RESOLUTION #12-36

Of Salem County Improvement Authority
In The County Of Salem, State Of New Jersey

Resolution Authorizing an Agreement
To Provide Solid Waste Disposal Services

WHEREAS, Gloucester City is desirous of contracting with the Salem County Improvement Authority (SCIA) Solid Waste Division to Provide Solid Waste Disposal Services; and

WHEREAS, the Salem County Improvement Authority (SCIA) is desirous of providing those solid Waste Disposal Services to Gloucester City in accordance with the terms and conditions of the attached agreement; and

WHEREAS, the Interlocal Services Act, N.J.S.A. 40A:11-10 et seq., authorizes and empowers the Salem County Improvement Authority (SCIA) and Gloucester City to enter into such an agreement;

NOW, THEREFORE, BE IT RESOLVED that the Salem County Improvement Authority Board does hereby authorize the Executive Director and Division Manager of Solid Waste to execute an agreement to Provide Solid Waste Disposal Services to Gloucester City as described in said agreement for the term commencing, March 19, 2012 and terminating December 31, 2012, subject to review and approval of the Authority Solicitor and Risk Manager.

BE IT FURTHER RESOLVED that a copy of the agreement shall be available for public inspection at the Salem County Improvement Authority Administration Office at 199 East Broadway, Salem, NJ 08079.

ATTEST:

Ron Howard, Secretary

John Ober, Chairman

March 26, 2012

Date

CERTIFICATION

I hereby certify the above to be a true copy of a resolution adopted by the Salem County Improvement Authority at a regular meeting held March 26, 2012.
SHARED SERVICES AGREEMENT SOLID WASTE DISPOAL – PUBLIC ENTITY

THIS AGREEMENT made this [___] day of [______________], 2012 is made between the SALEM COUNTY IMPROVEMENT AUTHORITY, SOLID WASTE DIVISION with its principal place of business located at 199 East Broadway, Salem, NJ 08079 (hereafter referred to as "SCIA"); and GLOUCESTER CITY with its principal place of business located at 512 Monmouth Street, Gloucester City, NJ 08030 hereafter referred to as "Customer"); and

WITNESSETH

WHEREAS, SCIA is the owner and operator of the Salem County Solid Waste Division Landfill (hereafter "Landfill") located at 52 McKillip Road, P.O. Box 890, Alloway, New Jersey 08001 in Salem County, New Jersey; and

WHEREAS, Customer is a hauler and/or generator of solid waste and desires to reserve certain space at the landfill for the disposal of its solid waste; and

WHEREAS, both SCIA and Customer desire to memorialize their agreement for the disposal of solid waste at the landfill by Customer during the calendar year 2012; and

WHEREAS, the Interlocal Services Act, N.J. S. A. 40A:11-10 et seq, authorized and empowers the SCIA and other public entities to enter into this Agreement and for the SCIA to provide the services contemplated by this Agreement;

IN CONSIDERATION of their mutual promises made herein, and for other good and valuable consideration, the parties hereby agree as follows:

1. TERM

1.1. This Agreement shall be effective at 12:01 AM on March 19, 2012 and will terminate as of 11:59 PM on December 31, 2012. Thereafter the parties may agree to extend the terms of this Agreement for a period of one (1) year, or any other time period agreeable to the parties, upon the same terms as contained herein or as modified by the parties by written agreement.

2. RESERVATION OF DISPOSAL RIGHTS

2.1. In accordance with the terms and conditions of this Agreement, Customer agrees to deliver, and SCIA agrees to accept and dispose of at its Landfill, “Acceptable Waste” as defined hereinafter:

“Acceptable Waste” CV 7 Lightly Processed Materials-Street Sweepings
Approximately 400 tons per year

2.2 In the event that the Customer generates total Acceptable Waste tonnage in excess of the tonnage purchased during the Term above, then, in return for the payment of the per ton Contract Price as provided in Section 3, SCIA hereby agrees to accept such additional volume of Acceptable Waste generated by Customer (hereinafter referred as the Excess Volume), provided such Excess Volume shall not exceed ten (10.0%) percent of the annual maximum tons as contained herein and provided that Customer shall pay the contract price for such excess volume. The volume/tonnage that exceeds the Excess Volume will be billed at the non-contract rate established by SCIA.
2.3. For purposes of this section, the solid waste volume of any Affiliate of Customer that delivers Acceptable Waste to the Landfill shall account for the annual minimum volume as set forth in this Section.

