list-style-type: none"><li>As feasible, evaluate and implement measures to improve the efficiency and effectiveness of County recyclables drop-off sites. As feasible, evaluate and implement new or enhanced services: Reduce contamination, increase quantities of clean recyclables recovered, and reduce costs.</li></ul>
<b>Target high-value commodities</b>	<ul style="list-style-type: none"><li>As feasible, target additional recovery of higher value commodities and/or materials prevalent in the waste stream, including materials that are often disposed illegally. Examples of target materials include cardboard, scrap metal, and electronics.</li></ul>
<b>Encourage voluntary recycling by municipalities</b>	<ul style="list-style-type: none"><li>Encourage municipalities to implement voluntary recycling programs as feasible and to report recycling efforts and quantities to the County.</li></ul>
<b>Enhance/Standardize Education</b>	<ul style="list-style-type: none"><li>Enhance the effectiveness of recycling education across the County by working toward a simple, standard educational message and utilizing standardized recycling education materials and labeling to the extent feasible across County, local municipal, and businesses.</li></ul>
<b>Enhance Business Recycling and Reporting</b>	<ul style="list-style-type: none"><li>Encourage increased recycling at commercial/institutional establishments and encourage reporting of recycling efforts and quantities to the County.</li></ul>

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## CHAPTER 6 – SELECTION & JUSTIFICATION

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This Chapter describes the process for selecting the Wayne County municipal waste management system and justifies the selected waste system and its components. Descriptions of the selected disposal facilities, recycling initiatives, and funding sources for managing County-generated municipal waste for the 10-year planning period (2020 – 2029) are provided.

### 6.1 SUMMARY OF CURRENT WASTE SYSTEM

The County waste system is operated by public and private organizations that provide services in response to waste generation rates and waste characteristics of this large rural County. Public and private waste generators, Wayne County and its Solid Waste Department, local governments (e.g., boroughs and township), private organizations, and other stakeholders share waste management responsibilities and service providers. The private sector primarily manages residential curbside collection services and on-site collection of wastes and recyclables from businesses.

Through the operation of the Wayne County Recycling Center, the Wayne County Solid Waste Department plays an integral role in the County waste system. The Recycling Center provides affordable public access to environmentally responsible alternatives to disposal, including the recovery of recyclable materials and special items (e.g., tires). The Wayne County Solid Waste Department provides administrative services including public education, waste and recyclables data tracking, marketing, and the development and implementation of the County Municipal Waste Management Plan.

### 6.2 WASTE SYSTEM SELECTION PROCESS

The County and its Solid Waste Department elect to continue the waste system without significant change or deviation. The selected waste system reinforces the planning goals and objectives established in Chapter 1 that, in summary, include:

- *Encourage access to affordable waste and recycling services to protect health, safety, welfare and to preserve Wayne County's natural resources.*

The County strives to meet waste and recyclables collection and processing needs through public and private services and partnerships that collectively meet the diverse waste management needs of County residents, businesses, and local governments. The Recycling Center is vital to public waste diversion opportunities, and funding is required to sustain the Recycling Center operation and staff. The SWAC confirmed that establishing programs for special items such as electronics is beneficial to Wayne County and its residents. Special items recovery, including acceptance of electronics at the Recycling Center, was evaluated during Plan development.

The following implementation processes and documents establish the basis for continuing the County waste system for the 2020 – 2029 planning period while recognizing programs may be enhanced or modified based on feasibility:

- **County Municipal Waste Management Plan (2020):** Developed with input from the public, local governments, and other stakeholders. The Plan describes the County waste system, defines planning goals and objectives, and provides initiatives to encourage proper waste management over the 10-year planning period.
- **Wayne County Municipal Waste Management Ordinance (2019):** Updated in 2019 to accurately reflect the County waste system and current legal framework.

# CHAPTER 6 – SELECTION & JUSTIFICATION

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- **Disposal Capacity Request for Proposals (RFP) and Disposal Capacity Agreements (2019):** An open, fair, and competitive process was used to enter agreements with State-permitted disposal facilities. These agreements:
  - Confirm disposal capacity is available for all County-generated municipal waste
  - Secure funding to be remitted by designated disposal facilities to Wayne County to support integrated waste management
  - Secure in-kind services from designated disposal facilities including donated or free disposal for specified quantities of illegally dumped waste

## 6.3 JUSTIFICATION OF WASTE SYSTEM SELECTION

The County and its Solid Waste Department have a proven history of successful Plan implementation. Through education, data collection, recycling data reporting, contract administration, and assistance to municipalities, the County encourages proper recovery and diversion of materials recycling, disposal facilities and other markets. The reasons and justification for the continuation of the County municipal waste system over the 10-year planning period, which are provided, include:

- **Existing Waste System and Regional Markets Are Working:** The combination of private and public collectors, material recovery facilities, transfer facilities, scrap yards, and other markets located in and outside the County have the capacity to manage all County-generated municipal wastes and source-separated recyclables. Due to sparse residential and commercial density, drop-off programs for recyclables and special items are cost-effective alternatives - compared to curbside collection - that can be implemented by public and private organizations.
- **Fulfill County and Public Need:** The SWAC confirmed County waste management priorities are aligned with public interests. This Plan supports initiatives to protect the health, safety, welfare, and the natural resources of Wayne County through responsible solid waste management practices.
- **Wayne County Recycling Center and County-wide Drop-off Program:** The Recycling Center is expected to serve as a primary public drop-off center available to County residents and businesses. The County may enter arrangements to accept materials from out of County when deemed in the best interest of the County. As needed, the County may administer cooperative arrangements with municipalities that host one or more drop-off sites. On an ongoing basis, the County and Solid Waste Department will evaluate recycling opportunities including the recovery of special items.
- **Townships/Boroughs:** There are no Act 101-mandated communities required to implement curbside recycling programs. Interested local governments are expected to continue voluntary recycling with assistance from the County as feasible. Nothing prevents individual townships and boroughs from implementing programs to collect recyclables or other materials. Townships and boroughs may manage the proper collection and disposal of residential waste and/or recyclables through ordinances and/or through contracts with private waste haulers.
- **Commercial, Municipal, and Institutional Establishments:** County businesses are expected to continue to manage municipal waste, including recyclables independently using private haulers and/or self-haul to local and regional processors and disposal locations. Businesses may continue to use public drop-off programs for recyclables and special items.
- **Open, Fair, and Competitive Solicitation for Disposal Capacity:** Through open solicitation for municipal waste disposal capacity, the County secured adequate disposal capacity to manage all of its municipal waste over the 10-year planning period. Waste haulers operating in the County may choose waste transfer and final disposal facilities. Individual municipalities may negotiate directly with transfer or disposal facilities to secure waste services.

## CHAPTER 6 – SELECTION & JUSTIFICATION

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### 6.3.1 WASTE SYSTEM SELECTION & MATERIALS

The selected waste system demonstrates an adequate capacity to collect, transport, process, recycle and dispose municipal waste and source-separated recyclables.

- **Municipal Solid Waste:** Public and private arrangements for collection, transport, disposal, and processing of landfill-bound wastes are expected to continue. The County has secured adequate landfill disposal capacity via contracts with regional disposal facilities. The County Recycling Center and other intermediate processors and markets have capacity for processing recyclables.
- **Construction/Demolition Waste:** Private arrangements for C/D collection, disposal, and recycling are expected to continue, and adequate processing capacity is available.
- **Yard Waste:** Yard waste collection includes a combination of public and private collection with processing (e.g., brush grinding) primarily performed by the private sector landscapers and tree companies. Curbside leaf collection is minimal but expected to continue. The majority of yard waste is expected to be handled by landowners and renters and be managed on-site to compost naturally.
- **Biosolids:** Biosolids and septage shall continue to be managed through the combination of wastewater treatment facilities, on-site treatment systems, and septage haulers. This activity includes the treatment of liquid biosolids and proper disposal of dewatered biosolids that are primarily landfilled. WWTPs demonstrate sufficient capacity to manage biosolids and septage, and the designated disposal facilities have the capacity to accept dewatered sludges annually, and over the 10-year planning period. No alternatives programs or infrastructure are anticipated or needed to manage biosolids.
- **Regulated Medical Waste:** Regulated medical waste, including infectious and chemotherapeutic waste, shall continue to be managed by the private sector, primarily through on-site and/or off-site incineration. No alternative programs or infrastructure is being considered to manage regulated medical waste.
- **Ash and Asbestos:** Ash and asbestos will continue to be managed by the generators that are required to properly manage and dispose this material at a permitted disposal facility. The current system has sufficient capacity to manage ash and asbestos over the next ten (10) years.
- **Residual Waste:** Residual waste collection, treatment, transport, processing, and disposal activities are expected to continue, and regional landfills demonstrate ample permitted capacity to process residual waste and for managing residual wastes.
- **Illegal Dump Waste:** There is sufficient disposal and processing capacity for litter and illegally dumped waste, but illegal dumping persists in the County. This Plan documents illegal dumping activities in Wayne County and considers the associated impacts, costs, and measures to prevent and clean up litter and illegally dumped materials. Protecting natural resources and preserving the aesthetics of natural areas has heightened value to Wayne County since the natural features are primary attractions for tourism that is important to the County economy. Littering, illegal dumping, and improper solid waste management can contribute to environmental risks and economic impacts, such as:
  - Degrading surface water, groundwater, and drinking water
  - Impacting environmentally sensitive areas and habitats (e.g., wetlands)
  - Lowering residential, commercial, and public property value including diminishing the real and perceived value of lands and public space attractions
  - Reducing local collection, hauling, disposal, equipment, and recycling business opportunities

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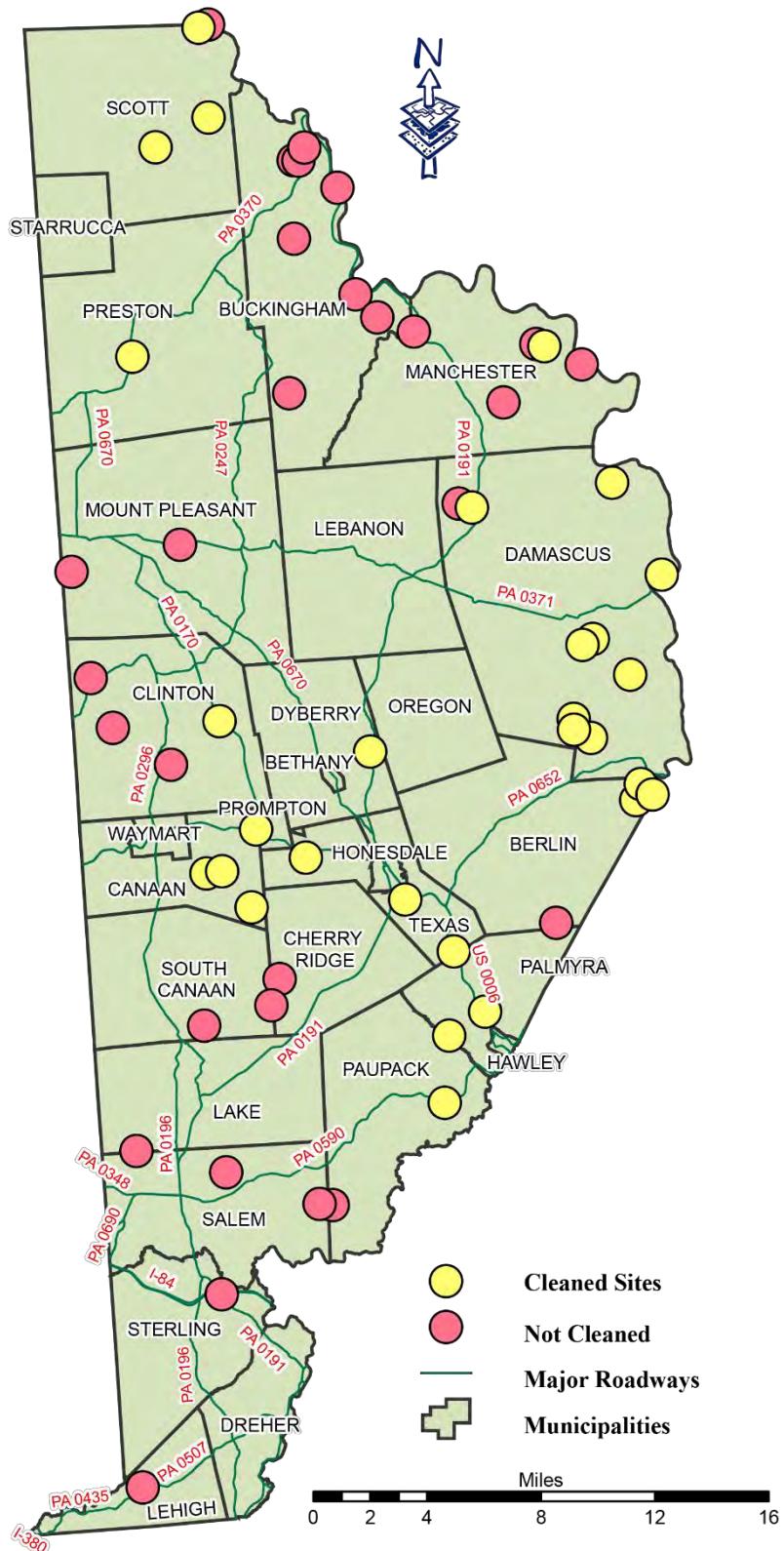
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- Reducing tourism by impacting the aesthetic value and public perception of County natural features and tourist areas
- Transferring the economic burden of cleanup to the host municipalities and/or the private property or business impacted by improper disposal

In 2012, Keep Pennsylvania Beautiful (KPB) conducted an illegal dumping survey which identified forty-three (43) dumpsites in Wayne County containing nearly seventy-two (72) tons of waste. Almost twenty (20) percent of these dumpsites were located within fifty (50) feet of a waterway or body of water. Loose and bagged household trash, construction and demolition waste, and tires were common materials. From 2015 through 2018, the Pennsylvania Environmental Council (PEC) performed an extensive cleanup effort that was made possible by funding originating from enforcement action by PADEP. PEC, under its Community Illegal Dumpsite Cleanup Program, coordinated and conducted dumpsite cleanups with assistance from nearly 150 volunteers, municipalities, and other stakeholders and partners. Over the 4-year cleanup period that ended in 2018, twenty-nine (29) dumpsites in Wayne County were cleaned. Twenty-seven (27) tons of waste, eleven (11) tons of scrap metal, and over 1,000 tires, or fourteen (14) tons, were removed and disposed or recycled. **Figure 6-1** shows the distribution of cleaned and uncleaned or existing sites.

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Figure 6-1 Map of Illegal Dump Sites



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## 6.4 DESIGNATED MSW DISPOSAL FACILITIES

### 6.4.1 LOCATION

The County openly and fairly executed disposal capacity agreements with five (5) out-of-County landfills (Appendix B – Disposal Capacity Agreements) and designated these selected disposal facilities within this Plan. These disposal facilities have contracts to accept all or part of the municipal waste generated on an annual basis over the 10-year planning period (2019 – 2029). The addresses for each designated disposal facility are presented in Table 6-1, and the facility locations are illustrated in Figure 6-2.

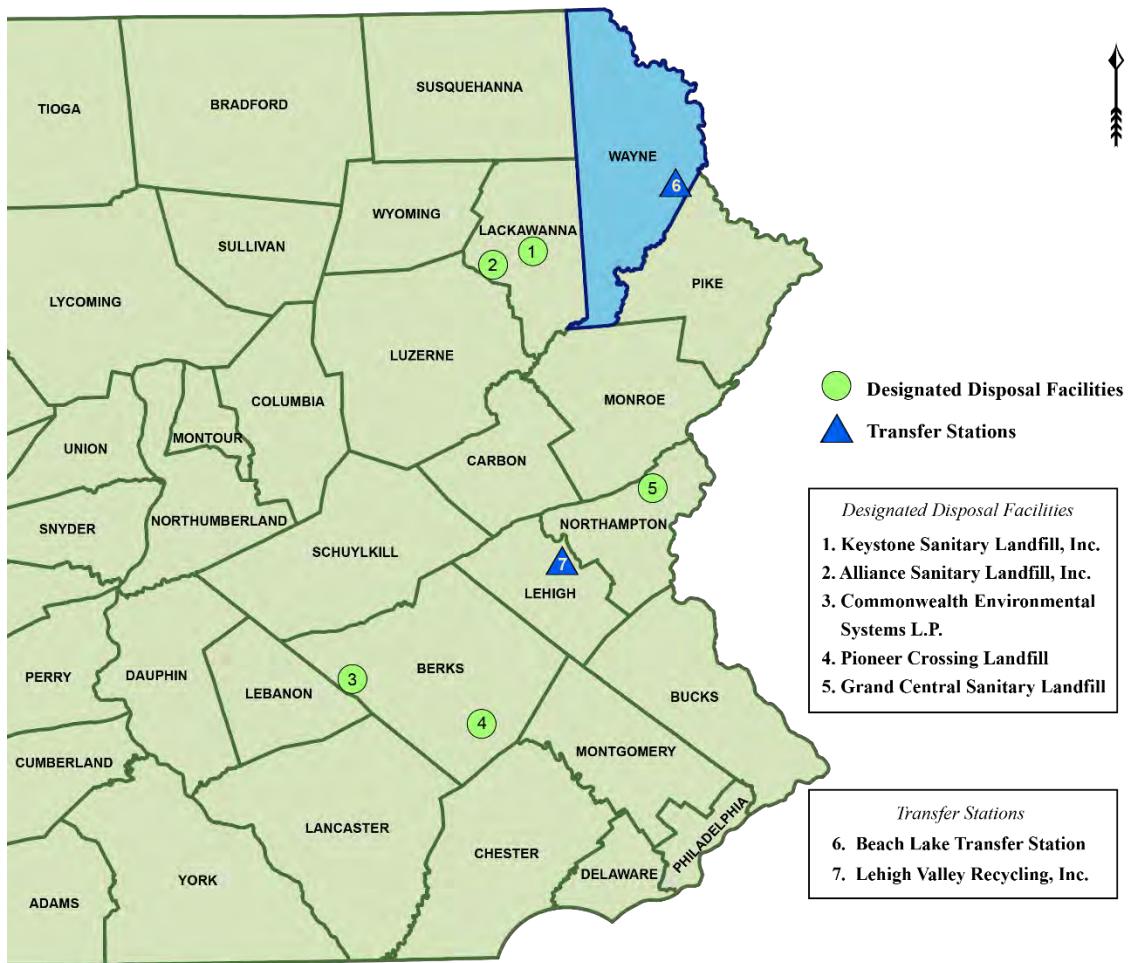
Transfer stations do not provide “disposal capacity” but have a role in the County waste system. The Beach Lake Transfer Station and Lehigh Valley Recycling, Inc. (transfer facility) executed transfer facility agreements with the County. Combined, these two facilities are permitted to transfer 14,200 tons per year or 142,000 total tons over the 10-year planning period. The Beach Lake Transfer Station is adjacent to the Wayne County Recycling Center and is expected to continue to serve as a primary transfer facility during the 10-year planning period. The address and locations of the Beach Lake Transfer Station and Lehigh Valley Recycling, Inc. are also shown in Table 6-1 and Figure 6-2, respectively.

**Table 6-1 Designated Municipal Waste Disposal and Transfer Facilities**

Designated Facility	Owner	Distance (miles)	County	Facility Address
<b>Disposal Facilities</b>				
Alliance Sanitary Landfill	Waste Management	37	Lackawanna	398 South Keyser Ave., Taylor, PA 18517
Commonwealth Environmental Systems (CES)	Keystone Landfill, Inc. and L&D Management, Inc.	109	Schuylkill	99 Commonwealth Road, Hegins, PA 17938
Grand Central Sanitary Landfill	Waste Management	77	Northampton	910 W Pennsylvania Ave., Pen Argyl, PA 18072
Keystone Sanitary Landfill	Keystone Landfill, Inc.	36	Lackawanna	249 Dunham Drive, Dunmore, PA 18512
Pioneer Crossing Landfill	J.P. Mascaro & Sons, Inc.	134	Berks	727 Red Lane Road, Birdsboro, PA 19508
<b>Transfer Stations</b>				
Beach Lake Transfer Station	Waste Management	7	Wayne	165 Rosencranse Rd, Beach Lake, PA 18405
Lehigh Valley Recycling Transfer Station	J.P. Mascaro & Sons, Inc.	84	Lehigh	3942 Portland St Coplay, PA 18037

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Figure 6-2 Map of Designated Municipal Waste Disposal and Transfer Facilities



### 6.4.2 DISPOSAL CAPACITY ASSURANCE

Haulers collecting County-generated wastes shall dispose municipal wastes at the disposal facilities designated in the Plan. **Table 6-2** summarizes information for each contracted designated disposal facility, including the approximate distance from Wayne County, accepted materials, available permitted capacity (tons), and years remaining until facility closure. As shown, the five (5) designated disposal facilities have a combined available capacity of about 100,000 tons annually and over 870,000 tons of capacity over the 10-year planning period. The disposal capacity secured via executed disposal capacity agreements far exceeds County municipal waste disposal requirements estimated at 36,000 tons for the year 2019 and declining to 34,000 tons for the year 2029.

### 6.4.3 IN-KIND DISPOSAL SERVICES

Wayne County's Request for Proposals (RFP) to secure MSW disposal capacity included a request for in-kind services to support the County's municipal waste management system. The RFP highlighted the value of illegal dumping prevention and cleanup and asked respondents to offer in-kind services and free disposal to reduce certain costs associated with managing illegally dumped materials.

**Table 6-3** summarizes the in-kind services provided by regional landfills and transfer stations that have been incorporated within executed disposal capacity agreements.

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Table 6-2 Wayne County Designated Disposal Capacity Summary

Designated Facility	Owner	Distance to Facility (miles)	Years of Remaining Capacity <sup>[1]</sup>	Accepted Materials <sup>[2]</sup>	Annual Disposal Capacity Available to Wayne County (tons)	10-Year Capacity Available to Wayne County (tons) <sup>[3]</sup>
Alliance Sanitary Landfill	Waste Management	37	26	MSW, R, SS, C/D, IC, A	25,000	250,000
Commonwealth Environmental Systems (CES)	Keystone Landfill, Inc. and L&D Management, Inc.	109	16	MSW, C/D, SS, BW	17,220	172,200
				Residual	2,460	24,600
Grand Central Sanitary Landfill	Waste Management	77	9	MSW, C/D, SS, A	10,400	93,600
Keystone Sanitary Landfill	Keystone Sanitary Landfill Company	30	3.26	MSW, C/D, SS, BW	17,040	55,550
				Residual	1,420	4,629
Pioneer Crossing Landfill <sup>[4]</sup>	J.P. Mascaro & Sons, Inc.	134	12	MSW, C/D, IC, BW, SS	30,000	300,000
				Residual	Not Provided	Not Provided
<b>Total Municipal Waste <sup>[5]</sup></b>					<b>99,660</b>	<b>871,350</b>
<b>Total Residual Waste</b>					<b>3,880</b>	<b>29,229</b>

[1] Years of remaining permitted capacity only assume approved expansions. Pending expansions would increase the available disposal capacity upon approval.

[2] Waste Types: MSW - Municipal Solid Waste, SS - Sewage Sludge, C/D – Construction/Demolition, IC - Infectious/Chemotherapeutic, A - Asbestos, IA - Incinerator Ash, BW – Bulky. Accepted materials may include incidental quantities of specific waste types delivered mixed with MSW.

[3] The annual estimated capacity available to Wayne County provided by the landfill multiplied by the years of remaining capacity up to a maximum of 10 years. For landfills providing a range of available capacity (tons), the minimum value (tons) is shown in the table.

[4] Pioneer Crossing provides capacity in coordination with Lehigh Valley Recycling, Inc. that is permitted to transfer municipal waste, C/D, and approved residual wastes.

[5] The aggregate of all non-hazardous residential/commercial/institutional municipal solid wastes including C/D, regulated medical waste, asbestos, sewage sludge, and other accepted "special handling" municipal wastes, excluding residual. This represents the total municipal waste disposal capacity include all accepted waste types under "municipal waste."

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**Table 6-3 Wayne County In-Kind Services for MSW Management**

Disposal Facility	Distance to Facility (miles)	Materials Accepted <sup>[1]</sup> (without charge)	Annual Maximum Donated (tons)	10-Year Maximum Donated (tons)	Other In-kind Services Offered
Alliance Sanitary Landfill	37	Illegally dumped MSW, Appliances without Freon	100	1,000	Recycling education assistance.
Commonwealth Environmental Systems L.P. (CES)	109	Illegally dumped MSW, Residential C/D, Bulky waste, Clean scrap metal	60	600	Case-by-case consideration of specific dumpsite cleanup waste.
Grand Central Sanitary Landfill	77	Illegally dumped MSW, Appliances without Freon	100	1,000	Recycling education assistance.
Keystone Sanitary Landfill	30	Illegally dumped MSW, Residential C/D, Bulky waste, Clean scrap metal	60	196	Case-by-case consideration of specific dumpsite cleanup waste.
Beach Lake Transfer Station	7	Illegally dumped MSW, Appliances without Freon	50	500	Recycling education assistance.
<b>Total</b>			<b>370</b>	<b>3,296</b>	

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## 6.4.4 PROCEDURE TO ADD DESIGNATED FACILITIES

Haulers, disposal facilities, and/or municipalities have the option to petition to use a disposal or processing facility for County-generated municipal waste other than those designated through an executed Disposal Capacity Agreement with Wayne County as established under this Plan revision. Any facility added to the Plan using this procedure below may accept County-generated MSW in accordance with the negotiated Disposal Capacity Agreement.

1. The entity shall submit a written petition to the County Commissioners to be included in the Plan as a designated disposal facility.
2. Within fifteen (15) working days of receiving the petitioning, the County will forward a copy of the solicitation documents to the facility requested for inclusion in the Plan.
3. Upon receipt of the completed solicitation documents by the County Commissioners from the facility, the County will review and provide a response (approval or denial) to the facility within twenty (20) working days.
4. For any approved designated facility to be added to the Plan, the County will mail an executed Disposal Capacity Agreement to be duly executed and returned to the County Commissioners.
5. Upon receipt of a fully executed Disposal Capacity Agreement, the County will notify all County municipalities and PADEP that an additional designated facility has been added to the Plan as a non-substantial Plan revision. The Disposal Capacity Agreement shall be provided to PADEP and attached to the Plan.

## 6.5 MATERIALS MANAGEMENT GOALS & OPPORTUNITIES

This section describes planning goals, materials management opportunities, and strategies that may be advanced during the 10-year planning period to benefit the County waste system. The selection of preferred materials management and diversion strategies take in to account these County solid waste system characteristics:

- Rural areas with low housing and business density underscore the value of leveraging economies of scale to overcome elevated material collection and transportation costs. The cost-benefit for drop-off recycling programs is high.
- The County's natural resources and historic setting attract visitors, and tourism is vital to the economy. However, transient populations create seasonal variations in waste generation and contribute to illegal dumping and littering.
- Wayne County townships and boroughs do not contract for waste collection services but are impacted by improper management of municipal waste within their jurisdictional boundary. Managing illegal dumping and the handling of special items is challenging for communities with limited resources. Many residents are not willing or able to pay additional hauler fees for special item collection services or curbside trash collection

Broad planning goals for materials management include those listed below. **Table 6-4** presents the opportunities for materials management and diversion.

- **Advance economically feasible municipal waste collection, reduction and diversion programs** that reduce costs through efficiency, market competition, and avoided disposal.
- **Enhance recovery of special items as feasible** for hard-to-recycle items and special items that require special handling (e.g., electronics, HHW, tires, bulk items).
- **Strengthen public and private partnerships** to promote efficient, cost-effective and environmentally responsible materials management.

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- **Implement illegal dumping prevention and cleanup strategies** to preserve the natural and scenic areas of the County that are vital to tourism and the local economy.
- **Encourage cooperation and resource sharing among the County and local municipal governments and strategic partners** to promote proper solid waste management and environmental stewardship.
- **Raise public and stakeholder awareness** through education addressing County-specific waste system challenges, opportunities, services, and programs to increase participation in programs that reduce costs and impacts and protect natural resources.

**Table 6-4 Materials Management and Diversion Opportunities**

Material Management & Diversion Opportunities	Description
<b>Program Standardization</b>	Streamline County and municipal materials management program implementation and education by standardizing key program elements such as materials definitions, list of targeted recyclables, targeted items requiring special collection (e.g., electronics), implementation documents (e.g., ordinances and contracts), and education materials, etc.
<b>Enhance Recycling Center Diversion Programs</b>	Enhance materials recovery at the Recycling Center, with prioritization to evaluate and implement these services as feasible: <b>Evaluate New Programs</b> <ul style="list-style-type: none"><li>• Electronics</li><li>• HHW</li></ul> Assure financial sustainability through user fees (e.g., \$20 per TV).
<b>Leverage Public-Private Partnerships &amp; Stakeholder Engagement</b>	Engage key stakeholders in solid waste topics, share resources, and identify volunteers to raise awareness and to address waste management challenges. Partners may include environmental groups (e.g., Conservation District, environmental groups, Game Commission, hunting clubs, private companies, foundations, disposal facilities and other processors).
<b>Public Education and Market Information</b>	Improve the effective delivery of waste and recycling information to benefit the public and stakeholders. Use standard messaging that targets waste and recycling priorities and initiatives. Leverage the County website, meetings, and seminars to share information and to discuss challenges, opportunities, and implementation strategies. Maintain the Material Markets Summary database developed during this planning process and make it available to the public to increase awareness about recycling and disposal options in the region.
<b>Illegal Dumping Prevention/ Cleanup</b>	Form partnerships with non-profit illegal dumping organizations, including PEC, KPB, and or KAB. Leverage these resources to provide technical and financial assistance to support litter prevention and cleanup. Use the “free disposal” services for illegal dump waste provided by the landfills and transfer stations that were secured via contract during this Plan development. Evaluate and implement feasible programs to recover special items including tires, appliances, electronics and similar materials. Enhance relationships with enforcement agencies including police, codes, District Justice, Game Commission, Fish and Boat Commission, PENNDOT, and others to strengthen enforcement efforts relating to littering and illegal dumping.

# CHAPTER 6 – SELECTION & JUSTIFICATION

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## 6.6 COUNTY WASTE SYSTEM FUNDING

Private sector costs for waste collection, transportation, and processing services will continue to be driven by many economic factors including market conditions and competition among service providers. Markets for recyclable commodities continue to be unpredictable. Since 2018, the costs for processing recyclables have increased and commodity values have decreased significantly in response to material export bans placed on U.S. commodities. Increasingly stringent requirements regarding acceptable contamination and/or residue levels in recovered recyclables is a crucial consideration, and the value of keeping source-separated recyclables free of contaminants is high.

**Table 6-5** summarizes waste system funding alternatives that were evaluated in detail in the previous Plan (2009) and reviewed with the SWAC during Plan development. Notably, some waste system funding alternatives are not viable in Wayne County because the alternative does not garnish public and/or political support.

**Table 6-5 Solid Waste System Funding Alternatives**

Funding Alternative	Description
<b>Waste Management Millage</b>	A tax assessed to property owners based on a percentage of the residential property value to fund annual County waste management programs and Plan administration costs. The expressed millage rate is multiplied by the total taxable value of the property to arrive at the property taxes due.
<b>Utility Billing</b>	Establishing a local utility, or piggybacking on a local utility, such as sewer/water to charge user fees to waste generators or residential and/or commercial customers. Solid waste charges can be added to existing utility bills and the User Fee established for materials management is determined by the County. Creating a new solid waste billing system can be complex and expensive.
<b>Non-Ad Valorem Tax Assessment</b>	Tax assessed based on the area of a property or the number of units. The levying authority sets the Non-Ad Valorem assessment based on establishing a justified cost of the service provided to the property. The Non-Ad Valorem tax is a reliable revenue source that can be allocated equitably.
<b>Solid Waste Service Contracts</b>	MSW collection, hauling, and/or processing contracts, often resulting from a competitive procurement process. Leverage procurement to improve economies of scale, manage competition, reduce costs, and even recover revenue. Solicitations (e.g., bids) shall clearly define service requirements and be structured to distribute risks among involved parties equitably. Since Wayne County Townships and Borough rarely enter waste collection contracts, this funding alternative is very limited.
<b>County-Owned Transfer Facility (Tip Fees)</b>	Constructing a County-owned transfer facility designated for all County-generated waste via waste flow control ordinance. Transfer facility tip fee rates can be set to cover County waste system operating and administrative costs (plus disposal fees) and serve as a primary funding mechanism. The County is not interested in this high-cost and complex alternative at this time given market conditions, nearby transfer station, and County priorities.
<b>Recycling Sustainability Fee</b>	The fee assessed by the County within the disposal capacity agreements executed with designated disposal facilities. The revenue remitted to the County is calculated based on the per-ton-fee established by the County multiplied by the reported MSW tons originating from the County.

## CHAPTER 6 – SELECTION & JUSTIFICATION

### 6.6.1 WASTE SYSTEM AND SOLID WASTE DEPARTMENT FUNDING

The primary funding requirement for the County waste system is the operation of the Wayne County Recycling Center and Wayne County Solid Waste Department. The Recycling Center and network of public drop-off sites are the centerpiece of recycling infrastructure and services that assure the public has affordable recycling opportunities. Each ton diverted to recycling and reuse avoids the cost of waste disposal and reduces environmental harms like those associated with illegal dumping. **Table 6-6** presents the annual Operating Result for the Recycling Center including the estimated income and expenses experienced in a typical operating year. Based on ten (10) years of financial information, the estimated annual operating cost of the Recycling Center is approximately \$400,000. Various revenue sources and grants offset costs. The General Fund and/or Solid Waste Fund is used to balance the annual Operating Result (shown as \$0 in Table 6-6). The amount needed to balance the budget fluctuates based on the amount of revenue and expenses experienced in a given year.

The Recycling Center and County drop-off sites are extraordinarily cost-effective and provide significant value to residents and businesses. **Table 6-7** presents the funding sources available to sustain the beneficial public waste and recycling services provided by the County through its Solid Waste Department. In the interest of the financial sustainability of the Recycling Center, the primary recommendation is for the Solid Waste Department to utilize service fees/user fees to offset the cost to the extent feasible and minimize annual draws from the General Fund and Solid Waste Fund. This recommendation applies to existing services and for any new or enhanced services such as electronics recovery programs that may be implemented during the planning period.

**Table 6-6 Wayne County Annual Estimated Recycling Center Operating Result**

INCOME	
<b>Revenue</b>	
Recycling Sustainability Fee	\$113,000
Commodity Sales	\$140,000
Service/User Fees	\$10,000
General Fund/Solid Waste Fund	\$13,000
<b>Grants</b>	
Act 101 Section 902 Recycling Grant	\$54,000
Act 101 Section 903 Recycling Coordinator Grant	\$34,000
Act 101 Section 904 Recycling Performance Grant	\$35,000
<b>Total Income</b>	<b>\$399,000</b>
EXPENSES	
Salaries	\$300,000
Maintenance	\$25,000
Utilities	\$16,000
Misc. Expenses	\$20,000
Capital Outlay	\$38,000
<b>Total Expenses</b>	<b>\$ 399,000</b>
<b>OPERATING RESULT</b>	<b>\$ 0</b>

## CHAPTER 6 – SELECTION & JUSTIFICATION

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Table 6-7 County Waste System Funding Sources

Funding Source	Description
Recycling Sustainability Fee/Solid Waste Fund	Through the per ton fee established within executed disposal capacity agreements between designated disposal facilities and the County, the County recovers approximately \$80,000 annually. The fee revenue is calculated by multiplying the per-ton-fee by the tons of County-generated municipal waste disposed. Fee revenue is retained in a Solid Waste Fund that is used to offset Recycling Center/Solid Waste Department expenses.
Recyclable Commodity Sales	The County Solid Waste Department markets recyclable commodities and recovers revenue through commodity sales.
Recycling Center Customer User Fees	Customer user fees are currently in place for specific materials (e.g., tires, refrigerant removal, etc.) at the Recycling Center. As needed, the Recycling Center will assess user fees to recover some or all costs associated with recycling services. Assessing user fees is integral to the financial sustainability of the Recycling Center, particularly when adding or expanding services (e.g., accepting electronics).
Grants	While grants <i>are not guaranteed revenue</i> , grants offset eligible recycling program costs and continue to benefit County recycling programs. The County will continue to pursue Act 101 Recycling Grants and other grants to support beneficial programs.
General Fund	General funds offset certain costs of County-implemented recycling programs. General fund expenditures are limited to the extent feasible through the use of other funding sources and grants.

# CHAPTER 7 – PLAN IMPLEMENTING ENTITY

## 7.1 WAYNE COUNTY SOLID WASTE DEPARTMENT

The Wayne County Solid Waste Department, under the direction of the Wayne County Board of Commissioners, provides Plan administrative and implementation services including the management and operation of the Wayne County Recycling Center. The Wayne County Commissioners are designated via ordinance responsibilities for municipal waste management including Plan development and implementation. Planning initiatives developed for the 10-year planning period (2010 – 2029) were developed with input from the SWAC. Plan implementation functions under the responsibility of the County Commissioners and Solid Waste Department are presented in **Table 7-1**.

**Table 7-1 Plan Implementation Responsibilities**

Implementation Item	Function
<b>Municipal Waste Management Plan</b>	Complete subsequent Plan revisions. Advance Plan initiatives, including feasible recycling alternatives that reduce disposal costs.
<b>Recycling &amp; Materials Management</b>	Advance sustainable material recovery initiatives and programs, including operation of the County Recycling Center and assistance to townships, boroughs, citizens and agencies interested in diversion. Implement responsible alternatives to disposal including recycling and recovery of hard-to-recycle items and special handling items (e.g., tires) that are often disposed illegally.
<b>County Municipal Waste Ordinance</b>	Administer the County Municipal Waste Ordinance.
<b>Public Education</b>	Provide ongoing public education to promote responsible disposal and materials recovery, resource conservation, and material diversion to recycling.
<b>Stakeholder Engagement</b>	Encourage stakeholder engagement and education, including resource development and sharing among municipalities, COG, and stakeholders (businesses, environmental groups, etc.).
<b>Funding</b>	Allocate resources for Plan implementation, including funds to support the County Recycling Coordinator/Solid Waste Director and County programs and to apply for grants to offset costs.
<b>Data Collection and Reporting</b>	Complete annual recycling reports as required under Act 101 of 1988. Administer recycling data collection from municipalities and commercial and institutional establishments. Encourage data collection best practices, including disposal and recycling data provision by haulers within residential curbside collection contracts.
<b>Illegal Dumping Prevention/ Cleanup</b>	Encourage dumping prevention through education, stakeholder engagement, and resource sharing. Monitor illegal dumpsites and roadside litter activity. Leverage donated (no cost) disposal capacity secured during this Plan in coordination with local businesses, environmental groups, and affiliates (e.g., KPB, KAB, PEC) to secure volunteers, supplies, and resources for dumping prevention and cleanup activities.

## **CHAPTER 7 – PLAN IMPLEMENTING ENTITY**

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## CHAPTER 8 – PUBLIC FUNCTION

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In accordance with Title 25, Chapter 272.230, this Chapter describes Wayne County's public function and activities pertaining to the ownership and operation of a municipal waste processing or disposal facility. Wayne County does not own or operate a state-permitted landfill or other waste disposal facility. Wayne County intends to use multiple out-of-county landfills for the ultimate disposal of municipal wastes, with a portion of County-generate municipal waste passing through the Beach Lake Transfer Station.

Wayne County owns and operates the Wayne County Recycling Center, which services as a public drop-off site for various recyclable commodities and special handling items (e.g., tires). The Solid Waste Department, through its Recycling Center, will continue to manage recyclables, including collection, consolidation, and transportation to permitted recycling facilities and markets. The County Commissioners retain the responsibility of execution and oversight of Disposal Capacity Agreements. Regional recyclables markets and processing continues to be available through an open market comprised of public and private material recovery facilities and small processors. Individual generators and the private sector shall continue to be responsible for the processing and disposal of sewage sludge, septage and regulated medical waste including infectious and chemotherapeutic waste via on-site processing and off-site processing and disposal.

## **CHAPTER 8 – PUBLIC FUNCTION**

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# CHAPTER 9 – PLAN IMPLEMENTING DOCUMENTS

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## 9.1 COUNTY IMPLEMENTING DOCUMENTS

The documents governing municipal waste management in association with this Plan are collectively referred to as “Plan Implementing Documents”. In accordance with Title 25, Chapter 272.231 and Chapter 272.245, the Plan shall include ordinances, contracts and other requirements used to ensure disposal capacity is available to process or dispose County-generated MSW over the 10-year planning period. Final and/or executed County Plan implementing documents shall be submitted to PADEP within one year of Plan approval and appended to the Plan. Implementing documents under the responsibility of the County for Plan implementation are presented in **Table 9-1**.

**Table 9-1 Wayne County Plan Implementing Documents**

Implementing Document	Description
County Waste Management Ordinance	An ordinance specifying persons/entities transporting County-generated MSW shall deliver waste to County-designated disposal facilities over the 10-year planning period ( <b>Appendix A – County Municipal Waste Management Ordinance</b> ). Waste haulers may use any of the designated facilities identified in the Plan.
Disposal Capacity Agreements	Contracts executed between the Wayne County Board of Commissioners and the owner/operators of permitted MSW disposal facilities to assure ( <b>Appendix B – Disposal Capacity Agreements</b> ).
Plan Resolution of Adoption)	A resolution executed by County Board of Commissioners marking the adoption of the completed Plan ( <b>Appendix C – Plan Resolution of Adoption</b> ).