2.4. The parties may agree to increase or to decrease the above annual minimum and maximum tonnage for Acceptable Waste disposal, but any such modification shall be in writing and signed by both parties.

2.5 Customer and its Affiliates shall have a limited license to enter the Landfill for the sole purpose of off-loading Acceptable Waste at an area designated, and in the manner directed by the SCTA. Customer shall, and shall ensure its Affiliates comply with all rules and regulations of and affecting the Landfill.

2.6 SCIA agrees to provide all on-site services including certified scales, waste compaction equipment, qualified personnel, billing, waste inspection, verification of waste origin, reporting to the NJDEP, and other materials necessary to insure proper disposal of Acceptable Waste emanating from Customer, in accordance with all Federal, State and Local regulations and permits. SCIA will not be responsible for collection and transportation of Acceptable Waste to the Landfill.

2.7 SCIA currently operates on the following schedule:

<table>
<thead>
<tr>
<th>Day</th>
<th>Hours</th>
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<tbody>
<tr>
<td>Monday</td>
<td>7:45 am- 3:30 pm</td>
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<tr>
<td>Tuesday</td>
<td>7:45 am- 3:30 pm</td>
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<tr>
<td>Wednesday</td>
<td>7:45 am- 3:30 pm</td>
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<tr>
<td>Thursday</td>
<td>7:45 am- 3:30 pm</td>
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<tr>
<td>Friday</td>
<td>7:45 am- 3:30 pm</td>
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<tr>
<td>Saturday</td>
<td>7:45 am-12:00 pm</td>
</tr>
<tr>
<td>Sunday</td>
<td>closed</td>
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The hours shall be sufficient to accommodate the needs of our customers in accordance with the Tarff and direction of the NJDEP. During declared states of emergency or severe weather conditions, the facility may temporarily alter (extend or curtail) the hours of operation with NJDEP approval. Notice of schedule changes will be provided by e-mail and fax.

3. FEES AND PAYMENT

3.1. In exchange for the solid waste disposal services as provided for herein, Public Entity (Municipal /County) Customer agrees to bring to SCIA 100% of their CV7 Lightly Processed Waste-Street Sweepings generated by the public entity and to pay the SCIA the following fees (which includes all relevant costs, taxes and surcharges as may be levied by the State, Local and Federal governmental agencies as well as discounts):

| Disposal Fee ($/ton) | CV7   | $7.00/Ton |

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3.2. SCIA will invoice Customer for solid waste deliveries. Payment will be due within thirty (30) days of the invoice date. For each invoice paid after said forty-five (45) day period, SCIA will charge, and the Customer will pay, the C-10 Municipal, commercial, residential non-contract rate for the invoice together with a late fee in the amount of one and one-half percent (1½%) per month. SCIA will assess and Customer shall pay a $50.00 fee for any returned check.

3.3 Customers that fail to remit payment as per the terms contained herein shall be considered in breach of this Agreement and SCIA will be entitled to all remedies as contained in Article 4 hereafter.

3.4 Fees for solid waste disposal services, other than Acceptable Waste referred to in #2 above, will be in accordance with the rate scheduled attached to this Agreement as “Schedule A” and made a part hereof.