## 9.2 OTHER IMPLEMENTING DOCUMENTS

Additional implementing documents related to municipal waste and recycling may be developed during the 10-year planning period. Wayne County, its municipalities, or other entities shall exercise their respective authorities for the development, adoption and execution of documents deemed necessary to carry forth waste management obligations and to implement this Plan. Examples include: municipal solid waste ordinances, solid waste collection, recycling, and disposal contracts, and cooperative or affiliation agreements among municipalities and/or environmental groups, businesses and other stakeholders.

## **CHAPTER 9 – PLAN IMPLEMENTING DOCUMENTS**

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## CHAPTER 10 – ORDERLY EXTENSION

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This Plan update has been developed in accordance with Act 101 of 1988 and Title 25, Chapter 272 of the PA Code, and PADEP guidance and does not conflict with any state, regional, or local plans. This Plan has been updated using demographic information reviewed by the Wayne County Solid Waste Department and the County GIS Department. This Plan builds upon planning concepts in the previously approved Plan. Demographic data, solid waste data, and knowledge of the Wayne County solid waste system have been applied to assure this Plan provides for the orderly extension of municipal waste management programs aligned with the needs of Wayne County.

## **CHAPTER 10 – ORDERLY EXTENSION**

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## **CHAPTER 11 – NON-INTERFERENCE**

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In accordance with Act 101 of 1988, Wayne County ensures its municipal waste management plan does not interfere with the design, construction, operation, financing or contractual obligations of any municipal waste processing, disposal, or resource recovery which is part of an approved municipal waste management Plan submitted to PADEP. There are no disposal facilities located within or proposed to be constructed within Wayne County. The Wayne County Recycling Center has been in operation for over 20 years. There is no significant expansion or operational changes proposed for the Recycling Center that would interfere with municipal waste processing, disposal or resource recovery.

This Plan does not restrict the use of remaining permitted disposal capacity, or capacity resulting from facility expansion. The County shall not interfere with the efforts of existing disposal or processing facilities to secure arrangements to process or dispose municipal waste from customers outside Wayne County provided these arrangements do not conflict with the executed Disposal Capacity Agreements associated with this Plan.

## **CHAPTER 11 – NON-INTERFERENCE**

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## CHAPTER 12 – PUBLIC PARTICIPATION

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Public participation was an essential component of developing this Plan revision. Input from individuals, the Solid Waste Advisory Committee (SWAC), the Solid Waste Department, Board of Commissioner, and other stakeholders influenced planning information, concepts, strategies and initiatives proposed for the 10-year planning period. Public participation shaped realistic, implementable and cost-effective Plan initiatives compatible with the existing system and County Recycling Center. The SWAC was formed by soliciting for representation via email and letter correspondence to the groups listed below. **Table 12-1** show the SWAC meeting schedule.

- (1) All classes of municipalities within the county.
- (2) Citizen organizations.
- (3) Industry.
- (4) Private solid waste industry (in County).
- (5) Private recycling or scrap industry (in County).
- (6) County Recycling Coordinator.

**Table 12-1 Wayne County SWAC Meeting Schedule**

Meeting	Date
SWAC (1)	12-06-18
SWAC (2)	08-08-19
SWAC (3)	02-20-20

Key elements of the Public Participation included input, engagement, and shared resources among the following:

- Solid Waste Advisory Committee (SWAC)
- Wayne County Board of Commissioners
- Wayne County Solid Waste Department
- Disposal facility Representatives
- Wayne County Planning Department/GIS

Essential outcomes from public participation efforts included:

- SWAC meeting discussions and input guided the selection and justification of the County waste management system.
- The SWAC weighed in on preferred and realistic materials management strategies
- The SWAC and all municipalities were provided quarterly status reports and given the opportunity to review and comment on draft Plan chapters.
- Involvement by County staff in negotiation with disposal facilities and execute disposal capacity agreements.

## **CHAPTER 12 – PUBLIC PARTICIPATION**

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## **APPENDIX A**

### **COUNTY MUNICIPAL WASTE MANAGEMENT ORDINANCE**

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**WAYNE COUNTY, PENNSYLVANIA  
MUNICIPAL WASTE MANAGEMENT ORDINANCE**

**ORDINANCE DESIGNATING DISPOSAL FACILITIES  
AND IMPLEMENTING MUNICIPAL WASTE MANAGEMENT FOR WAYNE  
COUNTY MUNICIPAL WASTE PLAN**

AN ORDINANCE OF THE COUNTY OF WAYNE, PENNSYLVANIA, DESIGNATING PROCESSING AND/OR DISPOSAL FACILITIES; PROVIDING WASTE FLOW CONTROL REQUIREMENTS TO DIRECT MUNICIPAL WASTE TO DESIGNATED PROCESSING AND/OR DISPOSAL FACILITIES; ESTABLISH MINIMUM CRITERIA FOR ALL HAULERS THAT COLLECT AND TRANSPORT MUNICIPAL WASTE GENERATED FROM SOURCES LOCATED IN WAYNE COUNTY AND PROVIDING PENALTIES FOR VIOLATION OF THIS ORDINANCE.

WHEREAS, the Board of County Commissioners have adopted and approved the Municipal Waste Management Plan (the "Plan") for Wayne County in accordance with the requirements of Section 501 of the Pennsylvania Municipal Waste Planning, Recycling and Waste Reduction Act of 1988 (Act 101), and said Plan has been duly ratified by the municipalities in the County; and,

WHEREAS, it is the intent of the County to implement the Plan.

WHEREAS, the County has the power and duty to adopt any such ordinances deemed necessary to implement this Plan by the authority vested to the County pursuant to Section 303 of Act 101, including requirements that all Haulers with a gross vehicle weight of 17,000 pounds or greater be licensed by the State of Pennsylvania to collect and transport Municipal Waste subject to the Plan to Municipal Waste processing and/or disposal facilities (the "Facilities") designated by the County pursuant to Subsection 303(e) of Act 101.

WHEREAS, the County intends to enter into Disposal Agreements with duly permitted disposal facilities to accept the County's Municipal Waste for a period of five years with an option to renew for five years; and,

WHEREAS, the County desires that the Municipal Waste generated within its jurisdiction be disposed of at the Facilities.

NOW, THEREFORE, the Board of County Commissioners of Wayne County hereby enact and ordain as follows;

## SECTION 1 – SHORT TITLE

This Ordinance shall be known and referred to as the “Wayne County Municipal Waste Management Ordinance”.

## SECTION 2 – DEFINITIONS

The following words and phrases as used in this Ordinance shall have the meaning ascribed to them herein, unless the context clearly indicates a different meaning:

Act 97 – The Pennsylvania Solid Waste Management Act of 1980 (P.L. 380, No. 97, July 7, 1980).

Act 101 – The Pennsylvania Municipal Waste Planning, Recycling and Waste Reduction Act of 1988 (SB 528, Act 1988 – 101, July 28, 1989).

Act 90 – The Pennsylvania Waste Transportation Safety Act of 2002 (P.L. 596, No. 90, June 29, 2002).

Commercial Establishment – Any establishment engaged in non-manufacturing or non-processing business, including, but not limited to, stores, markets, offices, restaurants, shopping centers and theatres.

County – The Wayne County Board of County Commissioners or its designee.

Licensed Waste Hauler – Any Municipal Waste collector or hauler possessing a current State License issued pursuant to Pennsylvania ACT 90.

Department or DEP – The Pennsylvania Department of Environmental Protection of the Commonwealth, and its authorized representatives.

Hauler – Any person, firm, partnership, corporation or public agency engaged in the collection and/or transportation of Municipal Waste. For purposes of this Ordinance, the term “Hauler” shall not include the following:

- (i) any residential property occupant not regularly engaged in the business of collecting and/or transporting Municipal Waste, provided that such occupant collects and/or transports his or her own Municipal Waste on an irregular and unscheduled basis to a DEP permitted disposal facility; and
- (ii) any farmer carrying out the normal activities of his or her farming operation, including composting and spreading of manure or other farm-produced agricultural waste.

Industrial Establishment – Any establishment engaged in manufacturing or production activities, including, but not limited to, factories, foundries, mills, processing plants, refineries, mines and slaughterhouses.

Institutional Establishment – Any establishment or facility engaged in services, including, but not limited to, hospitals, nursing homes, schools and universities.

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

License – A license or permit issued by the State of Pennsylvania to Haulers for the collection and/or transportation of Municipal Waste.

License Year – The period each year beginning with the parameters set by the DEP.

Municipality – Any local municipal government within Wayne County.

Municipal Waste – Any garbage, refuse, industrial lunchroom or office waste and other material including solid, liquid, semisolid or contained gaseous material resulting from operation of residential, municipal, commercial or institutional establishments and from community activities; and any sludge not meeting the definition of residual or hazardous waste under Act 97 from any municipal, commercial or institutional water supply treatment plant, wastewater treatment plant, or air pollution control facility. The term does not include any source-separated recyclable materials or Radioactive Waste.

Municipal Waste Landfill – Any facility that is designed, operated and maintained for the disposal of Municipal Waste and permitted by the appropriate State Regulatory Agency, for such purposes.

Person – Any individual, partnership, corporation, association, institution, cooperative enterprise, municipal authority, municipality, State institution and agency, or any other legal entity recognized by law as the subject of rights and duties. In any provisions of this Ordinance prescribing a fine, penalty or imprisonment, or any combination of the foregoing, the term “person” shall include the officers and directors of any corporation or other legal entity having officers and directors.

Processing – Any technology used for the purpose of reducing the volume or bulk of Municipal Waste or any technology used to convert part or all of such materials for off-site reuse. Processing facilities include, but are not limited to, transfer stations, composting facilities and resource recovery facilities.

Radioactive Waste – Any material which contains either high level or low level radioactive waste, or spent nuclear fuel, or source special nuclear, or by-produce material, or mill tailings, or naturally occurring, or accelerator-produced radioactive material as defined in either the Atomic Energy Act of 1954 as amended, or in the Pennsylvania Low Level Radioactive Waste Disposal Act of 1988, whichever is more inclusive. Radioactive

waste also includes any radioactive material that either the U.S. Nuclear Regulatory Commission or the PaDEP classified as radioactive waste as of January 1, 1990.

Recycling – The collection, separation, recovery and sale or reuse of metals, glass, paper, leaf waste, plastics and other materials which would otherwise be disposed or processed as Municipal Waste, or the mechanical separation and treatment of Municipal Waste (other than combustion) and creation and recovery of reusable materials other than a fuel for the operation of energy.

Scavenging – The unauthorized and uncontrolled removal of any material stored or placed at a point for subsequent collection by a State Licensed Waste Hauler.

Source Separated Recyclable Materials – Materials that are separated from Municipal Waste at the point of origin or generation for the purpose of recycling.

Transportation – The off-site removal of any Municipal Waste at any time after generation.

For the purposes of this Ordinance, the singular shall include the plural and the masculine shall include feminine and neuter.

### SECTION 3 – RESPONSIBILITY

The Wayne County Board of Commissioners, or their designee, shall be responsible for all aspects of Municipal Waste management as discussed in this Ordinance.

### SECTION 4 – FUNCTIONS AND POWER OF THE COUNTY

In accordance with all the pertinent statutes, rules, and regulations of the Commonwealth of Pennsylvania, the County shall:

- A. Regulate Municipal Waste disposal services in Wayne County.
- B. Aid and assist the Commonwealth in the application and enforcement of rules and regulations pertaining to Municipal Waste management.
- C. Enforce this Ordinance by issuing warning notices and initiating proceedings against violators of this ordinance and its appurtenant rules and regulations.
- D. Administer the Plan and the requirements set forth therein, in an effort to advance recycling toward the state waste diversion goal of 35%. Such administrative duties include but are not limited to:
  1. Designation of a Recycling Coordinator;
  2. Data collection and reporting of recycling;

3. Providing multiple forms of public education regarding waste reduction and recycling, and
4. Supporting programs that promote health, safety and welfare through the responsible management of materials.

## SECTION 5 – DESIGNATED DISPOSAL FACILITIES AND MUNICIPAL WASTE FLOW CONTROL MANAGEMENT

Pursuant to the authority granted to the County by Act 101, it is hereby directed that all Municipal Waste collected in the various municipalities of Wayne County shall be taken by State Licensed Waste Haulers to the Municipal Waste disposal facilities, as designated by the County.

## SECTION 6 – PROHIBITED ACTIVITIES

1. It shall be unlawful for any Hauler to collect and/or transport Municipal Waste from any residential, public, commercial, industrial or institutional establishment within Wayne County without first securing a license from DEP to do so in accordance with the provisions of State regulatory requirements.
2. It shall be unlawful for any Hauler to collect and/or transport Municipal Waste from any sources within Wayne County in a manner not in accordance with the provisions of this Ordinance and the minimum standards and requirements established in Chapter 285 of the DEP's Municipal Waste Management Regulations.
3. It shall be unlawful for any Hauler to transport any Municipal Waste collected within Wayne County to any processing and/or disposal facility other than those facilities which have disposal agreements with the County and are designated disposal facilities under the County's approved Municipal Waste Management Plan.
4. It shall be unlawful for any person to scavenge any material from any Municipal Waste or source-separated recyclable materials that are stored or placed for subsequent collection by a State Licensed Waste Hauler without prior approval from the County and local municipality.

## **SECTION 7 – STANDARDS FOR COLLECTION AND TRANSPORTATION**

1. All State Licensed Waste Haulers, or haulers operating vehicles with a gross vehicle weight of less than 17,000 pounds operating within the County must comply with the following minimum standards and regulations:
  - A. All trucks or other vehicles used for collection and transportation of Municipal Waste must comply with the requirements of Act 97 and Act 101 and PaDEP regulations adopted pursuant to Act 97 and Act 101, including the Title 25, Chapter 285, Subchapter B Regulations for the Collection and Transportation of Municipal Waste.
  - B. All collection vehicles conveying Municipal Waste shall be operated and maintained in a manner that will prevent creation of a nuisance or hazard to public health, safety and welfare.
  - C. All collection vehicles conveying putrescible Municipal Waste shall be watertight and suitably enclosed to prevent leakage, roadside littering, attraction of vectors and the creation of odors and other nuisances.
  - D. All collection vehicles conveying non-putrescible Municipal Waste shall be capable of being enclosed or covered to prevent roadside litter and other nuisances.
  - E. All collection vehicles conveying Municipal Waste shall bear signs identifying the name and business address of the person or municipality, which owns the vehicle and specify the type of waste transported by the vehicle as “Municipal Waste”. All such signs shall have lettering, which is at least six inches in height as required by Act 101.
2. All collection vehicles and equipment used by County Waste Haulers shall be subject to inspection by the County or its authorized agents at a reasonable hour without prior notification.

## **SECTION 8 – LICENSING REQUIREMENTS**

1. No Hauler shall collect, remove, haul or transport any Municipal Waste through or upon the streets of any municipality within Wayne County without first obtaining a license from the State
2. Any Hauler who desires to collect, haul or transport Municipal Waste within Wayne County shall demonstrate to the County that they have acquired the necessary State licenses or have a gross vehicle weight that precludes them from the State licensing requirement.

## SECTION 9 – REPORTING REQUIREMENTS

1. All County Waste Haulers shall promptly report any significant changes in the collection vehicles or equipment covered under the State issued license and insurance coverage changes to the County.
2. All County Waste Haulers shall maintain current, up-to-date records of the customers serviced within Wayne County. Such records and customer lists shall be subject to inspection and made available to the County or its authorized agents upon request.
3. Each County Waste Hauler shall prepare and submit a monthly report to the County. The report shall be submitted by the 15<sup>th</sup> day of the following month. At a minimum, the following information shall be included in each monthly report:
  - A. The total weight of each type of Municipal Waste collected from all sources in Wayne County during the month;
  - B. The name of each processing or disposal facility the County Waste Hauler used during the reporting period and the total weight of each type of Municipal Waste that was delivered to each site during each month;
  - C. The name of each municipality in Wayne County in which the County Waste Hauler collected Municipal Waste from any source during the reporting period; and,
  - D. A summary of the estimated total weight of each type of Municipal Waste collected from each municipality during each month.

## SECTION 10 – PENALTIES

1. Any person who violates any provisions of this Ordinance shall be guilty of a misdemeanor which is punishable, upon conviction, by a fine of not less than One Hundred (\$100.00) dollars, nor more than One Thousand (\$1,000.00) dollars, or by imprisonment for a period of not more than ten (10) days, or both. Each day of violation shall be considered as a separate and distinct offense.
  - A. Falsification or misrepresentation of any statements in any license application;
  - B. Lapse or cancellation of any required insurance coverages;
  - C. Collection and/or transportation of any Municipal Waste in a careless or negligent manner or any other manner that is not in compliance with the requirements of this Ordinance;

- D. Transportation and disposal of any Municipal Waste collected within the County at any site other than the designated processing and disposal facilities that have disposal agreements with the County; and,
- E. Failure to prepare and submit monthly reports.
- F. Violation of any part of this Ordinance, any other applicable County ordinances or any applicable Pennsylvania laws or regulations.

## **SECTION 11 – INJUNCTION RELIEF – SPECIAL POWERS**

The County may petition the Court of Common Pleas of Wayne County, Pennsylvania for an injunction, either mandatory or prohibitive, in order to enforce any of the provisions of this Ordinance.

In addition, the Court of Common Pleas may issue such orders to direct any offender, a person, corporation or business or officer of the same to remove any waste caused to be deposited on any property within the County or to surcharge any of the offenders the total cost of such removal and restoration of the land in the event the offender violates any of the terms of this Ordinance.

## **SECTION 12 – SEVERABILITY**

In the event that any section, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof, shall be declared illegal, invalid or unconstitutional for any reason, the remaining provisions of this Ordinance shall not be affected, impaired or invalidated by such action.

## **SECTION 13 – CONFLICT**

Any ordinances or any part of any ordinances which conflict with this Ordinance are hereby repealed insofar as the same is specifically inconsistent with this Ordinance.

**SECTION 14 – EFFECTIVE DATE**

This Ordinance shall take effect on \_\_\_\_\_  
ORDAINED AND ENACTED into an Ordinance this \_\_\_ day of \_\_\_\_\_,  
2020. COUNTY OF WAYNE

COUNTY OF WAYNE  
BOARD OF COUNTY COMMISSIONERS

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ATTEST:

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Chief Clerk

(County Seal)

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## APPENDIX B

### DISPOSAL CAPACITY AGREEMENTS

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**APPENDIX B**

**MUNICIPAL WASTE DISPOSAL CAPACITY AGREEMENT**

**COUNTY OF WAYNE**

THIS MUNICIPAL WASTE DISPOSAL CAPACITY AGREEMENT (Agreement) made this 14th day of November, 2019, by and between the COUNTY OF Wayne, a political subdivision of the Commonwealth of Pennsylvania (County), and Waste Management of Pennsylvania, Inc. – Alliance Sanitary Landfill, Inc. (Owner/Operator).

## **Article 1. BACKGROUND**

The Municipal Waste Planning, Recycling and Waste Reduction Act (Act 101) requires the County, as part of its Municipal Waste Management Plan (Plan), to provide disposal/processing capacity for all County-generated municipal waste over the 10-year planning period corresponding with the County Plan. To meet its obligation, the County issued a request for proposals (RFP) to execute Agreements with facilities for the provision of all, or a portion of, County generated municipal waste over the designated 10-year term. The Owner/Operator responded to the solicitation and the Owner/Operator's proposal was accepted by the County Board of Commissioners. This Agreement provides the terms and conditions under which the Owner/Operator will provide disposal capacity.

The County, as the designated administrator responsible for implementation of the 10-year Municipal Waste Management Plan (Plan), has responsibilities set forth by Act 101 of 1988, and as regulated by the Pennsylvania Department of Environmental Protection, to provide for proper disposal of solid wastes and to recover recyclable commodities to advance waste diversion to meet Pennsylvania's 35 percent recycling goal. Due to the County responsibilities under Act 101 of 1988 for disposal and diversion of County-generated municipal solid wastes, and because the activities of waste collection, transportation and disposal impact the health, safety, and welfare, the County, the waste disposal facilities, processors, and collectors influence the performance of the County's integrated solid waste management system. The County is interested in establishing Agreements to meet disposal capacity assurance and to benefit the efficient and proper management of solid wastes.

NOW, THEREFORE, in consideration of the mutual promises contained herein and with intent to be legally bound, the parties hereby agree as follows:

## **Article 2. DEFINITIONS AND TERMS**

### **2.1 DEFINITIONS**

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

**Acceptable Waste.** Municipal waste and all other wastes the facility is permitted to accept under applicable laws and regulations. Where applicable, acceptable or accepted wastes, refers to the waste types that shall be accepted by a Facility from Wayne County sources.

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

**Agreement.** The Municipal Waste Disposal Capacity Agreement between the County and the Owner/Operator, as amended, or supplemented by other submittals by the Owner/Operator.

**Alternative Facility.** Any licensed or permitted facility designated by the Owner/Operator to accept County-generated acceptable wastes during temporary or protracted cessation of operation at the facility.

**Commercial Establishment.** An establishment engaged in non-manufacturing or non-processing business, including, but not limited to, stores, markets, office buildings, restaurants, shopping centers and theaters.

**Construction/Demolition Waste (C/D).** Solid waste resulting from the construction or demolition of buildings and other structures, including, but not limited to, wood, plaster, metals, asphaltic substances, bricks, block and unsegregated concrete. The term also includes dredging waste. The term does not include the following if they are separate from other waste and are used as clean fill: (i) uncontaminated soil, rock, stone, gravel, unused brick and block and concrete; and (ii) waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material.

**County.** The County of Wayne, Commonwealth of Pennsylvania, solely and acting through its designated agent, the Wayne County Solid Waste Department.

**Department or PADEP.** Pennsylvania Department of Environmental Protection.

**Facility.** Processing and/or disposal facilities, including municipal waste, construction/demolition and residual waste landfills, resource recovery facilities permitted and licensed for the disposition of municipal waste (as defined herein), and/or residual waste. Transfer stations are facilities, but are not considered “designated disposal facilities” in the Plan because they do not provide disposal capacity.

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

**Industrial Establishment.** An establishment engaged in manufacturing and industrial processes, including, but not limited to, those carried out in factories, foundries, mills, processing plants, refineries, mines and slaughter houses.

**Institutional Establishment.** An establishment engaged in service, including, but not limited to, public buildings, hospitals (non-infectious waste only), nursing homes, orphanages, schools, correctional facilities and universities.

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

**Waste Hauler.** Any person collecting and/or transporting County-generated municipal waste to a County designated disposal facility or another fully permitted facility.

**Municipal Waste.** Garbage, refuse, industrial lunchroom or office waste and other material, including solid, liquid, semi-solid or contained gaseous material, resulting from operation of

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residential, municipal, commercial or institutional establishments or from community activities; and any sludge not meeting the definition of residual or hazardous waste from a municipal, commercial or institutional water supply treatment plant, wastewater treatment plant or air pollution control facility. Municipal waste includes construction/demolition waste, municipal sludges, asbestos, infectious/chemotherapeutic waste and incinerator ash residue. The term does not include source separated recyclable materials or material approved by PADEP for beneficial use.

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

**Owner/Operator.** Any Person who owns, operates, leases, controls, or supervises a Facility, or any permitted successors, assigns, or affiliates.

**Owner/Operator's Facility.** The Owner/Operator's permitted facility described within the Facility Questionnaire.

**Parent.** Any corporation, now or at any time or times hereafter, owning or controlling (alone or with any other person or entity) at least a majority of the issued and outstanding capital stock of the Owner/Operator.

**Permit.** A permit issued by PADEP, or a permit and/or license issued by a state and/or local regulatory agency, as required, to operate a municipal waste disposal or processing facility.

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

**Plan.** The County Municipal Waste Management Plan approved pursuant to Act 101.

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

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

**Tipping Fee/Processing Fee.** The schedule of fees established by the Owner/Operator of a facility for accepting various types of solid waste for processing or disposal.

**Ton.** Two thousand (2,000) pounds.

**Transfer Station.** A facility which receives and processes or temporarily stores municipal or residual waste at a location other than the generation site, and which facilitates the transportation or transfer of municipal or residual waste to a processing or disposal facility. The term includes a facility that uses a method or technology to convert part or all of the waste materials for offsite reuse. The term does not include a collecting or processing center that is only for source separated recyclable materials, including clear glass, colored glass, aluminum, steel and bimetallic cans, high grade office paper, newsprint, corrugated paper and plastics.

**Unacceptable Waste.** Material that by its composition, characteristics or quality, is ineligible for disposal at the landfill pursuant to the provisions of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §2605(e), the Pennsylvania Solid Waste Management Act, 35 P.S. §6018.101 et seq., or other applicable federal, state or local law, or material that the Owner/Operator concludes requires special handling or endangers the landfill, public health or safety, or the environment.

**Yard Waste.** Leaves, grass clippings, garden residue, tree trimmings, chipped shrubbery and other vegetative material.

## 2.2 OTHER WORDS, TERMS, PHRASES

Except as otherwise defined in this Agreement, all words, terms and/or phrases used herein shall be defined by the applicable definition therefore, if any, in Act 101 or the Pennsylvania Solid Waste Management Act or the regulations promulgated thereunder.

# Article 3. REPRESENTATIONS

## 3.1 REPRESENTATIONS OF COUNTY

The County represents and warrants that:

- (a) It is a political subdivision of the Commonwealth of Pennsylvania, acting by and through its duly authorized officials, and is duly authorized to carry on the governmental functions and operations contemplated by this Agreement and each other agreement or instrument entered into or to be entered into by the County or the municipalities within the boundaries of the County, pursuant to this Agreement.
- (b) It has the full power, authority and legal right to enter into and perform this Agreement and all other agreements or instruments which it may enter into under any provision of this Agreement.
- (c) This Agreement and each other agreement or instrument entered into by the County pursuant to this Agreement, when entered into, will have been duly authorized, executed and delivered by the County and will constitute a legal, valid and binding obligation of the County.
- (d) There is no action or proceeding before any court or administrative agency pending or, to the knowledge of the County, threatened against or adversely affecting the ability of the County to perform its obligations hereunder.

## 3.2 REPRESENTATIONS OF OWNER/OPERATOR

The Owner/Operator represents and warrants to the County that:

- (a) It is the Owner/Operator of the Facility and is permitted by PADEP or the appropriate state regulatory agency(ies).
- (b) It is a corporation duly organized and existing in good standing under the laws of Pennsylvania, or under the appropriate state regulatory agency(ies), and has the corporate power and authority to enter into and perform its obligations under this Agreement and each other agreement or instrument entered into or to be entered into under any provision of this Agreement.
- (c) It has the full power and legal right to enter into and perform this Agreement and all other agreements or instruments which it may enter into under any provision of this Agreement.

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(d) This Agreement and each other agreement or instrument entered into pursuant to this Agreement, when entered into, will have been duly authorized, executed by and delivered by the Owner/Operator, and will constitute a legal, valid and binding obligation.

(e) The execution, delivery and performance hereof by the Owner/Operator: (i) has the requisite approval of all governmental bodies; (ii) will not violate any judgment, order, law or regulation applicable to the Owner/Operator; and (iii) does not (a) conflict with, (b) constitute a default under, or (c) except as specifically created hereby, result in the creation of any lien, charge, encumbrance or security interest upon any assets of the Owner/Operator under any agreement or instrument to which the Owner/Operator is party or by which the Owner/Operator or its assets may be bound or affected.

(f) This Agreement has been duly authorized, executed and delivered by the Owner/Operator, and constitutes a legal, valid and binding obligation of the Owner/Operator, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditor's rights generally, or by general equitable principles concerning remedies.

(g) There is no litigation or proceeding pending or, to the knowledge of the Owner/Operator, threatened against or affecting the Owner/Operator: (i) challenging the validity of this Agreement; (ii) seeking to enjoin the performance by the Owner/Operator of its obligations under this Agreement; or (iii) which, if adversely determined, would materially adversely affect the ability of the Owner/Operator to perform its obligation under this Agreement.

(h) Except as disclosed within the Submittal Forms for Municipal Solid Waste Disposal Services contained in the County's solicitation attached hereto and incorporated herein by reference, the Owner/Operator is not a subsidiary of any parent.

### **3.3 PARENT GUARANTEE**

If and to the extent that the Owner/Operator is a subsidiary of a parent, the Owner/Operator agrees to cause such parent to execute and deliver to the County a guarantee of the obligations of the Owner/Operator under this Agreement in a form reasonably satisfactory to the County.

### **3.4 DESIGNATION AS PROCESSING/DISPOSAL FACILITY**

In consideration of the Owner/Operator's Covenants and this Agreement, the County hereby agrees to include the Owner/Operator's Facility in its Plan as a designated processing/disposal facility for municipal waste generated in the County. The Owner/Operator acknowledges that this Agreement is nonexclusive, and the County may enter into agreements with other facilities to perform the same work and services that the Owner/Operator is contracted to perform hereunder. At no time during the term of this Agreement shall the County be obligated to deliver and dispose of acceptable waste at the Owner/Operator's Facility.

If the Owner/Operator's Facility is a transfer station, the Owner/Operator must stipulate where ultimate disposal of County-generated municipal waste will take place. If ultimate disposal is to be in a facility that is not a County Designated Facility, the Owner/Operator must furnish proof that the facility holds a valid permit in the state where it is located and that it meets all appropriate federal, state and local rules, regulations and guidelines.

## Article 4. DELIVERY AND DISPOSAL OF ACCEPTABLE WASTE

### 4.1 DELIVERY AND DISPOSAL OF ACCEPTABLE WASTE

On and after the effective date of this Agreement and pursuant to the capacity reservations specified in **Appendix A, Submittal Forms:**

- (a) The County may, at its option cause, to be delivered to the Owner/Operator's Facility during the receiving times all, part or none of the acceptable waste generated in the County.
- (b) The County or any waste hauler shall notify the Owner/Operator that it intends to exercise its right to deliver acceptable waste to the Owner/Operator's Facility prior to commencing the delivery of such wastes.
- (c) The Owner/Operator shall provide processing and/or disposal capacity as may be needed by the County for all acceptable waste generated within the geographic boundaries of the County and that the County may cause to be delivered to the Owner/Operator's Facility. This shall include delivery of acceptable waste on an occasional basis by individual County residents in small vehicles. The Owner/Operator and the County shall from time to time agree upon reasonable regulations and charges for such disposal, which will include all applicable fees.
- (d) The Owner/Operator shall provide in-kind processing and/or disposal and other in-kind services as clarified in completed Form A-3 that may include supplemental information clarifying in-kind services to be provided under the Agreement.

### 4.2 RELEASE FROM COMMITMENT

The Owner/Operator may at any time request that the County release it from its commitment to provide all or part of the reserved capacity required. Such request shall be in writing and shall set forth the basis for the request. The County shall in good faith review the Owner/Operator's request, based on the County's ability to ensure sufficient disposal capacity for municipal waste estimated to be generated during that particular calendar year, and make a determination within ten (10) business days of receipt of the request. If the request does not jeopardize the County's ability to ensure sufficient disposal capacity, it shall grant the Owner/Operator's request. The County's decision shall be in writing and delivered to the Owner/Operator.

The Owner/Operator may dispute the County's decision by giving the County a written request for resolution of dispute within five (5) working days of receipt of the decision. The dispute resolution shall be conducted in accordance with the provisions and rules under which the Court of Common Pleas of Wayne County, Pennsylvania operates. The sole issue to be arbitrated is whether the requested release can be granted without jeopardizing the ability of the County to ensure sufficient disposal capacity for municipal waste generated in the County for that year. Any decision of the arbitrator shall be final and binding on both parties. During resolution of any dispute, the Owner/Operator and the County shall each continue to perform all of their respective obligations under this Agreement without interruption or slowdown.

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### Article 5. CONDITIONS FOR THE DELIVERY AND DISPOSAL OF WASTE

#### 5.1 CONTROL PROCEDURES/WEIGHING OF WASTE DELIVERIES

(a) The Owner/Operator shall be required to maintain a scale that conforms to the Weights and Measurement Act of 1965, 73 P.S. §1651-1692, to weigh all incoming waste. Vehicles of all waste haulers delivering waste to the Owner/Operator's Facility shall be weighed and their waste loads classified, and each vehicle shall receive an appropriate record indicating the classification, origin, and weight of all waste prior to disposal at the Owner/Operator's Facility.

(b) If at any time testing of the weighing facilities indicates that the weights are inaccurate, any adjustments of waste delivery receipts shall revert to the date the last verified scale weights were recorded by the appropriate certification agency. The County or a waste hauler may at all times have access to the scale accuracy records of the Owner/Operator. If the scale is inoperable for any reason, the waste haulers may use another certified scale of their choice, or the Owner/Operator may direct vehicles to another certified scale closest to the Owner/Operator's Facility. If none are available, estimated weights based on historic data pertinent to the affected waste haulers shall take the place of actual weighing during the scale outage. The Owner/Operator shall make disposal invoices for the preceding month, on a monthly basis, available to the waste haulers, and the Owner/Operator shall use this information to invoice the waste haulers for disposal at the Owner/Operator's Facility.

#### 5.2 RECEIVING TIME/HOURS OF OPERATION

(a) The Owner/Operator's Facility shall be available to receive waste during the receiving times specified in Forms contained in Appendix A, attached hereto and incorporated herein by reference.

(b) If the County or a waste hauler requests and the Owner/Operator agrees, a waste hauler may deliver waste at times in addition to the specified receiving times at a cost which may exceed the fees herein as mutually agreed upon by such waste hauler and the Owner/Operator.

(c) Upon request by the County, the Owner/Operator shall use reasonable efforts to accept deliveries of waste at times other than the receiving times upon seven (7) days prior written notice or, in the event of a natural disaster or other emergency condition, such shorter notice as may be practicable.

#### 5.3 RIGHT TO REFUSE DELIVERY

(a) Except as noted, the Owner/Operator may refuse waste delivered at hours other than the specified receiving times.

(b) The Owner/Operator shall have the right and discretion to inspect any load entering the Owner/Operator's Facility and may refuse: (i) waste for which specific Regulatory Agency approval is required when approval has not been obtained prior to delivery; (ii) loads containing significant amounts of hazardous waste; or (iii) loads containing significant amounts of unacceptable waste including material banned from landfilling (e.g., loads comprised primarily of leaf waste, electronics, etc.). The Owner/Operator may refuse delivery of the entire load or only the portion that contains the unacceptable materials. The Owner/Operator shall notify waste haulers prior to initial waste delivery of the Owner/Operator's waste monitoring program and expected procedures and responsibilities under such program.

(c) The Owner/Operator's Facility may not reject a load of acceptable waste from the County for any reason except those listed in Article 5.3 (a) and (b). Reaching the average daily permitted capacity may not be used as a basis for rejecting County-generated loads of acceptable waste.

#### **5.4 COMPLAINTS**

The Owner/Operator shall receive and respond to all complaints from waste haulers regarding the acceptance of waste materials at the Owner/Operator's Facility. Any complaints received by the County will be directed to the Owner/Operator. In the event the Owner/Operator cannot satisfactorily resolve a complaint within five (5) working days after the complaint, the County shall have the right to demand a written explanation or satisfactory resolution of the complaint pursuant to the breach of Agreement provisions herein.

#### **5.5 TITLE TO MUNICIPAL WASTE**

Except in the case where hazardous or unacceptable wastes are delivered to the Owner/Operator's Facility, title to the municipal waste and any benefits of marketing materials or energy recovery shall pass to the Owner/Operator upon delivery to the Owner/Operator's Facility and acceptance of waste by the Owner/Operator.

#### **5.6 PERMITS**

The Owner/Operator shall be responsible for obtaining any and all permits necessary for the construction and operation of the Owner/Operator's Facility required to comply with the terms and conditions of this Agreement, and any and all costs or expenses of obtaining such permits. Failure to obtain and maintain permits shall constitute default on this Agreement.

### **Article 6. RECORDKEEPING AND REPORTING REQUIREMENTS**

The Owner/Operator shall establish and maintain a system to provide storage and ready retrieval of the Owner/Operator's Facility operating data pertinent to this Agreement, including, but not limited to, all information necessary to verify donated tonnages and calculations for the fee schedule.

#### **6.1 BASIC REPORTING REQUIREMENTS**

(a) In-County and Out-of-County Owner/Operators shall provide the County with quarterly reports of all types of waste delivered to the Owner/Operator's Facility that are generated from County sources and delivered to the Owner/Operator's Facility. This report shall include the totals by month for each type of waste. To the extent that reports required to be submitted to PADEP or any other regulatory agency contain the information required by the County, copies of said reports may be submitted to the County to comply with the Owner/Operator's reporting requirements.

(b) Along with quarterly report, the Owner/Operator shall provide: (i) names of waste haulers delivering loads of County-generated wastes; and (ii) a statement that the Owner/Operator's permit for the Owner/Operator's Facility has not been revoked or suspended, and that the Owner/Operator is in substantial compliance with all the terms and conditions of its permit, the provisions of the Solid Waste Management Act, and all applicable federal, state, PADEP and County regulations.

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### 6.2 SPECIAL REPORTING REQUIREMENTS

The Owner/Operator shall provide written notification to the County of any permit modification applications for the following types of permit changes at the time the application is first submitted to the state or local regulatory agency: (i) changes in permitted site volume or capacity; (ii) changes in permitted average and/or maximum daily waste volume or loading rates; (iii) changes in the permitted acreage; and (iv) changes in ownership.

### 6.3 ADMINISTRATIVE INSPECTIONS

Upon reasonable notice and during regular business hours, the County and its authorized representatives shall have access to the Owner/Operator's records pertaining to the quantities and sources of County-generated municipal waste for the purpose of verifying compliance with the terms and conditions of this Agreement.

## Article 7. TIPPING FEES AND OTHER CHARGES

### 7.1 TIPPING FEES

(a) All waste haulers shall pay at a maximum the rates set forth in Appendix A, Form A-2 Proposed Rate Schedule, for County-generated municipal waste and other wastes/recyclables as identified by Respondents. The rates shall, as applicable, include the following fees: (i) Act 101 host municipality fee plus any additional fee negotiated by the host County or municipality; (ii) Act 101 recycling fee and growing greener fee; (iii) and Act 101 post closure fee; and (iv) the Recycling Sustainability Fee.

(b) The County shall not be responsible for any payment to the Owner/Operator of tipping fees incurred by waste haulers. All tipping fees shall be paid directly by the waste haulers that deliver the waste to the Owner/Operator's Facility. The Owner/Operator shall be responsible for the billing and collection of all tipping fees. The County shall not be responsible for the failure of any waste hauler to pay the Owner/Operator's tipping fees.

The Owner/Operator shall not charge a tipping fee to a County hauler that exceeds the maximum rates established by this Agreement for each type of waste. Nothing in this Agreement shall prevent or preclude the Owner/Operator from negotiating alternate tipping fees with any hauler provided such fees do not exceed the maximum rates under this Agreement.

(e) Unless the County and the Owner/Operator mutually agree to an alternate date, all annual rate adjustments shall become effective on January 1st of each year of the Agreement.

(f) The Owner/Operator may petition the County at any time for additional rate or fee adjustments on the basis of unforeseen changes in operating costs resulting from any new or revised federal, state or local laws, ordinances, regulations, or permit requirements which were not in effect at the time this Agreement was awarded. The County shall evaluate the evidence submitted and may approve reasonable and justifiable cost adjustments. The County shall not unreasonably deny such cost adjustment.

### 7.2 RECYCLING SUSTAINABILITY FEE

The County currently collects a Recycling Sustainability Fee of four dollars (\$4.00) on each ton of municipal waste delivered to designated disposal facilities from Wayne County sources. The County

requests to continue to collect this \$4.00 fee on each ton of municipal waste delivered to the Operator's Facility. This requested fee shall be forwarded as a quarterly payment consistent with the payments scheduled for Act 101 fees. The fee shall be accompanied by a report as described in Article 6.1 (a).

If the Owner/Operator fails to make timely payments to the County of the County Recycling Sustainability Fee, the Operator would additionally pay the County interest on the unpaid amount due at the rate established pursuant to Section 806 of the Act of April 9, 1929 (P.L. 343, No. 176), known as The Fiscal Code, from the last day for timely payment to the date paid.

### **Article 8. IN-KIND SERVICES**

Per the Request for Proposals (RFP), under Appendix A, Form A-3, the County requests interested disposal facility owner/operators to offer in-kind services. These may include free disposal of specified quantities of illegal dump waste to benefit the performance of the County solid waste management system and to avoid costs. These in-kind services identified by owner/operators and as negotiated by the County and Respondents shall be incorporated within the Disposal Capacity Agreement under this section by reference (Attachment A-3.1).

### **Article 9. INSURANCE**

(a) The Owner/Operator shall maintain, in full force and effect throughout the term of the Agreement and any renewal or extension thereof, insurance coverages consistent with all current DEP regulations. The County and Owner/Operator hereby waive any and every claim for recovery from the other for any and all loss or damage to each other resulting from the performance of this Agreement, to the extent such loss or damage is recovered under insurance policies.

The County shall be designated as an additional insured under all required insurance policies and shall be provided with copies and certificates of said insurance policies. Each such insurance policy shall provide the County with a thirty (30) day notice of cancellation.

### **Article 10. INDEMNIFICATION**

#### **10.1 INDEMNIFICATION**

The Owner/Operator or its successors and assigns shall protect, indemnify and hold harmless the County, its officers, members, employees, agents, contractors and subcontractors, from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and attorneys' fees, and shall defend the County indemnified parties in any suit, including appeals, for personal injury to or death of any persons or persons, or loss or damage to property arising out of:

- (a) the negligence or willful misconduct, tortious activity, error or omission of Owner/Operator or its successors or assigns, or any of its officers, agents, employees, contractors or subcontractors in connection with Owner/Operator obligations or rights under this Agreement; and
- (b) the construction, operation, closure and post-closure care and maintenance of the Owner/Operator's Facility.

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The Owner/Operator shall not be liable or required to indemnify or reimburse the County or any County indemnified party for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses and other attorney fees arising out of any willful or negligent act, tortious activity, error or omission of the County or County indemnified parties.

### 10.2 COOPERATION REGARDING CLAIMS

If either the County or the Owner/Operator shall receive notice or have knowledge of any claim, demand, action, suit or proceeding that may result in a claim for indemnification by the County against the Owner/Operator pursuant to Article 10.1, that party shall so notify the other party and provide pertinent information and documents. Failure to promptly give such notice or to provide such information and documents shall not relieve the Owner/Operator of any obligation of indemnification it may have under Article 10.1 unless such failure shall materially diminish the ability of the Owner/Operator to respond to, or to defend the party failing to give such notice against such claim, demand, action, suit or proceeding. The County and the Owner/Operator shall consult with each other and cooperate in respect of the response to and the defense of any such claim, demand, action, suit or proceeding and, in the case of a claim for indemnification pursuant to Article 10.1, the Owner/Operator shall, upon acknowledgment in writing of its obligation to indemnify the County, be entitled to cooperate with the County with respect to the defense. With the written consent of the County, the Owner/Operator may assume the defense or represent the interests of the County with respect to such claim, demand, action, suit or proceeding which shall include the right to select and direct legal counsel and other consultants, appear in proceedings on behalf of the County and to propose, accept or reject offers of settlement.

## Article 11. DISPUTES, DEFAULTS AND REMEDIES

### 11.1 RESOLUTION OF DISPUTES

In the event any claim, controversy or dispute arises between the County and the Owner/Operator, or if any approvals, agreements or concurrences specified herein shall not have been timely given, the Owner/Operator and the County shall undertake in good faith to resolve the dispute. If the County and the Owner/Operator cannot resolve the dispute, either party shall be limited to the Court of Common Pleas of Wayne County, Pennsylvania, in equity or to law to litigate such disputes.

### 11.2 EVENTS OF DEFAULT BY COUNTY

The persistent or repeated failure or refusal by the County to perform under this Agreement in accordance with the terms hereof shall constitute an event of default by the County hereunder, unless such failure or refusal shall be excused or justified by a default by the Owner/Operator, provided, however, that no such failure or refusal shall constitute an event of default unless and until:

(a) The Owner/Operator shall have given written notice to the County stating that in its opinion a particular default or defaults (to be described in reasonable detail in such notice) exists which will, unless corrected, constitute a material breach of this Agreement on the part of the County; and

(b) The County shall have failed to cure such default within thirty (30) days from its receipt of the written notice given pursuant to Article 11.2 (a) above, provided that if the County shall have

commenced to take reasonable steps to correct such default within such thirty (30) day period, the County's failure to complete its cure of the indicated default shall not constitute an event of default for as long as the County is continuing to take reasonable steps to cure such default within the earliest practicable time.

### **11.3 EVENTS OF DEFAULT BY OWNER/OPERATOR**

The Owner/Operator shall be considered to be in default of this Agreement for failure to accept acceptable waste from the County or its waste haulers delivered to the Owner/Operator's Facility under the terms of this Agreement, or failure to otherwise fulfill its obligations under this Agreement.

### **11.4 FORCE MAJEURE**

Neither the Owner/Operator nor the County shall be liable for the failure to perform their duties and obligations under the Agreement or for any resultant damages, loss or expense, if such failure was the result of an act of God, riot, insurrection, war, catastrophe, natural disaster, labor strike or any other cause which was beyond reasonable control of the Owner/Operator or the County and which the Owner/Operator or County was unable to avoid by exercise of reasonable diligence. Documentation of the event that caused the Owner/Operator to be unable to meet its obligation hereunder must be submitted to the County within ten (10) working days after the occurrence of the event.

### **11.5 REMEDIES**

(a) The County and the Owner/Operator agree, except as provided in Article 11.5 (b) and (c) below, in the event of a default by either party under this Agreement, upon the right to recover damages or to be reimbursed for incremental costs associated with waste haulers redirecting loads of municipal waste to alternative facilities.

(b) If, within a period of thirty (30) days after the County shall have given written notice to the Owner/Operator that a default has occurred and is continuing, and specifying the nature of the default, the Owner/Operator has neither remedied such default, nor undertaken and diligently pursued corrective action, then this Agreement shall terminate immediately upon written notice thereof by the County to the Owner/Operator.

(c) If, within a period of thirty (30) days after the Owner/Operator shall have given written notice to the County that a default has occurred and is continuing, and specifying the nature of the default, the County has neither remedied such default, nor undertaken and diligently pursued corrective action, then this Agreement shall terminate immediately upon written notice thereof by the Owner/Operator to the County.

### **11.6 WAIVERS**

A waiver by either the County or Owner/Operator of any default of any provisions of the Agreement shall not be taken or held to be a waiver of any succeeding default of such provisions or as a waiver of any provision itself. No payment or acceptance of compensation for any period subsequent to any default shall be deemed a waiver of any right or acceptance of defective performance. To be effective a waiver must be in writing and signed by the party granting such waiver.

### **Article 12. TERM AND TERMINATION**

#### **12.1 EFFECTIVE DATE**

This Agreement shall become effective on July 1, 2020. The Owner/Operator shall begin to accept waste deliveries from County sources under the terms and conditions of this Agreement on this date.

#### **12.2 TERM OF AGREEMENT**

The term of this Agreement shall commence on the effective date and shall continue in effect for ten (10) years and is intended to coincide with the 10-year planning period of the County Plan.

#### **12.3 EFFECT OF TERMINATION**

Upon the termination of this Agreement, the obligations of the County and the Owner/Operator hereunder shall cease, provided that any obligation for the payment of money or otherwise arising from the conduct of the County or Owner/Operator pursuant to this Agreement prior to such termination shall not be affected by such termination and shall survive and remain in full force and effect.

### **Article 13. MISCELLANEOUS**

#### **13.1 ASSIGNMENT**

(a) This Agreement may not be assigned by either the County or the Owner/Operator or its rights sold by Owner/Operator except with the written consent of the County or Owner/Operator or as further provided in this Article. The County may, however, contract with a third party or parties for the collection, transportation, processing and disposal of waste, and such contracting will not be interpreted as an assignment of this Agreement. Further, any municipality within the political boundaries of the County and/or any waste hauler may avail themselves of the rights of the County under this Agreement without violating the assignment provision, provided, however, that such municipalities and waste haulers will be bound by the covenants of the County in this Agreement. The Owner/Operator shall not assign this Agreement except to a licensed and permitted successor to the Owner/Operator capable of performing all covenants of this Agreement and with ninety (90) days prior written notice to the County and the written consent of the County.

(b) In the event of any assignment or delegation of duties under this Agreement, the delegate shall assume full responsibility and liability, and shall be responsible for compliance with and performance of all terms and conditions of this Agreement, including but not limited to provisions for sureties and assurances of availability of ten (10) year service. The assignment or delegation of any Agreement duties will not relieve the Owner/Operator or its surety of any liability and/or obligation to perform.

#### **13.2 NOTICES**

Except under emergency circumstances all notices, demands, requests and other communications under this Agreement shall be deemed sufficient and properly given if in writing and delivered in person or by recognized carrier service, or sent by certified or registered mail, postage prepaid, with return receipt requested, to the following addresses:

County: Wayne County  
Attn: Solid Waste Director/Recycling Coordinator  
66 Volunteer Drive  
Honesdale, PA 18431

Either the County or Owner/Operator may, as specified above, designate any further or different addresses to which subsequent notices shall be sent.

### **13.3 ENTIRE AGREEMENT/MODIFICATIONS**

The provisions of this Agreement, together with the Agreements, Appendices, and Attachments incorporated by reference, shall constitute the entire Municipal Waste Disposal Capacity Agreement between the County and the Owner/Operator, superseding all prior disposal capacity agreements and negotiations, if any, and, except as otherwise provided in this Agreement, shall only be modified by written agreement duly executed by both parties to this Agreement. The County and Owner/Operator agree that any existing municipal waste disposal contracts between them are hereby rendered null and void and superseded by this Agreement. If there are existing Host County Fee Agreements between parties, or Host County Fee Agreements are entered during the term of this Agreement, the Host County Fee Agreements shall remain in full force and effect notwithstanding any provisions of this Agreement.

### **13.4 SEVERABILITY**

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

### **13.5 CHANGE OF OWNERSHIP**

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

### **13.6 GOVERNING LAW**

This Agreement and any question concerning its validity, construction, or performance shall be governed by the laws of the Commonwealth of Pennsylvania, irrespective of the place of execution or of the order in which the signatures of the County and Owner/Operator are affixed or of the place or places of performance. The Owner/Operator shall conduct the services provided for in this Agreement in compliance with all applicable federal and state laws and regulations.

## APPENDIX B

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### 13.7 JOINT AND SEVERABLE LIABILITY

If the Owner/Operator is comprised of more than one individual, corporation or other entity, each of the entities comprising the Owner/Operator shall be jointly and severally liable.

### 13.8 COUNTERPARTS

This Agreement may be executed in more than one (1) counterpart, each of which shall be deemed to be an original but all of which taken together shall be deemed a single instrument.

### 13.9 NO CO-PARTNERSHIP OR AGENCY

It is understood and agreed that nothing contained in this Agreement is intended or shall be construed to in any respect create or establish the relationship of co-partners between the County and the Owner/Operator, or as constituting the Owner/Operator the general representative or general agent of the County for any purpose whatsoever.

### 13.10 SECTION HEADINGS/REFERENCES

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

### 13.11 CONVENTIONS

In this Agreement:

- (a) the singular includes the plural and the plural the singular;
- (b) words importing any gender include the other gender;
- (c) references to statutes are construed as including all statutory provisions consolidating, amending or replacing the statute referred to;
- (d) references to writing include printing, typing, lithography and other means of reproducing words in a visible form;
- (e) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments thereto or changes therein entered into in accordance with their respective terms;
- (f) references to persons include their permitted successors and assigns; and
- (g) the term "including" shall mean including without limitation.

### 13.12 NONDISCRIMINATION

Neither the Owner/Operator nor any subcontractor nor any person(s) acting on their behalf shall discriminate against any person because of race, sex, age, creed, color, religion or national origin, ancestry, disability, sexual orientation, or union membership.

IN WITNESS WHEREOF, the County and Owner/Operator have caused this Waste Disposal Capacity Agreement to be executed as of the date and year first written.

COUNTY OF WAYNE BOARD OF COMMISSIONERS

ATTEST:

Brian W. St.  
Commissioner

Vickey J. Bojers  
Chief Clerk

Wendell R. Kue  
Commissioner

Jeff W. Allen  
Commissioner

ATTEST:

OWNER/OPERATOR:

Paul Ettner

By: Dennis

**Form A-3 (Attachment A-3.1)**  
**In-kind Services Clarifications – Alliance Sanitary Landfill**

**A. Form A-3 Clarifications**

This attachment clarifies the in-kind services offered by and to be provided by Waste Management, Inc., through its Alliance Sanitary Landfill to Wayne County annually over the 10-year planning period of the Wayne County Municipal Waste Management Plan. In-kind services shall be attached to the Disposal Capacity Agreements.

1. Alliance Landfill shall provide an annual free commitment of up to 100 tons, or a total free commitment of disposal of up to 1,000 tons of Wayne County acceptable wastes over the 10-year period specified in the executed Disposal Capacity Agreements.
2. Acceptable wastes shall include non-hazardous municipal solid wastes originating from litter and illegal dump cleanup activities from within Wayne County. Whitegoods/appliances without Freon are acceptable, and the whitegoods/appliance shall include a sticker or certificate verifying freon removal. Residential C/D from County projects is acceptable.
3. Prior to delivery of any wastes qualifying under the in-kind services and program, a County representative shall notify the transfer or disposal facility. Wayne County may request weight receipts for donated tons in order to track quantities processed under the program.
4. Waste Management does not assume or donate waste hauling services under this arrangement.
5. Electronic devices shall not be accepted, except for small incidental quantities of electronics mixed with other acceptable municipal solid waste.
6. Household hazardous wastes, sewage sludges, whole tires, electronics and asbestos are not accepted under the arrangement for donated disposal services.
7. Financial contributions that may support Wayne County municipal waste management shall be considered by Waste Management on a case by case basis but are not guaranteed.
8. Upon request by Wayne County, Waste Management shall provide recycling education assistance on specific education projects initiated by the County during the 10-year planning period. Waste management shall establish the limits of the education support provided.

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Written Name of Authorized Representative



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Signature of Authorized Representative

**APPENDIX B**

**MUNICIPAL WASTE TRANSFER FACILITY AGREEMENT**

**COUNTY OF WAYNE**

THIS MUNICIPAL WASTE TRANSFER FACILITY AGREEMENT (Agreement) made this 14<sup>th</sup> day of November, 2019, by and between the COUNTY OF Wayne, a political subdivision of the Commonwealth of Pennsylvania (County), and Waste Management of Pennsylvania, Inc. – Beach Lake Transfer Station (Owner/Operator).

**Article 1. BACKGROUND**

The Municipal Waste Planning, Recycling and Waste Reduction Act (Act 101) requires the County, as part of its Municipal Waste Management Plan (Plan), to provide disposal/processing capacity for all County-generated municipal waste over the 10-year planning period corresponding with the County Plan. To meet its obligation, the County issued a request for proposals (RFP) to execute Agreements with facilities for the provision of all, or a portion of, County generated municipal waste over the designated 10-year term. The Owner/Operator responded to the solicitation and the Owner/Operator's proposal was accepted by the County Board of Commissioners. This Agreement provides the terms and conditions under which the Owner/Operator will provide disposal capacity.

The County, as the designated administrator responsible for implementation of the 10-year Municipal Waste Management Plan (Plan), has responsibilities set forth by Act 101 of 1988, and as regulated by the Pennsylvania Department of Environmental Protection, to provide for proper disposal of solid wastes and to recover recyclable commodities to advance waste diversion to meet Pennsylvania's 35 percent recycling goal. Due to the County responsibilities under Act 101 of 1988 for disposal and diversion of County-generated municipal solid wastes, and because the activities of waste collection, transportation and disposal impact the health, safety, and welfare, the County, the waste disposal facilities, processors, and collectors influence the performance of the County's integrated solid waste management system. The County is interested in establishing Agreements to meet disposal capacity assurance and to benefit the efficient and proper management of solid wastes.

NOW, THEREFORE, in consideration of the mutual promises contained herein and with intent to be legally bound, the parties hereby agree as follows:

**Article 2. DEFINITIONS AND TERMS**

**2.1 DEFINITIONS**

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

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

**Agreement.** The Municipal Waste Disposal Capacity Agreement between the County and the Owner/Operator, as amended, or supplemented by other submittals by the Owner/Operator.

**Alternative Facility.** Any licensed or permitted facility designated by the Owner/Operator to accept County-generated acceptable wastes during temporary or protracted cessation of operation at the facility.

**Commercial Establishment.** An establishment engaged in non-manufacturing or non-processing business, including, but not limited to, stores, markets, office buildings, restaurants, shopping centers and theaters.

**Construction/Demolition Waste (C/D).** Solid waste resulting from the construction or demolition of buildings and other structures, including, but not limited to, wood, plaster, metals, asphaltic substances, bricks, block and unsegregated concrete. The term also includes dredging waste. The term does not include the following if they are separate from other waste and are used as clean fill: (i) uncontaminated soil, rock, stone, gravel, unused brick and block and concrete; and (ii) waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material.

**County.** The County of Wayne, Commonwealth of Pennsylvania, solely and acting through its designated agent, the Wayne County Solid Waste Department.

**Department or PADEP.** Pennsylvania Department of Environmental Protection.

**Facility.** Processing and/or disposal facilities, including municipal waste, construction/demolition and residual waste landfills, resource recovery facilities permitted and licensed for the disposition of municipal waste (as defined herein), and/or residual waste. Transfer stations are facilities, but are not considered “designated disposal facilities” in the Plan because they do not provide disposal capacity.

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

**Industrial Establishment.** An establishment engaged in manufacturing and industrial processes, including, but not limited to, those carried out in factories, foundries, mills, processing plants, refineries, mines and slaughter houses.

**Institutional Establishment.** An establishment engaged in service, including, but not limited to, public buildings, hospitals (non-infectious waste only), nursing homes, orphanages, schools, correctional facilities and universities.

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

**Waste Hauler.** Any person collecting and/or transporting County-generated municipal waste to a County designated disposal facility or another fully permitted facility.

**Municipal Waste.** Garbage, refuse, industrial lunchroom or office waste and other material, including solid, liquid, semi-solid or contained gaseous material, resulting from operation of

## APPENDIX B

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residential, municipal, commercial or institutional establishments or from community activities; and any sludge not meeting the definition of residual or hazardous waste from a municipal, commercial or institutional water supply treatment plant, wastewater treatment plant or air pollution control facility. Municipal waste includes construction/demolition waste, municipal sludges, asbestos, infectious/chemotherapeutic waste and incinerator ash residue. The term does not include source separated recyclable materials or material approved by PADEP for beneficial use.

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

**Owner/Operator.** Any Person who owns, operates, leases, controls, or supervises a Facility, or any permitted successors, assigns, or affiliates.

**Owner/Operator's Facility.** The Owner/Operator's permitted facility described within the Facility Questionnaire.

**Parent.** Any corporation, now or at any time or times hereafter, owning or controlling (alone or with any other person or entity) at least a majority of the issued and outstanding capital stock of the Owner/Operator.

**Permit.** A permit issued by PADEP, or a permit and/or license issued by a state and/or local regulatory agency, as required, to operate a municipal waste disposal or processing facility.

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

**Plan.** The County Municipal Waste Management Plan approved pursuant to Act 101.

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

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

**Tipping Fee/Processing Fee.** The schedule of fees established by the Owner/Operator of a facility for accepting various types of solid waste for processing or disposal.

**Ton.** Two thousand (2,000) pounds.

**Transfer Station/Facility.** A facility which receives and processes or temporarily stores municipal or residual waste at a location other than the generation site, and which facilitates the transportation or transfer of municipal or residual waste to a processing or disposal facility. The term includes a facility that uses a method or technology to convert part or all of the waste materials for offsite reuse. The term does not include a collecting or processing center that is only for source separated recyclable materials, including clear glass, colored glass, aluminum, steel and bimetallic cans, high grade office paper, newsprint, corrugated paper and plastics.

**Unacceptable Waste.** Material that by its composition, characteristics or quality, is ineligible for disposal at the landfill pursuant to the provisions of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §2605(e), the Pennsylvania Solid Waste Management Act, 35 P.S. §6018.101 et seq., or other applicable federal, state or local law, or material that the Owner/Operator concludes requires special handling or endangers the landfill, public health or safety, or the environment.

**Yard Waste.** Leaves, grass clippings, garden residue, tree trimmings, chipped shrubbery and other vegetative material.

## 2.2 OTHER WORDS, TERMS, PHRASES

Except as otherwise defined in this Agreement, all words, terms and/or phrases used herein shall be defined by the applicable definition therefore, if any, in Act 101 or the Pennsylvania Solid Waste Management Act or the regulations promulgated thereunder.

# Article 3. REPRESENTATIONS

## 3.1 REPRESENTATIONS OF COUNTY

The County represents and warrants that:

- (a) It is a political subdivision of the Commonwealth of Pennsylvania, acting by and through its duly authorized officials, and is duly authorized to carry on the governmental functions and operations contemplated by this Agreement and each other agreement or instrument entered into or to be entered into by the County or the municipalities within the boundaries of the County, pursuant to this Agreement.
- (b) It has the full power, authority and legal right to enter into and perform this Agreement and all other agreements or instruments which it may enter into under any provision of this Agreement.
- (c) This Agreement and each other agreement or instrument entered into by the County pursuant to this Agreement, when entered into, will have been duly authorized, executed and delivered by the County and will constitute a legal, valid and binding obligation of the County.
- (d) There is no action or proceeding before any court or administrative agency pending or, to the knowledge of the County, threatened against or adversely affecting the ability of the County to perform its obligations hereunder.

## 3.2 REPRESENTATIONS OF OWNER/OPERATOR

The Owner/Operator represents and warrants to the County that:

- (a) It is the Owner/Operator of the Facility and is permitted by PADEP or the appropriate state regulatory agency(ies).
- (b) It is a corporation duly organized and existing in good standing under the laws of Pennsylvania, or under the appropriate state regulatory agency(ies), and has the corporate power and authority to enter into and perform its obligations under this Agreement and each other agreement or instrument entered into or to be entered into under any provision of this Agreement.
- (c) It has the full power and legal right to enter into and perform this Agreement and all other agreements or instruments which it may enter into under any provision of this Agreement.

## APPENDIX B

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(d) This Agreement and each other agreement or instrument entered into pursuant to this Agreement, when entered into, will have been duly authorized, executed by and delivered by the Owner/Operator, and will constitute a legal, valid and binding obligation.

(e) The execution, delivery and performance hereof by the Owner/Operator: (i) has the requisite approval of all governmental bodies; (ii) will not violate any judgment, order, law or regulation applicable to the Owner/Operator; and (iii) does not (a) conflict with, (b) constitute a default under, or (c) except as specifically created hereby, result in the creation of any lien, charge, encumbrance or security interest upon any assets of the Owner/Operator under any agreement or instrument to which the Owner/Operator is party or by which the Owner/Operator or its assets may be bound or affected.

(f) This Agreement has been duly authorized, executed and delivered by the Owner/Operator, and constitutes a legal, valid and binding obligation of the Owner/Operator, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditor's rights generally, or by general equitable principles concerning remedies.

(g) There is no litigation or proceeding pending or, to the knowledge of the Owner/Operator, threatened against or affecting the Owner/Operator: (i) challenging the validity of this Agreement; (ii) seeking to enjoin the performance by the Owner/Operator of its obligations under this Agreement; or (iii) which, if adversely determined, would materially adversely affect the ability of the Owner/Operator to perform its obligation under this Agreement.

(h) Except as disclosed within the Submittal Forms for Municipal Solid Waste Disposal Services contained in the County's solicitation attached hereto and incorporated herein by reference, the Owner/Operator is not a subsidiary of any parent.

### **3.3 PARENT GUARANTEE**

If and to the extent that the Owner/Operator is a subsidiary of a parent, the Owner/Operator agrees to cause such parent to execute and deliver to the County a guarantee of the obligations of the Owner/Operator under this Agreement in a form reasonably satisfactory to the County.

### **3.4 DESIGNATION AS PROCESSING/DISPOSAL FACILITY**

In consideration of the Owner/Operator's Covenants and this Agreement, the County hereby agrees to include the Owner/Operator's Facility in its Plan as a designated processing/disposal facility for municipal waste generated in the County. The Owner/Operator acknowledges that this Agreement is nonexclusive, and the County may enter into agreements with other facilities to perform the same work and services that the Owner/Operator is contracted to perform hereunder. At no time during the term of this Agreement shall the County be obligated to deliver and dispose of acceptable waste at the Owner/Operator's Facility.

If the Owner/Operator's Facility is a transfer station, the Owner/Operator must stipulate where ultimate disposal of County-generated municipal waste will take place. If ultimate disposal is to be in a facility that is not a County Designated Facility, the Owner/Operator must furnish proof that the facility holds a valid permit in the state where it is located and that it meets all appropriate federal, state and local rules, regulations and guidelines.

## Article 4. DELIVERY AND DISPOSAL OF ACCEPTABLE WASTE

### 4.1 DELIVERY AND DISPOSAL OF ACCEPTABLE WASTE

On and after the effective date of this Agreement and pursuant to the capacity reservations specified in **Appendix A, Submittal Forms**:

- (a) The County may, at its option cause, to be delivered to the Owner/Operator's Facility during the receiving times all, part or none of the acceptable waste generated in the County.
- (b) The County or any waste hauler shall notify the Owner/Operator that it intends to exercise its right to deliver acceptable waste to the Owner/Operator's Facility prior to commencing the delivery of such wastes.
- (c) The Owner/Operator shall provide processing and/or disposal capacity as may be needed by the County for all acceptable waste generated within the geographic boundaries of the County and that the County may cause to be delivered to the Owner/Operator's Facility. This shall include delivery of acceptable waste on an occasional basis by individual County residents in small vehicles. The Owner/Operator and the County shall from time to time agree upon reasonable regulations and charges for such disposal, which will include all applicable fees.
- (d) The Owner/Operator shall provide in-kind processing and/or disposal and other in-kind services as clarified in completed Form A-3 that may include supplemental information clarifying in-kind services to be provided under the Agreement.

### 4.2 RELEASE FROM COMMITMENT

The Owner/Operator may at any time request that the County release it from its commitment to provide all or part of the reserved capacity required. Such request shall be in writing and shall set forth the basis for the request. The County shall in good faith review the Owner/Operator's request, based on the County's ability to ensure sufficient disposal capacity for municipal waste estimated to be generated during that particular calendar year, and make a determination within ten (10) business days of receipt of the request. If the request does not jeopardize the County's ability to ensure sufficient disposal capacity, it shall grant the Owner/Operator's request. The County's decision shall be in writing and delivered to the Owner/Operator.

The Owner/Operator may dispute the County's decision by giving the County a written request for resolution of dispute within five (5) working days of receipt of the decision. The dispute resolution shall be conducted in accordance with the provisions and rules under which the Court of Common Pleas of Wayne County, Pennsylvania operates. The sole issue to be arbitrated is whether the requested release can be granted without jeopardizing the ability of the County to ensure sufficient disposal capacity for municipal waste generated in the County for that year. Any decision of the arbitrator shall be final and binding on both parties. During resolution of any dispute, the Owner/Operator and the County shall each continue to perform all of their respective obligations under this Agreement without interruption or slowdown.

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### Article 5. CONDITIONS FOR THE DELIVERY AND DISPOSAL OF WASTE

#### 5.1 CONTROL PROCEDURES/WEIGHING OF WASTE DELIVERIES

(a) The Owner/Operator shall be required to maintain a scale that conforms to the Weights and Measurement Act of 1965, 73 P.S. §1651-1692, to weigh all incoming waste. Vehicles of all waste haulers delivering waste to the Owner/Operator's Facility shall be weighed and their waste loads classified, and each vehicle shall receive an appropriate record indicating the classification, origin, and weight of all waste prior to disposal at the Owner/Operator's Facility.

(b) If at any time testing of the weighing facilities indicates that the weights are inaccurate, any adjustments of waste delivery receipts shall revert to the date the last verified scale weights were recorded by the appropriate certification agency. The County or a waste hauler may at all times have access to the scale accuracy records of the Owner/Operator. If the scale is inoperable for any reason, the waste haulers may use another certified scale of their choice, or the Owner/Operator may direct vehicles to another certified scale closest to the Owner/Operator's Facility. If none are available, estimated weights based on historic data pertinent to the affected waste haulers shall take the place of actual weighing during the scale outage. The Owner/Operator shall make disposal invoices for the preceding month, on a monthly basis, available to the waste haulers, and the Owner/Operator shall use this information to invoice the waste haulers for disposal at the Owner/Operator's Facility.

#### 5.2 RECEIVING TIME/HOURS OF OPERATION

(a) The Owner/Operator's Facility shall be available to receive waste during the receiving times specified in Forms contained in Appendix A, attached hereto and incorporated herein by reference.

(b) If the County or a waste hauler requests and the Owner/Operator agrees, a waste hauler may deliver waste at times in addition to the specified receiving times at a cost which may exceed the fees herein as mutually agreed upon by such waste hauler and the Owner/Operator.

(c) Upon request by the County, the Owner/Operator shall use reasonable efforts to accept deliveries of waste at times other than the receiving times upon seven (7) days prior written notice or, in the event of a natural disaster or other emergency condition, such shorter notice as may be practicable.

#### 5.3 RIGHT TO REFUSE DELIVERY

(a) Except as noted, the Owner/Operator may refuse waste delivered at hours other than the specified receiving times.

(b) The Owner/Operator shall have the right and discretion to inspect any load entering the Owner/Operator's Facility and may refuse: (i) waste for which specific Regulatory Agency approval is required when approval has not been obtained prior to delivery; (ii) loads containing significant amounts of hazardous waste; or (iii) loads containing significant amounts of unacceptable waste including material banned from landfilling (e.g., loads comprised primarily of leaf waste, electronics, etc.). The Owner/Operator may refuse delivery of the entire load or only the portion that contains the unacceptable materials. The Owner/Operator shall notify waste haulers prior to initial waste delivery of the Owner/Operator's waste monitoring program and expected procedures and responsibilities under such program.

(c) The Owner/Operator's Facility may not reject a load of acceptable waste from the County for any reason except those listed in Article 5.3 (a) and (b). Reaching the average daily permitted capacity may not be used as a basis for rejecting County-generated loads of acceptable waste.

#### **5.4 COMPLAINTS**

The Owner/Operator shall receive and respond to all complaints from waste haulers regarding the acceptance of waste materials at the Owner/Operator's Facility. Any complaints received by the County will be directed to the Owner/Operator. In the event the Owner/Operator cannot satisfactorily resolve a complaint within five (5) working days after the complaint, the County shall have the right to demand a written explanation or satisfactory resolution of the complaint pursuant to the breach of Agreement provisions herein.

#### **5.5 TITLE TO MUNICIPAL WASTE**

Except in the case where hazardous or unacceptable wastes are delivered to the Owner/Operator's Facility, title to the municipal waste and any benefits of marketing materials or energy recovery shall pass to the Owner/Operator upon delivery to the Owner/Operator's Facility and acceptance of waste by the Owner/Operator.

#### **5.6 PERMITS**

The Owner/Operator shall be responsible for obtaining any and all permits necessary for the construction and operation of the Owner/Operator's Facility required to comply with the terms and conditions of this Agreement, and any and all costs or expenses of obtaining such permits. Failure to obtain and maintain permits shall constitute default on this Agreement.

### **Article 6. RECORDKEEPING AND REPORTING REQUIREMENTS**

The Owner/Operator shall establish and maintain a system to provide storage and ready retrieval of the Owner/Operator's Facility operating data pertinent to this Agreement, including, but not limited to, all information necessary to verify donated tonnages and calculations for the fee schedule.

#### **6.1 BASIC REPORTING REQUIREMENTS**

(a) In-County and Out-of-County Owner/Operators shall provide the County with quarterly reports of all types of waste delivered to the Owner/Operator's Facility that are generated from County sources and delivered to the Owner/Operator's Facility. This report shall include the totals by month for each type of waste. To the extent that reports required to be submitted to PADEP or any other regulatory agency contain the information required by the County, copies of said reports may be submitted to the County to comply with the Owner/Operator's reporting requirements.

(b) Along with quarterly report, the Owner/Operator shall provide: (i) names of waste haulers delivering loads of County-generated wastes; and (ii) a statement that the Owner/Operator's permit for the Owner/Operator's Facility has not been revoked or suspended, and that the Owner/Operator is in substantial compliance with all the terms and conditions of its permit, the provisions of the Solid Waste Management Act, and all applicable federal, state, PADEP and County regulations.

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### 6.2 SPECIAL REPORTING REQUIREMENTS

The Owner/Operator shall provide written notification to the County of any permit modification applications for the following types of permit changes at the time the application is first submitted to the state or local regulatory agency: (i) changes in permitted site volume or capacity; (ii) changes in permitted average and/or maximum daily waste volume or loading rates; (iii) changes in the permitted acreage; and (iv) changes in ownership.

### 6.3 ADMINISTRATIVE INSPECTIONS

Upon reasonable notice and during regular business hours, the County and its authorized representatives shall have access to the Owner/Operator's records pertaining to the quantities and sources of County-generated municipal waste for the purpose of verifying compliance with the terms and conditions of this Agreement.

## Article 7. TIPPING FEES AND OTHER CHARGES

### 7.1 TIPPING FEES

(a) All waste haulers shall pay at a maximum the rates set forth in Appendix A, Form A-2 Proposed Rate Schedule, for County-generated municipal waste and other wastes/recyclables as identified by Respondents. The rates shall, as applicable, include the following fees: (i) Act 101 host municipality fee plus any additional fee negotiated by the host County or municipality; (ii) Act 101 recycling fee and growing greener fee; (iii) and Act 101 post closure fee; and (iv) the Recycling Sustainability Fee.

(b) The County shall not be responsible for any payment to the Owner/Operator of tipping fees incurred by waste haulers. All tipping fees shall be paid directly by the waste haulers that deliver the waste to the Owner/Operator's Facility. The Owner/Operator shall be responsible for the billing and collection of all tipping fees. The County shall not be responsible for the failure of any waste hauler to pay the Owner/Operator's tipping fees.

The Owner/Operator shall not charge a tipping fee to a County hauler that exceeds the maximum rates established by this Agreement for each type of waste. Nothing in this Agreement shall prevent or preclude the Owner/Operator from negotiating alternate tipping fees with any hauler provided such fees do not exceed the maximum rates under this Agreement.

(e) Unless the County and the Owner/Operator mutually agree to an alternate date, all annual rate adjustments shall become effective on January 1st of each year of the Agreement.

(f) The Owner/Operator may petition the County at any time for additional rate or fee adjustments on the basis of unforeseen changes in operating costs resulting from any new or revised federal, state or local laws, ordinances, regulations, or permit requirements which were not in effect at the time this Agreement was awarded. The County shall evaluate the evidence submitted and may approve reasonable and justifiable cost adjustments. The County shall not unreasonably deny such cost adjustment.

### 7.2 RECYCLING SUSTAINABILITY FEE

The County currently collects a Recycling Sustainability Fee of four dollars (\$4.00) on each ton of municipal waste delivered to designated disposal facilities from Wayne County sources. The County

requests to continue to collect this \$4.00 fee on each ton of municipal waste delivered to the Operator's Facility. This requested fee shall be forwarded as a quarterly payment consistent with the payments scheduled for Act 101 fees. The fee shall be accompanied by a report as described in Article 6.1 (a).

If the Owner/Operator fails to make timely payments to the County of the County Recycling Sustainability Fee, the Operator would additionally pay the County interest on the unpaid amount due at the rate established pursuant to Section 806 of the Act of April 9, 1929 (P.L. 343, No. 176), known as The Fiscal Code, from the last day for timely payment to the date paid.

### **Article 8. IN-KIND SERVICES**

Per the Request for Proposals (RFP), under Appendix A, Form A-3, the County requests interested disposal facility owner/operators to offer in-kind services. These may include free disposal of specified quantities of illegal dump waste to benefit the performance of the County solid waste management system and to avoid costs. These in-kind services identified by owner/operators and as negotiated by the County and Respondents shall be incorporated within the Disposal Capacity Agreement under this section by reference (Attachment A-3.1).

### **Article 9. INSURANCE**

(a) The Owner/Operator shall maintain, in full force and effect throughout the term of the Agreement and any renewal or extension thereof, insurance coverages consistent with all current DEP regulations. The County and Owner/Operator hereby waive any and every claim for recovery from the other for any and all loss or damage to each other resulting from the performance of this Agreement, to the extent such loss or damage is recovered under insurance policies.

The County shall be designated as an additional insured under all required insurance policies and shall be provided with copies and certificates of said insurance policies. Each such insurance policy shall provide the County with a thirty (30) day notice of cancellation.

### **Article 10. INDEMNIFICATION**

#### **10.1 INDEMNIFICATION**

The Owner/Operator or its successors and assigns shall protect, indemnify and hold harmless the County, its officers, members, employees, agents, contractors and subcontractors, from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and attorneys' fees, and shall defend the County indemnified parties in any suit, including appeals, for personal injury to or death of any persons or persons, or loss or damage to property arising out of:

- (a) the negligence or willful misconduct, tortious activity, error or omission of Owner/Operator or its successors or assigns, or any of its officers, agents, employees, contractors or subcontractors in connection with Owner/Operator obligations or rights under this Agreement; and
- (b) the construction, operation, closure and post-closure care and maintenance of the Owner/Operator's Facility.

## APPENDIX B

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The Owner/Operator shall not be liable or required to indemnify or reimburse the County or any County indemnified party for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses and other attorney fees arising out of any willful or negligent act, tortious activity, error or omission of the County or County indemnified parties.

### 10.2 COOPERATION REGARDING CLAIMS

If either the County or the Owner/Operator shall receive notice or have knowledge of any claim, demand, action, suit or proceeding that may result in a claim for indemnification by the County against the Owner/Operator pursuant to Article 10.1, that party shall so notify the other party and provide pertinent information and documents. Failure to promptly give such notice or to provide such information and documents shall not relieve the Owner/Operator of any obligation of indemnification it may have under Article 10.1 unless such failure shall materially diminish the ability of the Owner/Operator to respond to, or to defend the party failing to give such notice against such claim, demand, action, suit or proceeding. The County and the Owner/Operator shall consult with each other and cooperate in respect of the response to and the defense of any such claim, demand, action, suit or proceeding and, in the case of a claim for indemnification pursuant to Article 10.1, the Owner/Operator shall, upon acknowledgment in writing of its obligation to indemnify the County, be entitled to cooperate with the County with respect to the defense. With the written consent of the County, the Owner/Operator may assume the defense or represent the interests of the County with respect to such claim, demand, action, suit or proceeding which shall include the right to select and direct legal counsel and other consultants, appear in proceedings on behalf of the County and to propose, accept or reject offers of settlement.

## Article 11. DISPUTES, DEFAULTS AND REMEDIES

### 11.1 RESOLUTION OF DISPUTES

In the event any claim, controversy or dispute arises between the County and the Owner/Operator, or if any approvals, agreements or concurrences specified herein shall not have been timely given, the Owner/Operator and the County shall undertake in good faith to resolve the dispute. If the County and the Owner/Operator cannot resolve the dispute, either party shall be limited to the Court of Common Pleas of Wayne County, Pennsylvania, in equity or to law to litigate such disputes.

### 11.2 EVENTS OF DEFAULT BY COUNTY

The persistent or repeated failure or refusal by the County to perform under this Agreement in accordance with the terms hereof shall constitute an event of default by the County hereunder, unless such failure or refusal shall be excused or justified by a default by the Owner/Operator, provided, however, that no such failure or refusal shall constitute an event of default unless and until:

- (a) The Owner/Operator shall have given written notice to the County stating that in its opinion a particular default or defaults (to be described in reasonable detail in such notice) exists which will, unless corrected, constitute a material breach of this Agreement on the part of the County; and
- (b) The County shall have failed to cure such default within thirty (30) days from its receipt of the written notice given pursuant to Article 11.2 (a) above, provided that if the County shall have

commenced to take reasonable steps to correct such default within such thirty (30) day period, the County's failure to complete its cure of the indicated default shall not constitute an event of default for as long as the County is continuing to take reasonable steps to cure such default within the earliest practicable time.

### **11.3 EVENTS OF DEFAULT BY OWNER/OPERATOR**

The Owner/Operator shall be considered to be in default of this Agreement for failure to accept acceptable waste from the County or its waste haulers delivered to the Owner/Operator's Facility under the terms of this Agreement, or failure to otherwise fulfill its obligations under this Agreement.

### **11.4 FORCE MAJEURE**

Neither the Owner/Operator nor the County shall be liable for the failure to perform their duties and obligations under the Agreement or for any resultant damages, loss or expense, if such failure was the result of an act of God, riot, insurrection, war, catastrophe, natural disaster, labor strike or any other cause which was beyond reasonable control of the Owner/Operator or the County and which the Owner/Operator or County was unable to avoid by exercise of reasonable diligence. Documentation of the event that caused the Owner/Operator to be unable to meet its obligation hereunder must be submitted to the County within ten (10) working days after the occurrence of the event.

### **11.5 REMEDIES**

(a) The County and the Owner/Operator agree, except as provided in Article 11.5 (b) and (c) below, in the event of a default by either party under this Agreement, upon the right to recover damages or to be reimbursed for incremental costs associated with waste haulers redirecting loads of municipal waste to alternative facilities.

(b) If, within a period of thirty (30) days after the County shall have given written notice to the Owner/Operator that a default has occurred and is continuing, and specifying the nature of the default, the Owner/Operator has neither remedied such default, nor undertaken and diligently pursued corrective action, then this Agreement shall terminate immediately upon written notice thereof by the County to the Owner/Operator.

(c) If, within a period of thirty (30) days after the Owner/Operator shall have given written notice to the County that a default has occurred and is continuing, and specifying the nature of the default, the County has neither remedied such default, nor undertaken and diligently pursued corrective action, then this Agreement shall terminate immediately upon written notice thereof by the Owner/Operator to the County.

### **11.6 WAIVERS**

A waiver by either the County or Owner/Operator of any default of any provisions of the Agreement shall not be taken or held to be a waiver of any succeeding default of such provisions or as a waiver of any provision itself. No payment or acceptance of compensation for any period subsequent to any default shall be deemed a waiver of any right or acceptance of defective performance. To be effective a waiver must be in writing and signed by the party granting such waiver.

## APPENDIX B

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### Article 12. TERM AND TERMINATION

#### 12.1 EFFECTIVE DATE

This Agreement shall become effective on July 1, 2020. The Owner/Operator shall begin to accept waste deliveries from County sources under the terms and conditions of this Agreement on this date.