4. INSPECTION AND REJECTION OF WASTE

4.1 Title to and risk of loss and responsibility for Acceptable Waste delivered to the Landfill by Customer or its Affiliates shall pass to the SCIA at the time that Acceptable Waste is removed from the delivery vehicle at the Landfill. Title to waste material which does not conform to the definition of Acceptable Waste shall remain with Customer and shall not be deemed to pass to the SCIA. Acceptance of any waste material delivered by Customer or its Affiliates to the Landfill shall not impair, or operate as a waiver of any remedy available to the SCIA, including revocation of acceptance in the event that the material is later discovered to be nonconforming to the definition of Acceptable Waste. The SCIA may inspect, sample, analyze and test any material or require Customer to produce a sample of the material to be disposed of by Customer hereunder; however, the SCIA’s exercise or a failure to exercise such right shall not relieve the Customer of its obligations under this Agreement to deliver only Acceptable Waste. The SCIA in the exercise of its sole but reasonable discretion shall have the right to reject any load or part thereof which the SCIA reasonably believes does not conform to the definition of Acceptable Waste. Customer shall be responsible for promptly removing any nonconforming waste that has been offloaded from the Landfill, but in no event later than three (3) days after notification by SCIA of the need to do so, at the sole cost and expense of Customer and in compliance with all applicable laws, rules and regulations. If Customer fails to comply with its obligation to promptly remove the offloaded nonconforming waste hereunder, the SCIA may arrange for the removal and disposal of nonconforming waste or other materials at the sole cost and expense of Customer.

5. TERMINATION

5.1 The SCIA may terminate this Agreement:

(a) in the event Customer or is Affiliates breaches any term or provision of this Agreement if Customer or the Affiliates, as the case may be, fails to remedy such breach within two (2) business days of receipt of written notice of same from the SCIA to Customer or its Affiliates; or

(b) If Customer delivers material other than Acceptable Waste to the Landfill on more than three (3) occasion during the Term of this Agreement; or

(c) For non-payment in accordance with Section 3 hereof; or

(d) If Customer becomes insolvent, the subject of an order for relief in bankruptcy, receivership, reorganization, dissolution or similar law, or makes an assignment for the benefit of creditors.
6. BREACH AND REMEDIES

6.1 A breach of this Agreement by Customer shall cause this Agreement to be considered null and void and of no further effect. All payments made by Customer to SCIA to the date of said breach will be retained by SCIA. Additionally, in the event SCIA sues Customer for non-payment, SCIA will be entitled to receive, and Customer will pay, all costs and counsel fees incurred by SCIA as a result of said law suit.

6.2. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law or by any other agreement. The exercise by a party of any right or remedy will not preclude that party from exercising any other right or remedy. Any party may pursue its rights and remedies in such order as it determines.

6.3. The failure or delay of either party in enforcing any right or obligation or any provision of this Agreement in any instance shall not constitute a waiver thereof in that or any other instance. Either party may only waive any such right, obligation or provision by an instrument in writing signed by it.

7. INDEMNIFICATION

7.1 Excepting the gross negligence and willful misconduct of SCIA, SCIA's agents and employees, Customer shall indemnify SCIA and its officers, board members, directors, employees and agents ("SCIA Indemnified Parties") and save them harmless from and against any and all claims, actions, damages, liabilities, fines, penalties and expense in connection with loss of life, personal injury, violation or alleged violation of law and/or damage to property arising from or out of any act or omission of Customer, its Affiliates and their respective agents, contractors or employees including without limitation the delivery to the Landfill of any material that fails to conform to the definition of Acceptable Waste. In case any of the SCIA Parties shall, without fault on their part, be made a party to any litigation commenced by or against Customer, then Customer agrees to protect and hold such SCIA Indemnified Parties harmless. Customer agrees also to pay all costs, expenses and reasonable attorney's fees that may be incurred or paid by any SCIA Indemnified Parties in enforcing the covenants and agreements in this Agreement.

7.2. Excepting the gross negligence and willful misconduct of SCIA, SCIA's agents and employees, Customer shall operate in and about the Landfill and all other portions of the Landfill at its own risk, and hereby releases SCIA, its agents and employees from any claims for damages or injury to the full extent permitted by law.