#### 12.2 TERM OF AGREEMENT

The term of this Agreement shall commence on the effective date and shall continue in effect for ten (10) years and is intended to coincide with the 10-year planning period of the County Plan.

#### 12.3 EFFECT OF TERMINATION

Upon the termination of this Agreement, the obligations of the County and the Owner/Operator hereunder shall cease, provided that any obligation for the payment of money or otherwise arising from the conduct of the County or Owner/Operator pursuant to this Agreement prior to such termination shall not be affected by such termination and shall survive and remain in full force and effect.

## Article 13. MISCELLANEOUS

#### 13.1 ASSIGNMENT

(a) This Agreement may not be assigned by either the County or the Owner/Operator or its rights sold by Owner/Operator except with the written consent of the County or Owner/Operator or as further provided in this Article. The County may, however, contract with a third party or parties for the collection, transportation, processing and disposal of waste, and such contracting will not be interpreted as an assignment of this Agreement. Further, any municipality within the political boundaries of the County and/or any waste hauler may avail themselves of the rights of the County under this Agreement without violating the assignment provision, provided, however, that such municipalities and waste haulers will be bound by the covenants of the County in this Agreement. The Owner/Operator shall not assign this Agreement except to a licensed and permitted successor to the Owner/Operator capable of performing all covenants of this Agreement and with ninety (90) days prior written notice to the County and the written consent of the County.

(b) In the event of any assignment or delegation of duties under this Agreement, the delegate shall assume full responsibility and liability, and shall be responsible for compliance with and performance of all terms and conditions of this Agreement, including but not limited to provisions for sureties and assurances of availability of ten (10) year service. The assignment or delegation of any Agreement duties will not relieve the Owner/Operator or its surety of any liability and/or obligation to perform.

#### 13.2 NOTICES

Except under emergency circumstances all notices, demands, requests and other communications under this Agreement shall be deemed sufficient and properly given if in writing and delivered in person or by recognized carrier service, or sent by certified or registered mail, postage prepaid, with return receipt requested, to the following addresses:

County: Wayne County  
Attn: Solid Waste Director/Recycling Coordinator  
66 Volunteer Drive  
Honesdale, PA 18431

Either the County or Owner/Operator may, as specified above, designate any further or different addresses to which subsequent notices shall be sent.

### **13.3 ENTIRE AGREEMENT/MODIFICATIONS**

The provisions of this Agreement, together with the Agreements, Appendices, and Attachments incorporated by reference, shall constitute the entire Municipal Waste Disposal Capacity Agreement between the County and the Owner/Operator, superseding all prior disposal capacity agreements and negotiations, if any, and, except as otherwise provided in this Agreement, shall only be modified by written agreement duly executed by both parties to this Agreement. The County and Owner/Operator agree that any existing municipal waste disposal contracts between them are hereby rendered null and void and superseded by this Agreement. If there are existing Host County Fee Agreements between parties, or Host County Fee Agreements are entered during the term of this Agreement, the Host County Fee Agreements shall remain in full force and effect notwithstanding any provisions of this Agreement.

### **13.4 SEVERABILITY**

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

### **13.5 CHANGE OF OWNERSHIP**

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

### **13.6 GOVERNING LAW**

This Agreement and any question concerning its validity, construction, or performance shall be governed by the laws of the Commonwealth of Pennsylvania, irrespective of the place of execution or of the order in which the signatures of the County and Owner/Operator are affixed or of the place or places of performance. The Owner/Operator shall conduct the services provided for in this Agreement in compliance with all applicable federal and state laws and regulations.

## APPENDIX B

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### **13.7 JOINT AND SEVERABLE LIABILITY**

If the Owner/Operator is comprised of more than one individual, corporation or other entity, each of the entities comprising the Owner/Operator shall be jointly and severally liable.

### **13.8 COUNTERPARTS**

This Agreement may be executed in more than one (1) counterpart, each of which shall be deemed to be an original but all of which taken together shall be deemed a single instrument.

### **13.9 NO CO-PARTNERSHIP OR AGENCY**

It is understood and agreed that nothing contained in this Agreement is intended or shall be construed to in any respect create or establish the relationship of co-partners between the County and the Owner/Operator, or as constituting the Owner/Operator the general representative or general agent of the County for any purpose whatsoever.

### **13.10 SECTION HEADINGS/REFERENCES**

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

### **13.11 CONVENTIONS**

In this Agreement:

- (a) the singular includes the plural and the plural the singular;
- (b) words importing any gender include the other gender;
- (c) references to statutes are construed as including all statutory provisions consolidating, amending or replacing the statute referred to;
- (d) references to writing include printing, typing, lithography and other means of reproducing words in a visible form;
- (e) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments thereto or changes therein entered into in accordance with their respective terms;
- (f) references to persons include their permitted successors and assigns; and
- (g) the term "including" shall mean including without limitation.

### **13.12 NONDISCRIMINATION**

Neither the Owner/Operator nor any subcontractor nor any person(s) acting on their behalf shall discriminate against any person because of race, sex, age, creed, color, religion or national origin, ancestry, disability, sexual orientation, or union membership.

## APPENDIX B

IN WITNESS WHEREOF, the County and Owner/Operator have caused this Waste Disposal Capacity Agreement to be executed as of the date and year first written.

### COUNTY OF WAYNE BOARD OF COMMISSIONERS

ATTEST:

Brion A. St  
Commissioner

Verley J. Boggs  
Chief Clerk

Wendell R. Kae  
Commissioner

Jack W. Allen  
Commissioner

ATTEST:

OWNER/OPERATOR:

Paul E. Hause

By: Paul E. Hause

**Form A-3 (Attachment A-3.1)**  
**In-kind Services Clarifications – Beach Lake Transfer Station**

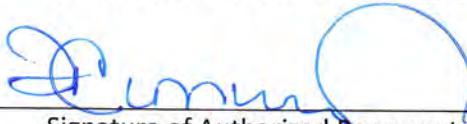
**A. Form A-3 Clarifications**

This attachment clarifies the in-kind services offered by and to be provided by Waste Management, Inc., through its Beach Lake Transfer Station to Wayne County annually over the 10-year planning period corresponding to the Wayne County Municipal Waste Management Plan. In-kind services shall be attached to the Transfer Facility Agreement.

1. Beach Lake Transfer Station shall provide an annual free commitment of up to 50 tons, or a total free commitment of disposal of up to 500 tons of Wayne County acceptable wastes over the 10-year period specified in executed disposal capacity agreements.
2. Acceptable wastes shall include non-hazardous municipal solid wastes originating from litter and illegal dump cleanup activities from within Wayne County. Whitegoods/appliances without Freon are acceptable, and the whitegoods/appliance shall include a sticker or certificate verifying freon removal. Residential C/D is acceptable.
3. Electronic devices shall not be accepted, except for small incidental quantities of electronics mixed with other acceptable municipal solid waste.
4. Prior to delivery of any wastes qualifying under the in-kind services and program, a Wayne County representative shall notify the transfer or disposal facility. Wayne County may request weight receipts for donated tons to track quantities processed under the program.
5. Waste Management does not assume or donate waste hauling services under this arrangement.
6. Household hazardous wastes, sewage sludges, whole tires, electronics and asbestos are not accepted under the arrangement for donated disposal services.
7. Financial contributions that may support Wayne County municipal waste management shall be considered by Waste Management on a case by case basis but are not guaranteed.
8. Upon request by Wayne County, Waste Management shall provide recycling education assistance on specific education projects initiated by Wayne County during the 10-year planning period. Waste management shall establish the limits of the education support provided.

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Written Name of Authorized Representative



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Signature of Authorized Representative

## APPENDIX B

### MUNICIPAL WASTE DISPOSAL CAPACITY AGREEMENT

#### COUNTY OF WAYNE

THIS MUNICIPAL WASTE DISPOSAL CAPACITY AGREEMENT (Agreement) made this 14<sup>th</sup> day of November, 2019, by and between the COUNTY OF Wayne, a political subdivision of the Commonwealth of Pennsylvania (County), and Facility Name (Owner/Operator).

Commonwealth Environmental Systems, L.P.

#### Article 1. BACKGROUND

The Municipal Waste Planning, Recycling and Waste Reduction Act (Act 101) requires the County, as part of its Municipal Waste Management Plan (Plan), to provide disposal/processing capacity for all County-generated municipal waste over the 10-year planning period corresponding with the County Plan. To meet its obligation, the County issued a request for proposals (RFP) to execute Agreements with facilities for the provision of all, or a portion of, County generated municipal waste over the designated 10-year term. The Owner/Operator responded to the solicitation and the Owner/Operator's proposal was accepted by the County Board of Commissioners. This Agreement provides the terms and conditions under which the Owner/Operator will provide disposal capacity.

The County, as the designated administrator responsible for implementation of the 10-year Municipal Waste Management Plan (Plan), has responsibilities set forth by Act 101 of 1988, and as regulated by the Pennsylvania Department of Environmental Protection, to provide for proper disposal of solid wastes and to recover recyclable commodities to advance waste diversion to meet Pennsylvania's 35 percent recycling goal. Due to the County responsibilities under Act 101 of 1988 for disposal and diversion of County-generated municipal solid wastes, and because the activities of waste collection, transportation and disposal impact the health, safety, and welfare, the County, the waste disposal facilities, processors, and collectors influence the performance of the County's integrated solid waste management system. The County is interested in establishing Agreements to meet disposal capacity assurance and to benefit the efficient and proper management of solid wastes.

NOW, THEREFORE, in consideration of the mutual promises contained herein and with intent to be legally bound, the parties hereby agree as follows:

#### Article 2. DEFINITIONS AND TERMS

##### 2.1 DEFINITIONS

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

**Acceptable Waste.** Municipal waste and all other wastes the facility is permitted to accept under applicable laws and regulations. Where applicable, acceptable or accepted wastes, refers to the waste types that shall be accepted by a Facility from Wayne County sources.

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

**Agreement.** The Municipal Waste Disposal Capacity Agreement between the County and the Owner/Operator, as amended, or supplemented by other submittals by the Owner/Operator.

**Alternative Facility.** Any licensed or permitted facility designated by the Owner/Operator to accept County-generated acceptable wastes during temporary or protracted cessation of operation at the facility.

**Commercial Establishment.** An establishment engaged in non-manufacturing or non-processing business, including, but not limited to, stores, markets, office buildings, restaurants, shopping centers and theaters.

**Construction/Demolition Waste (C/D).** Solid waste resulting from the construction or demolition of buildings and other structures, including, but not limited to, wood, plaster, metals, asphaltic substances, bricks, block and unsegregated concrete. The term also includes dredging waste. The term does not include the following if they are separate from other waste and are used as clean fill: (i) uncontaminated soil, rock, stone, gravel, unused brick and block and concrete; and (ii) waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material.

**County.** The County of Wayne, Commonwealth of Pennsylvania, solely and acting through its designated agent, the Wayne County Solid Waste Department.

**Department or PADEP.** Pennsylvania Department of Environmental Protection.

**Facility.** Processing and/or disposal facilities, including municipal waste, construction/demolition and residual waste landfills, resource recovery facilities permitted and licensed for the disposition of municipal waste (as defined herein), and/or residual waste. Transfer stations are facilities, but are not considered “designated disposal facilities” in the Plan because they do not provide disposal capacity.

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

**Industrial Establishment.** An establishment engaged in manufacturing and industrial processes, including, but not limited to, those carried out in factories, foundries, mills, processing plants, refineries, mines and slaughter houses.

**Institutional Establishment.** An establishment engaged in service, including, but not limited to, public buildings, hospitals (non-infectious waste only), nursing homes, orphanages, schools, correctional facilities and universities.

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

**Waste Hauler.** Any person collecting and/or transporting County-generated municipal waste to a County designated disposal facility or another fully permitted facility.

**Municipal Waste.** Garbage, refuse, industrial lunchroom or office waste and other material, including solid, liquid, semi-solid or contained gaseous material, resulting from operation of residential, municipal, commercial or institutional establishments or from community activities; and any sludge not meeting the definition of residual or hazardous waste from a municipal, commercial or

## APPENDIX B

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institutional water supply treatment plant, wastewater treatment plant or air pollution control facility. Municipal waste includes construction/demolition waste, municipal sludges, asbestos, infectious/chemotherapeutic waste and incinerator ash residue. The term does not include source separated recyclable materials or material approved by PADEP for beneficial use.

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

**Owner/Operator**. Any Person who owns, operates, leases, controls, or supervises a Facility, or any permitted successors, assigns, or affiliates.

**Owner/Operator's Facility**. The Owner/Operator's permitted facility described within the Facility Questionnaire.

**Parent**. Any corporation, now or at any time or times hereafter, owning or controlling (alone or with any other person or entity) at least a majority of the issued and outstanding capital stock of the Owner/Operator.

**Permit**. A permit issued by PADEP, or a permit and/or license issued by a state and/or local regulatory agency, as required, to operate a municipal waste disposal or processing facility.

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

**Plan**. The County Municipal Waste Management Plan approved pursuant to Act 101.

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

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

**Tipping Fee/Processing Fee**. The schedule of fees established by the Owner/Operator of a facility for accepting various types of solid waste for processing or disposal.

**Ton**. Two thousand (2,000) pounds.

**Transfer Station**. A facility which receives and processes or temporarily stores municipal or residual waste at a location other than the generation site, and which facilitates the transportation or transfer of municipal or residual waste to a processing or disposal facility. The term includes a facility that uses a method or technology to convert part or all of the waste materials for offsite reuse. The term does not include a collecting or processing center that is only for source separated recyclable materials, including clear glass, colored glass, aluminum, steel and bimetallic cans, high grade office paper, newsprint, corrugated paper and plastics.

**Unacceptable Waste**. Material that by its composition, characteristics or quality, is ineligible for disposal at the landfill pursuant to the provisions of the Resource Conservation and Recovery Act of

1976, 42 U.S.C. §2605(e), the Pennsylvania Solid Waste Management Act, 35 P.S. §6018.101 et seq., or other applicable federal, state or local law, or material that the Owner/Operator concludes requires special handling or endangers the landfill, public health or safety, or the environment.

**Yard Waste.** Leaves, grass clippings, garden residue, tree trimmings, chipped shrubbery and other vegetative material.

## **2.2 OTHER WORDS, TERMS, PHRASES**

Except as otherwise defined in this Agreement, all words, terms and/or phrases used herein shall be defined by the applicable definition therefore, if any, in Act 101 or the Pennsylvania Solid Waste Management Act or the regulations promulgated thereunder.

# **Article 3. REPRESENTATIONS**

## **3.1 REPRESENTATIONS OF COUNTY**

The County represents and warrants that:

- (a) It is a political subdivision of the Commonwealth of Pennsylvania, acting by and through its duly authorized officials, and is duly authorized to carry on the governmental functions and operations contemplated by this Agreement and each other agreement or instrument entered into or to be entered into by the County or the municipalities within the boundaries of the County, pursuant to this Agreement.
- (b) It has the full power, authority and legal right to enter into and perform this Agreement and all other agreements or instruments which it may enter into under any provision of this Agreement.
- (c) This Agreement and each other agreement or instrument entered into by the County pursuant to this Agreement, when entered into, will have been duly authorized, executed and delivered by the County and will constitute a legal, valid and binding obligation of the County.
- (d) There is no action or proceeding before any court or administrative agency pending or, to the knowledge of the County, threatened against or adversely affecting the ability of the County to perform its obligations hereunder.

## **3.2 REPRESENTATIONS OF OWNER/OPERATOR**

The Owner/Operator represents and warrants to the County that:

- (a) It is the Owner/Operator of the Facility and is permitted by PADEP or the appropriate state regulatory agency(ies).
- (b) It is a corporation duly organized and existing in good standing under the laws of Pennsylvania, or under the appropriate state regulatory agency(ies), and has the corporate power and authority to enter into and perform its obligations under this Agreement and each other agreement or instrument entered into or to be entered into under any provision of this Agreement.
- (c) It has the full power and legal right to enter into and perform this Agreement and all other agreements or instruments which it may enter into under any provision of this Agreement.

## APPENDIX B

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(d) This Agreement and each other agreement or instrument entered into pursuant to this Agreement, when entered into, will have been duly authorized, executed by and delivered by the Owner/Operator, and will constitute a legal, valid and binding obligation.

(e) The execution, delivery and performance hereof by the Owner/Operator: (i) has the requisite approval of all governmental bodies; (ii) will not violate any judgment, order, law or regulation applicable to the Owner/Operator; and (iii) does not (a) conflict with, (b) constitute a default under, or (c) except as specifically created hereby, result in the creation of any lien, charge, encumbrance or security interest upon any assets of the Owner/Operator under any agreement or instrument to which the Owner/Operator is party or by which the Owner/Operator or its assets may be bound or affected.

(f) This Agreement has been duly authorized, executed and delivered by the Owner/Operator, and constitutes a legal, valid and binding obligation of the Owner/Operator, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditor's rights generally, or by general equitable principles concerning remedies.

(g) There is no litigation or proceeding pending or, to the knowledge of the Owner/Operator, threatened against or affecting the Owner/Operator: (i) challenging the validity of this Agreement; (ii) seeking to enjoin the performance by the Owner/Operator of its obligations under this Agreement; or (iii) which, if adversely determined, would materially adversely affect the ability of the Owner/Operator to perform its obligation under this Agreement.

(h) Except as disclosed within the Submittal Forms for Municipal Solid Waste Disposal Services contained in the County's solicitation attached hereto and incorporated herein by reference, the Owner/Operator is not a subsidiary of any parent.

### **3.3 PARENT GUARANTEE**

If and to the extent that the Owner/Operator is a subsidiary of a parent, the Owner/Operator agrees to cause such parent to execute and deliver to the County a guarantee of the obligations of the Owner/Operator under this Agreement in a form reasonably satisfactory to the County.

### **3.4 DESIGNATION AS PROCESSING/DISPOSAL FACILITY**

In consideration of the Owner/Operator's Covenants and this Agreement, the County hereby agrees to include the Owner/Operator's Facility in its Plan as a designated processing/disposal facility for municipal waste generated in the County. The Owner/Operator acknowledges that this Agreement is nonexclusive, and the County may enter into agreements with other facilities to perform the same work and services that the Owner/Operator is contracted to perform hereunder. At no time during the term of this Agreement shall the County be obligated to deliver and dispose of acceptable waste at the Owner/Operator's Facility.

If the Owner/Operator's Facility is a transfer station, the Owner/Operator must stipulate where ultimate disposal of County-generated municipal waste will take place. If ultimate disposal is to be in a facility that is not a County Designated Facility, the Owner/Operator must furnish proof that the facility holds a valid permit in the state where it is located and that it meets all appropriate federal, state and local rules, regulations and guidelines.

## Article 4. DELIVERY AND DISPOSAL OF ACCEPTABLE WASTE

### 4.1 DELIVERY AND DISPOSAL OF ACCEPTABLE WASTE

On and after the effective date of this Agreement and pursuant to the capacity reservations specified in **Appendix A, Submittal Forms**:

- (a) The County may, at its option cause, to be delivered to the Owner/Operator's Facility during the receiving times all, part or none of the acceptable waste generated in the County.
- (b) The County or any waste hauler shall notify the Owner/Operator that it intends to exercise its right to deliver acceptable waste to the Owner/Operator's Facility prior to commencing the delivery of such wastes.
- (c) The Owner/Operator shall provide processing and/or disposal capacity as may be needed by the County for all acceptable waste generated within the geographic boundaries of the County and that the County may cause to be delivered to the Owner/Operator's Facility. This shall include delivery of acceptable waste on an occasional basis by individual County residents in small vehicles. The Owner/Operator and the County shall from time to time agree upon reasonable regulations and charges for such disposal, which will include all applicable fees.
- (d) The Owner/Operator shall provide in-kind processing and/or disposal and other in-kind services as clarified in completed Form A-3 that may include supplemental information clarifying in-kind services to be provided under the Agreement.

### 4.2 RELEASE FROM COMMITMENT

The Owner/Operator may at any time request that the County release it from its commitment to provide all or part of the reserved capacity required. Such request shall be in writing and shall set forth the basis for the request. The County shall in good faith review the Owner/Operator's request, based on the County's ability to ensure sufficient disposal capacity for municipal waste estimated to be generated during that particular calendar year, and make a determination within ten (10) business days of receipt of the request. If the request does not jeopardize the County's ability to ensure sufficient disposal capacity, it shall grant the Owner/Operator's request. The County's decision shall be in writing and delivered to the Owner/Operator.

The Owner/Operator may dispute the County's decision by giving the County a written request for resolution of dispute within five (5) working days of receipt of the decision. The dispute resolution shall be conducted in accordance with the provisions and rules under which the Court of Common Pleas of Wayne County, Pennsylvania operates. The sole issue to be arbitrated is whether the requested release can be granted without jeopardizing the ability of the County to ensure sufficient disposal capacity for municipal waste generated in the County for that year. Any decision of the arbitrator shall be final and binding on both parties. During resolution of any dispute, the Owner/Operator and the County shall each continue to perform all of their respective obligations under this Agreement without interruption or slowdown.

### Article 5. CONDITIONS FOR THE DELIVERY AND DISPOSAL OF WASTE

#### 5.1 CONTROL PROCEDURES/WEIGHING OF WASTE DELIVERIES

(a) The Owner/Operator shall be required to maintain a scale that conforms to the Weights and Measurement Act of 1965, 73 P.S. §1651-1692, to weigh all incoming waste. Vehicles of all waste haulers delivering waste to the Owner/Operator's Facility shall be weighed and their waste loads classified, and each vehicle shall receive an appropriate record indicating the classification, origin, and weight of all waste prior to disposal at the Owner/Operator's Facility.

(b) If at any time testing of the weighing facilities indicates that the weights are inaccurate, any adjustments of waste delivery receipts shall revert to the date the last verified scale weights were recorded by the appropriate certification agency. The County or a waste hauler may at all times have access to the scale accuracy records of the Owner/Operator. If the scale is inoperable for any reason, the waste haulers may use another certified scale of their choice, or the Owner/Operator may direct vehicles to another certified scale closest to the Owner/Operator's Facility. If none are available, estimated weights based on historic data pertinent to the affected waste haulers shall take the place of actual weighing during the scale outage. The Owner/Operator shall make disposal invoices for the preceding month, on a monthly basis, available to the waste haulers, and the Owner/Operator shall use this information to invoice the waste haulers for disposal at the Owner/Operator's Facility.

#### 5.2 RECEIVING TIME/HOURS OF OPERATION

(a) The Owner/Operator's Facility shall be available to receive waste during the receiving times specified in Forms contained in Appendix A, attached hereto and incorporated herein by reference.

(b) If the County or a waste hauler requests and the Owner/Operator agrees, a waste hauler may deliver waste at times in addition to the specified receiving times at a cost which may exceed the fees herein as mutually agreed upon by such waste hauler and the Owner/Operator.

(c) Upon request by the County, the Owner/Operator shall use reasonable efforts to accept deliveries of waste at times other than the receiving times upon seven (7) days prior written notice or, in the event of a natural disaster or other emergency condition, such shorter notice as may be practicable.

#### 5.3 RIGHT TO REFUSE DELIVERY

(a) Except as noted, the Owner/Operator may refuse waste delivered at hours other than the specified receiving times.

(b) The Owner/Operator shall have the right and discretion to inspect any load entering the Owner/Operator's Facility and may refuse: (i) waste for which specific Regulatory Agency approval is required when approval has not been obtained prior to delivery; (ii) loads containing significant amounts of hazardous waste; or (iii) loads containing significant amounts of unacceptable waste including material banned from landfilling (e.g., loads comprised primarily of leaf waste, electronics, etc.). The Owner/Operator may refuse delivery of the entire load or only the portion that contains the unacceptable materials. The Owner/Operator shall notify waste haulers prior to initial waste delivery of the Owner/Operator's waste monitoring program and expected procedures and responsibilities under such program.

(c) The Owner/Operator's Facility may not reject a load of acceptable waste from the County for any reason except those listed in Article 5.3 (a) and (b). Reaching the average daily permitted capacity may not be used as a basis for rejecting County-generated loads of acceptable waste.

#### **5.4 COMPLAINTS**

The Owner/Operator shall receive and respond to all complaints from waste haulers regarding the acceptance of waste materials at the Owner/Operator's Facility. Any complaints received by the County will be directed to the Owner/Operator. In the event the Owner/Operator cannot satisfactorily resolve a complaint within five (5) working days after the complaint, the County shall have the right to demand a written explanation or satisfactory resolution of the complaint pursuant to the breach of Agreement provisions herein.

#### **5.5 TITLE TO MUNICIPAL WASTE**

Except in the case where hazardous or unacceptable wastes are delivered to the Owner/Operator's Facility, title to the municipal waste and any benefits of marketing materials or energy recovery shall pass to the Owner/Operator upon delivery to the Owner/Operator's Facility and acceptance of waste by the Owner/Operator.

#### **5.6 PERMITS**

The Owner/Operator shall be responsible for obtaining any and all permits necessary for the construction and operation of the Owner/Operator's Facility required to comply with the terms and conditions of this Agreement, and any and all costs or expenses of obtaining such permits. Failure to obtain and maintain permits shall constitute default on this Agreement.

### **Article 6. RECORDKEEPING AND REPORTING REQUIREMENTS**

The Owner/Operator shall establish and maintain a system to provide storage and ready retrieval of the Owner/Operator's Facility operating data pertinent to this Agreement, including, but not limited to, all information necessary to verify donated tonnages and calculations for the fee schedule.

#### **6.1 BASIC REPORTING REQUIREMENTS**

(a) In-County and Out-of-County Owner/Operators shall provide the County with quarterly reports of all types of waste delivered to the Owner/Operator's Facility that are generated from County sources and delivered to the Owner/Operator's Facility. This report shall include the totals by month for each type of waste. To the extent that reports required to be submitted to PADEP or any other regulatory agency contain the information required by the County, copies of said reports may be submitted to the County to comply with the Owner/Operator's reporting requirements.

(b) Along with quarterly report, the Owner/Operator shall provide: (i) names of waste haulers delivering loads of County-generated wastes; and (ii) a statement that the Owner/Operator's permit for the Owner/Operator's Facility has not been revoked or suspended, and that the Owner/Operator is in substantial compliance with all the terms and conditions of its permit, the provisions of the Solid Waste Management Act, and all applicable federal, state, PADEP and County regulations.

### 6.2 SPECIAL REPORTING REQUIREMENTS

The Owner/Operator shall provide written notification to the County of any permit modification applications for the following types of permit changes at the time the application is first submitted to the state or local regulatory agency: (i) changes in permitted site volume or capacity; (ii) changes in permitted average and/or maximum daily waste volume or loading rates; (iii) changes in the permitted acreage; and (iv) changes in ownership.

### 6.3 ADMINISTRATIVE INSPECTIONS

Upon reasonable notice and during regular business hours, the County and its authorized representatives shall have access to the Owner/Operator's records pertaining to the quantities and sources of County-generated municipal waste for the purpose of verifying compliance with the terms and conditions of this Agreement.

## Article 7. TIPPING FEES AND OTHER CHARGES

### 7.1 TIPPING FEES

(a) All waste haulers shall pay at a maximum the rates set forth in Appendix A, Form A-2 Proposed Rate Schedule, for County-generated municipal waste and other wastes/recyclables as identified by Respondents. The rates shall, as applicable, include the following fees: (i) Act 101 host municipality fee plus any additional fee negotiated by the host County or municipality; (ii) Act 101 recycling fee and growing greener fee; (iii) and Act 101 post closure fee; and (iv) the Recycling Sustainability Fee.

(b) The County shall not be responsible for any payment to the Owner/Operator of tipping fees incurred by waste haulers. All tipping fees shall be paid directly by the waste haulers that deliver the waste to the Owner/Operator's Facility. The Owner/Operator shall be responsible for the billing and collection of all tipping fees. The County shall not be responsible for the failure of any waste hauler to pay the Owner/Operator's tipping fees.

The Owner/Operator shall not charge a tipping fee to a County hauler that exceeds the maximum rates established by this Agreement for each type of waste. Nothing in this Agreement shall prevent or preclude the Owner/Operator from negotiating alternate tipping fees with any hauler provided such fees do not exceed the maximum rates under this Agreement.

(e) Unless the County and the Owner/Operator mutually agree to an alternate date, all annual rate adjustments shall become effective on January 1st of each year of the Agreement.

(f) The Owner/Operator may petition the County at any time for additional rate or fee adjustments on the basis of unforeseen changes in operating costs resulting from any new or revised federal, state or local laws, ordinances, regulations, or permit requirements which were not in effect at the time this Agreement was awarded. The County shall evaluate the evidence submitted and may approve reasonable and justifiable cost adjustments. The County shall not unreasonably deny such cost adjustment.

### 7.2 RECYCLING SUSTAINABILITY FEE

The County currently collects a Recycling Sustainability Fee of four dollars (\$4.00) on each ton of municipal waste delivered to designated disposal facilities from Wayne County sources. The County

requests to continue to collect this \$4.00 fee on each ton of municipal waste delivered to the Operator's Facility. This requested fee shall be forwarded as a quarterly payment consistent with the payments scheduled for Act 101 fees. The fee shall be accompanied by a report as described in Article 6.1 (a).

If the Owner/Operator fails to make timely payments to the County of the County Recycling Sustainability Fee, the Operator would additionally pay the County interest on the unpaid amount due at the rate established pursuant to Section 806 of the Act of April 9, 1929 (P.L. 343, No. 176), known as The Fiscal Code, from the last day for timely payment to the date paid.

## **Article 8. IN-KIND SERVICES**

Per the Request for Proposals (RFP), under Appendix A, Form A-3, the County requests interested disposal facility owner/operators to offer in-kind services. These may include free disposal of specified quantities of illegal dump waste to benefit the performance of the County solid waste management system and to avoid costs. These in-kind services identified by owner/operators and as negotiated by the County and Respondents shall be incorporated within the Disposal Capacity Agreement under this section by reference (Attachment A-3.1).

## **Article 9. INSURANCE**

(a) The Owner/Operator shall maintain, in full force and effect throughout the term of the Agreement and any renewal or extension thereof, insurance coverages consistent with all current DEP regulations. The County and Owner/Operator hereby waive any and every claim for recovery from the other for any and all loss or damage to each other resulting from the performance of this Agreement, to the extent such loss or damage is recovered under insurance policies.

The County shall be designated as an additional insured under all required insurance policies and shall be provided with copies and certificates of said insurance policies. Each such insurance policy shall provide the County with a thirty (30) day notice of cancellation.

## **Article 10. INDEMNIFICATION**

### **10.1 INDEMNIFICATION**

The Owner/Operator or its successors and assigns shall protect, indemnify and hold harmless the County, its officers, members, employees, agents, contractors and subcontractors, from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and attorneys' fees, and shall defend the County indemnified parties in any suit, including appeals, for personal injury to or death of any persons or persons, or loss or damage to property arising out of:

(a) the negligence or willful misconduct, tortious activity, error or omission of Owner/Operator or its successors or assigns, or any of its officers, agents, employees, contractors or subcontractors in connection with Owner/Operator obligations or rights under this Agreement; and

(b) the construction, operation, closure and post-closure care and maintenance of the Owner/Operator's Facility.

## APPENDIX B

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The Owner/Operator shall not be liable or required to indemnify or reimburse the County or any County indemnified party for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses and other attorney fees arising out of any willful or negligent act, tortious activity, error or omission of the County or County indemnified parties.

### 10.2 COOPERATION REGARDING CLAIMS

If either the County or the Owner/Operator shall receive notice or have knowledge of any claim, demand, action, suit or proceeding that may result in a claim for indemnification by the County against the Owner/Operator pursuant to Article 10.1, that party shall so notify the other party and provide pertinent information and documents. Failure to promptly give such notice or to provide such information and documents shall not relieve the Owner/Operator of any obligation of indemnification it may have under Article 10.1 unless such failure shall materially diminish the ability of the Owner/Operator to respond to, or to defend the party failing to give such notice against such claim, demand, action, suit or proceeding. The County and the Owner/Operator shall consult with each other and cooperate in respect of the response to and the defense of any such claim, demand, action, suit or proceeding and, in the case of a claim for indemnification pursuant to Article 10.1, the Owner/Operator shall, upon acknowledgment in writing of its obligation to indemnify the County, be entitled to cooperate with the County with respect to the defense. With the written consent of the County, the Owner/Operator may assume the defense or represent the interests of the County with respect to such claim, demand, action, suit or proceeding which shall include the right to select and direct legal counsel and other consultants, appear in proceedings on behalf of the County and to propose, accept or reject offers of settlement.

## Article 11. DISPUTES, DEFAULTS AND REMEDIES

### 11.1 RESOLUTION OF DISPUTES

In the event any claim, controversy or dispute arises between the County and the Owner/Operator, or if any approvals, agreements or concurrences specified herein shall not have been timely given, the Owner/Operator and the County shall undertake in good faith to resolve the dispute. If the County and the Owner/Operator cannot resolve the dispute, either party shall be limited to the Court of Common Pleas of Wayne County, Pennsylvania, in equity or to law to litigate such disputes.

### 11.2 EVENTS OF DEFAULT BY COUNTY

The persistent or repeated failure or refusal by the County to perform under this Agreement in accordance with the terms hereof shall constitute an event of default by the County hereunder, unless such failure or refusal shall be excused or justified by a default by the Owner/Operator, provided, however, that no such failure or refusal shall constitute an event of default unless and until:

- (a) The Owner/Operator shall have given written notice to the County stating that in its opinion a particular default or defaults (to be described in reasonable detail in such notice) exists which will, unless corrected, constitute a material breach of this Agreement on the part of the County; and
- (b) The County shall have failed to cure such default within thirty (30) days from its receipt of the written notice given pursuant to Article 11.2 (a) above, provided that if the County shall have commenced to take reasonable steps to correct such default within such thirty (30) day period, the County's failure to complete its cure of the indicated default shall not constitute an event of default

for as long as the County is continuing to take reasonable steps to cure such default within the earliest practicable time.

### **11.3 EVENTS OF DEFAULT BY OWNER/OPERATOR**

The Owner/Operator shall be considered to be in default of this Agreement for failure to accept acceptable waste from the County or its waste haulers delivered to the Owner/Operator's Facility under the terms of this Agreement, or failure to otherwise fulfill its obligations under this Agreement.

### **11.4 FORCE MAJEURE**

Neither the Owner/Operator nor the County shall be liable for the failure to perform their duties and obligations under the Agreement or for any resultant damages, loss or expense, if such failure was the result of an act of God, riot, insurrection, war, catastrophe, natural disaster, labor strike or any other cause which was beyond reasonable control of the Owner/Operator or the County and which the Owner/Operator or County was unable to avoid by exercise of reasonable diligence. Documentation of the event that caused the Owner/Operator to be unable to meet its obligation hereunder must be submitted to the County within ten (10) working days after the occurrence of the event.

### **11.5 REMEDIES**

(a) The County and the Owner/Operator agree, except as provided in Article 11.5 (b) and (c) below, in the event of a default by either party under this Agreement, upon the right to recover damages or to be reimbursed for incremental costs associated with waste haulers redirecting loads of municipal waste to alternative facilities.

(b) If, within a period of thirty (30) days after the County shall have given written notice to the Owner/Operator that a default has occurred and is continuing, and specifying the nature of the default, the Owner/Operator has neither remedied such default, nor undertaken and diligently pursued corrective action, then this Agreement shall terminate immediately upon written notice thereof by the County to the Owner/Operator.

(c) If, within a period of thirty (30) days after the Owner/Operator shall have given written notice to the County that a default has occurred and is continuing, and specifying the nature of the default, the County has neither remedied such default, nor undertaken and diligently pursued corrective action, then this Agreement shall terminate immediately upon written notice thereof by the Owner/Operator to the County.

### **11.6 WAIVERS**

A waiver by either the County or Owner/Operator of any default of any provisions of the Agreement shall not be taken or held to be a waiver of any succeeding default of such provisions or as a waiver of any provision itself. No payment or acceptance of compensation for any period subsequent to any default shall be deemed a waiver of any right or acceptance of defective performance. To be effective a waiver must be in writing and signed by the party granting such waiver.

### Article 12. TERM AND TERMINATION

#### 12.1 EFFECTIVE DATE

This Agreement shall become effective on July 1, 2020. The Owner/Operator shall begin to accept waste deliveries from County sources under the terms and conditions of this Agreement on this date.

#### 12.2 TERM OF AGREEMENT

The term of this Agreement shall commence on the effective date and shall continue in effect for ten (10) years and is intended to coincide with the 10-year planning period of the County Plan.

#### 12.3 EFFECT OF TERMINATION

Upon the termination of this Agreement, the obligations of the County and the Owner/Operator hereunder shall cease, provided that any obligation for the payment of money or otherwise arising from the conduct of the County or Owner/Operator pursuant to this Agreement prior to such termination shall not be affected by such termination and shall survive and remain in full force and effect.

### Article 13. MISCELLANEOUS

#### 13.1 ASSIGNMENT

(a) This Agreement may not be assigned by either the County or the Owner/Operator or its rights sold by Owner/Operator except with the written consent of the County or Owner/Operator or as further provided in this Article. The County may, however, contract with a third party or parties for the collection, transportation, processing and disposal of waste, and such contracting will not be interpreted as an assignment of this Agreement. Further, any municipality within the political boundaries of the County and/or any waste hauler may avail themselves of the rights of the County under this Agreement without violating the assignment provision, provided, however, that such municipalities and waste haulers will be bound by the covenants of the County in this Agreement. The Owner/Operator shall not assign this Agreement except to a licensed and permitted successor to the Owner/Operator capable of performing all covenants of this Agreement and with ninety (90) days prior written notice to the County and the written consent of the County.

(b) In the event of any assignment or delegation of duties under this Agreement, the delegate shall assume full responsibility and liability, and shall be responsible for compliance with and performance of all terms and conditions of this Agreement, including but not limited to provisions for sureties and assurances of availability of ten (10) year service. The assignment or delegation of any Agreement duties will not relieve the Owner/Operator or its surety of any liability and/or obligation to perform.

#### 13.2 NOTICES

Except under emergency circumstances all notices, demands, requests and other communications under this Agreement shall be deemed sufficient and properly given if in writing and delivered in person or by recognized carrier service, or sent by certified or registered mail, postage prepaid, with return receipt requested, to the following addresses:

County: Wayne County  
Attn: Solid Waste Director/Recycling Coordinator  
66 Volunteer Drive  
Honesdale, PA 18431

Either the County or Owner/Operator may, as specified above, designate any further or different addresses to which subsequent notices shall be sent.

### **13.3 ENTIRE AGREEMENT/MODIFICATIONS**

The provisions of this Agreement, together with the Agreements, Appendices, and Attachments incorporated by reference, shall constitute the entire Municipal Waste Disposal Capacity Agreement between the County and the Owner/Operator, superseding all prior disposal capacity agreements and negotiations, if any, and, except as otherwise provided in this Agreement, shall only be modified by written agreement duly executed by both parties to this Agreement. The County and Owner/Operator agree that any existing municipal waste disposal contracts between them are hereby rendered null and void and superseded by this Agreement. If there are existing Host County Fee Agreements between parties, or Host County Fee Agreements are entered during the term of this Agreement, the Host County Fee Agreements shall remain in full force and effect notwithstanding any provisions of this Agreement.

### **13.4 SEVERABILITY**

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

### **13.5 CHANGE OF OWNERSHIP**

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

### **13.6 GOVERNING LAW**

This Agreement and any question concerning its validity, construction, or performance shall be governed by the laws of the Commonwealth of Pennsylvania, irrespective of the place of execution or of the order in which the signatures of the County and Owner/Operator are affixed or of the place or places of performance. The Owner/Operator shall conduct the services provided for in this Agreement in compliance with all applicable federal and state laws and regulations.

### **13.7 JOINT AND SEVERABLE LIABILITY**

If the Owner/Operator is comprised of more than one individual, corporation or other entity, each of the entities comprising the Owner/Operator shall be jointly and severably liable.

### **13.8 COUNTERPARTS**

This Agreement may be executed in more than one (1) counterpart, each of which shall be deemed to be an original but all of which taken together shall be deemed a single instrument.

### **13.9 NO CO-PARTNERSHIP OR AGENCY**

It is understood and agreed that nothing contained in this Agreement is intended or shall be construed to in any respect create or establish the relationship of co-partners between the County and the Owner/Operator, or as constituting the Owner/Operator the general representative or general agent of the County for any purpose whatsoever.

### **13.10 SECTION HEADINGS/REFERENCES**

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

### **13.11 CONVENTIONS**

In this Agreement:

- (a) the singular includes the plural and the plural the singular;
- (b) words importing any gender include the other gender;
- (c) references to statutes are construed as including all statutory provisions consolidating, amending or replacing the statute referred to;
- (d) references to writing include printing, typing, lithography and other means of reproducing words in a visible form;
- (e) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments thereto or changes therein entered into in accordance with their respective terms;
- (f) references to persons include their permitted successors and assigns; and
- (g) the term "including" shall mean including without limitation.

### **13.12 NONDISCRIMINATION**

Neither the Owner/Operator nor any subcontractor nor any person(s) acting on their behalf shall discriminate against any person because of race, sex, age, creed, color, religion or national origin, ancestry, disability, sexual orientation, or union membership.

IN WITNESS WHEREOF, the County and Owner/Operator have caused this Waste Disposal Capacity Agreement to be executed as of the date and year first written.

COUNTY OF WAYNE BOARD OF COMMISSIONERS

ATTEST:

## Commissioner

Chief Clerk.

### Commissioner

Frank W.  
Commissioner

ATTEST:

**OWNER/OPERATOR:**

John

By: Paula M. Mays

President  
L&D Management Inc. its General Partner

Appendix A, Submittal Forms

**Form A-3 (Attachment A-3.1)**

**In-kind Services Clarifications – Commonwealth Environmental Systems (CES)**

**A. Form A-3 Clarifications**

This attachment clarifies the in-kind services offered by and to be provided by Commonwealth Environmental System, L.P. (referred to as CES) to Wayne County annually over the 10-year planning period corresponding to the Wayne County Municipal Waste Management Plan. In-kind services shall be attached to the Disposal Capacity Agreements.

1. CES shall provide an annual free commitment of up to 30 tons, or a total free commitment of disposal of up to 300 tons of Wayne County acceptable wastes over the 10-year period specified in the executed Disposal Capacity Agreements.
2. Acceptable wastes include any combination of non-hazardous illegally dumped wastes, bulk items, and residential C&D originating from Wayne County and deemed acceptable.
3. CES will not accept tires, electronics, liquid or household hazardous wastes.
4. Prior to delivery of any wastes qualifying under the in-kind services and program, a County representative shall notify the disposal facility. Wayne County may request weight receipts for donated tons in order to track quantities processed under the program.

*Dan O'Brien*

Written Name of Authorized Representative

*Dan O'Brien*

Signature of Authorized Representative

**APPENDIX B**

**MUNICIPAL WASTE DISPOSAL CAPACITY AGREEMENT**

**COUNTY OF WAYNE**

THIS MUNICIPAL WASTE DISPOSAL CAPACITY AGREEMENT (Agreement) made this 14<sup>th</sup> day of November, 2019, by and between the COUNTY OF Wayne, a political subdivision of the Commonwealth of Pennsylvania (County), and Waste Management of Pennsylvania, Inc. – Grand Central Sanitary Landfill (Owner/Operator).

**Article 1. BACKGROUND**

The Municipal Waste Planning, Recycling and Waste Reduction Act (Act 101) requires the County, as part of its Municipal Waste Management Plan (Plan), to provide disposal/processing capacity for all County-generated municipal waste over the 10-year planning period corresponding with the County Plan. To meet its obligation, the County issued a request for proposals (RFP) to execute Agreements with facilities for the provision of all, or a portion of, County generated municipal waste over the designated 10-year term. The Owner/Operator responded to the solicitation and the Owner/Operator's proposal was accepted by the County Board of Commissioners. This Agreement provides the terms and conditions under which the Owner/Operator will provide disposal capacity.

The County, as the designated administrator responsible for implementation of the 10-year Municipal Waste Management Plan (Plan), has responsibilities set forth by Act 101 of 1988, and as regulated by the Pennsylvania Department of Environmental Protection, to provide for proper disposal of solid wastes and to recover recyclable commodities to advance waste diversion to meet Pennsylvania's 35 percent recycling goal. Due to the County responsibilities under Act 101 of 1988 for disposal and diversion of County-generated municipal solid wastes, and because the activities of waste collection, transportation and disposal impact the health, safety, and welfare, the County, the waste disposal facilities, processors, and collectors influence the performance of the County's integrated solid waste management system. The County is interested in establishing Agreements to meet disposal capacity assurance and to benefit the efficient and proper management of solid wastes.

NOW, THEREFORE, in consideration of the mutual promises contained herein and with intent to be legally bound, the parties hereby agree as follows:

**Article 2. DEFINITIONS AND TERMS**

**2.1 DEFINITIONS**

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

**Acceptable Waste.** Municipal waste and all other wastes the facility is permitted to accept under applicable laws and regulations. Where applicable, acceptable or accepted wastes, refers to the waste types that shall be accepted by a Facility from Wayne County sources.

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

**Agreement.** The Municipal Waste Disposal Capacity Agreement between the County and the Owner/Operator, as amended, or supplemented by other submittals by the Owner/Operator.

**Alternative Facility.** Any licensed or permitted facility designated by the Owner/Operator to accept County-generated acceptable wastes during temporary or protracted cessation of operation at the facility.

**Commercial Establishment.** An establishment engaged in non-manufacturing or non-processing business, including, but not limited to, stores, markets, office buildings, restaurants, shopping centers and theaters.

**Construction/Demolition Waste (C/D).** Solid waste resulting from the construction or demolition of buildings and other structures, including, but not limited to, wood, plaster, metals, asphaltic substances, bricks, block and unsegregated concrete. The term also includes dredging waste. The term does not include the following if they are separate from other waste and are used as clean fill: (i) uncontaminated soil, rock, stone, gravel, unused brick and block and concrete; and (ii) waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material.

**County.** The County of Wayne, Commonwealth of Pennsylvania, solely and acting through its designated agent, the Wayne County Solid Waste Department.

**Department or PADEP.** Pennsylvania Department of Environmental Protection.

**Facility.** Processing and/or disposal facilities, including municipal waste, construction/demolition and residual waste landfills, resource recovery facilities permitted and licensed for the disposition of municipal waste (as defined herein), and/or residual waste. Transfer stations are facilities, but are not considered “designated disposal facilities” in the Plan because they do not provide disposal capacity.

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

**Industrial Establishment.** An establishment engaged in manufacturing and industrial processes, including, but not limited to, those carried out in factories, foundries, mills, processing plants, refineries, mines and slaughter houses.

**Institutional Establishment.** An establishment engaged in service, including, but not limited to, public buildings, hospitals (non-infectious waste only), nursing homes, orphanages, schools, correctional facilities and universities.

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

**Waste Hauler.** Any person collecting and/or transporting County-generated municipal waste to a County designated disposal facility or another fully permitted facility.

**Municipal Waste.** Garbage, refuse, industrial lunchroom or office waste and other material, including solid, liquid, semi-solid or contained gaseous material, resulting from operation of

## APPENDIX B

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residential, municipal, commercial or institutional establishments or from community activities; and any sludge not meeting the definition of residual or hazardous waste from a municipal, commercial or institutional water supply treatment plant, wastewater treatment plant or air pollution control facility. Municipal waste includes construction/demolition waste, municipal sludges, asbestos, infectious/chemotherapeutic waste and incinerator ash residue. The term does not include source separated recyclable materials or material approved by PADEP for beneficial use.

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

**Owner/Operator.** Any Person who owns, operates, leases, controls, or supervises a Facility, or any permitted successors, assigns, or affiliates.

**Owner/Operator's Facility.** The Owner/Operator's permitted facility described within the Facility Questionnaire.

**Parent.** Any corporation, now or at any time or times hereafter, owning or controlling (alone or with any other person or entity) at least a majority of the issued and outstanding capital stock of the Owner/Operator.

**Permit.** A permit issued by PADEP, or a permit and/or license issued by a state and/or local regulatory agency, as required, to operate a municipal waste disposal or processing facility.

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

**Plan.** The County Municipal Waste Management Plan approved pursuant to Act 101.

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

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

**Tipping Fee/Processing Fee.** The schedule of fees established by the Owner/Operator of a facility for accepting various types of solid waste for processing or disposal.

**Ton.** Two thousand (2,000) pounds.

**Transfer Station.** A facility which receives and processes or temporarily stores municipal or residual waste at a location other than the generation site, and which facilitates the transportation or transfer of municipal or residual waste to a processing or disposal facility. The term includes a facility that uses a method or technology to convert part or all of the waste materials for offsite reuse. The term does not include a collecting or processing center that is only for source separated recyclable materials, including clear glass, colored glass, aluminum, steel and bimetallic cans, high grade office paper, newsprint, corrugated paper and plastics.

**Unacceptable Waste.** Material that by its composition, characteristics or quality, is ineligible for disposal at the landfill pursuant to the provisions of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §2605(e), the Pennsylvania Solid Waste Management Act, 35 P.S. §6018.101 et seq., or other applicable federal, state or local law, or material that the Owner/Operator concludes requires special handling or endangers the landfill, public health or safety, or the environment.

**Yard Waste.** Leaves, grass clippings, garden residue, tree trimmings, chipped shrubbery and other vegetative material.

## 2.2 OTHER WORDS, TERMS, PHRASES

Except as otherwise defined in this Agreement, all words, terms and/or phrases used herein shall be defined by the applicable definition therefore, if any, in Act 101 or the Pennsylvania Solid Waste Management Act or the regulations promulgated thereunder.

# Article 3. REPRESENTATIONS

## 3.1 REPRESENTATIONS OF COUNTY

The County represents and warrants that:

- (a) It is a political subdivision of the Commonwealth of Pennsylvania, acting by and through its duly authorized officials, and is duly authorized to carry on the governmental functions and operations contemplated by this Agreement and each other agreement or instrument entered into or to be entered into by the County or the municipalities within the boundaries of the County, pursuant to this Agreement.
- (b) It has the full power, authority and legal right to enter into and perform this Agreement and all other agreements or instruments which it may enter into under any provision of this Agreement.
- (c) This Agreement and each other agreement or instrument entered into by the County pursuant to this Agreement, when entered into, will have been duly authorized, executed and delivered by the County and will constitute a legal, valid and binding obligation of the County.
- (d) There is no action or proceeding before any court or administrative agency pending or, to the knowledge of the County, threatened against or adversely affecting the ability of the County to perform its obligations hereunder.

## 3.2 REPRESENTATIONS OF OWNER/OPERATOR

The Owner/Operator represents and warrants to the County that:

- (a) It is the Owner/Operator of the Facility and is permitted by PADEP or the appropriate state regulatory agency(ies).
- (b) It is a corporation duly organized and existing in good standing under the laws of Pennsylvania, or under the appropriate state regulatory agency(ies), and has the corporate power and authority to enter into and perform its obligations under this Agreement and each other agreement or instrument entered into or to be entered into under any provision of this Agreement.
- (c) It has the full power and legal right to enter into and perform this Agreement and all other agreements or instruments which it may enter into under any provision of this Agreement.

## APPENDIX B

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(d) This Agreement and each other agreement or instrument entered into pursuant to this Agreement, when entered into, will have been duly authorized, executed by and delivered by the Owner/Operator, and will constitute a legal, valid and binding obligation.

(e) The execution, delivery and performance hereof by the Owner/Operator: (i) has the requisite approval of all governmental bodies; (ii) will not violate any judgment, order, law or regulation applicable to the Owner/Operator; and (iii) does not (a) conflict with, (b) constitute a default under, or (c) except as specifically created hereby, result in the creation of any lien, charge, encumbrance or security interest upon any assets of the Owner/Operator under any agreement or instrument to which the Owner/Operator is party or by which the Owner/Operator or its assets may be bound or affected.

(f) This Agreement has been duly authorized, executed and delivered by the Owner/Operator, and constitutes a legal, valid and binding obligation of the Owner/Operator, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditor's rights generally, or by general equitable principles concerning remedies.

(g) There is no litigation or proceeding pending or, to the knowledge of the Owner/Operator, threatened against or affecting the Owner/Operator: (i) challenging the validity of this Agreement; (ii) seeking to enjoin the performance by the Owner/Operator of its obligations under this Agreement; or (iii) which, if adversely determined, would materially adversely affect the ability of the Owner/Operator to perform its obligation under this Agreement.

(h) Except as disclosed within the Submittal Forms for Municipal Solid Waste Disposal Services contained in the County's solicitation attached hereto and incorporated herein by reference, the Owner/Operator is not a subsidiary of any parent.

### 3.3 PARENT GUARANTEE

If and to the extent that the Owner/Operator is a subsidiary of a parent, the Owner/Operator agrees to cause such parent to execute and deliver to the County a guarantee of the obligations of the Owner/Operator under this Agreement in a form reasonably satisfactory to the County.

### 3.4 DESIGNATION AS PROCESSING/DISPOSAL FACILITY

In consideration of the Owner/Operator's Covenants and this Agreement, the County hereby agrees to include the Owner/Operator's Facility in its Plan as a designated processing/disposal facility for municipal waste generated in the County. The Owner/Operator acknowledges that this Agreement is nonexclusive, and the County may enter into agreements with other facilities to perform the same work and services that the Owner/Operator is contracted to perform hereunder. At no time during the term of this Agreement shall the County be obligated to deliver and dispose of acceptable waste at the Owner/Operator's Facility.

If the Owner/Operator's Facility is a transfer station, the Owner/Operator must stipulate where ultimate disposal of County-generated municipal waste will take place. If ultimate disposal is to be in a facility that is not a County Designated Facility, the Owner/Operator must furnish proof that the facility holds a valid permit in the state where it is located and that it meets all appropriate federal, state and local rules, regulations and guidelines.

## Article 4. DELIVERY AND DISPOSAL OF ACCEPTABLE WASTE

### 4.1 DELIVERY AND DISPOSAL OF ACCEPTABLE WASTE

On and after the effective date of this Agreement and pursuant to the capacity reservations specified in **Appendix A, Submittal Forms**:

- (a) The County may, at its option cause, to be delivered to the Owner/Operator's Facility during the receiving times all, part or none of the acceptable waste generated in the County.
- (b) The County or any waste hauler shall notify the Owner/Operator that it intends to exercise its right to deliver acceptable waste to the Owner/Operator's Facility prior to commencing the delivery of such wastes.
- (c) The Owner/Operator shall provide processing and/or disposal capacity as may be needed by the County for all acceptable waste generated within the geographic boundaries of the County and that the County may cause to be delivered to the Owner/Operator's Facility. This shall include delivery of acceptable waste on an occasional basis by individual County residents in small vehicles. The Owner/Operator and the County shall from time to time agree upon reasonable regulations and charges for such disposal, which will include all applicable fees.
- (d) The Owner/Operator shall provide in-kind processing and/or disposal and other in-kind services as clarified in completed Form A-3 that may include supplemental information clarifying in-kind services to be provided under the Agreement.

### 4.2 RELEASE FROM COMMITMENT

The Owner/Operator may at any time request that the County release it from its commitment to provide all or part of the reserved capacity required. Such request shall be in writing and shall set forth the basis for the request. The County shall in good faith review the Owner/Operator's request, based on the County's ability to ensure sufficient disposal capacity for municipal waste estimated to be generated during that particular calendar year, and make a determination within ten (10) business days of receipt of the request. If the request does not jeopardize the County's ability to ensure sufficient disposal capacity, it shall grant the Owner/Operator's request. The County's decision shall be in writing and delivered to the Owner/Operator.

The Owner/Operator may dispute the County's decision by giving the County a written request for resolution of dispute within five (5) working days of receipt of the decision. The dispute resolution shall be conducted in accordance with the provisions and rules under which the Court of Common Pleas of Wayne County, Pennsylvania operates. The sole issue to be arbitrated is whether the requested release can be granted without jeopardizing the ability of the County to ensure sufficient disposal capacity for municipal waste generated in the County for that year. Any decision of the arbitrator shall be final and binding on both parties. During resolution of any dispute, the Owner/Operator and the County shall each continue to perform all of their respective obligations under this Agreement without interruption or slowdown.

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### Article 5. CONDITIONS FOR THE DELIVERY AND DISPOSAL OF WASTE

#### 5.1 CONTROL PROCEDURES/WEIGHING OF WASTE DELIVERIES

(a) The Owner/Operator shall be required to maintain a scale that conforms to the Weights and Measurement Act of 1965, 73 P.S. §1651-1692, to weigh all incoming waste. Vehicles of all waste haulers delivering waste to the Owner/Operator's Facility shall be weighed and their waste loads classified, and each vehicle shall receive an appropriate record indicating the classification, origin, and weight of all waste prior to disposal at the Owner/Operator's Facility.

(b) If at any time testing of the weighing facilities indicates that the weights are inaccurate, any adjustments of waste delivery receipts shall revert to the date the last verified scale weights were recorded by the appropriate certification agency. The County or a waste hauler may at all times have access to the scale accuracy records of the Owner/Operator. If the scale is inoperable for any reason, the waste haulers may use another certified scale of their choice, or the Owner/Operator may direct vehicles to another certified scale closest to the Owner/Operator's Facility. If none are available, estimated weights based on historic data pertinent to the affected waste haulers shall take the place of actual weighing during the scale outage. The Owner/Operator shall make disposal invoices for the preceding month, on a monthly basis, available to the waste haulers, and the Owner/Operator shall use this information to invoice the waste haulers for disposal at the Owner/Operator's Facility.

#### 5.2 RECEIVING TIME/HOURS OF OPERATION

(a) The Owner/Operator's Facility shall be available to receive waste during the receiving times specified in Forms contained in Appendix A, attached hereto and incorporated herein by reference.

(b) If the County or a waste hauler requests and the Owner/Operator agrees, a waste hauler may deliver waste at times in addition to the specified receiving times at a cost which may exceed the fees herein as mutually agreed upon by such waste hauler and the Owner/Operator.

(c) Upon request by the County, the Owner/Operator shall use reasonable efforts to accept deliveries of waste at times other than the receiving times upon seven (7) days prior written notice or, in the event of a natural disaster or other emergency condition, such shorter notice as may be practicable.

#### 5.3 RIGHT TO REFUSE DELIVERY

(a) Except as noted, the Owner/Operator may refuse waste delivered at hours other than the specified receiving times.

(b) The Owner/Operator shall have the right and discretion to inspect any load entering the Owner/Operator's Facility and may refuse: (i) waste for which specific Regulatory Agency approval is required when approval has not been obtained prior to delivery; (ii) loads containing significant amounts of hazardous waste; or (iii) loads containing significant amounts of unacceptable waste including material banned from landfilling (e.g., loads comprised primarily of leaf waste, electronics, etc.). The Owner/Operator may refuse delivery of the entire load or only the portion that contains the unacceptable materials. The Owner/Operator shall notify waste haulers prior to initial waste delivery of the Owner/Operator's waste monitoring program and expected procedures and responsibilities under such program.

(c) The Owner/Operator's Facility may not reject a load of acceptable waste from the County for any reason except those listed in Article 5.3 (a) and (b). Reaching the average daily permitted capacity may not be used as a basis for rejecting County-generated loads of acceptable waste.

#### **5.4 COMPLAINTS**

The Owner/Operator shall receive and respond to all complaints from waste haulers regarding the acceptance of waste materials at the Owner/Operator's Facility. Any complaints received by the County will be directed to the Owner/Operator. In the event the Owner/Operator cannot satisfactorily resolve a complaint within five (5) working days after the complaint, the County shall have the right to demand a written explanation or satisfactory resolution of the complaint pursuant to the breach of Agreement provisions herein.

#### **5.5 TITLE TO MUNICIPAL WASTE**

Except in the case where hazardous or unacceptable wastes are delivered to the Owner/Operator's Facility, title to the municipal waste and any benefits of marketing materials or energy recovery shall pass to the Owner/Operator upon delivery to the Owner/Operator's Facility and acceptance of waste by the Owner/Operator.

#### **5.6 PERMITS**

The Owner/Operator shall be responsible for obtaining any and all permits necessary for the construction and operation of the Owner/Operator's Facility required to comply with the terms and conditions of this Agreement, and any and all costs or expenses of obtaining such permits. Failure to obtain and maintain permits shall constitute default on this Agreement.

### **Article 6. RECORDKEEPING AND REPORTING REQUIREMENTS**

The Owner/Operator shall establish and maintain a system to provide storage and ready retrieval of the Owner/Operator's Facility operating data pertinent to this Agreement, including, but not limited to, all information necessary to verify donated tonnages and calculations for the fee schedule.

#### **6.1 BASIC REPORTING REQUIREMENTS**

(a) In-County and Out-of-County Owner/Operators shall provide the County with quarterly reports of all types of waste delivered to the Owner/Operator's Facility that are generated from County sources and delivered to the Owner/Operator's Facility. This report shall include the totals by month for each type of waste. To the extent that reports required to be submitted to PADEP or any other regulatory agency contain the information required by the County, copies of said reports may be submitted to the County to comply with the Owner/Operator's reporting requirements.

(b) Along with quarterly report, the Owner/Operator shall provide: (i) names of waste haulers delivering loads of County-generated wastes; and (ii) a statement that the Owner/Operator's permit for the Owner/Operator's Facility has not been revoked or suspended, and that the Owner/Operator is in substantial compliance with all the terms and conditions of its permit, the provisions of the Solid Waste Management Act, and all applicable federal, state, PADEP and County regulations.

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### 6.2 SPECIAL REPORTING REQUIREMENTS

The Owner/Operator shall provide written notification to the County of any permit modification applications for the following types of permit changes at the time the application is first submitted to the state or local regulatory agency: (i) changes in permitted site volume or capacity; (ii) changes in permitted average and/or maximum daily waste volume or loading rates; (iii) changes in the permitted acreage; and (iv) changes in ownership.

### 6.3 ADMINISTRATIVE INSPECTIONS

Upon reasonable notice and during regular business hours, the County and its authorized representatives shall have access to the Owner/Operator's records pertaining to the quantities and sources of County-generated municipal waste for the purpose of verifying compliance with the terms and conditions of this Agreement.

## Article 7. TIPPING FEES AND OTHER CHARGES

### 7.1 TIPPING FEES

(a) All waste haulers shall pay at a maximum the rates set forth in Appendix A, Form A-2 Proposed Rate Schedule, for County-generated municipal waste and other wastes/recyclables as identified by Respondents. The rates shall, as applicable, include the following fees: (i) Act 101 host municipality fee plus any additional fee negotiated by the host County or municipality; (ii) Act 101 recycling fee and growing greener fee; (iii) and Act 101 post closure fee; and (iv) the Recycling Sustainability Fee.

(b) The County shall not be responsible for any payment to the Owner/Operator of tipping fees incurred by waste haulers. All tipping fees shall be paid directly by the waste haulers that deliver the waste to the Owner/Operator's Facility. The Owner/Operator shall be responsible for the billing and collection of all tipping fees. The County shall not be responsible for the failure of any waste hauler to pay the Owner/Operator's tipping fees.

The Owner/Operator shall not charge a tipping fee to a County hauler that exceeds the maximum rates established by this Agreement for each type of waste. Nothing in this Agreement shall prevent or preclude the Owner/Operator from negotiating alternate tipping fees with any hauler provided such fees do not exceed the maximum rates under this Agreement.

(e) Unless the County and the Owner/Operator mutually agree to an alternate date, all annual rate adjustments shall become effective on January 1st of each year of the Agreement.

(f) The Owner/Operator may petition the County at any time for additional rate or fee adjustments on the basis of unforeseen changes in operating costs resulting from any new or revised federal, state or local laws, ordinances, regulations, or permit requirements which were not in effect at the time this Agreement was awarded. The County shall evaluate the evidence submitted and may approve reasonable and justifiable cost adjustments. The County shall not unreasonably deny such cost adjustment.

### 7.2 RECYCLING SUSTAINABILITY FEE

The County currently collects a Recycling Sustainability Fee of four dollars (\$4.00) on each ton of municipal waste delivered to designated disposal facilities from Wayne County sources. The County

requests to continue to collect this \$4.00 fee on each ton of municipal waste delivered to the Operator's Facility. This requested fee shall be forwarded as a quarterly payment consistent with the payments scheduled for Act 101 fees. The fee shall be accompanied by a report as described in Article 6.1 (a).

If the Owner/Operator fails to make timely payments to the County of the County Recycling Sustainability Fee, the Operator would additionally pay the County interest on the unpaid amount due at the rate established pursuant to Section 806 of the Act of April 9, 1929 (P.L. 343, No. 176), known as The Fiscal Code, from the last day for timely payment to the date paid.

## **Article 8. IN-KIND SERVICES**

Per the Request for Proposals (RFP), under Appendix A, Form A-3, the County requests interested disposal facility owner/operators to offer in-kind services. These may include free disposal of specified quantities of illegal dump waste to benefit the performance of the County solid waste management system and to avoid costs. These in-kind services identified by owner/operators and as negotiated by the County and Respondents shall be incorporated within the Disposal Capacity Agreement under this section by reference (Attachment A-3.1).

## **Article 9. INSURANCE**

(a) The Owner/Operator shall maintain, in full force and effect throughout the term of the Agreement and any renewal or extension thereof, insurance coverages consistent with all current DEP regulations. The County and Owner/Operator hereby waive any and every claim for recovery from the other for any and all loss or damage to each other resulting from the performance of this Agreement, to the extent such loss or damage is recovered under insurance policies.

The County shall be designated as an additional insured under all required insurance policies and shall be provided with copies and certificates of said insurance policies. Each such insurance policy shall provide the County with a thirty (30) day notice of cancellation.

## **Article 10. INDEMNIFICATION**

### **10.1 INDEMNIFICATION**

The Owner/Operator or its successors and assigns shall protect, indemnify and hold harmless the County, its officers, members, employees, agents, contractors and subcontractors, from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and attorneys' fees, and shall defend the County indemnified parties in any suit, including appeals, for personal injury to or death of any persons or persons, or loss or damage to property arising out of:

- (a) the negligence or willful misconduct, tortious activity, error or omission of Owner/Operator or its successors or assigns, or any of its officers, agents, employees, contractors or subcontractors in connection with Owner/Operator obligations or rights under this Agreement; and
- (b) the construction, operation, closure and post-closure care and maintenance of the Owner/Operator's Facility.

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The Owner/Operator shall not be liable or required to indemnify or reimburse the County or any County indemnified party for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses and other attorney fees arising out of any willful or negligent act, tortious activity, error or omission of the County or County indemnified parties.

### 10.2 COOPERATION REGARDING CLAIMS

If either the County or the Owner/Operator shall receive notice or have knowledge of any claim, demand, action, suit or proceeding that may result in a claim for indemnification by the County against the Owner/Operator pursuant to Article 10.1, that party shall so notify the other party and provide pertinent information and documents. Failure to promptly give such notice or to provide such information and documents shall not relieve the Owner/Operator of any obligation of indemnification it may have under Article 10.1 unless such failure shall materially diminish the ability of the Owner/Operator to respond to, or to defend the party failing to give such notice against such claim, demand, action, suit or proceeding. The County and the Owner/Operator shall consult with each other and cooperate in respect of the response to and the defense of any such claim, demand, action, suit or proceeding and, in the case of a claim for indemnification pursuant to Article 10.1, the Owner/Operator shall, upon acknowledgment in writing of its obligation to indemnify the County, be entitled to cooperate with the County with respect to the defense. With the written consent of the County, the Owner/Operator may assume the defense or represent the interests of the County with respect to such claim, demand, action, suit or proceeding which shall include the right to select and direct legal counsel and other consultants, appear in proceedings on behalf of the County and to propose, accept or reject offers of settlement.

## Article 11. DISPUTES, DEFAULTS AND REMEDIES

### 11.1 RESOLUTION OF DISPUTES

In the event any claim, controversy or dispute arises between the County and the Owner/Operator, or if any approvals, agreements or concurrences specified herein shall not have been timely given, the Owner/Operator and the County shall undertake in good faith to resolve the dispute. If the County and the Owner/Operator cannot resolve the dispute, either party shall be limited to the Court of Common Pleas of Wayne County, Pennsylvania, in equity or to law to litigate such disputes.

### 11.2 EVENTS OF DEFAULT BY COUNTY

The persistent or repeated failure or refusal by the County to perform under this Agreement in accordance with the terms hereof shall constitute an event of default by the County hereunder, unless such failure or refusal shall be excused or justified by a default by the Owner/Operator, provided, however, that no such failure or refusal shall constitute an event of default unless and until:

(a) The Owner/Operator shall have given written notice to the County stating that in its opinion a particular default or defaults (to be described in reasonable detail in such notice) exists which will, unless corrected, constitute a material breach of this Agreement on the part of the County; and

(b) The County shall have failed to cure such default within thirty (30) days from its receipt of the written notice given pursuant to Article 11.2 (a) above, provided that if the County shall have

commenced to take reasonable steps to correct such default within such thirty (30) day period, the County's failure to complete its cure of the indicated default shall not constitute an event of default for as long as the County is continuing to take reasonable steps to cure such default within the earliest practicable time.

### **11.3 EVENTS OF DEFAULT BY OWNER/OPERATOR**

The Owner/Operator shall be considered to be in default of this Agreement for failure to accept acceptable waste from the County or its waste haulers delivered to the Owner/Operator's Facility under the terms of this Agreement, or failure to otherwise fulfill its obligations under this Agreement.

### **11.4 FORCE MAJEURE**

Neither the Owner/Operator nor the County shall be liable for the failure to perform their duties and obligations under the Agreement or for any resultant damages, loss or expense, if such failure was the result of an act of God, riot, insurrection, war, catastrophe, natural disaster, labor strike or any other cause which was beyond reasonable control of the Owner/Operator or the County and which the Owner/Operator or County was unable to avoid by exercise of reasonable diligence. Documentation of the event that caused the Owner/Operator to be unable to meet its obligation hereunder must be submitted to the County within ten (10) working days after the occurrence of the event.

### **11.5 REMEDIES**

(a) The County and the Owner/Operator agree, except as provided in Article 11.5 (b) and (c) below, in the event of a default by either party under this Agreement, upon the right to recover damages or to be reimbursed for incremental costs associated with waste haulers redirecting loads of municipal waste to alternative facilities.

(b) If, within a period of thirty (30) days after the County shall have given written notice to the Owner/Operator that a default has occurred and is continuing, and specifying the nature of the default, the Owner/Operator has neither remedied such default, nor undertaken and diligently pursued corrective action, then this Agreement shall terminate immediately upon written notice thereof by the County to the Owner/Operator.

(c) If, within a period of thirty (30) days after the Owner/Operator shall have given written notice to the County that a default has occurred and is continuing, and specifying the nature of the default, the County has neither remedied such default, nor undertaken and diligently pursued corrective action, then this Agreement shall terminate immediately upon written notice thereof by the Owner/Operator to the County.

### **11.6 WAIVERS**

A waiver by either the County or Owner/Operator of any default of any provisions of the Agreement shall not be taken or held to be a waiver of any succeeding default of such provisions or as a waiver of any provision itself. No payment or acceptance of compensation for any period subsequent to any default shall be deemed a waiver of any right or acceptance of defective performance. To be effective a waiver must be in writing and signed by the party granting such waiver.

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### Article 12. TERM AND TERMINATION

#### 12.1 EFFECTIVE DATE

This Agreement shall become effective on July 1, 2020. The Owner/Operator shall begin to accept waste deliveries from County sources under the terms and conditions of this Agreement on this date.

#### 12.2 TERM OF AGREEMENT

The term of this Agreement shall commence on the effective date and shall continue in effect for ten (10) years and is intended to coincide with the 10-year planning period of the County Plan.

#### 12.3 EFFECT OF TERMINATION

Upon the termination of this Agreement, the obligations of the County and the Owner/Operator hereunder shall cease, provided that any obligation for the payment of money or otherwise arising from the conduct of the County or Owner/Operator pursuant to this Agreement prior to such termination shall not be affected by such termination and shall survive and remain in full force and effect.

## Article 13. MISCELLANEOUS

#### 13.1 ASSIGNMENT

(a) This Agreement may not be assigned by either the County or the Owner/Operator or its rights sold by Owner/Operator except with the written consent of the County or Owner/Operator or as further provided in this Article. The County may, however, contract with a third party or parties for the collection, transportation, processing and disposal of waste, and such contracting will not be interpreted as an assignment of this Agreement. Further, any municipality within the political boundaries of the County and/or any waste hauler may avail themselves of the rights of the County under this Agreement without violating the assignment provision, provided, however, that such municipalities and waste haulers will be bound by the covenants of the County in this Agreement. The Owner/Operator shall not assign this Agreement except to a licensed and permitted successor to the Owner/Operator capable of performing all covenants of this Agreement and with ninety (90) days prior written notice to the County and the written consent of the County.

(b) In the event of any assignment or delegation of duties under this Agreement, the delegate shall assume full responsibility and liability, and shall be responsible for compliance with and performance of all terms and conditions of this Agreement, including but not limited to provisions for sureties and assurances of availability of ten (10) year service. The assignment or delegation of any Agreement duties will not relieve the Owner/Operator or its surety of any liability and/or obligation to perform.

#### 13.2 NOTICES

Except under emergency circumstances all notices, demands, requests and other communications under this Agreement shall be deemed sufficient and properly given if in writing and delivered in person or by recognized carrier service, or sent by certified or registered mail, postage prepaid, with return receipt requested, to the following addresses:

County: Wayne County  
Attn: Solid Waste Director/Recycling Coordinator  
66 Volunteer Drive  
Honesdale, PA 18431

Either the County or Owner/Operator may, as specified above, designate any further or different addresses to which subsequent notices shall be sent.

### **13.3 ENTIRE AGREEMENT/MODIFICATIONS**

The provisions of this Agreement, together with the Agreements, Appendices, and Attachments incorporated by reference, shall constitute the entire Municipal Waste Disposal Capacity Agreement between the County and the Owner/Operator, superseding all prior disposal capacity agreements and negotiations, if any, and, except as otherwise provided in this Agreement, shall only be modified by written agreement duly executed by both parties to this Agreement. The County and Owner/Operator agree that any existing municipal waste disposal contracts between them are hereby rendered null and void and superseded by this Agreement. If there are existing Host County Fee Agreements between parties, or Host County Fee Agreements are entered during the term of this Agreement, the Host County Fee Agreements shall remain in full force and effect notwithstanding any provisions of this Agreement.

### **13.4 SEVERABILITY**

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

### **13.5 CHANGE OF OWNERSHIP**

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

### **13.6 GOVERNING LAW**

This Agreement and any question concerning its validity, construction, or performance shall be governed by the laws of the Commonwealth of Pennsylvania, irrespective of the place of execution or of the order in which the signatures of the County and Owner/Operator are affixed or of the place or places of performance. The Owner/Operator shall conduct the services provided for in this Agreement in compliance with all applicable federal and state laws and regulations.

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### 13.7 JOINT AND SEVERABLE LIABILITY

If the Owner/Operator is comprised of more than one individual, corporation or other entity, each of the entities comprising the Owner/Operator shall be jointly and severally liable.

### 13.8 COUNTERPARTS

This Agreement may be executed in more than one (1) counterpart, each of which shall be deemed to be an original but all of which taken together shall be deemed a single instrument.

### 13.9 NO CO-PARTNERSHIP OR AGENCY

It is understood and agreed that nothing contained in this Agreement is intended or shall be construed to in any respect create or establish the relationship of co-partners between the County and the Owner/Operator, or as constituting the Owner/Operator the general representative or general agent of the County for any purpose whatsoever.

### 13.10 SECTION HEADINGS/REFERENCES

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

### 13.11 CONVENTIONS

In this Agreement:

- (a) the singular includes the plural and the plural the singular;
- (b) words importing any gender include the other gender;
- (c) references to statutes are construed as including all statutory provisions consolidating, amending or replacing the statute referred to;
- (d) references to writing include printing, typing, lithography and other means of reproducing words in a visible form;
- (e) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments thereto or changes therein entered into in accordance with their respective terms;
- (f) references to persons include their permitted successors and assigns; and
- (g) the term "including" shall mean including without limitation.

### 13.12 NONDISCRIMINATION

Neither the Owner/Operator nor any subcontractor nor any person(s) acting on their behalf shall discriminate against any person because of race, sex, age, creed, color, religion or national origin, ancestry, disability, sexual orientation, or union membership.

IN WITNESS WHEREOF, the County and Owner/Operator have caused this Waste Disposal Capacity Agreement to be executed as of the date and year first written.

COUNTY OF WAYNE BOARD OF COMMISSIONERS

ATTEST:

Brian West

Commissioner

Chief Clerk

Vickey J. Boggs

Wendell Rhee

Commissioner

Commissioner

ATTEST:

OWNER/OPERATOR:

Mark Ettinger

By: Mark Ettinger

Form A-3 (Attachment A-3.1)

**In-kind Services Clarifications – Grand Central Sanitary Landfill**

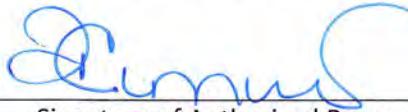
**A. Form A-3 Clarifications**

This attachment clarifies the in-kind services offered by and to be provided by Waste Management, Inc., through its Grand Central Sanitary Landfill to Wayne County annually over the 10-year planning period of the Wayne County Municipal Waste Management Plan. In-kind services shall be attached to the Disposal Capacity Agreements.

1. Grand Central Sanitary Landfill shall provide an annual free commitment of up to 100 tons, or a total free commitment of disposal of up to 1,000 tons of Wayne County acceptable wastes over the 10-year period specified in the executed Disposal Capacity Agreements.
2. Acceptable wastes shall include non-hazardous municipal solid wastes originating from litter and illegal dump cleanup activities from within Wayne County. Whitegoods/appliances without Freon are acceptable, and the whitegoods/appliance shall include a sticker or certificate verifying freon removal. Residential C/D from County projects is acceptable.
3. Prior to delivery of any wastes qualifying under the in-kind services and program, a Wayne County representative shall notify the transfer or disposal facility. Wayne County may request weight receipts for donated tons in order to track quantities processed under the program.
4. Electronic devices shall not be accepted, except for small incidental quantities of electronics mixed with other acceptable municipal solid waste.
5. Waste Management does not assume or donate waste hauling services under this arrangement.
6. Household hazardous wastes, sewage sludges, whole tires, electronics and asbestos are not accepted under the arrangement for donated disposal services.
7. Financial contributions that may support Wayne County municipal waste management shall be considered by Waste Management on a case by case basis but are not guaranteed.
8. Upon request by Wayne County, Waste Management shall provide recycling education assistance on specific education projects initiated by the County during the 10-year planning period. Waste management shall establish the limits of the education support provided.

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Written Name of Authorized Representative



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Signature of Authorized Representative

APPENDIX B  
MUNICIPAL WASTE DISPOSAL CAPACITY AGREEMENT  
COUNTY OF WAYNE

THIS MUNICIPAL WASTE DISPOSAL CAPACITY AGREEMENT (Agreement) made this  
14 day of November, 2019, by and between the COUNTY OF Wayne, a political  
subdivision of the Commonwealth of Pennsylvania (County), and Facility Name (Owner/Operator).

Keystone Sanitary Landfill, Inc.

### Article 1. BACKGROUND

The Municipal Waste Planning, Recycling and Waste Reduction Act (Act 101) requires the County, as part of its Municipal Waste Management Plan (Plan), to provide disposal/processing capacity for all County-generated municipal waste over the 10-year planning period corresponding with the County Plan. To meet its obligation, the County issued a request for proposals (RFP) to execute Agreements with facilities for the provision of all, or a portion of, County generated municipal waste over the designated 10-year term. The Owner/Operator responded to the solicitation and the Owner/Operator's proposal was accepted by the County Board of Commissioners. This Agreement provides the terms and conditions under which the Owner/Operator will provide disposal capacity.

The County, as the designated administrator responsible for implementation of the 10-year Municipal Waste Management Plan (Plan), has responsibilities set forth by Act 101 of 1988, and as regulated by the Pennsylvania Department of Environmental Protection, to provide for proper disposal of solid wastes and to recover recyclable commodities to advance waste diversion to meet Pennsylvania's 35 percent recycling goal. Due to the County responsibilities under Act 101 of 1988 for disposal and diversion of County-generated municipal solid wastes, and because the activities of waste collection, transportation and disposal impact the health, safety, and welfare, the County, the waste disposal facilities, processors, and collectors influence the performance of the County's integrated solid waste management system. The County is interested in establishing Agreements to meet disposal capacity assurance and to benefit the efficient and proper management of solid wastes.

NOW, THEREFORE, in consideration of the mutual promises contained herein and with intent to be legally bound, the parties hereby agree as follows:

### Article 2. DEFINITIONS AND TERMS

#### 2.1 DEFINITIONS

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

Acceptable Waste. Municipal waste and all other wastes the facility is permitted to accept under applicable laws and regulations. Where applicable, acceptable or accepted wastes, refers to the waste types that shall be accepted by a Facility from Wayne County sources.

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

**Agreement.** The Municipal Waste Disposal Capacity Agreement between the County and the Owner/Operator, as amended, or supplemented by other submittals by the Owner/Operator.

**Alternative Facility.** Any licensed or permitted facility designated by the Owner/Operator to accept County-generated acceptable wastes during temporary or protracted cessation of operation at the facility.

**Commercial Establishment.** An establishment engaged in non-manufacturing or non-processing business, including, but not limited to, stores, markets, office buildings, restaurants, shopping centers and theaters.

**Construction/Demolition Waste (C/D).** Solid waste resulting from the construction or demolition of buildings and other structures, including, but not limited to, wood, plaster, metals, asphaltic substances, bricks, block and unsegregated concrete. The term also includes dredging waste. The term does not include the following if they are separate from other waste and are used as clean fill: (i) uncontaminated soil, rock, stone, gravel, unused brick and block and concrete; and (ii) waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material.

**County.** The County of Wayne, Commonwealth of Pennsylvania, solely and acting through its designated agent, the Wayne County Solid Waste Department.

**Department or PADEP.** Pennsylvania Department of Environmental Protection.

**Facility.** Processing and/or disposal facilities, including municipal waste, construction/demolition and residual waste landfills, resource recovery facilities permitted and licensed for the disposition of municipal waste (as defined herein), and/or residual waste. Transfer stations are facilities, but are not considered "designated disposal facilities" in the Plan because they do not provide disposal capacity.

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

**Industrial Establishment.** An establishment engaged in manufacturing and industrial processes, including, but not limited to, those carried out in factories, foundries, mills, processing plants, refineries, mines and slaughter houses.

**Institutional Establishment.** An establishment engaged in service, including, but not limited to, public buildings, hospitals (non-infectious waste only), nursing homes, orphanages, schools, correctional facilities and universities.