8. INSURANCE

8.1. At all times during the Term of this Agreement and at any other time Customer shall have access to the Landfill to ready the same for its use, Customer shall, at its own cost and expense, carry and maintain the following coverage with insurers authorized to do business in New Jersey and acceptable to SCIA. If any of the insurers have an A.M. Best rating; the rating shall be no less than:

(a) Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than $3,000,000* per occurrence and/or aggregate combined single limit for Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following: (A.)
Contractual Liability; (B.) Products and Completed Operations; (C.) Independent Contractors Coverage; (D.) Broad Form General Liability Extensions or equivalent.

  (b)  Worker's Compensation Insurance including Employers' Liability Coverage in accordance with the statutes of the State of New Jersey.

  (c)  Motor Vehicle Liability Insurance, including applicable No-Fault coverage, with limits of liability not less than $3,000,000* per accident combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

  (d)  Pollution Liability Insurance with limits of liability not less than $1,000,000 per pollution incident e / $1,000,000 annual aggregate. This insurance shall provide coverage for bodily injury, including death; loss or damage to property, including loss of use of damaged property or of property that has not been physically injured; cleanup and monitoring costs; and costs and expenses incurred in the investigation, defense, or settlement of claims.

*Please note: A primary general and auto liability limit of $1,000,000 and an excess/umbrella limit of $2,000,000 will satisfy the above requirements in lieu of $3,000,000 primary limit.

The following shall be Additional Insureds on the general liability policy: The Salem County Improvement Authority, including all appointed officials, all employees and volunteers.

  8.2. Every policy of insurance referred to in this Agreement and each certificate therefor issued by the insurer shall (i) contain an express agreement by the insurer that no cancellation or nonrenewal in the coverage afforded under said policies will be effective until at least thirty (30) days’ prior written notice of such cancellation, non-renewal, or reduction has been given by the insurer to SCIA; Customer shall promptly advise SCIA of any policy cancellation, reduction, non-renewal, or amendment.

  8.3. If Customer shall fail to maintain such insurance as is required by this Section, SCIA may, in the exercise of its sole discretion, either deny Customer access to the Landfill until such time as the required insurance has been obtained or reinstated by Customer to the satisfaction of SCIA or, terminate this Agreement in accordance with Article 5 hereof.

  8.4. Within ten (10) days of the execution of this Agreement, Customer is required to provide SCIA with a certification of insurance. The certificate of insurance should reflect the terms, and amounts of coverage stated in this section of the Agreement.

  9. NOTICES

  9.1. Any notice, demand or request required or agreed to be given under this Agreement by either party shall be sufficiently given when mailed by certified mail, return receipt requested or by a nationally recognized overnight delivery service, addressed to the party to be notified as follows:

To SCIA:
  Deborah Turner-Fox, Executive Director
  Salem County Improvement Authority
  199 East Broadway
  Salem, NJ 08079
With a copy to:
Adam I. Telsey, Esquire
107 W. Broadway
Salem, NJ 08079

To Customer:

10. ASSIGNMENT

10.1. Customer may not transfer or assign any of its rights or obligations under this Agreement without the prior written consent of SCIA which consent shall be within the sole discretion of SCIA except as set forth herein. Any such transfer, assignment or attempt thereat will be null and void; provided, however, that Customer may, without the consent of SCIA, transfer and assign its rights and obligations under this Agreement to any corporation which succeeds by merger, consolidation or purchase to all or substantially all of the business and assets of Customer and which assumes all of the obligations of Customer under this Agreement, or to any Affiliate (as that term is hereinafter defined) of Customer. An "Affiliate" is a person, corporation or other entity which controls or is controlled by or is under common control with Customer. Control means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of an entity, whether by ownership of voting securities, contract or otherwise. In the case of any transfer or assignment permitted by this Section, the Customer will remain liable for the performance of all of its obligations under this Agreement regardless of whether those obligations arose before or arise after the transfer or assignment.