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

**Waste Hauler.** Any person collecting and/or transporting County-generated municipal waste to a County designated disposal facility or another fully permitted facility.

**Municipal Waste.** Garbage, refuse, industrial lunchroom or office waste and other material, including solid, liquid, semi-solid or contained gaseous material, resulting from operation of residential, municipal, commercial or institutional establishments or from community activities; and any sludge not meeting the definition of residual or hazardous waste from a municipal, commercial or

## APPENDIX B

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institutional water supply treatment plant, wastewater treatment plant or air pollution control facility. Municipal waste includes construction/demolition waste, municipal sludges, asbestos, infectious/chemotherapeutic waste and incinerator ash residue. The term does not include source separated recyclable materials or material approved by PADEP for beneficial use.

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

**Owner/Operator.** Any Person who owns, operates, leases, controls, or supervises a Facility, or any permitted successors, assigns, or affiliates.

**Owner/Operator's Facility.** The Owner/Operator's permitted facility described within the Facility Questionnaire.

**Parent.** Any corporation, now or at any time or times hereafter, owning or controlling (alone or with any other person or entity) at least a majority of the issued and outstanding capital stock of the Owner/Operator.

**Permit.** A permit issued by PADEP, or a permit and/or license issued by a state and/or local regulatory agency, as required, to operate a municipal waste disposal or processing facility.

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

**Plan.** The County Municipal Waste Management Plan approved pursuant to Act 101.

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

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

**Tipping Fee/Processing Fee.** The schedule of fees established by the Owner/Operator of a facility for accepting various types of solid waste for processing or disposal.

**Ton.** Two thousand (2,000) pounds.

**Transfer Station.** A facility which receives and processes or temporarily stores municipal or residual waste at a location other than the generation site, and which facilitates the transportation or transfer of municipal or residual waste to a processing or disposal facility. The term includes a facility that uses a method or technology to convert part or all of the waste materials for offsite reuse. The term does not include a collecting or processing center that is only for source separated recyclable materials, including clear glass, colored glass, aluminum, steel and bimetallic cans, high grade office paper, newsprint, corrugated paper and plastics.

**Unacceptable Waste.** Material that by its composition, characteristics or quality, is ineligible for disposal at the landfill pursuant to the provisions of the Resource Conservation and Recovery Act of

1976, 42 U.S.C. §2605(e), the Pennsylvania Solid Waste Management Act, 35 P.S. §6018.101 et seq., or other applicable federal, state or local law, or material that the Owner/Operator concludes requires special handling or endangers the landfill, public health or safety, or the environment.

**Yard Waste.** Leaves, grass clippings, garden residue, tree trimmings, chipped shrubbery and other vegetative material.

## **2.2 OTHER WORDS, TERMS, PHRASES**

Except as otherwise defined in this Agreement, all words, terms and/or phrases used herein shall be defined by the applicable definition therefore, if any, in Act 101 or the Pennsylvania Solid Waste Management Act or the regulations promulgated thereunder.

# **Article 3. REPRESENTATIONS**

## **3.1 REPRESENTATIONS OF COUNTY**

The County represents and warrants that:

- (a) It is a political subdivision of the Commonwealth of Pennsylvania, acting by and through its duly authorized officials, and is duly authorized to carry on the governmental functions and operations contemplated by this Agreement and each other agreement or instrument entered into or to be entered into by the County or the municipalities within the boundaries of the County, pursuant to this Agreement.
- (b) It has the full power, authority and legal right to enter into and perform this Agreement and all other agreements or instruments which it may enter into under any provision of this Agreement.
- (c) This Agreement and each other agreement or instrument entered into by the County pursuant to this Agreement, when entered into, will have been duly authorized, executed and delivered by the County and will constitute a legal, valid and binding obligation of the County.
- (d) There is no action or proceeding before any court or administrative agency pending or, to the knowledge of the County, threatened against or adversely affecting the ability of the County to perform its obligations hereunder.

## **3.2 REPRESENTATIONS OF OWNER/OPERATOR**

The Owner/Operator represents and warrants to the County that:

- (a) It is the Owner/Operator of the Facility and is permitted by PADEP or the appropriate state regulatory agency(ies).
- (b) It is a corporation duly organized and existing in good standing under the laws of Pennsylvania, or under the appropriate state regulatory agency(ies), and has the corporate power and authority to enter into and perform its obligations under this Agreement and each other agreement or instrument entered into or to be entered into under any provision of this Agreement.
- (c) It has the full power and legal right to enter into and perform this Agreement and all other agreements or instruments which it may enter into under any provision of this Agreement.

## APPENDIX B

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(d) This Agreement and each other agreement or instrument entered into pursuant to this Agreement, when entered into, will have been duly authorized, executed by and delivered by the Owner/Operator, and will constitute a legal, valid and binding obligation.

(e) The execution, delivery and performance hereof by the Owner/Operator: (i) has the requisite approval of all governmental bodies; (ii) will not violate any judgment, order, law or regulation applicable to the Owner/Operator; and (iii) does not (a) conflict with, (b) constitute a default under, or (c) except as specifically created hereby, result in the creation of any lien, charge, encumbrance or security interest upon any assets of the Owner/Operator under any agreement or instrument to which the Owner/Operator is party or by which the Owner/Operator or its assets may be bound or affected.

(f) This Agreement has been duly authorized, executed and delivered by the Owner/Operator, and constitutes a legal, valid and binding obligation of the Owner/Operator, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditor's rights generally, or by general equitable principles concerning remedies.

(g) There is no litigation or proceeding pending or, to the knowledge of the Owner/Operator, threatened against or affecting the Owner/Operator: (i) challenging the validity of this Agreement; (ii) seeking to enjoin the performance by the Owner/Operator of its obligations under this Agreement; or (iii) which, if adversely determined, would materially adversely affect the ability of the Owner/Operator to perform its obligation under this Agreement.

(h) Except as disclosed within the Submittal Forms for Municipal Solid Waste Disposal Services contained in the County's solicitation attached hereto and incorporated herein by reference, the Owner/Operator is not a subsidiary of any parent.

### 3.3 PARENT GUARANTEE

If and to the extent that the Owner/Operator is a subsidiary of a parent, the Owner/Operator agrees to cause such parent to execute and deliver to the County a guarantee of the obligations of the Owner/Operator under this Agreement in a form reasonably satisfactory to the County.

### 3.4 DESIGNATION AS PROCESSING/DISPOSAL FACILITY

In consideration of the Owner/Operator's Covenants and this Agreement, the County hereby agrees to include the Owner/Operator's Facility in its Plan as a designated processing/disposal facility for municipal waste generated in the County. The Owner/Operator acknowledges that this Agreement is nonexclusive, and the County may enter into agreements with other facilities to perform the same work and services that the Owner/Operator is contracted to perform hereunder. At no time during the term of this Agreement shall the County be obligated to deliver and dispose of acceptable waste at the Owner/Operator's Facility.

If the Owner/Operator's Facility is a transfer station, the Owner/Operator must stipulate where ultimate disposal of County-generated municipal waste will take place. If ultimate disposal is to be in a facility that is not a County Designated Facility, the Owner/Operator must furnish proof that the facility holds a valid permit in the state where it is located and that it meets all appropriate federal, state and local rules, regulations and guidelines.

## **Article 4. DELIVERY AND DISPOSAL OF ACCEPTABLE WASTE**

### **4.1 DELIVERY AND DISPOSAL OF ACCEPTABLE WASTE**

On and after the effective date of this Agreement and pursuant to the capacity reservations specified in Appendix A, Submittal Forms:

- (a) The County may, at its option cause, to be delivered to the Owner/Operator's Facility during the receiving times all, part or none of the acceptable waste generated in the County.
- (b) The County or any waste hauler shall notify the Owner/Operator that it intends to exercise its right to deliver acceptable waste to the Owner/Operator's Facility prior to commencing the delivery of such wastes.
- (c) The Owner/Operator shall provide processing and/or disposal capacity as may be needed by the County for all acceptable waste generated within the geographic boundaries of the County and that the County may cause to be delivered to the Owner/Operator's Facility. This shall include delivery of acceptable waste on an occasional basis by individual County residents in small vehicles. The Owner/Operator and the County shall from time to time agree upon reasonable regulations and charges for such disposal, which will include all applicable fees.
- (d) The Owner/Operator shall provide in-kind processing and/or disposal and other in-kind services as clarified in completed Form A-3 that may include supplemental information clarifying in-kind services to be provided under the Agreement.

### **4.2 RELEASE FROM COMMITMENT**

The Owner/Operator may at any time request that the County release it from its commitment to provide all or part of the reserved capacity required. Such request shall be in writing and shall set forth the basis for the request. The County shall in good faith review the Owner/Operator's request, based on the County's ability to ensure sufficient disposal capacity for municipal waste estimated to be generated during that particular calendar year, and make a determination within ten (10) business days of receipt of the request. If the request does not jeopardize the County's ability to ensure sufficient disposal capacity, it shall grant the Owner/Operator's request. The County's decision shall be in writing and delivered to the Owner/Operator.

The Owner/Operator may dispute the County's decision by giving the County a written request for resolution of dispute within five (5) working days of receipt of the decision. The dispute resolution shall be conducted in accordance with the provisions and rules under which the Court of Common Pleas of Wayne County, Pennsylvania operates. The sole issue to be arbitrated is whether the requested release can be granted without jeopardizing the ability of the County to ensure sufficient disposal capacity for municipal waste generated in the County for that year. Any decision of the arbitrator shall be final and binding on both parties. During resolution of any dispute, the Owner/Operator and the County shall each continue to perform all of their respective obligations under this Agreement without interruption or slowdown.

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### Article 5. CONDITIONS FOR THE DELIVERY AND DISPOSAL OF WASTE

#### 5.1 CONTROL PROCEDURES/WEIGHING OF WASTE DELIVERIES

(a) The Owner/Operator shall be required to maintain a scale that conforms to the Weights and Measurement Act of 1965, 73 P.S. §1651-1692, to weigh all incoming waste. Vehicles of all waste haulers delivering waste to the Owner/Operator's Facility shall be weighed and their waste loads classified, and each vehicle shall receive an appropriate record indicating the classification, origin, and weight of all waste prior to disposal at the Owner/Operator's Facility.

(b) If at any time testing of the weighing facilities indicates that the weights are inaccurate, any adjustments of waste delivery receipts shall revert to the date the last verified scale weights were recorded by the appropriate certification agency. The County or a waste hauler may at all times have access to the scale accuracy records of the Owner/Operator. If the scale is inoperable for any reason, the waste haulers may use another certified scale of their choice, or the Owner/Operator may direct vehicles to another certified scale closest to the Owner/Operator's Facility. If none are available, estimated weights based on historic data pertinent to the affected waste haulers shall take the place of actual weighing during the scale outage. The Owner/Operator shall make disposal invoices for the preceding month, on a monthly basis, available to the waste haulers, and the Owner/Operator shall use this information to invoice the waste haulers for disposal at the Owner/Operator's Facility.

#### 5.2 RECEIVING TIME/HOURS OF OPERATION

(a) The Owner/Operator's Facility shall be available to receive waste during the receiving times specified in Forms contained in Appendix A, attached hereto and incorporated herein by reference.

(b) If the County or a waste hauler requests and the Owner/Operator agrees, a waste hauler may deliver waste at times in addition to the specified receiving times at a cost which may exceed the fees herein as mutually agreed upon by such waste hauler and the Owner/Operator.

(c) Upon request by the County, the Owner/Operator shall use reasonable efforts to accept deliveries of waste at times other than the receiving times upon seven (7) days prior written notice or, in the event of a natural disaster or other emergency condition, such shorter notice as may be practicable.

#### 5.3 RIGHT TO REFUSE DELIVERY

(a) Except as noted, the Owner/Operator may refuse waste delivered at hours other than the specified receiving times.

(b) The Owner/Operator shall have the right and discretion to inspect any load entering the Owner/Operator's Facility and may refuse: (i) waste for which specific Regulatory Agency approval is required when approval has not been obtained prior to delivery; (ii) loads containing significant amounts of hazardous waste; or (iii) loads containing significant amounts of unacceptable waste including material banned from landfilling (e.g., loads comprised primarily of leaf waste, electronics, etc.). The Owner/Operator may refuse delivery of the entire load or only the portion that contains the unacceptable materials. The Owner/Operator shall notify waste haulers prior to initial waste delivery of the Owner/Operator's waste monitoring program and expected procedures and responsibilities under such program.

(c) The Owner/Operator's Facility may not reject a load of acceptable waste from the County for any reason except those listed in Article 5.3 (a) and (b). Reaching the average daily permitted capacity may not be used as a basis for rejecting County-generated loads of acceptable waste.

#### **5.4 COMPLAINTS**

The Owner/Operator shall receive and respond to all complaints from waste haulers regarding the acceptance of waste materials at the Owner/Operator's Facility. Any complaints received by the County will be directed to the Owner/Operator. In the event the Owner/Operator cannot satisfactorily resolve a complaint within five (5) working days after the complaint, the County shall have the right to demand a written explanation or satisfactory resolution of the complaint pursuant to the breach of Agreement provisions herein.

#### **5.5 TITLE TO MUNICIPAL WASTE**

Except in the case where hazardous or unacceptable wastes are delivered to the Owner/Operator's Facility, title to the municipal waste and any benefits of marketing materials or energy recovery shall pass to the Owner/Operator upon delivery to the Owner/Operator's Facility and acceptance of waste by the Owner/Operator.

#### **5.6 PERMITS**

The Owner/Operator shall be responsible for obtaining any and all permits necessary for the construction and operation of the Owner/Operator's Facility required to comply with the terms and conditions of this Agreement, and any and all costs or expenses of obtaining such permits. Failure to obtain and maintain permits shall constitute default on this Agreement.

### **Article 6. RECORDKEEPING AND REPORTING REQUIREMENTS**

The Owner/Operator shall establish and maintain a system to provide storage and ready retrieval of the Owner/Operator's Facility operating data pertinent to this Agreement, including, but not limited to, all information necessary to verify donated tonnages and calculations for the fee schedule.

#### **6.1 BASIC REPORTING REQUIREMENTS**

(a) In-County and Out-of-County Owner/Operators shall provide the County with quarterly reports of all types of waste delivered to the Owner/Operator's Facility that are generated from County sources and delivered to the Owner/Operator's Facility. This report shall include the totals by month for each type of waste. To the extent that reports required to be submitted to PADEP or any other regulatory agency contain the information required by the County, copies of said reports may be submitted to the County to comply with the Owner/Operator's reporting requirements.

(b) Along with quarterly report, the Owner/Operator shall provide: (i) names of waste haulers delivering loads of County-generated wastes; and (ii) a statement that the Owner/Operator's permit for the Owner/Operator's Facility has not been revoked or suspended, and that the Owner/Operator is in substantial compliance with all the terms and conditions of its permit, the provisions of the Solid Waste Management Act, and all applicable federal, state, PADEP and County regulations.

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### 6.2 SPECIAL REPORTING REQUIREMENTS

The Owner/Operator shall provide written notification to the County of any permit modification applications for the following types of permit changes at the time the application is first submitted to the state or local regulatory agency: (i) changes in permitted site volume or capacity; (ii) changes in permitted average and/or maximum daily waste volume or loading rates; (iii) changes in the permitted acreage; and (iv) changes in ownership.

### 6.3 ADMINISTRATIVE INSPECTIONS

Upon reasonable notice and during regular business hours, the County and its authorized representatives shall have access to the Owner/Operator's records pertaining to the quantities and sources of County-generated municipal waste for the purpose of verifying compliance with the terms and conditions of this Agreement.

## Article 7. TIPPING FEES AND OTHER CHARGES

### 7.1 TIPPING FEES

(a) All waste haulers shall pay at a maximum the rates set forth in Appendix A, Form A-2 Proposed Rate Schedule, for County-generated municipal waste and other wastes/recyclables as identified by Respondents. The rates shall, as applicable, include the following fees: (i) Act 101 host municipality fee plus any additional fee negotiated by the host County or municipality; (ii) Act 101 recycling fee and growing greener fee; (iii) and Act 101 post closure fee; and (iv) the Recycling Sustainability Fee.

(b) The County shall not be responsible for any payment to the Owner/Operator of tipping fees incurred by waste haulers. All tipping fees shall be paid directly by the waste haulers that deliver the waste to the Owner/Operator's Facility. The Owner/Operator shall be responsible for the billing and collection of all tipping fees. The County shall not be responsible for the failure of any waste hauler to pay the Owner/Operator's tipping fees.

The Owner/Operator shall not charge a tipping fee to a County hauler that exceeds the maximum rates established by this Agreement for each type of waste. Nothing in this Agreement shall prevent or preclude the Owner/Operator from negotiating alternate tipping fees with any hauler provided such fees do not exceed the maximum rates under this Agreement.

(e) Unless the County and the Owner/Operator mutually agree to an alternate date, all annual rate adjustments shall become effective on January 1st of each year of the Agreement.

(f) The Owner/Operator may petition the County at any time for additional rate or fee adjustments on the basis of unforeseen changes in operating costs resulting from any new or revised federal, state or local laws, ordinances, regulations, or permit requirements which were not in effect at the time this Agreement was awarded. The County shall evaluate the evidence submitted and may approve reasonable and justifiable cost adjustments. The County shall not unreasonably deny such cost adjustment.

### 7.2 RECYCLING SUSTAINABILITY FEE

The County currently collects a Recycling Sustainability Fee of four dollars (\$4.00) on each ton of municipal waste delivered to designated disposal facilities from Wayne County sources. The County

requests to continue to collect this \$4.00 fee on each ton of municipal waste delivered to the Operator's Facility. This requested fee shall be forwarded as a quarterly payment consistent with the payments scheduled for Act 101 fees. The fee shall be accompanied by a report as described in Article 6.1 (a).

If the Owner/Operator fails to make timely payments to the County of the County Recycling Sustainability Fee, the Operator would additionally pay the County interest on the unpaid amount due at the rate established pursuant to Section 806 of the Act of April 9, 1929 (P.L. 343, No. 176), known as The Fiscal Code, from the last day for timely payment to the date paid.

## **Article 8. IN-KIND SERVICES**

Per the Request for Proposals (RFP), under Appendix A, Form A-3, the County requests interested disposal facility owner/operators to offer in-kind services. These may include free disposal of specified quantities of illegal dump waste to benefit the performance of the County solid waste management system and to avoid costs. These in-kind services identified by owner/operators and as negotiated by the County and Respondents shall be incorporated within the Disposal Capacity Agreement under this section by reference (Attachment A-3.1).

## **Article 9. INSURANCE**

(a) The Owner/Operator shall maintain, in full force and effect throughout the term of the Agreement and any renewal or extension thereof, insurance coverages consistent with all current DEP regulations. The County and Owner/Operator hereby waive any and every claim for recovery from the other for any and all loss or damage to each other resulting from the performance of this Agreement, to the extent such loss or damage is recovered under insurance policies.

The County shall be designated as an additional insured under all required insurance policies and shall be provided with copies and certificates of said insurance policies. Each such insurance policy shall provide the County with a thirty (30) day notice of cancellation.

## **Article 10. INDEMNIFICATION**

### **10.1 INDEMNIFICATION**

The Owner/Operator or its successors and assigns shall protect, indemnify and hold harmless the County, its officers, members, employees, agents, contractors and subcontractors, from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and attorneys' fees, and shall defend the County indemnified parties in any suit, including appeals, for personal injury to or death of any persons or persons, or loss or damage to property arising out of:

- (a) the negligence or willful misconduct, tortious activity, error or omission of Owner/Operator or its successors or assigns, or any of its officers, agents, employees, contractors or subcontractors in connection with Owner/Operator obligations or rights under this Agreement; and
- (b) the construction, operation, closure and post-closure care and maintenance of the Owner/Operator's Facility.

## **APPENDIX B**

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The Owner/Operator shall not be liable or required to indemnify or reimburse the County or any County indemnified party for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses and other attorney fees arising out of any willful or negligent act, tortious activity, error or omission of the County or County indemnified parties.

### **10.2 COOPERATION REGARDING CLAIMS**

If either the County or the Owner/Operator shall receive notice or have knowledge of any claim, demand, action, suit or proceeding that may result in a claim for indemnification by the County against the Owner/Operator pursuant to Article 10.1, that party shall so notify the other party and provide pertinent information and documents. Failure to promptly give such notice or to provide such information and documents shall not relieve the Owner/Operator of any obligation of indemnification it may have under Article 10.1 unless such failure shall materially diminish the ability of the Owner/Operator to respond to, or to defend the party failing to give such notice against such claim, demand, action, suit or proceeding. The County and the Owner/Operator shall consult with each other and cooperate in respect of the response to and the defense of any such claim, demand, action, suit or proceeding and, in the case of a claim for indemnification pursuant to Article 10.1, the Owner/Operator shall, upon acknowledgment in writing of its obligation to indemnify the County, be entitled to cooperate with the County with respect to the defense. With the written consent of the County, the Owner/Operator may assume the defense or represent the interests of the County with respect to such claim, demand, action, suit or proceeding which shall include the right to select and direct legal counsel and other consultants, appear in proceedings on behalf of the County and to propose, accept or reject offers of settlement.

## **Article 11. DISPUTES, DEFAULTS AND REMEDIES**

### **11.1 RESOLUTION OF DISPUTES**

In the event any claim, controversy or dispute arises between the County and the Owner/Operator, or if any approvals, agreements or concurrences specified herein shall not have been timely given, the Owner/Operator and the County shall undertake in good faith to resolve the dispute. If the County and the Owner/Operator cannot resolve the dispute, either party shall be limited to the Court of Common Pleas of Wayne County, Pennsylvania, in equity or to law to litigate such disputes.

### **11.2 EVENTS OF DEFAULT BY COUNTY**

The persistent or repeated failure or refusal by the County to perform under this Agreement in accordance with the terms hereof shall constitute an event of default by the County hereunder, unless such failure or refusal shall be excused or justified by a default by the Owner/Operator, provided, however, that no such failure or refusal shall constitute an event of default unless and until:

- (a) The Owner/Operator shall have given written notice to the County stating that in its opinion a particular default or defaults (to be described in reasonable detail in such notice) exists which will, unless corrected, constitute a material breach of this Agreement on the part of the County; and
- (b) The County shall have failed to cure such default within thirty (30) days from its receipt of the written notice given pursuant to Article 11.2 (a) above, provided that if the County shall have commenced to take reasonable steps to correct such default within such thirty (30) day period, the County's failure to complete its cure of the indicated default shall not constitute an event of default

for as long as the County is continuing to take reasonable steps to cure such default within the earliest practicable time.

### **11.3 EVENTS OF DEFAULT BY OWNER/OPERATOR**

The Owner/Operator shall be considered to be in default of this Agreement for failure to accept acceptable waste from the County or its waste haulers delivered to the Owner/Operator's Facility under the terms of this Agreement, or failure to otherwise fulfill its obligations under this Agreement.

### **11.4 FORCE MAJEURE**

Neither the Owner/Operator nor the County shall be liable for the failure to perform their duties and obligations under the Agreement or for any resultant damages, loss or expense, if such failure was the result of an act of God, riot, insurrection, war, catastrophe, natural disaster, labor strike or any other cause which was beyond reasonable control of the Owner/Operator or the County and which the Owner/Operator or County was unable to avoid by exercise of reasonable diligence. Documentation of the event that caused the Owner/Operator to be unable to meet its obligation hereunder must be submitted to the County within ten (10) working days after the occurrence of the event.

### **11.5 REMEDIES**

(a) The County and the Owner/Operator agree, except as provided in Article 11.5 (b) and (c) below, in the event of a default by either party under this Agreement, upon the right to recover damages or to be reimbursed for incremental costs associated with waste haulers redirecting loads of municipal waste to alternative facilities.

(b) If, within a period of thirty (30) days after the County shall have given written notice to the Owner/Operator that a default has occurred and is continuing, and specifying the nature of the default, the Owner/Operator has neither remedied such default, nor undertaken and diligently pursued corrective action, then this Agreement shall terminate immediately upon written notice thereof by the County to the Owner/Operator.

(c) If, within a period of thirty (30) days after the Owner/Operator shall have given written notice to the County that a default has occurred and is continuing, and specifying the nature of the default, the County has neither remedied such default, nor undertaken and diligently pursued corrective action, then this Agreement shall terminate immediately upon written notice thereof by the Owner/Operator to the County.

### **11.6 WAIVERS**

A waiver by either the County or Owner/Operator of any default of any provisions of the Agreement shall not be taken or held to be a waiver of any succeeding default of such provisions or as a waiver of any provision itself. No payment or acceptance of compensation for any period subsequent to any default shall be deemed a waiver of any right or acceptance of defective performance. To be effective a waiver must be in writing and signed by the party granting such waiver.

## APPENDIX B

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### Article 12. TERM AND TERMINATION

#### 12.1 EFFECTIVE DATE

This Agreement shall become effective on July 1, 2020. The Owner/Operator shall begin to accept waste deliveries from County sources under the terms and conditions of this Agreement on this date.

#### 12.2 TERM OF AGREEMENT

The term of this Agreement shall commence on the effective date and shall continue in effect for ten (10) years and is intended to coincide with the 10-year planning period of the County Plan.

#### 12.3 EFFECT OF TERMINATION

Upon the termination of this Agreement, the obligations of the County and the Owner/Operator hereunder shall cease, provided that any obligation for the payment of money or otherwise arising from the conduct of the County or Owner/Operator pursuant to this Agreement prior to such termination shall not be affected by such termination and shall survive and remain in full force and effect.

### Article 13. MISCELLANEOUS

#### 13.1 ASSIGNMENT

(a) This Agreement may not be assigned by either the County or the Owner/Operator or its rights sold by Owner/Operator except with the written consent of the County or Owner/Operator or as further provided in this Article. The County may, however, contract with a third party or parties for the collection, transportation, processing and disposal of waste, and such contracting will not be interpreted as an assignment of this Agreement. Further, any municipality within the political boundaries of the County and/or any waste hauler may avail themselves of the rights of the County under this Agreement without violating the assignment provision, provided, however, that such municipalities and waste haulers will be bound by the covenants of the County in this Agreement. The Owner/Operator shall not assign this Agreement except to a licensed and permitted successor to the Owner/Operator capable of performing all covenants of this Agreement and with ninety (90) days prior written notice to the County and the written consent of the County.

(b) In the event of any assignment or delegation of duties under this Agreement, the delegate shall assume full responsibility and liability, and shall be responsible for compliance with and performance of all terms and conditions of this Agreement, including but not limited to provisions for sureties and assurances of availability of ten (10) year service. The assignment or delegation of any Agreement duties will not relieve the Owner/Operator or its surety of any liability and/or obligation to perform.

#### 13.2 NOTICES

Except under emergency circumstances all notices, demands, requests and other communications under this Agreement shall be deemed sufficient and properly given if in writing and delivered in person or by recognized carrier service, or sent by certified or registered mail, postage prepaid, with return receipt requested, to the following addresses:

County: Wayne County  
Attn: Solid Waste Director/Recycling Coordinator  
66 Volunteer Drive  
Honesdale, PA 18431

Either the County or Owner/Operator may, as specified above, designate any further or different addresses to which subsequent notices shall be sent.

### **13.3 ENTIRE AGREEMENT/MODIFICATIONS**

The provisions of this Agreement, together with the Agreements, Appendices, and Attachments incorporated by reference, shall constitute the entire Municipal Waste Disposal Capacity Agreement between the County and the Owner/Operator, superseding all prior disposal capacity agreements and negotiations, if any, and, except as otherwise provided in this Agreement, shall only be modified by written agreement duly executed by both parties to this Agreement. The County and Owner/Operator agree that any existing municipal waste disposal contracts between them are hereby rendered null and void and superseded by this Agreement. If there are existing Host County Fee Agreements between parties, or Host County Fee Agreements are entered during the term of this Agreement, the Host County Fee Agreements shall remain in full force and effect notwithstanding any provisions of this Agreement.

### **13.4 SEVERABILITY**

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

### **13.5 CHANGE OF OWNERSHIP**

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

### **13.6 GOVERNING LAW**

This Agreement and any question concerning its validity, construction, or performance shall be governed by the laws of the Commonwealth of Pennsylvania, irrespective of the place of execution or of the order in which the signatures of the County and Owner/Operator are affixed or of the place or places of performance. The Owner/Operator shall conduct the services provided for in this Agreement in compliance with all applicable federal and state laws and regulations.

## APPENDIX B

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### 13.7 JOINT AND SEVERABLE LIABILITY

If the Owner/Operator is comprised of more than one individual, corporation or other entity, each of the entities comprising the Owner/Operator shall be jointly and severally liable.

### 13.8 COUNTERPARTS

This Agreement may be executed in more than one (1) counterpart, each of which shall be deemed to be an original but all of which taken together shall be deemed a single instrument.

### 13.9 NO CO-PARTNERSHIP OR AGENCY

It is understood and agreed that nothing contained in this Agreement is intended or shall be construed to in any respect create or establish the relationship of co-partners between the County and the Owner/Operator, or as constituting the Owner/Operator the general representative or general agent of the County for any purpose whatsoever.

### 13.10 SECTION HEADINGS/REFERENCES

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

### 13.11 CONVENTIONS

In this Agreement:

- (a) the singular includes the plural and the plural the singular;
- (b) words importing any gender include the other gender;
- (c) references to statutes are construed as including all statutory provisions consolidating, amending or replacing the statute referred to;
- (d) references to writing include printing, typing, lithography and other means of reproducing words in a visible form;
- (e) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments thereto or changes therein entered into in accordance with their respective terms;
- (f) references to persons include their permitted successors and assigns; and
- (g) the term "including" shall mean including without limitation.

### 13.12 NONDISCRIMINATION

Neither the Owner/Operator nor any subcontractor nor any person(s) acting on their behalf shall discriminate against any person because of race, sex, age, creed, color, religion or national origin, ancestry, disability, sexual orientation, or union membership.

IN WITNESS WHEREOF, the County and Owner/Operator have caused this Waste Disposal Capacity Agreement to be executed as of the date and year first written.

COUNTY OF WAYNE BOARD OF COMMISSIONERS

ATTEST:

Vicky J. Basye  
Chief Clerk

Brian W. St  
Commissioner

Markell R. Ha  
Commissioner

Jeff W. Allen  
Commissioner

ATTEST:

OWNER/OPERATOR:

Donald M. Miller  
By: Donald M. Miller  
President  
L&D Management Inc. its General Partner

Appendix A, Submittal Forms

**Form A-3 (Attachment A-3.1)**  
**In-kind Services Clarifications – Keystone Sanitary Landfill**

**A. Form A-3 Clarifications**

This attachment clarifies the in-kind services offered by and to be provided by Keystone Sanitary Landfill to Wayne County annually over the 10-year planning period corresponding to the Wayne County Municipal Waste Management Plan. In-kind services shall be attached to the Disposal Capacity Agreements.

1. Keystone Sanitary Landfill shall provide an annual free commitment of up to 30 tons, or a total free commitment of disposal of up to 300 tons of Wayne County acceptable wastes over the 10-year period specified in the executed Disposal Capacity Agreements.
2. Acceptable wastes include any combination of non-hazardous illegally dumped wastes, bulk items, and residential C&D originating from Wayne County and deemed acceptable.
3. Keystone Sanitary Landfill will not accept tires, electronics, liquid or household hazardous wastes.
4. Prior to delivery of any wastes qualifying under the in-kind services and program, a Wayne County representative shall notify the disposal facility. Wayne County may request weight receipts for donated tons in order to track quantities processed under the program.

Dan O'Brien

Written Name of Authorized Representative

Dan O'Brien

Signature of Authorized Representative

**APPENDIX B**

**MUNICIPAL WASTE TRANSFER FACILITY AGREEMENT**

**COUNTY OF WAYNE**

X THIS MUNICIPAL WASTE TRANSFER FACILITY AGREEMENT (Agreement) made this 21st day of November, 2019, by and between the COUNTY OF Wayne, a political subdivision of the Commonwealth of Pennsylvania (County), and J.P. Mascaro & Sons – Lehigh Valley Recycling, Inc. (Owner/Operator).

## **Article 1. BACKGROUND**

The Municipal Waste Planning, Recycling and Waste Reduction Act (Act 101) requires the County, as part of its Municipal Waste Management Plan (Plan), to provide disposal/processing capacity for all County-generated municipal waste over the 10-year planning period corresponding with the County Plan. To meet its obligation, the County issued a request for proposals (RFP) to execute Agreements with facilities for the provision of all, or a portion of, County generated municipal waste over the designated 10-year term. The Owner/Operator responded to the solicitation and the Owner/Operator's proposal was accepted by the County Board of Commissioners. This Agreement provides the terms and conditions under which the Owner/Operator will provide disposal capacity.

The County, as the designated administrator responsible for implementation of the 10-year Municipal Waste Management Plan (Plan), has responsibilities set forth by Act 101 of 1988, and as regulated by the Pennsylvania Department of Environmental Protection, to provide for proper disposal of solid wastes and to recover recyclable commodities to advance waste diversion to meet Pennsylvania's 35 percent recycling goal. Due to the County responsibilities under Act 101 of 1988 for disposal and diversion of County-generated municipal solid wastes, and because the activities of waste collection, transportation and disposal impact the health, safety, and welfare, the County, the waste disposal facilities, processors, and collectors influence the performance of the County's integrated solid waste management system. The County is interested in establishing Agreements to meet disposal capacity assurance and to benefit the efficient and proper management of solid wastes.

NOW, THEREFORE, in consideration of the mutual promises contained herein and with intent to be legally bound, the parties hereby agree as follows:

## **Article 2. DEFINITIONS AND TERMS**

### **2.1 DEFINITIONS**

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

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

**Agreement.** The Municipal Waste Disposal Capacity Agreement between the County and the Owner/Operator, as amended, or supplemented by other submittals by the Owner/Operator.

**Alternative Facility.** Any licensed or permitted facility designated by the Owner/Operator to accept County-generated acceptable wastes during temporary or protracted cessation of operation at the facility.

**Commercial Establishment.** An establishment engaged in non-manufacturing or non-processing business, including, but not limited to, stores, markets, office buildings, restaurants, shopping centers and theaters.

**Construction/Demolition Waste (C/D).** Solid waste resulting from the construction or demolition of buildings and other structures, including, but not limited to, wood, plaster, metals, asphaltic substances, bricks, block and unsegregated concrete. The term also includes dredging waste. The term does not include the following if they are separate from other waste and are used as clean fill: (i) uncontaminated soil, rock, stone, gravel, unused brick and block and concrete; and (ii) waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material.

**County.** The County of Wayne, Commonwealth of Pennsylvania, solely and acting through its designated agent, the Wayne County Solid Waste Department.

**Department or PADEP.** Pennsylvania Department of Environmental Protection.

**Facility.** Processing and/or disposal facilities, including municipal waste, construction/demolition and residual waste landfills, resource recovery facilities permitted and licensed for the disposition of municipal waste (as defined herein), and/or residual waste. Transfer stations are facilities, but are not considered "designated disposal facilities" in the Plan because they do not provide disposal capacity.

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

**Industrial Establishment.** An establishment engaged in manufacturing and industrial processes, including, but not limited to, those carried out in factories, foundries, mills, processing plants, refineries, mines and slaughter houses.

**Institutional Establishment.** An establishment engaged in service, including, but not limited to, public buildings, hospitals (non-infectious waste only), nursing homes, orphanages, schools, correctional facilities and universities.

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

**Waste Hauler.** Any person collecting and/or transporting County-generated municipal waste to a County designated disposal facility or another fully permitted facility.

**Municipal Waste.** Garbage, refuse, industrial lunchroom or office waste and other material, including solid, liquid, semi-solid or contained gaseous material, resulting from operation of

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residential, municipal, commercial or institutional establishments or from community activities; and any sludge not meeting the definition of residual or hazardous waste from a municipal, commercial or institutional water supply treatment plant, wastewater treatment plant or air pollution control facility. Municipal waste includes construction/demolition waste, municipal sludges, asbestos, infectious/chemotherapeutic waste and incinerator ash residue. The term does not include source separated recyclable materials or material approved by PADEP for beneficial use.

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

**Owner/Operator.** Any Person who owns, operates, leases, controls, or supervises a Facility, or any permitted successors, assigns, or affiliates.

**Owner/Operator's Facility.** The Owner/Operator's permitted facility described within the Facility Questionnaire.

**Parent.** Any corporation, now or at any time or times hereafter, owning or controlling (alone or with any other person or entity) at least a majority of the issued and outstanding capital stock of the Owner/Operator.

**Permit.** A permit issued by PADEP, or a permit and/or license issued by a state and/or local regulatory agency, as required, to operate a municipal waste disposal or processing facility.

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

**Plan.** The County Municipal Waste Management Plan approved pursuant to Act 101.

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

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

**Tipping Fee/Processing Fee.** The schedule of fees established by the Owner/Operator of a facility for accepting various types of solid waste for processing or disposal.

**Ton.** Two thousand (2,000) pounds.

**Transfer Station/Facility.** A facility which receives and processes or temporarily stores municipal or residual waste at a location other than the generation site, and which facilitates the transportation or transfer of municipal or residual waste to a processing or disposal facility. The term includes a facility that uses a method or technology to convert part or all of the waste materials for offsite reuse. The term does not include a collecting or processing center that is only for source separated recyclable materials, including clear glass, colored glass, aluminum, steel and bimetallic cans, high grade office paper, newsprint, corrugated paper and plastics.

**Unacceptable Waste.** Material that by its composition, characteristics or quality, is ineligible for disposal at the landfill pursuant to the provisions of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §2605(e), the Pennsylvania Solid Waste Management Act, 35 P.S. §6018.101 et seq., or other applicable federal, state or local law, or material that the Owner/Operator concludes requires special handling or endangers the landfill, public health or safety, or the environment.

**Yard Waste.** Leaves, grass clippings, garden residue, tree trimmings, chipped shrubbery and other vegetative material.

## 2.2 OTHER WORDS, TERMS, PHRASES

Except as otherwise defined in this Agreement, all words, terms and/or phrases used herein shall be defined by the applicable definition therefore, if any, in Act 101 or the Pennsylvania Solid Waste Management Act or the regulations promulgated thereunder.

# Article 3. REPRESENTATIONS

## 3.1 REPRESENTATIONS OF COUNTY

The County represents and warrants that:

- (a) It is a political subdivision of the Commonwealth of Pennsylvania, acting by and through its duly authorized officials, and is duly authorized to carry on the governmental functions and operations contemplated by this Agreement and each other agreement or instrument entered into or to be entered into by the County or the municipalities within the boundaries of the County, pursuant to this Agreement.
- (b) It has the full power, authority and legal right to enter into and perform this Agreement and all other agreements or instruments which it may enter into under any provision of this Agreement.
- (c) This Agreement and each other agreement or instrument entered into by the County pursuant to this Agreement, when entered into, will have been duly authorized, executed and delivered by the County and will constitute a legal, valid and binding obligation of the County.
- (d) There is no action or proceeding before any court or administrative agency pending or, to the knowledge of the County, threatened against or adversely affecting the ability of the County to perform its obligations hereunder.

## 3.2 REPRESENTATIONS OF OWNER/OPERATOR

The Owner/Operator represents and warrants to the County that:

- (a) It is the Owner/Operator of the Facility and is permitted by PADEP or the appropriate state regulatory agency(ies).
- (b) It is a corporation duly organized and existing in good standing under the laws of Pennsylvania, or under the appropriate state regulatory agency(ies), and has the corporate power and authority to enter into and perform its obligations under this Agreement and each other agreement or instrument entered into or to be entered into under any provision of this Agreement.
- (c) It has the full power and legal right to enter into and perform this Agreement and all other agreements or instruments which it may enter into under any provision of this Agreement.

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(d) This Agreement and each other agreement or instrument entered into pursuant to this Agreement, when entered into, will have been duly authorized, executed by and delivered by the Owner/Operator, and will constitute a legal, valid and binding obligation.

(e) The execution, delivery and performance hereof by the Owner/Operator: (i) has the requisite approval of all governmental bodies; (ii) will not violate any judgment, order, law or regulation applicable to the Owner/Operator; and (iii) does not (a) conflict with, (b) constitute a default under, or (c) except as specifically created hereby, result in the creation of any lien, charge, encumbrance or security interest upon any assets of the Owner/Operator under any agreement or instrument to which the Owner/Operator is party or by which the Owner/Operator or its assets may be bound or affected.

(f) This Agreement has been duly authorized, executed and delivered by the Owner/Operator, and constitutes a legal, valid and binding obligation of the Owner/Operator, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditor's rights generally, or by general equitable principles concerning remedies.

(g) There is no litigation or proceeding pending or, to the knowledge of the Owner/Operator, threatened against or affecting the Owner/Operator: (i) challenging the validity of this Agreement; (ii) seeking to enjoin the performance by the Owner/Operator of its obligations under this Agreement; or (iii) which, if adversely determined, would materially adversely affect the ability of the Owner/Operator to perform its obligation under this Agreement.

(h) Except as disclosed within the Submittal Forms for Municipal Solid Waste Disposal Services contained in the County's solicitation attached hereto and incorporated herein by reference, the Owner/Operator is not a subsidiary of any parent.

### **3.3 PARENT GUARANTEE**

If and to the extent that the Owner/Operator is a subsidiary of a parent, the Owner/Operator agrees to cause such parent to execute and deliver to the County a guarantee of the obligations of the Owner/Operator under this Agreement in a form reasonably satisfactory to the County.