11. MISCELLANEOUS

11.1. In the event SCIA is prevented from carrying out its obligations under this Agreement due to any law, administrative ruling, judgment, lawsuit, acts of God, strikes, lockouts, riot, fires, etc. or for any other reason beyond the control of SCIA, then and in that event, SCIA may terminate this Agreement immediately, and as of such termination, the terms and conditions of this Agreement shall be considered null and void and the parties no longer bound to one another. SCIA may also suspend Customer’s right to dispose of Acceptable Waste at the landfill during the occurrence of an event of uncontrollable circumstance if the period of uncontrollable circumstance shall be of limited duration, in the reasonable determination of SCIA.

11.2. Should the Customer petition a judicial body, court, or tribunal with applicable jurisdiction for bankruptcy protection, liquidation and/or receivership, or should SCIA be compelled by law to do so, SCIA reserves the right to terminate this Agreement immediately without written notice to Customer. If so terminated, this Agreement shall be considered null and void and the parties no longer bound to one another.

11.3. Customer’s use of the landfill shall be controlled by the Rules and Regulations applicable to the operation of the landfill and to all requirements imposed thereby on waste disposers by the State of New Jersey, SCIA or any other governmental agency which has jurisdiction over the landfill.
11.4. If any provision of this Agreement is determined to be illegal, then such provision shall be deemed severable from and the remainder of the Contract shall not be affected thereby.

11.5. This Agreement is made in the State of New Jersey and the validity, interpretation and performance of this Agreement shall be governed by New Jersey law.

11.6 This is the entire Agreement between the parties and may not be modified or amended except by a written document signed by the party against whom enforcement is sought.

11.7 This Agreement may be signed in more than one counterpart, in which case each counterpart shall constitute an original of this Agreement.

11.8 Paragraph headings are for convenience only and are not intended to expand or restrict the scope or substance of the provisions of this Agreement. Wherever used herein, the singular shall include the plural, the plural shall include the singular and pronouns shall be read as masculine, feminine or neuter as the context requires.

11.9 The prevailing party in any litigation relating to this Agreement shall be entitled to recover its reasonable attorneys' fees and costs from the other party.

11.10 The parties hereto irrevocably consent to and confer personal jurisdiction and venue on the federal and state courts within Salem County, New Jersey for any litigation involving this Agreement.

11.11 Customer agrees that it will not, except as required by law or valid legal process, or with the prior written consent of SCIA, disclose the terms of this Agreement to any person other than employees, directors, officers, shareholders and agents or representatives of Customer who need to know same.
IN WITNESS WHEREOF, the parties have signed this Agreement as of the day and year first above written.

ATTESTED TO BY: SALEM COUNTY IMPROVEMENT AUTHORITY

_________________________________________ __________________________________________

BY: DEBORAH TURNER-FOX, EXECUTIVE DIRECTOR

STATE OF NEW JERSEY

) SS:

COUNTY OF SALEM

I CERTIFY that on the ________day of__________, 2012 __________________, Personally came before me and proved to my satisfaction that this person:

(a) was the maker of the attached instrument; and
(b) was authorized to and did execute this instrument as the____________________
of THE SALEM COUNTY IMPROVEMENT AUTHORITY, the entity named in this instrument.

Signed and sworn to before
me on this ______day of ________________, 2012

_________________________________________

Notary Public of the State of New Jersey

ATTESTED TO BY: (Business Name_______________________________________)

_________________________________________

By: ________________________________

(______________________________ print name)

STATE OF

) SS:

COUNTY OF

I CERTIFY that on the ________day of__________, 2012 __________________, Personally came before me and proved to my satisfaction that this person:

(a) was the maker of the attached instrument; and
(b) was authorized to and did execute this instrument as the____________________
of ________________________________, the entity named in this instrument.

Signed and sworn to before
me on this ______day of ________________, 2012

_________________________________________

Notary Public of the State of New Jersey