### **3.4 DESIGNATION AS PROCESSING/DISPOSAL FACILITY**

In consideration of the Owner/Operator's Covenants and this Agreement, the County hereby agrees to include the Owner/Operator's Facility in its Plan as a designated processing/disposal facility for municipal waste generated in the County. The Owner/Operator acknowledges that this Agreement is nonexclusive, and the County may enter into agreements with other facilities to perform the same work and services that the Owner/Operator is contracted to perform hereunder. At no time during the term of this Agreement shall the County be obligated to deliver and dispose of acceptable waste at the Owner/Operator's Facility.

If the Owner/Operator's Facility is a transfer station, the Owner/Operator must stipulate where ultimate disposal of County-generated municipal waste will take place. If ultimate disposal is to be in a facility that is not a County Designated Facility, the Owner/Operator must furnish proof that the facility holds a valid permit in the state where it is located and that it meets all appropriate federal, state and local rules, regulations and guidelines.

## Article 4. DELIVERY AND DISPOSAL OF ACCEPTABLE WASTE

### 4.1 DELIVERY AND DISPOSAL OF ACCEPTABLE WASTE

On and after the effective date of this Agreement and pursuant to the capacity reservations specified in **Appendix A, Submittal Forms:**

- (a) The County may, at its option cause, to be delivered to the Owner/Operator's Facility during the receiving times all, part or none of the acceptable waste generated in the County.
- (b) The County or any waste hauler shall notify the Owner/Operator that it intends to exercise its right to deliver acceptable waste to the Owner/Operator's Facility prior to commencing the delivery of such wastes.
- (c) The Owner/Operator shall provide processing and/or disposal capacity as may be needed by the County for all acceptable waste generated within the geographic boundaries of the County and that the County may cause to be delivered to the Owner/Operator's Facility. This shall include delivery of acceptable waste on an occasional basis by individual County residents in small vehicles. The Owner/Operator and the County shall from time to time agree upon reasonable regulations and charges for such disposal, which will include all applicable fees.
- (d) The Owner/Operator shall provide in-kind processing and/or disposal and other in-kind services as clarified in completed Form A-3 that may include supplemental information clarifying in-kind services to be provided under the Agreement.

### 4.2 RELEASE FROM COMMITMENT

The Owner/Operator may at any time request that the County release it from its commitment to provide all or part of the reserved capacity required. Such request shall be in writing and shall set forth the basis for the request. The County shall in good faith review the Owner/Operator's request, based on the County's ability to ensure sufficient disposal capacity for municipal waste estimated to be generated during that particular calendar year, and make a determination within ten (10) business days of receipt of the request. If the request does not jeopardize the County's ability to ensure sufficient disposal capacity, it shall grant the Owner/Operator's request. The County's decision shall be in writing and delivered to the Owner/Operator.

The Owner/Operator may dispute the County's decision by giving the County a written request for resolution of dispute within five (5) working days of receipt of the decision. The dispute resolution shall be conducted in accordance with the provisions and rules under which the Court of Common Pleas of Wayne County, Pennsylvania operates. The sole issue to be arbitrated is whether the requested release can be granted without jeopardizing the ability of the County to ensure sufficient disposal capacity for municipal waste generated in the County for that year. Any decision of the arbitrator shall be final and binding on both parties. During resolution of any dispute, the Owner/Operator and the County shall each continue to perform all of their respective obligations under this Agreement without interruption or slowdown.

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### Article 5. CONDITIONS FOR THE DELIVERY AND DISPOSAL OF WASTE

#### 5.1 CONTROL PROCEDURES/WEIGHING OF WASTE DELIVERIES

(a) The Owner/Operator shall be required to maintain a scale that conforms to the Weights and Measurement Act of 1965, 73 P.S. §1651-1692, to weigh all incoming waste. Vehicles of all waste haulers delivering waste to the Owner/Operator's Facility shall be weighed and their waste loads classified, and each vehicle shall receive an appropriate record indicating the classification, origin, and weight of all waste prior to disposal at the Owner/Operator's Facility.

(b) If at any time testing of the weighing facilities indicates that the weights are inaccurate, any adjustments of waste delivery receipts shall revert to the date the last verified scale weights were recorded by the appropriate certification agency. The County or a waste hauler may at all times have access to the scale accuracy records of the Owner/Operator. If the scale is inoperable for any reason, the waste haulers may use another certified scale of their choice, or the Owner/Operator may direct vehicles to another certified scale closest to the Owner/Operator's Facility. If none are available, estimated weights based on historic data pertinent to the affected waste haulers shall take the place of actual weighing during the scale outage. The Owner/Operator shall make disposal invoices for the preceding month, on a monthly basis, available to the waste haulers, and the Owner/Operator shall use this information to invoice the waste haulers for disposal at the Owner/Operator's Facility.

#### 5.2 RECEIVING TIME/HOURS OF OPERATION

(a) The Owner/Operator's Facility shall be available to receive waste during the receiving times specified in Forms contained in Appendix A, attached hereto and incorporated herein by reference.

(b) If the County or a waste hauler requests and the Owner/Operator agrees, a waste hauler may deliver waste at times in addition to the specified receiving times at a cost which may exceed the fees herein as mutually agreed upon by such waste hauler and the Owner/Operator.

(c) Upon request by the County, the Owner/Operator shall use reasonable efforts to accept deliveries of waste at times other than the receiving times upon seven (7) days prior written notice or, in the event of a natural disaster or other emergency condition, such shorter notice as may be practicable.

#### 5.3 RIGHT TO REFUSE DELIVERY

(a) Except as noted, the Owner/Operator may refuse waste delivered at hours other than the specified receiving times.

(b) The Owner/Operator shall have the right and discretion to inspect any load entering the Owner/Operator's Facility and may refuse: (i) waste for which specific Regulatory Agency approval is required when approval has not been obtained prior to delivery; (ii) loads containing significant amounts of hazardous waste; or (iii) loads containing significant amounts of unacceptable waste including material banned from landfilling (e.g., loads comprised primarily of leaf waste, electronics, etc.). The Owner/Operator may refuse delivery of the entire load or only the portion that contains the unacceptable materials. The Owner/Operator shall notify waste haulers prior to initial waste delivery of the Owner/Operator's waste monitoring program and expected procedures and responsibilities under such program.

(c) The Owner/Operator's Facility may not reject a load of acceptable waste from the County for any reason except those listed in Article 5.3 (a) and (b). Reaching the average daily permitted capacity may not be used as a basis for rejecting County-generated loads of acceptable waste.

#### **5.4 COMPLAINTS**

The Owner/Operator shall receive and respond to all complaints from waste haulers regarding the acceptance of waste materials at the Owner/Operator's Facility. Any complaints received by the County will be directed to the Owner/Operator. In the event the Owner/Operator cannot satisfactorily resolve a complaint within five (5) working days after the complaint, the County shall have the right to demand a written explanation or satisfactory resolution of the complaint pursuant to the breach of Agreement provisions herein.

#### **5.5 TITLE TO MUNICIPAL WASTE**

Except in the case where hazardous or unacceptable wastes are delivered to the Owner/Operator's Facility, title to the municipal waste and any benefits of marketing materials or energy recovery shall pass to the Owner/Operator upon delivery to the Owner/Operator's Facility and acceptance of waste by the Owner/Operator.

#### **5.6 PERMITS**

The Owner/Operator shall be responsible for obtaining any and all permits necessary for the construction and operation of the Owner/Operator's Facility required to comply with the terms and conditions of this Agreement, and any and all costs or expenses of obtaining such permits. Failure to obtain and maintain permits shall constitute default on this Agreement.

### **Article 6. RECORDKEEPING AND REPORTING REQUIREMENTS**

The Owner/Operator shall establish and maintain a system to provide storage and ready retrieval of the Owner/Operator's Facility operating data pertinent to this Agreement, including, but not limited to, all information necessary to verify donated tonnages and calculations for the fee schedule.

#### **6.1 BASIC REPORTING REQUIREMENTS**

(a) In-County and Out-of-County Owner/Operators shall provide the County with quarterly reports of all types of waste delivered to the Owner/Operator's Facility that are generated from County sources and delivered to the Owner/Operator's Facility. This report shall include the totals by month for each type of waste. To the extent that reports required to be submitted to PADEP or any other regulatory agency contain the information required by the County, copies of said reports may be submitted to the County to comply with the Owner/Operator's reporting requirements.

(b) Along with quarterly report, the Owner/Operator shall provide: (i) names of waste haulers delivering loads of County-generated wastes; and (ii) a statement that the Owner/Operator's permit for the Owner/Operator's Facility has not been revoked or suspended, and that the Owner/Operator is in substantial compliance with all the terms and conditions of its permit, the provisions of the Solid Waste Management Act, and all applicable federal, state, PADEP and County regulations.

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### 6.2 SPECIAL REPORTING REQUIREMENTS

The Owner/Operator shall provide written notification to the County of any permit modification applications for the following types of permit changes at the time the application is first submitted to the state or local regulatory agency: (i) changes in permitted site volume or capacity; (ii) changes in permitted average and/or maximum daily waste volume or loading rates; (iii) changes in the permitted acreage; and (iv) changes in ownership.

### 6.3 ADMINISTRATIVE INSPECTIONS

Upon reasonable notice and during regular business hours, the County and its authorized representatives shall have access to the Owner/Operator's records pertaining to the quantities and sources of County-generated municipal waste for the purpose of verifying compliance with the terms and conditions of this Agreement.

## Article 7. TIPPING FEES AND OTHER CHARGES

### 7.1 TIPPING FEES

(a) All waste haulers shall pay at a maximum the rates set forth in Appendix A, Form A-2 Proposed Rate Schedule, for County-generated municipal waste and other wastes/recyclables as identified by Respondents. The rates shall, as applicable, include the following fees: (i) Act 101 host municipality fee plus any additional fee negotiated by the host County or municipality; (ii) Act 101 recycling fee and growing greener fee; (iii) and Act 101 post closure fee; and (iv) the Recycling Sustainability Fee.

(b) The County shall not be responsible for any payment to the Owner/Operator of tipping fees incurred by waste haulers. All tipping fees shall be paid directly by the waste haulers that deliver the waste to the Owner/Operator's Facility. The Owner/Operator shall be responsible for the billing and collection of all tipping fees. The County shall not be responsible for the failure of any waste hauler to pay the Owner/Operator's tipping fees.

The Owner/Operator shall not charge a tipping fee to a County hauler that exceeds the maximum rates established by this Agreement for each type of waste. Nothing in this Agreement shall prevent or preclude the Owner/Operator from negotiating alternate tipping fees with any hauler provided such fees do not exceed the maximum rates under this Agreement.

(e) Unless the County and the Owner/Operator mutually agree to an alternate date, all annual rate adjustments shall become effective on January 1st of each year of the Agreement.

(f) The Owner/Operator may petition the County at any time for additional rate or fee adjustments on the basis of unforeseen changes in operating costs resulting from any new or revised federal, state or local laws, ordinances, regulations, or permit requirements which were not in effect at the time this Agreement was awarded. The County shall evaluate the evidence submitted and may approve reasonable and justifiable cost adjustments. The County shall not unreasonably deny such cost adjustment.

### 7.2 RECYCLING SUSTAINABILITY FEE

The County currently collects a Recycling Sustainability Fee of four dollars (\$4.00) on each ton of municipal waste delivered to designated disposal facilities from Wayne County sources. The County

requests to continue to collect this \$4.00 fee on each ton of municipal waste delivered to the Operator's Facility. This requested fee shall be forwarded as a quarterly payment consistent with the payments scheduled for Act 101 fees. The fee shall be accompanied by a report as described in Article 6.1 (a).

If the Owner/Operator fails to make timely payments to the County of the County Recycling Sustainability Fee, the Operator would additionally pay the County interest on the unpaid amount due at the rate established pursuant to Section 806 of the Act of April 9, 1929 (P.L. 343, No. 176), known as The Fiscal Code, from the last day for timely payment to the date paid.

### Article 8. IN-KIND SERVICES

Per the Request for Proposals (RFP), under Appendix A, Form A-3, the County requests interested disposal facility owner/operators to offer in-kind services. These may include free disposal of specified quantities of illegal dump waste to benefit the performance of the County solid waste management system and to avoid costs. These in-kind services identified by owner/operators and as negotiated by the County and Respondents shall be incorporated within the Disposal Capacity Agreement under this section by reference (Attachment A-3.1).

### Article 9. INSURANCE

(a) The Owner/Operator shall maintain, in full force and effect throughout the term of the Agreement and any renewal or extension thereof, insurance coverages consistent with all current DEP regulations. The County and Owner/Operator hereby waive any and every claim for recovery from the other for any and all loss or damage to each other resulting from the performance of this Agreement, to the extent such loss or damage is recovered under insurance policies.

The County shall be designated as an additional insured under all required insurance policies and shall be provided with copies and certificates of said insurance policies. Each such insurance policy shall provide the County with a thirty (30) day notice of cancellation.

### Article 10. INDEMNIFICATION

#### 10.1 INDEMNIFICATION

The Owner/Operator or its successors and assigns shall protect, indemnify and hold harmless the County, its officers, members, employees, agents, contractors and subcontractors, from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and attorneys' fees, and shall defend the County indemnified parties in any suit, including appeals, for personal injury to or death of any persons or persons, or loss or damage to property arising out of:

(a) the negligence or willful misconduct, tortious activity, error or omission of Owner/Operator or its successors or assigns, or any of its officers, agents, employees, contractors or subcontractors in connection with Owner/Operator obligations or rights under this Agreement; and

(b) the construction, operation, closure and post-closure care and maintenance of the Owner/Operator's Facility.

## APPENDIX B

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The Owner/Operator shall not be liable or required to indemnify or reimburse the County or any County indemnified party for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses and other attorney fees arising out of any willful or negligent act, tortious activity, error or omission of the County or County indemnified parties.

### 10.2 COOPERATION REGARDING CLAIMS

If either the County or the Owner/Operator shall receive notice or have knowledge of any claim, demand, action, suit or proceeding that may result in a claim for indemnification by the County against the Owner/Operator pursuant to Article 10.1, that party shall so notify the other party and provide pertinent information and documents. Failure to promptly give such notice or to provide such information and documents shall not relieve the Owner/Operator of any obligation of indemnification it may have under Article 10.1 unless such failure shall materially diminish the ability of the Owner/Operator to respond to, or to defend the party failing to give such notice against such claim, demand, action, suit or proceeding. The County and the Owner/Operator shall consult with each other and cooperate in respect of the response to and the defense of any such claim, demand, action, suit or proceeding and, in the case of a claim for indemnification pursuant to Article 10.1, the Owner/Operator shall, upon acknowledgment in writing of its obligation to indemnify the County, be entitled to cooperate with the County with respect to the defense. With the written consent of the County, the Owner/Operator may assume the defense or represent the interests of the County with respect to such claim, demand, action, suit or proceeding which shall include the right to select and direct legal counsel and other consultants, appear in proceedings on behalf of the County and to propose, accept or reject offers of settlement.

## Article 11. DISPUTES, DEFAULTS AND REMEDIES

### 11.1 RESOLUTION OF DISPUTES

In the event any claim, controversy or dispute arises between the County and the Owner/Operator, or if any approvals, agreements or concurrences specified herein shall not have been timely given, the Owner/Operator and the County shall undertake in good faith to resolve the dispute. If the County and the Owner/Operator cannot resolve the dispute, either party shall be limited to the Court of Common Pleas of Wayne County, Pennsylvania, in equity or to law to litigate such disputes.

### 11.2 EVENTS OF DEFAULT BY COUNTY

The persistent or repeated failure or refusal by the County to perform under this Agreement in accordance with the terms hereof shall constitute an event of default by the County hereunder, unless such failure or refusal shall be excused or justified by a default by the Owner/Operator, provided, however, that no such failure or refusal shall constitute an event of default unless and until:

(a) The Owner/Operator shall have given written notice to the County stating that in its opinion a particular default or defaults (to be described in reasonable detail in such notice) exists which will, unless corrected, constitute a material breach of this Agreement on the part of the County; and

(b) The County shall have failed to cure such default within thirty (30) days from its receipt of the written notice given pursuant to Article 11.2 (a) above, provided that if the County shall have

commenced to take reasonable steps to correct such default within such thirty (30) day period, the County's failure to complete its cure of the indicated default shall not constitute an event of default for as long as the County is continuing to take reasonable steps to cure such default within the earliest practicable time.

### **11.3 EVENTS OF DEFAULT BY OWNER/OPERATOR**

The Owner/Operator shall be considered to be in default of this Agreement for failure to accept acceptable waste from the County or its waste haulers delivered to the Owner/Operator's Facility under the terms of this Agreement, or failure to otherwise fulfill its obligations under this Agreement.

### **11.4 FORCE MAJEURE**

Neither the Owner/Operator nor the County shall be liable for the failure to perform their duties and obligations under the Agreement or for any resultant damages, loss or expense, if such failure was the result of an act of God, riot, insurrection, war, catastrophe, natural disaster, labor strike or any other cause which was beyond reasonable control of the Owner/Operator or the County and which the Owner/Operator or County was unable to avoid by exercise of reasonable diligence. Documentation of the event that caused the Owner/Operator to be unable to meet its obligation hereunder must be submitted to the County within ten (10) working days after the occurrence of the event.

### **11.5 REMEDIES**

(a) The County and the Owner/Operator agree, except as provided in Article 11.5 (b) and (c) below, in the event of a default by either party under this Agreement, upon the right to recover damages or to be reimbursed for incremental costs associated with waste haulers redirecting loads of municipal waste to alternative facilities.

(b) If, within a period of thirty (30) days after the County shall have given written notice to the Owner/Operator that a default has occurred and is continuing, and specifying the nature of the default, the Owner/Operator has neither remedied such default, nor undertaken and diligently pursued corrective action, then this Agreement shall terminate immediately upon written notice thereof by the County to the Owner/Operator.

(c) If, within a period of thirty (30) days after the Owner/Operator shall have given written notice to the County that a default has occurred and is continuing, and specifying the nature of the default, the County has neither remedied such default, nor undertaken and diligently pursued corrective action, then this Agreement shall terminate immediately upon written notice thereof by the Owner/Operator to the County.

### **11.6 WAIVERS**

A waiver by either the County or Owner/Operator of any default of any provisions of the Agreement shall not be taken or held to be a waiver of any succeeding default of such provisions or as a waiver of any provision itself. No payment or acceptance of compensation for any period subsequent to any default shall be deemed a waiver of any right or acceptance of defective performance. To be effective a waiver must be in writing and signed by the party granting such waiver.

## APPENDIX B

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### Article 12. TERM AND TERMINATION

#### 12.1 EFFECTIVE DATE

This Agreement shall become effective on July 1, 2020. The Owner/Operator shall begin to accept waste deliveries from County sources under the terms and conditions of this Agreement on this date.

#### 12.2 TERM OF AGREEMENT

The term of this Agreement shall commence on the effective date and shall continue in effect for ten (10) years and is intended to coincide with the 10-year planning period of the County Plan.

#### 12.3 EFFECT OF TERMINATION

Upon the termination of this Agreement, the obligations of the County and the Owner/Operator hereunder shall cease, provided that any obligation for the payment of money or otherwise arising from the conduct of the County or Owner/Operator pursuant to this Agreement prior to such termination shall not be affected by such termination and shall survive and remain in full force and effect.

## Article 13. MISCELLANEOUS

#### 13.1 ASSIGNMENT

(a) This Agreement may not be assigned by either the County or the Owner/Operator or its rights sold by Owner/Operator except with the written consent of the County or Owner/Operator or as further provided in this Article. The County may, however, contract with a third party or parties for the collection, transportation, processing and disposal of waste, and such contracting will not be interpreted as an assignment of this Agreement. Further, any municipality within the political boundaries of the County and/or any waste hauler may avail themselves of the rights of the County under this Agreement without violating the assignment provision, provided, however, that such municipalities and waste haulers will be bound by the covenants of the County in this Agreement. The Owner/Operator shall not assign this Agreement except to a licensed and permitted successor to the Owner/Operator capable of performing all covenants of this Agreement and with ninety (90) days prior written notice to the County and the written consent of the County.

(b) In the event of any assignment or delegation of duties under this Agreement, the delegate shall assume full responsibility and liability, and shall be responsible for compliance with and performance of all terms and conditions of this Agreement, including but not limited to provisions for sureties and assurances of availability of ten (10) year service. The assignment or delegation of any Agreement duties will not relieve the Owner/Operator or its surety of any liability and/or obligation to perform.

#### 13.2 NOTICES

Except under emergency circumstances all notices, demands, requests and other communications under this Agreement shall be deemed sufficient and properly given if in writing and delivered in person or by recognized carrier service, or sent by certified or registered mail, postage prepaid, with return receipt requested, to the following addresses:

County: Wayne County  
Attn: Solid Waste Director/Recycling Coordinator  
66 Volunteer Drive  
Honesdale, PA 18431

Either the County or Owner/Operator may, as specified above, designate any further or different addresses to which subsequent notices shall be sent.

### **13.3 ENTIRE AGREEMENT/MODIFICATIONS**

The provisions of this Agreement, together with the Agreements, Appendices, and Attachments incorporated by reference, shall constitute the entire Municipal Waste Disposal Capacity Agreement between the County and the Owner/Operator, superseding all prior disposal capacity agreements and negotiations, if any, and, except as otherwise provided in this Agreement, shall only be modified by written agreement duly executed by both parties to this Agreement. The County and Owner/Operator agree that any existing municipal waste disposal contracts between them are hereby rendered null and void and superseded by this Agreement. If there are existing Host County Fee Agreements between parties, or Host County Fee Agreements are entered during the term of this Agreement, the Host County Fee Agreements shall remain in full force and effect notwithstanding any provisions of this Agreement.

### **13.4 SEVERABILITY**

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

### **13.5 CHANGE OF OWNERSHIP**

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

### **13.6 GOVERNING LAW**

This Agreement and any question concerning its validity, construction, or performance shall be governed by the laws of the Commonwealth of Pennsylvania, irrespective of the place of execution or of the order in which the signatures of the County and Owner/Operator are affixed or of the place or places of performance. The Owner/Operator shall conduct the services provided for in this Agreement in compliance with all applicable federal and state laws and regulations.

## APPENDIX B

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### 13.7 JOINT AND SEVERABLE LIABILITY

If the Owner/Operator is comprised of more than one individual, corporation or other entity, each of the entities comprising the Owner/Operator shall be jointly and severably liable.

### 13.8 COUNTERPARTS

This Agreement may be executed in more than one (1) counterpart, each of which shall be deemed to be an original but all of which taken together shall be deemed a single instrument.

### 13.9 NO CO-PARTNERSHIP OR AGENCY

It is understood and agreed that nothing contained in this Agreement is intended or shall be construed to in any respect create or establish the relationship of co-partners between the County and the Owner/Operator, or as constituting the Owner/Operator the general representative or general agent of the County for any purpose whatsoever.

### 13.10 SECTION HEADINGS/REFERENCES

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

### 13.11 CONVENTIONS

In this Agreement:

- (a) the singular includes the plural and the plural the singular;
- (b) words importing any gender include the other gender;
- (c) references to statutes are construed as including all statutory provisions consolidating, amending or replacing the statute referred to;
- (d) references to writing include printing, typing, lithography and other means of reproducing words in a visible form;
- (e) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments thereto or changes therein entered into in accordance with their respective terms;
- (f) references to persons include their permitted successors and assigns; and
- (g) the term "including" shall mean including without limitation.

### 13.12 NONDISCRIMINATION

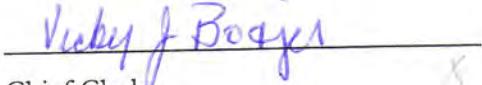
Neither the Owner/Operator nor any subcontractor nor any person(s) acting on their behalf shall discriminate against any person because of race, sex, age, creed, color, religion or national origin, ancestry, disability, sexual orientation, or union membership.

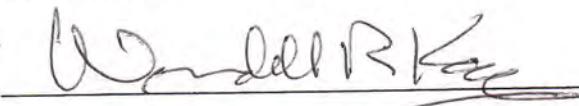
IN WITNESS WHEREOF, the County and Owner/Operator have caused this Waste Disposal Capacity Agreement to be executed as of the date and year first written.

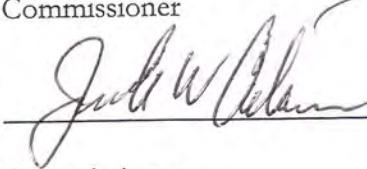
COUNTY OF WAYNE BOARD OF COMMISSIONERS

ATTEST:

  
Commissioner

  
Chief Clerk

  
Commissioner

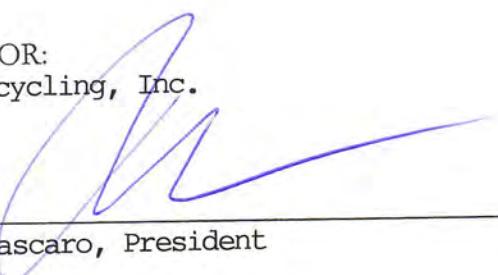
  
Commissioner

ATTEST:

  
Michael Mascaro, Secretary

OWNER/OPERATOR:  
Lehigh Valley Recycling, Inc.

By:

  
Pasquale N. Mascaro, President

## APPENDIX B

### MUNICIPAL WASTE DISPOSAL CAPACITY AGREEMENT

### COUNTY OF WAYNE

THIS MUNICIPAL WASTE DISPOSAL CAPACITY AGREEMENT (Agreement) made this 21st day of November, 2019, by and between the COUNTY OF Wayne, a political subdivision of the Commonwealth of Pennsylvania (County), and J.P. Mascaro & Sons – Pioneer Crossing Landfill (Owner/Operator).

#### **Article 1. BACKGROUND**

The Municipal Waste Planning, Recycling and Waste Reduction Act (Act 101) requires the County, as part of its Municipal Waste Management Plan (Plan), to provide disposal/processing capacity for all County-generated municipal waste over the 10-year planning period corresponding with the County Plan. To meet its obligation, the County issued a request for proposals (RFP) to execute Agreements with facilities for the provision of all, or a portion of, County generated municipal waste over the designated 10-year term. The Owner/Operator responded to the solicitation and the Owner/Operator's proposal was accepted by the County Board of Commissioners. This Agreement provides the terms and conditions under which the Owner/Operator will provide disposal capacity.

The County, as the designated administrator responsible for implementation of the 10-year Municipal Waste Management Plan (Plan), has responsibilities set forth by Act 101 of 1988, and as regulated by the Pennsylvania Department of Environmental Protection, to provide for proper disposal of solid wastes and to recover recyclable commodities to advance waste diversion to meet Pennsylvania's 35 percent recycling goal. Due to the County responsibilities under Act 101 of 1988 for disposal and diversion of County-generated municipal solid wastes, and because the activities of waste collection, transportation and disposal impact the health, safety, and welfare, the County, the waste disposal facilities, processors, and collectors influence the performance of the County's integrated solid waste management system. The County is interested in establishing Agreements to meet disposal capacity assurance and to benefit the efficient and proper management of solid wastes.

NOW, THEREFORE, in consideration of the mutual promises contained herein and with intent to be legally bound, the parties hereby agree as follows:

#### **Article 2. DEFINITIONS AND TERMS**

##### **2.1 DEFINITIONS**

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

**Acceptable Waste.** Municipal waste and all other wastes the facility is permitted to accept under applicable laws and regulations. Where applicable, acceptable or accepted wastes, refers to the waste types that shall be accepted by a Facility from Wayne County sources.

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

**Agreement.** The Municipal Waste Disposal Capacity Agreement between the County and the Owner/Operator, as amended, or supplemented by other submittals by the Owner/Operator.

**Alternative Facility.** Any licensed or permitted facility designated by the Owner/Operator to accept County-generated acceptable wastes during temporary or protracted cessation of operation at the facility.

**Commercial Establishment.** An establishment engaged in non-manufacturing or non-processing business, including, but not limited to, stores, markets, office buildings, restaurants, shopping centers and theaters.

**Construction/Demolition Waste (C/D).** Solid waste resulting from the construction or demolition of buildings and other structures, including, but not limited to, wood, plaster, metals, asphaltic substances, bricks, block and unsegregated concrete. The term also includes dredging waste. The term does not include the following if they are separate from other waste and are used as clean fill: (i) uncontaminated soil, rock, stone, gravel, unused brick and block and concrete; and (ii) waste from land clearing, grubbing and excavation, including trees, brush, stumps and vegetative material.

**County.** The County of Wayne, Commonwealth of Pennsylvania, solely and acting through its designated agent, the Wayne County Solid Waste Department.

**Department or PADEP.** Pennsylvania Department of Environmental Protection.

**Facility.** Processing and/or disposal facilities, including municipal waste, construction/demolition and residual waste landfills, resource recovery facilities permitted and licensed for the disposition of municipal waste (as defined herein), and/or residual waste. Transfer stations are facilities, but are not considered "designated disposal facilities" in the Plan because they do not provide disposal capacity.

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

**Industrial Establishment.** An establishment engaged in manufacturing and industrial processes, including, but not limited to, those carried out in factories, foundries, mills, processing plants, refineries, mines and slaughter houses.

**Institutional Establishment.** An establishment engaged in service, including, but not limited to, public buildings, hospitals (non-infectious waste only), nursing homes, orphanages, schools, correctional facilities and universities.

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

**Waste Hauler.** Any person collecting and/or transporting County-generated municipal waste to a County designated disposal facility or another fully permitted facility.

**Municipal Waste.** Garbage, refuse, industrial lunchroom or office waste and other material, including solid, liquid, semi-solid or contained gaseous material, resulting from operation of

## APPENDIX B

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residential, municipal, commercial or institutional establishments or from community activities; and any sludge not meeting the definition of residual or hazardous waste from a municipal, commercial or institutional water supply treatment plant, wastewater treatment plant or air pollution control facility. Municipal waste includes construction/demolition waste, municipal sludges, asbestos, infectious/chemotherapeutic waste and incinerator ash residue. The term does not include source separated recyclable materials or material approved by PADEP for beneficial use.

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

**Owner/Operator**. Any Person who owns, operates, leases, controls, or supervises a Facility, or any permitted successors, assigns, or affiliates.

**Owner/Operator's Facility**. The Owner/Operator's permitted facility described within the Facility Questionnaire.

**Parent**. Any corporation, now or at any time or times hereafter, owning or controlling (alone or with any other person or entity) at least a majority of the issued and outstanding capital stock of the Owner/Operator.

**Permit**. A permit issued by PADEP, or a permit and/or license issued by a state and/or local regulatory agency, as required, to operate a municipal waste disposal or processing facility.

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

**Plan**. The County Municipal Waste Management Plan approved pursuant to Act 101.

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

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

**Tipping Fee/Processing Fee**. The schedule of fees established by the Owner/Operator of a facility for accepting various types of solid waste for processing or disposal.

**Ton**. Two thousand (2,000) pounds.

**Transfer Station**. A facility which receives and processes or temporarily stores municipal or residual waste at a location other than the generation site, and which facilitates the transportation or transfer of municipal or residual waste to a processing or disposal facility. The term includes a facility that uses a method or technology to convert part or all of the waste materials for offsite reuse. The term does not include a collecting or processing center that is only for source separated recyclable materials, including clear glass, colored glass, aluminum, steel and bimetallic cans, high grade office paper, newsprint, corrugated paper and plastics.

**Unacceptable Waste.** Material that by its composition, characteristics or quality, is ineligible for disposal at the landfill pursuant to the provisions of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §2605(e), the Pennsylvania Solid Waste Management Act, 35 P.S. §6018.101 et seq., or other applicable federal, state or local law, or material that the Owner/Operator concludes requires special handling or endangers the landfill, public health or safety, or the environment.

**Yard Waste.** Leaves, grass clippings, garden residue, tree trimmings, chipped shrubbery and other vegetative material.

## 2.2 OTHER WORDS, TERMS, PHRASES

Except as otherwise defined in this Agreement, all words, terms and/or phrases used herein shall be defined by the applicable definition therefore, if any, in Act 101 or the Pennsylvania Solid Waste Management Act or the regulations promulgated thereunder.

# Article 3. REPRESENTATIONS

## 3.1 REPRESENTATIONS OF COUNTY

The County represents and warrants that:

- (a) It is a political subdivision of the Commonwealth of Pennsylvania, acting by and through its duly authorized officials, and is duly authorized to carry on the governmental functions and operations contemplated by this Agreement and each other agreement or instrument entered into or to be entered into by the County or the municipalities within the boundaries of the County, pursuant to this Agreement.
- (b) It has the full power, authority and legal right to enter into and perform this Agreement and all other agreements or instruments which it may enter into under any provision of this Agreement.
- (c) This Agreement and each other agreement or instrument entered into by the County pursuant to this Agreement, when entered into, will have been duly authorized, executed and delivered by the County and will constitute a legal, valid and binding obligation of the County.
- (d) There is no action or proceeding before any court or administrative agency pending or, to the knowledge of the County, threatened against or adversely affecting the ability of the County to perform its obligations hereunder.

## 3.2 REPRESENTATIONS OF OWNER/OPERATOR

The Owner/Operator represents and warrants to the County that:

- (a) It is the Owner/Operator of the Facility and is permitted by PADEP or the appropriate state regulatory agency(ies).
- (b) It is a corporation duly organized and existing in good standing under the laws of Pennsylvania, or under the appropriate state regulatory agency(ies), and has the corporate power and authority to enter into and perform its obligations under this Agreement and each other agreement or instrument entered into or to be entered into under any provision of this Agreement.
- (c) It has the full power and legal right to enter into and perform this Agreement and all other agreements or instruments which it may enter into under any provision of this Agreement.

## APPENDIX B

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(d) This Agreement and each other agreement or instrument entered into pursuant to this Agreement, when entered into, will have been duly authorized, executed by and delivered by the Owner/Operator, and will constitute a legal, valid and binding obligation.

(e) The execution, delivery and performance hereof by the Owner/Operator: (i) has the requisite approval of all governmental bodies; (ii) will not violate any judgment, order, law or regulation applicable to the Owner/Operator; and (iii) does not (a) conflict with, (b) constitute a default under, or (c) except as specifically created hereby, result in the creation of any lien, charge, encumbrance or security interest upon any assets of the Owner/Operator under any agreement or instrument to which the Owner/Operator is party or by which the Owner/Operator or its assets may be bound or affected.

(f) This Agreement has been duly authorized, executed and delivered by the Owner/Operator, and constitutes a legal, valid and binding obligation of the Owner/Operator, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditor's rights generally, or by general equitable principles concerning remedies.

(g) There is no litigation or proceeding pending or, to the knowledge of the Owner/Operator, threatened against or affecting the Owner/Operator: (i) challenging the validity of this Agreement; (ii) seeking to enjoin the performance by the Owner/Operator of its obligations under this Agreement; or (iii) which, if adversely determined, would materially adversely affect the ability of the Owner/Operator to perform its obligation under this Agreement.

(h) Except as disclosed within the Submittal Forms for Municipal Solid Waste Disposal Services contained in the County's solicitation attached hereto and incorporated herein by reference, the Owner/Operator is not a subsidiary of any parent.

### 3.3 PARENT GUARANTEE

If and to the extent that the Owner/Operator is a subsidiary of a parent, the Owner/Operator agrees to cause such parent to execute and deliver to the County a guarantee of the obligations of the Owner/Operator under this Agreement in a form reasonably satisfactory to the County.

### 3.4 DESIGNATION AS PROCESSING/DISPOSAL FACILITY

In consideration of the Owner/Operator's Covenants and this Agreement, the County hereby agrees to include the Owner/Operator's Facility in its Plan as a designated processing/disposal facility for municipal waste generated in the County. The Owner/Operator acknowledges that this Agreement is nonexclusive, and the County may enter into agreements with other facilities to perform the same work and services that the Owner/Operator is contracted to perform hereunder. At no time during the term of this Agreement shall the County be obligated to deliver and dispose of acceptable waste at the Owner/Operator's Facility.

If the Owner/Operator's Facility is a transfer station, the Owner/Operator must stipulate where ultimate disposal of County-generated municipal waste will take place. If ultimate disposal is to be in a facility that is not a County Designated Facility, the Owner/Operator must furnish proof that the facility holds a valid permit in the state where it is located and that it meets all appropriate federal, state and local rules, regulations and guidelines.

## Article 4. DELIVERY AND DISPOSAL OF ACCEPTABLE WASTE

### 4.1 DELIVERY AND DISPOSAL OF ACCEPTABLE WASTE

On and after the effective date of this Agreement and pursuant to the capacity reservations specified in **Appendix A, Submittal Forms**:

- (a) The County may, at its option cause, to be delivered to the Owner/Operator's Facility during the receiving times all, part or none of the acceptable waste generated in the County.
- (b) The County or any waste hauler shall notify the Owner/Operator that it intends to exercise its right to deliver acceptable waste to the Owner/Operator's Facility prior to commencing the delivery of such wastes.
- (c) The Owner/Operator shall provide processing and/or disposal capacity as may be needed by the County for all acceptable waste generated within the geographic boundaries of the County and that the County may cause to be delivered to the Owner/Operator's Facility. This shall include delivery of acceptable waste on an occasional basis by individual County residents in small vehicles. The Owner/Operator and the County shall from time to time agree upon reasonable regulations and charges for such disposal, which will include all applicable fees.
- (d) The Owner/Operator shall provide in-kind processing and/or disposal and other in-kind services as clarified in completed Form A-3 that may include supplemental information clarifying in-kind services to be provided under the Agreement.

### 4.2 RELEASE FROM COMMITMENT

The Owner/Operator may at any time request that the County release it from its commitment to provide all or part of the reserved capacity required. Such request shall be in writing and shall set forth the basis for the request. The County shall in good faith review the Owner/Operator's request, based on the County's ability to ensure sufficient disposal capacity for municipal waste estimated to be generated during that particular calendar year, and make a determination within ten (10) business days of receipt of the request. If the request does not jeopardize the County's ability to ensure sufficient disposal capacity, it shall grant the Owner/Operator's request. The County's decision shall be in writing and delivered to the Owner/Operator.

The Owner/Operator may dispute the County's decision by giving the County a written request for resolution of dispute within five (5) working days of receipt of the decision. The dispute resolution shall be conducted in accordance with the provisions and rules under which the Court of Common Pleas of Wayne County, Pennsylvania operates. The sole issue to be arbitrated is whether the requested release can be granted without jeopardizing the ability of the County to ensure sufficient disposal capacity for municipal waste generated in the County for that year. Any decision of the arbitrator shall be final and binding on both parties. During resolution of any dispute, the Owner/Operator and the County shall each continue to perform all of their respective obligations under this Agreement without interruption or slowdown.

## APPENDIX B

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### Article 5. CONDITIONS FOR THE DELIVERY AND DISPOSAL OF WASTE

#### 5.1 CONTROL PROCEDURES/WEIGHING OF WASTE DELIVERIES

(a) The Owner/Operator shall be required to maintain a scale that conforms to the Weights and Measurement Act of 1965, 73 P.S. §1651-1692, to weigh all incoming waste. Vehicles of all waste haulers delivering waste to the Owner/Operator's Facility shall be weighed and their waste loads classified, and each vehicle shall receive an appropriate record indicating the classification, origin, and weight of all waste prior to disposal at the Owner/Operator's Facility.

(b) If at any time testing of the weighing facilities indicates that the weights are inaccurate, any adjustments of waste delivery receipts shall revert to the date the last verified scale weights were recorded by the appropriate certification agency. The County or a waste hauler may at all times have access to the scale accuracy records of the Owner/Operator. If the scale is inoperable for any reason, the waste haulers may use another certified scale of their choice, or the Owner/Operator may direct vehicles to another certified scale closest to the Owner/Operator's Facility. If none are available, estimated weights based on historic data pertinent to the affected waste haulers shall take the place of actual weighing during the scale outage. The Owner/Operator shall make disposal invoices for the preceding month, on a monthly basis, available to the waste haulers, and the Owner/Operator shall use this information to invoice the waste haulers for disposal at the Owner/Operator's Facility.

#### 5.2 RECEIVING TIME/HOURS OF OPERATION

(a) The Owner/Operator's Facility shall be available to receive waste during the receiving times specified in Forms contained in Appendix A, attached hereto and incorporated herein by reference.

(b) If the County or a waste hauler requests and the Owner/Operator agrees, a waste hauler may deliver waste at times in addition to the specified receiving times at a cost which may exceed the fees herein as mutually agreed upon by such waste hauler and the Owner/Operator.

(c) Upon request by the County, the Owner/Operator shall use reasonable efforts to accept deliveries of waste at times other than the receiving times upon seven (7) days prior written notice or, in the event of a natural disaster or other emergency condition, such shorter notice as may be practicable.

#### 5.3 RIGHT TO REFUSE DELIVERY

(a) Except as noted, the Owner/Operator may refuse waste delivered at hours other than the specified receiving times.

(b) The Owner/Operator shall have the right and discretion to inspect any load entering the Owner/Operator's Facility and may refuse: (i) waste for which specific Regulatory Agency approval is required when approval has not been obtained prior to delivery; (ii) loads containing significant amounts of hazardous waste; or (iii) loads containing significant amounts of unacceptable waste including material banned from landfilling (e.g., loads comprised primarily of leaf waste, electronics, etc.). The Owner/Operator may refuse delivery of the entire load or only the portion that contains the unacceptable materials. The Owner/Operator shall notify waste haulers prior to initial waste delivery of the Owner/Operator's waste monitoring program and expected procedures and responsibilities under such program.

(c) The Owner/Operator's Facility may not reject a load of acceptable waste from the County for any reason except those listed in Article 5.3 (a) and (b). Reaching the average daily permitted capacity may not be used as a basis for rejecting County-generated loads of acceptable waste.

#### **5.4 COMPLAINTS**

The Owner/Operator shall receive and respond to all complaints from waste haulers regarding the acceptance of waste materials at the Owner/Operator's Facility. Any complaints received by the County will be directed to the Owner/Operator. In the event the Owner/Operator cannot satisfactorily resolve a complaint within five (5) working days after the complaint, the County shall have the right to demand a written explanation or satisfactory resolution of the complaint pursuant to the breach of Agreement provisions herein.

#### **5.5 TITLE TO MUNICIPAL WASTE**

Except in the case where hazardous or unacceptable wastes are delivered to the Owner/Operator's Facility, title to the municipal waste and any benefits of marketing materials or energy recovery shall pass to the Owner/Operator upon delivery to the Owner/Operator's Facility and acceptance of waste by the Owner/Operator.

#### **5.6 PERMITS**

The Owner/Operator shall be responsible for obtaining any and all permits necessary for the construction and operation of the Owner/Operator's Facility required to comply with the terms and conditions of this Agreement, and any and all costs or expenses of obtaining such permits. Failure to obtain and maintain permits shall constitute default on this Agreement.

### **Article 6. RECORDKEEPING AND REPORTING REQUIREMENTS**

The Owner/Operator shall establish and maintain a system to provide storage and ready retrieval of the Owner/Operator's Facility operating data pertinent to this Agreement, including, but not limited to, all information necessary to verify donated tonnages and calculations for the fee schedule.

#### **6.1 BASIC REPORTING REQUIREMENTS**

(a) In-County and Out-of-County Owner/Operators shall provide the County with quarterly reports of all types of waste delivered to the Owner/Operator's Facility that are generated from County sources and delivered to the Owner/Operator's Facility. This report shall include the totals by month for each type of waste. To the extent that reports required to be submitted to PADEP or any other regulatory agency contain the information required by the County, copies of said reports may be submitted to the County to comply with the Owner/Operator's reporting requirements.

(b) Along with quarterly report, the Owner/Operator shall provide: (i) names of waste haulers delivering loads of County-generated wastes; and (ii) a statement that the Owner/Operator's permit for the Owner/Operator's Facility has not been revoked or suspended, and that the Owner/Operator is in substantial compliance with all the terms and conditions of its permit, the provisions of the Solid Waste Management Act, and all applicable federal, state, PADEP and County regulations.

### 6.2 SPECIAL REPORTING REQUIREMENTS

The Owner/Operator shall provide written notification to the County of any permit modification applications for the following types of permit changes at the time the application is first submitted to the state or local regulatory agency: (i) changes in permitted site volume or capacity; (ii) changes in permitted average and/or maximum daily waste volume or loading rates; (iii) changes in the permitted acreage; and (iv) changes in ownership.

### 6.3 ADMINISTRATIVE INSPECTIONS

Upon reasonable notice and during regular business hours, the County and its authorized representatives shall have access to the Owner/Operator's records pertaining to the quantities and sources of County-generated municipal waste for the purpose of verifying compliance with the terms and conditions of this Agreement.

## Article 7. TIPPING FEES AND OTHER CHARGES

### 7.1 TIPPING FEES

(a) All waste haulers shall pay at a maximum the rates set forth in Appendix A, Form A-2 Proposed Rate Schedule, for County-generated municipal waste and other wastes/recyclables as identified by Respondents. The rates shall, as applicable, include the following fees: (i) Act 101 host municipality fee plus any additional fee negotiated by the host County or municipality; (ii) Act 101 recycling fee and growing greener fee; (iii) and Act 101 post closure fee; and (iv) the Recycling Sustainability Fee.

(b) The County shall not be responsible for any payment to the Owner/Operator of tipping fees incurred by waste haulers. All tipping fees shall be paid directly by the waste haulers that deliver the waste to the Owner/Operator's Facility. The Owner/Operator shall be responsible for the billing and collection of all tipping fees. The County shall not be responsible for the failure of any waste hauler to pay the Owner/Operator's tipping fees.

The Owner/Operator shall not charge a tipping fee to a County hauler that exceeds the maximum rates established by this Agreement for each type of waste. Nothing in this Agreement shall prevent or preclude the Owner/Operator from negotiating alternate tipping fees with any hauler provided such fees do not exceed the maximum rates under this Agreement.

(e) Unless the County and the Owner/Operator mutually agree to an alternate date, all annual rate adjustments shall become effective on January 1st of each year of the Agreement.

(f) The Owner/Operator may petition the County at any time for additional rate or fee adjustments on the basis of unforeseen changes in operating costs resulting from any new or revised federal, state or local laws, ordinances, regulations, or permit requirements which were not in effect at the time this Agreement was awarded. The County shall evaluate the evidence submitted and may approve reasonable and justifiable cost adjustments. The County shall not unreasonably deny such cost adjustment.

### 7.2 RECYCLING SUSTAINABILITY FEE

The County currently collects a Recycling Sustainability Fee of four dollars (\$4.00) on each ton of municipal waste delivered to designated disposal facilities from Wayne County sources. The County

requests to continue to collect this \$4.00 fee on each ton of municipal waste delivered to the Operator's Facility. This requested fee shall be forwarded as a quarterly payment consistent with the payments scheduled for Act 101 fees. The fee shall be accompanied by a report as described in Article 6.1 (a).

If the Owner/Operator fails to make timely payments to the County of the County Recycling Sustainability Fee, the Operator would additionally pay the County interest on the unpaid amount due at the rate established pursuant to Section 806 of the Act of April 9, 1929 (P.L. 343, No. 176), known as The Fiscal Code, from the last day for timely payment to the date paid.

## **Article 8. IN-KIND SERVICES**

Per the Request for Proposals (RFP), under Appendix A, Form A-3, the County requests interested disposal facility owner/operators to offer in-kind services. These may include free disposal of specified quantities of illegal dump waste to benefit the performance of the County solid waste management system and to avoid costs. These in-kind services identified by owner/operators and as negotiated by the County and Respondents shall be incorporated within the Disposal Capacity Agreement under this section by reference (Attachment A-3.1).

## **Article 9. INSURANCE**

(a) The Owner/Operator shall maintain, in full force and effect throughout the term of the Agreement and any renewal or extension thereof, insurance coverages consistent with all current DEP regulations. The County and Owner/Operator hereby waive any and every claim for recovery from the other for any and all loss or damage to each other resulting from the performance of this Agreement, to the extent such loss or damage is recovered under insurance policies.

The County shall be designated as an additional insured under all required insurance policies and shall be provided with copies and certificates of said insurance policies. Each such insurance policy shall provide the County with a thirty (30) day notice of cancellation.

## **Article 10. INDEMNIFICATION**

### **10.1 INDEMNIFICATION**

The Owner/Operator or its successors and assigns shall protect, indemnify and hold harmless the County, its officers, members, employees, agents, contractors and subcontractors, from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and attorneys' fees, and shall defend the County indemnified parties in any suit, including appeals, for personal injury to or death of any persons or persons, or loss or damage to property arising out of:

(a) the negligence or willful misconduct, tortious activity, error or omission of Owner/Operator or its successors or assigns, or any of its officers, agents, employees, contractors or subcontractors in connection with Owner/Operator obligations or rights under this Agreement; and

(b) the construction, operation, closure and post-closure care and maintenance of the Owner/Operator's Facility.

## APPENDIX B

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The Owner/Operator shall not be liable or required to indemnify or reimburse the County or any County indemnified party for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses and other attorney fees arising out of any willful or negligent act, tortious activity, error or omission of the County or County indemnified parties.

### 10.2 COOPERATION REGARDING CLAIMS

If either the County or the Owner/Operator shall receive notice or have knowledge of any claim, demand, action, suit or proceeding that may result in a claim for indemnification by the County against the Owner/Operator pursuant to Article 10.1, that party shall so notify the other party and provide pertinent information and documents. Failure to promptly give such notice or to provide such information and documents shall not relieve the Owner/Operator of any obligation of indemnification it may have under Article 10.1 unless such failure shall materially diminish the ability of the Owner/Operator to respond to, or to defend the party failing to give such notice against such claim, demand, action, suit or proceeding. The County and the Owner/Operator shall consult with each other and cooperate in respect of the response to and the defense of any such claim, demand, action, suit or proceeding and, in the case of a claim for indemnification pursuant to Article 10.1, the Owner/Operator shall, upon acknowledgment in writing of its obligation to indemnify the County, be entitled to cooperate with the County with respect to the defense. With the written consent of the County, the Owner/Operator may assume the defense or represent the interests of the County with respect to such claim, demand, action, suit or proceeding which shall include the right to select and direct legal counsel and other consultants, appear in proceedings on behalf of the County and to propose, accept or reject offers of settlement.

## Article 11. DISPUTES, DEFAULTS AND REMEDIES

### 11.1 RESOLUTION OF DISPUTES

In the event any claim, controversy or dispute arises between the County and the Owner/Operator, or if any approvals, agreements or concurrences specified herein shall not have been timely given, the Owner/Operator and the County shall undertake in good faith to resolve the dispute. If the County and the Owner/Operator cannot resolve the dispute, either party shall be limited to the Court of Common Pleas of Wayne County, Pennsylvania, in equity or to law to litigate such disputes.

### 11.2 EVENTS OF DEFAULT BY COUNTY

The persistent or repeated failure or refusal by the County to perform under this Agreement in accordance with the terms hereof shall constitute an event of default by the County hereunder, unless such failure or refusal shall be excused or justified by a default by the Owner/Operator, provided, however, that no such failure or refusal shall constitute an event of default unless and until:

(a) The Owner/Operator shall have given written notice to the County stating that in its opinion a particular default or defaults (to be described in reasonable detail in such notice) exists which will, unless corrected, constitute a material breach of this Agreement on the part of the County; and

(b) The County shall have failed to cure such default within thirty (30) days from its receipt of the written notice given pursuant to Article 11.2 (a) above, provided that if the County shall have

commenced to take reasonable steps to correct such default within such thirty (30) day period, the County's failure to complete its cure of the indicated default shall not constitute an event of default for as long as the County is continuing to take reasonable steps to cure such default within the earliest practicable time.

### **11.3 EVENTS OF DEFAULT BY OWNER/OPERATOR**

The Owner/Operator shall be considered to be in default of this Agreement for failure to accept acceptable waste from the County or its waste haulers delivered to the Owner/Operator's Facility under the terms of this Agreement, or failure to otherwise fulfill its obligations under this Agreement.

### **11.4 FORCE MAJEURE**

Neither the Owner/Operator nor the County shall be liable for the failure to perform their duties and obligations under the Agreement or for any resultant damages, loss or expense, if such failure was the result of an act of God, riot, insurrection, war, catastrophe, natural disaster, labor strike or any other cause which was beyond reasonable control of the Owner/Operator or the County and which the Owner/Operator or County was unable to avoid by exercise of reasonable diligence. Documentation of the event that caused the Owner/Operator to be unable to meet its obligation hereunder must be submitted to the County within ten (10) working days after the occurrence of the event.

### **11.5 REMEDIES**

(a) The County and the Owner/Operator agree, except as provided in Article 11.5 (b) and (c) below, in the event of a default by either party under this Agreement, upon the right to recover damages or to be reimbursed for incremental costs associated with waste haulers redirecting loads of municipal waste to alternative facilities.

(b) If, within a period of thirty (30) days after the County shall have given written notice to the Owner/Operator that a default has occurred and is continuing, and specifying the nature of the default, the Owner/Operator has neither remedied such default, nor undertaken and diligently pursued corrective action, then this Agreement shall terminate immediately upon written notice thereof by the County to the Owner/Operator.

(c) If, within a period of thirty (30) days after the Owner/Operator shall have given written notice to the County that a default has occurred and is continuing, and specifying the nature of the default, the County has neither remedied such default, nor undertaken and diligently pursued corrective action, then this Agreement shall terminate immediately upon written notice thereof by the Owner/Operator to the County.

### **11.6 WAIVERS**

A waiver by either the County or Owner/Operator of any default of any provisions of the Agreement shall not be taken or held to be a waiver of any succeeding default of such provisions or as a waiver of any provision itself. No payment or acceptance of compensation for any period subsequent to any default shall be deemed a waiver of any right or acceptance of defective performance. To be effective a waiver must be in writing and signed by the party granting such waiver.

## APPENDIX B

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### Article 12. TERM AND TERMINATION

#### 12.1 EFFECTIVE DATE

This Agreement shall become effective on July 1, 2020. The Owner/Operator shall begin to accept waste deliveries from County sources under the terms and conditions of this Agreement on this date.

#### 12.2 TERM OF AGREEMENT

The term of this Agreement shall commence on the effective date and shall continue in effect for ten (10) years and is intended to coincide with the 10-year planning period of the County Plan.

#### 12.3 EFFECT OF TERMINATION

Upon the termination of this Agreement, the obligations of the County and the Owner/Operator hereunder shall cease, provided that any obligation for the payment of money or otherwise arising from the conduct of the County or Owner/Operator pursuant to this Agreement prior to such termination shall not be affected by such termination and shall survive and remain in full force and effect.

## Article 13. MISCELLANEOUS

#### 13.1 ASSIGNMENT

(a) This Agreement may not be assigned by either the County or the Owner/Operator or its rights sold by Owner/Operator except with the written consent of the County or Owner/Operator or as further provided in this Article. The County may, however, contract with a third party or parties for the collection, transportation, processing and disposal of waste, and such contracting will not be interpreted as an assignment of this Agreement. Further, any municipality within the political boundaries of the County and/or any waste hauler may avail themselves of the rights of the County under this Agreement without violating the assignment provision, provided, however, that such municipalities and waste haulers will be bound by the covenants of the County in this Agreement. The Owner/Operator shall not assign this Agreement except to a licensed and permitted successor to the Owner/Operator capable of performing all covenants of this Agreement and with ninety (90) days prior written notice to the County and the written consent of the County.

(b) In the event of any assignment or delegation of duties under this Agreement, the delegate shall assume full responsibility and liability, and shall be responsible for compliance with and performance of all terms and conditions of this Agreement, including but not limited to provisions for sureties and assurances of availability of ten (10) year service. The assignment or delegation of any Agreement duties will not relieve the Owner/Operator or its surety of any liability and/or obligation to perform.

#### 13.2 NOTICES

Except under emergency circumstances all notices, demands, requests and other communications under this Agreement shall be deemed sufficient and properly given if in writing and delivered in person or by recognized carrier service, or sent by certified or registered mail, postage prepaid, with return receipt requested, to the following addresses:

County: Wayne County  
Attn: Solid Waste Director/Recycling Coordinator  
66 Volunteer Drive  
Honesdale, PA 18431

Either the County or Owner/Operator may, as specified above, designate any further or different addresses to which subsequent notices shall be sent.

### **13.3 ENTIRE AGREEMENT/MODIFICATIONS**

The provisions of this Agreement, together with the Agreements, Appendices, and Attachments incorporated by reference, shall constitute the entire Municipal Waste Disposal Capacity Agreement between the County and the Owner/Operator, superseding all prior disposal capacity agreements and negotiations, if any, and, except as otherwise provided in this Agreement, shall only be modified by written agreement duly executed by both parties to this Agreement. The County and Owner/Operator agree that any existing municipal waste disposal contracts between them are hereby rendered null and void and superseded by this Agreement. If there are existing Host County Fee Agreements between parties, or Host County Fee Agreements are entered during the term of this Agreement, the Host County Fee Agreements shall remain in full force and effect notwithstanding any provisions of this Agreement.

### **13.4 SEVERABILITY**

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

### **13.5 CHANGE OF OWNERSHIP**

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

### **13.6 GOVERNING LAW**

This Agreement and any question concerning its validity, construction, or performance shall be governed by the laws of the Commonwealth of Pennsylvania, irrespective of the place of execution or of the order in which the signatures of the County and Owner/Operator are affixed or of the place or places of performance. The Owner/Operator shall conduct the services provided for in this Agreement in compliance with all applicable federal and state laws and regulations.

## APPENDIX B

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### 13.7 JOINT AND SEVERABLE LIABILITY

If the Owner/Operator is comprised of more than one individual, corporation or other entity, each of the entities comprising the Owner/Operator shall be jointly and severably liable.

### 13.8 COUNTERPARTS

This Agreement may be executed in more than one (1) counterpart, each of which shall be deemed to be an original but all of which taken together shall be deemed a single instrument.

### 13.9 NO CO-PARTNERSHIP OR AGENCY

It is understood and agreed that nothing contained in this Agreement is intended or shall be construed to in any respect create or establish the relationship of co-partners between the County and the Owner/Operator, or as constituting the Owner/Operator the general representative or general agent of the County for any purpose whatsoever.

### 13.10 SECTION HEADINGS/REFERENCES

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

### 13.11 CONVENTIONS

In this Agreement:

- (a) the singular includes the plural and the plural the singular;
- (b) words importing any gender include the other gender;
- (c) references to statutes are construed as including all statutory provisions consolidating, amending or replacing the statute referred to;
- (d) references to writing include printing, typing, lithography and other means of reproducing words in a visible form;
- (e) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments thereto or changes therein entered into in accordance with their respective terms;
- (f) references to persons include their permitted successors and assigns; and
- (g) the term "including" shall mean including without limitation.

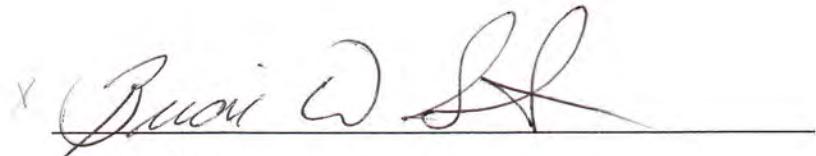
### 13.12 NONDISCRIMINATION

Neither the Owner/Operator nor any subcontractor nor any person(s) acting on their behalf shall discriminate against any person because of race, sex, age, creed, color, religion or national origin, ancestry, disability, sexual orientation, or union membership.

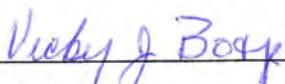
IN WITNESS WHEREOF, the County and Owner/Operator have caused this Waste Disposal Capacity Agreement to be executed as of the date and year first written.

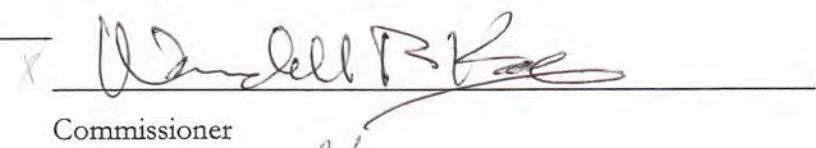
COUNTY OF WAYNE BOARD OF COMMISSIONERS

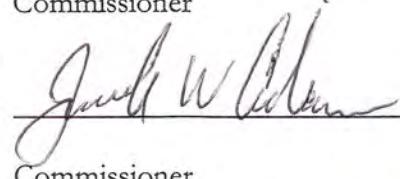
ATTEST:

  
X Brian W. Shaffer  
Commissioner

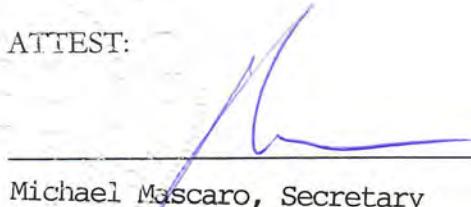
Chief Clerk

  
X Vicki J. Bopp

  
X Wendell B. Bopp  
Commissioner

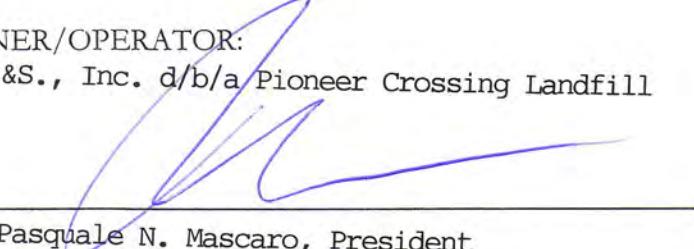
  
X Jack W. Allen  
Commissioner

ATTEST:

  
Michael Mascaro, Secretary

OWNER/OPERATOR:  
F.R.&S., Inc. d/b/a Pioneer Crossing Landfill

By:

  
Pasquale N. Mascaro, President

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## APPENDIX C

### PLAN RESOLUTION OF ADOPTION

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**RESOLUTION NO. OF 2010**

On motion of Commissioner \_\_\_\_\_ seconded by  
Commissioner \_\_\_\_\_;

**WHEREAS**, the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, No. 97, as amended (Act 97) established a comprehensive planning and regulatory framework for the storage, collection, transportation, processing and disposal of solid waste, including municipal waste; and

**WHEREAS**, the Municipal Waste Planning, Recycling and Waste Reduction Act, Act of July 28, 1988, P.L. 528, No. 101 (Act 101) gave the County primary responsibility for planning for municipal waste management within its boundaries and for ensuring sufficient disposal capacity for all municipal waste generated within its boundaries; and

**WHEREAS**, the 2002 Wayne County Municipal Waste Plan was deemed under Section 501(c)(2) of Act 101 to be a plan approved under Act 101; and

**WHEREAS**, Section 303(d) of Act 101 authorizes counties to enter into an agreement with another person, including a municipal authority, pursuant to which that person undertakes to fulfill some or all of the County's responsibilities under Act 101 for municipal waste planning and implementation of the approved County Plan; and

**WHEREAS**, the Board of Wayne County Commissioners designated the Wayne County Solid Waste Advisory Committee (SWAC) as the agency to prepare an update of the 2002 Plan; and

**WHEREAS**, pursuant to the request of the Board of Wayne County Commissioners, Wayne County Solid Waste Director with the SWAC has prepared the Wayne County Municipal Waste Management Plan Update of 2010 (the 2010 Plan); and

**WHEREAS**, the Board of Wayne County Commissioners believes that the 2010 Plan is appropriate and necessary to protect the health and welfare of the residents of the County; and

**WHEREAS**, the Board of Wayne County Commissioners believes that effecting and carrying forth the 2010 Plan will enable the County and each municipality to continue to realize the benefits of an effective, efficient, reliable and environmentally safe system for the storage, transportation, processing and disposal of solid waste.

**NOW, THEREFORE**, upon consideration of the foregoing matters, the Board of Wayne County Commissioners approves the following Resolutions:

1. **RESOLVED**, the 2010 Wayne County Municipal Waste Management Plan Update is approved.

2. **RESOLVED**, that the proper officers of the County are authorized and directed to take such actions and execute and deliver on behalf of the County such instruments as shall be necessary or appropriate to carry forth the 2010 Plan.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**COUNTY OF WAYNE**

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

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

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

Attest:

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Chief Clerk

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## **APPENDIX D**

### **SOLID WASTE ADVISORY COMMITTEE (SWAC) MEETING MINUTES**

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SWAC no.1 – 12-06-2018  
SWAC no.2 – 08-08-2019  
SWAC no.1 – 02-20-2020

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# MEETING MINUTES

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## SOLID WASTE ADVISORY COMMITTEE MEETING – SWAC(1)

DATE: 12-06-18

### ATTENDEES

- Steve Deasy, MSW Consultants
- Carl Hursh, MSW Consultants
- Randy Heller, Wayne County
- (See attached SWAC Sign-in Sheet)

### AGENDA

1. **Introductions/Background**
2. **Plan Requirements**
3. **Project Schedule**
4. **MSW Generation**
5. **Project Goals**
6. **Open Discussion**

### MEETING MINUTES

**Purpose:** This initial SWAC meeting introduced Wayne County SWAC members to the solid waste planning process and approach by MSW Consultants to complete the State-required 10-year Municipal Solid Waste Management Plan update (MWMP). MSW Consultants was contracted by the County in June 2018 to lead the solid waste planning process. Steve Deasy from MSW Consultants facilitated the SWAC meeting and presentation. The SWAC provided feedback during open discussions to identify review challenges facing the County and to provide input on project goals.

Randy Heller, Wayne County Recycling Coordinator, conducted a role call and introduced Steve Deasy and Carl Hursh of MSW Consultants, LLC, the firm hired by Wayne County to develop the Plan update. Steve illustrated the goals of the Plan and the responsibilities of the Committee with a slide show and led a general discussion.

Steve explained that Pennsylvania's Act 101 of 1988 delegates solid waste planning responsibilities to counties, as is done in many other states. The overall goals of the Plan are to ensure solid waste disposal capacity and to achieve a 35 percent recycling goal, utilizing local markets for recyclables where possible. The Plan must update conditions and facts related to solid waste generated within the county and provide disposal capacity for the waste that cannot be recycled.

The role of the Committee is to provide feedback in shaping the plan, including Chapters 1 – 4, and to review the draft Plan and provide comment as needed.

Steve identified continued funding of the Wayne County Recycling Program as a significant issue in updating the Plan. The \$4.00/Ton administrative fee is a concern due to industry reluctance to pay administrative fees, which, in this case generates \$80,000/year to support the Wayne County Recycling

## MEETING MINUTES

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Center and its operations. The Plan will need to identify how alternative support may be generated to replace the administrative fee income by focusing on assuring that waste disposal and recycling needs are integrated.

Steve explained that a 14-24 month time frame is typical for development of a plan but he anticipates a 12-14 month term. Steve suggested that the Plan address illegal dumping in the Wayne County and include a mapping of illegal dumps in the County. Steve recommended that the Plan be simple, straightforward and broad, because a broad plan can be flexible and can assure applicability in later years.

In describing soliciting for disposal capacity assurance, Steve recommended that Wayne County ask for recycling and other services as part of a bid solicitation. For example, asking that disposal fees be waived for materials recovered from the clean-up of illegal dump sites could be an option. Another example would be bidders offer an electronics collection program since electronics are banned from disposal. Jean Avery, Office Manager at the Recycling Center, agreed that proper disposition of electronics is a significant problem in the county as the office receives 5-10 calls/day related to electronics.

Steve related that a recent revision of the Carbon County Solid Waste plan resulted in an unexpected outcome: an offer from a landfill to waive disposal charges for residential housing construction and demolition (C&D) materials. Having an affordable outlet for C&D waste materials could impact illegal dumping in Wayne County.

Another problem with the County's Administrative Fee is that it can lead to under-reporting of the volume of waste collected, particularly in rural areas. Steve projected that the current solid waste generation in Wayne County of 0.82 Tons per person per day has the potential to decline each year until 2030 the 10-year anniversary of the Plan revision. This projected decline in solid waste generated within Wayne County, and increases in recycling and other diversion measures as part of an integrated solid waste management approach, should impact the annual volume of solid waste requiring disposal.

### Open Discussion

Following the presentation, a questions and answers session with open discussion took place. The SWAC asked a number of questions, starting with how can cleaned dumpsites be kept clean? This can be accomplished through a partner approach, including the Keep Pennsylvania Beautiful illegal dumping camera surveillance program. Carbon County has G.I.S mapped illegal dumpsite locations to prioritize those posing the greatest threat to health and the environment. Randy Heller reminded the group that "trash begets trash." If dumps are cleaned up they are less likely to attract further dumping. Steve Deasy suggested an enforcement focus on contractors avoiding landfill disposal as repeat offenders.

Expanding recycling opportunities for additional materials. Brian Fulp of the Himalayan Institute described the institution's abilities to recycle household alkaline batteries, expanded polystyrene, and plastics. Steve Deasy remarked the efforts to recycle lightweight materials that require significant hauling distances may increase the Institute's carbon footprint. Carl Hursh described how packaging is evolving to lighter weight aluminum cans and PET bottles, and other lightweight substitute packages such as pouches. Steve concurred by referencing how the number of PET bottles per bale has increased over time. Randy Heller stated that market assurance is needed prior to including additional materials to the menu of items accepted at the Wayne County Recycling Center.

Brian Fulp provided some details about the Himalayan Institute: 10,000 visitors/year, 110 residents, 400-acre site, a 90,000 SF. dorm-like building, 30,000 SF barn, \$12,000 annual disposal cost, \$24,000

## MEETING MINUTES

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– \$25,000 annual recycling cost including single stream collected materials. Steve Deasy re-emphasized the option of leveraging a disposal capacity contract to include needed recycling services.

Where to recycle? Jocelyn Cramer of S.E.E.D.S. provide sustainability education and recommended that it, and Wayne County's recycling education outreach, be aligned. Jocelyn identified a NEPA website that is under construction that identifies local recycling opportunities: [www.neparecycles.com](http://www.neparecycles.com) Jocelyn recommend the website be linked to the Wayne County website.

Steve Deasy recommended that recycling programs be designed knowing what can go where and asked the group to identify municipal recycling problems. Responses included:

- Municipalities call the County for advice on problems.
- Where to recycle CFL bulbs?
- The Recycling Center should join the County Department Daily Alerts
- Tire recycling - one of two items the Recycling Center charges for recycling \$3.00 for tires off the rim, \$5.00 for tires on rim, \$10 for tractor trailer tires. White goods requiring Freon removal are charged \$10.00/unit
- Steve Deasy pointed out the recycling glass containers impacts Recycling Performance Grants but cautioned that the glass recycling industry may be in danger of collapse.
- Steve Deasy recommended expanding existing programs, such as scrap recycling, to generate revenue.
- Randy stated that all material received at the Recycling Center generate revenue due to source separation. Good quality equates to the ability to market the materials.
- Steve Deasy suggested RAA as a source for standardizing recycling education and containers.
- Both Randy and Steve suggested the value of surveillance cameras, whether active or not, as a deterrent to dumping and other undesired activities

The meeting adjourned at 8:30 PM without a specific date set for the next meeting.

### Action Items

Item#	Description	Responsible Party
1.	Develop illegal dump site information and map	
2.	Schedule next SWAC	



# Wayne County

## Solid Waste Department

Wayne County Recycling Center  
66 Volunteer Drive  
Honesdale, PA 18431-9420  
70-253-9727 FAX: 570-253-9399

RANDY S. HELLER  
SOLID WASTE/RECYCLING  
COORDINATOR

JEAN AVERY  
OFFICE MANAGER

RANDY S. HELLER  
County Representative/Official

## MEETING MINUTES

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### SOLID WASTE ADVISORY COMMITTEE MEETING – SWAC(2)

DATE: 08-08-19 (7:00 PM TO 9:00 PM)

#### ATTENDEES

- Steve Deasy, MSW Consultants
- Randy Heller, Wayne County
- (See attached SWAC Sign-in Sheet)

#### AGENDA

1. Plan Updates Status
2. Disposal Capacity
3. Municipal Survey
4. Residential Survey
5. Open Discussion

#### MEETING MINUTES

**Purpose:** This second SWAC meeting updated Wayne County SWAC members on the status of the solid waste planning process and Plan document progress by MSW Consultants. Steve Deasy from MSW Consultants facilitated the SWAC meeting and conducted a PowerPoint presentation followed by open discussion with the SWAC regarding key challenges and the most important programs and services needed in Wayne County.

Randy Heller, Wayne County Recycling Coordinator, conducted a role call and introduced Steve Deasy of MSW Consultants, LLC.

Steve updated the SWAC regarding the status of the Plan document and noted that most of the data and text in Chapters 1-5 has been drafted. Steve explained the next steps are to fill in some data gaps and get a draft to the County for review, prior to sharing with the SWAC.

Next, Steve updated the SWAC on the RFP for disposal capacity noting that 5 landfills and 2 transfer stations responded. Steve explained the County is now in the process of negotiating and executing contracts, with the priority to attempt to secure the Sustainability Fee of \$4 per ton. Steve reviewed the RFP results data showing that the responding landfills offered sufficient capacity for the 10-year planning period and that the landfills also offered free disposal capacity for illegally dumped wastes.

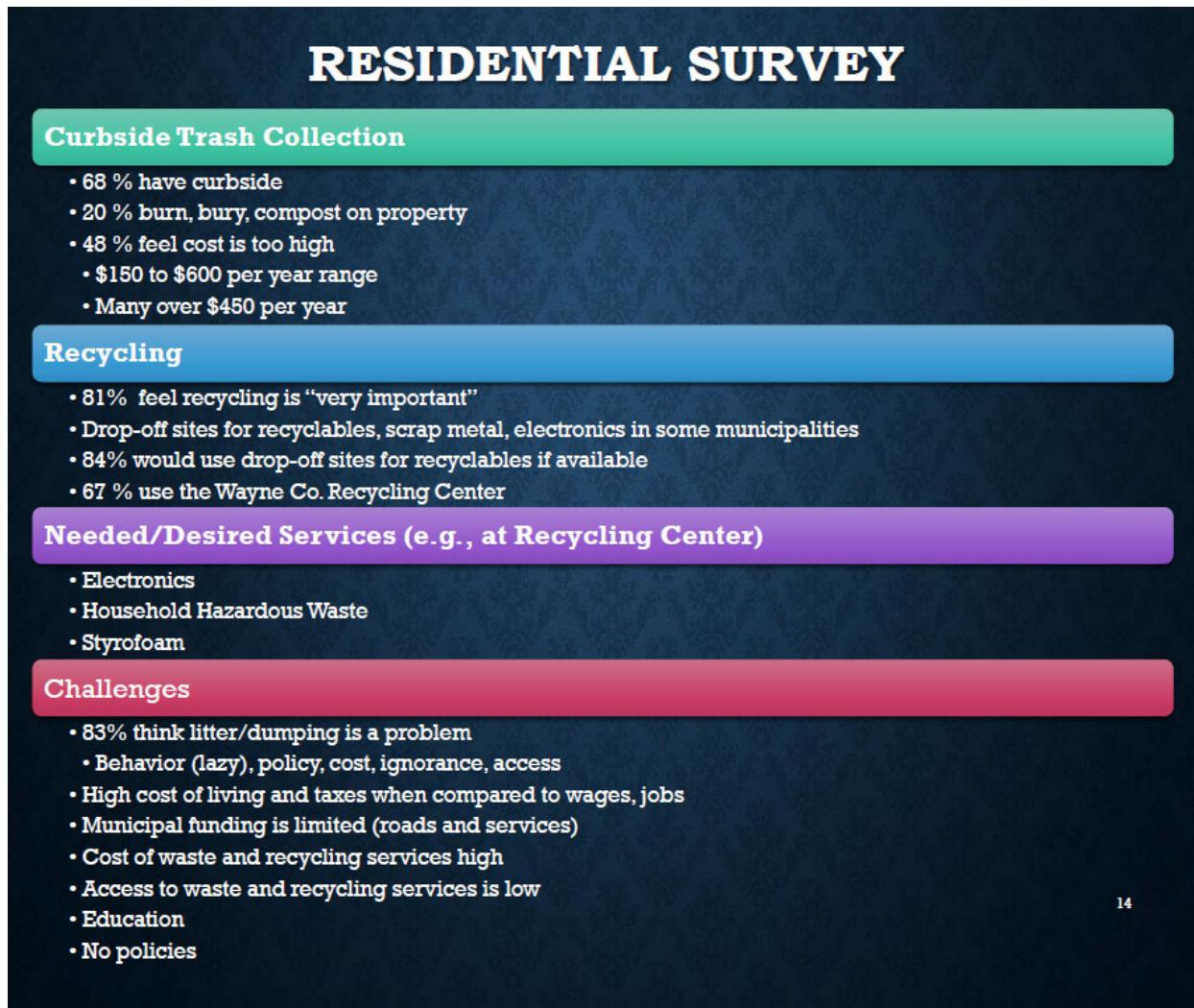
Steve review the results of the municipal and residential surveys. Steve noted that 100% of the municipalities responded. Steve reviewed the following data points from the municipal survey:

- Less than 20% of municipalities have solid waste ordinances
- 100% of residents have “access” to trash collection. This point lead to a discussion about access versus the roughly 30 percent of households that don’t have trash service.

## MEETING MINUTES

- None of the municipalities have composting programs, but two municipalities collect leaves or yard waste.

The following residential survey results were reviewed.



**RESIDENTIAL SURVEY**

**Curbside Trash Collection**

- 68 % have curbside
- 20 % burn, bury, compost on property
- 48 % feel cost is too high
- \$150 to \$600 per year range
- Many over \$450 per year

**Recycling**

- 81% feel recycling is "very important"
- Drop-off sites for recyclables, scrap metal, electronics in some municipalities
- 84% would use drop-off sites for recyclables if available
- 67 % use the Wayne Co. Recycling Center

**Needed/Desired Services (e.g., at Recycling Center)**

- Electronics
- Household Hazardous Waste
- Styrofoam

**Challenges**

- 83% think litter/dumping is a problem
- Behavior (lazy), policy, cost, ignorance, access
- High cost of living and taxes when compared to wages, jobs
- Municipal funding is limited (roads and services)
- Cost of waste and recycling services high
- Access to waste and recycling services is low
- Education
- No policies

## Open Discussion

Following a review of the residential survey results, an open discussion was held among the SWAC. There was a consensus that electronics recovery should be a priority. Steve and Randy Heller reviewed the alternatives to collect electronics, including at the Wayne County Recycling Center. It was discussed that the County could competitively secure a non-OEM processor which would enable the county to charge fees that would likely be based on the weight of electronics delivered to the Recycling Center by the Public. SWAC members noted the key barriers in the county including the resistance of many municipalities to work cooperatively, the income gaps, road conditions and complex human behaviors. A discussion was held with a SWAC participant from the Wayne County Memorial Hospital. This discussion revealed the challenges of managing special wastes from the hospital, the high cost of hauling pulls (\$325), and the different scales across the main hospitals and its 25 other

## MEETING MINUTES

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satellite operations. However, it was concluded there may be opportunities for the County (Recycling Center) and the hospital to work together to manage certain recyclable materials. Finally, it was discussed that education and information sharing was a priority. It was discussed that NEPArecycles is developing standard education materials and it makes sense to consider ways to effectively distribute standardized messages to municipalities and the public. A SWAC member commented that even the containers provided by haulers for recycling don't have a recycling symbol or sticker.

The meeting adjourned at 9:00 PM.

### Action Items

Item#	Description	Responsible Party
1.	Investigate electronics recovery	County & MSW Consultants
2.	Review the NEPArecycles info and share markets info	MSW Consultants



# Wayne County

## Solid Waste Department

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RANDY S. HELLER  
SOLID WASTE/RECYCLING  
COORDINATOR

JEAN AVERY  
OFFICE MANAGER

Randy S. HELLER (S.W. Recycling  
Coordinator)  
County Representative/Official  
Randy S. Heller

# MEETING MINUTES

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## SOLID WASTE ADVISORY COMMITTEE MEETING – SWAC(3)

**DATE: 02-20-19 (7:00 PM TO 8:15 PM)**

### ATTENDEES

- Steve Deasy, MSW Consultants
- Randy Heller, Wayne County
- (See attached SWAC Sign-in Sheet)

### AGENDA

- **Plan Finalization Update**
- **Disposal Capacity Agreements**
- **Opportunities/Strategies**
- **Open Discussion/Plan Comments**

### MEETING MINUTES

**Purpose:** This third and final SWAC meeting updated Wayne County SWAC members on the key aspects of the overall solid waste planning process and conclusion of the final draft Plan. Steve Deasy from MSW Consultants facilitated the SWAC meeting and conducted a PowerPoint presentation followed by open discussion with the SWAC. Steve began the presentation by clarifying the benefits of recycling as compared to raw resource extraction and highlighted the importance of County and local government involvement in proper waste management and materials recovery. Steve recapped the key elements of the Plan: updated data, waste projections, contractual arrangements for disposal capacity, SWAC participation and the strategies to advance proper waste management and recycling in Wayne County. The in-kind services secured under contract, including free disposal of up to 50 tons of illegal dump waste at the Beach Lake Transfer Station, was reviewed. It was noted the education initiatives are ongoing, and investigations into electronics recycling opportunities are underway.

### **Open Discussion**

The open discussion among the SWAC is summarized as follows:

- A discussion was held about medical wastes and it was noted that medical waste are heavily regulated, and while included in the Plan, the details regarding final disposal of these materials is not required. The Plan acknowledges that many medical facilities use on-site incineration and used licensed contractors for medical waste transport and processing.
- A discussion was held about wastewater, dewatered sludge and biosolids land application. The release of overflow wastewater into streams and the impacts from hormones and other chemicals that are not removed through wastewater processing was discussed. It was noted the Plan emphasizes solid waste, not wastewater, in the context of disposal capacity. A representative from Koberlein explained their process to land apply biosolids and relayed the benefits of this practice when it is done right and with DEP inspections.

# MEETING MINUTES

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## Grant

Randy Heller requested SWAC members to send him the hours they spent on meetings and plan review and travel to support the planning process for his records as related to preparing the Act 101 grant.

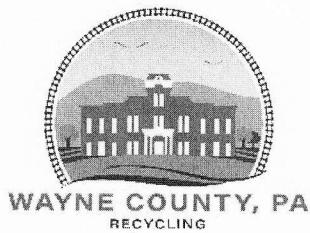
## Plan Adoption

Randy Heller called for a motion to recommend the County Commissioners adopt the Plan. The motion was made by Brian Fulp, seconded by Alan Jones, and all (SWAC members) in favor.

The meeting adjourned at 8:15 PM.

## Action Items

Item#	Description	Responsible Party
1.	Commissioners to Adopt Plan (resolution)	Wayne County
2.	Compile Final Plan documents	MSW Consultants
3.	Distribute Final Plan to PADEP	Wayne County



# Wayne County

## Solid Waste Department

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JEAN AVERY  
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RANDY S. HELLER  
County Representative/Official

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**MSW CONSULTANTS**

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