ATTACHMENT #3

INTERMUNICIPAL AGREEMENT
BETWEEN THE TOWN OF BROOKHAVEN and THE INCORPORATED VILLAGE OF MASTIC BEACH

THIS AGREEMENT (the "Agreement") made between the **TOWN OF BROOKHAVEN ("BROOKHAVEN")**, a municipal corporation of the State of New York, having its principal offices at One Independence Hill, Farmingville, New York 11738 and **the VILLAGE OF MASTIC BEACH** a municipal corporation of the State of New York, having its principal offices at _____ (hereinafter the "_____") provides as follows:

RECITALS:

WHEREAS, municipal corporations in the State of New York, including the **PARTIES** herein, are authorized under General Municipal Law §119-o to enter into agreements for the performance among themselves or one for the other of their respective functions, powers and duties on a cooperative or contract basis;

WHEREAS, MASTIC BEACH, currently collects street sweepings defined herein, located throughout the Village of MASTIC BEACH that is suitable for transfer and disposal, the Landfill complex operated by the Town of Brookhaven at Horseblock Road, Yaphank, N.Y. ("Brookhaven Facility"); and

WHEREAS, the street sweepings in the Town of MASTIC BEACH must be disposed of in accordance with applicable law; and

WHEREAS, Brookhaven owns and operates a Landfill complex including solid waste management and recycling facilities located in Brookhaven at Horseblock Road, Yaphank, N.Y. which accepts a variety of materials defined herein, and is capable of recycling and processing it ; and

WHEREAS, MASTIC BEACH wishes to dispose of the street sweepings as defined herein, at the Brookhaven Facility, and Brookhaven wishes to accept such material for disposal under the terms set forth below; and

WHEREAS, both the Brookhaven and the Village of MASTIC BEACH desire to work cooperatively together to provide an environmentally sound and cost-effective arrangement for disposing of street sweepings collected in the Town of MASTIC BEACH consistent with applicable law; and

WHEREAS, the cooperative action of Brookhaven and MASTIC BEACH is expected to be to the economic benefit of each Party and will serve a public purpose for each Party.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE MUTUAL COVENANTS AND AGREEMENTS HEREIN CONTAINED THE PARTIES AGREE, WARRANT AND COVENANT AS FOLLOWS:

1. Purpose and Intent. The purpose of this Agreement is to set forth the terms and conditions under which the Village of MASTIC BEACH will deliver, and **Brookhaven will accept Street Sweepings, as defined herein,** at Brookhaven's Landfill complex located on Horseblock Road, Yaphank, New York. The parties hereto recognize and agree that the access to the Landfill complex which is hereby granted to the Municipality by Brookhaven shall be governed solely by the terms of this Agreement.

2. Definitions

A. The term Commissioner shall mean the Commissioner of the Department of Waste Management of the Town of Brookhaven.

B. The term Concrete shall mean recognizable uncontaminated concrete and other masonry waste as described in 6 NYCRR 360-16.1 (d)(1)(i) (or any subsequent amendment thereto).

C. The term Construction and Demolition Debris ("C&D") shall have the meaning set forth in 6 NYCRR 360-1.2(b)(38) (or any subsequent amendment thereto), subject to additional conditions as may be set forth in the Town of Brookhaven's Landfill Permit to Operate.

D. The term Facility Delivery Hours shall mean the hours of Landfill complex operation which are 7:00 am – 4:00pm Monday through Friday, and 7:00 am – 12:00 pm Saturday, except holidays.

E. The term Hazardous Waste shall have the meaning set forth in 6 NYCRR 371 (or any subsequent amendment thereto).

F. The term Municipal Solid Waste shall have the meaning set forth in 6 NYCRR 360-1.2(b) (106).

G. The term Off-Specification Waste shall mean any and all waste, other than Hazardous Waste, which does not conform to the material requirements of any Brookhaven facility or which are inconsistent with the materials approved for disposal in the Landfill.

H. The term "Recyclables" means paper, cardboard, glass, plastic, ferrous metal, aluminum or other material capable of being processed and recovered at the Town of Brookhaven Materials Recovery Facility, located at the Landfill complex on Horseblock Road, Yaphank, N.Y.

I. The term "Unprocessed C&D" shall mean C&D material that is not crushed, shredded or otherwise processed prior to delivery to the Brookhaven landfill.

Unprocessed C&D shall not include other solid wastes such as auto shredder fluff, petroleum contaminated soil or asbestos containing materials which may be accepted at the Landfill only under separate Agreement after evaluation by the Commissioner on a case-by-case basis.

J. The term "Street Sweepings" shall mean the municipal solid waste, soil, and other material collected through the street cleaning operations conducted by or on behalf of the Municipality.

K. The term "Vac-Haul" shall mean the materials collected when catch basins within the Village are cleared of debris and cleaned out by or on behalf of the Municipality.

3. Term. The base term of this Agreement shall commence on _____ and shall expire on _____. The term of this Agreement may be extended for up to two (2) additional one-year terms, exercised by the mutual agreement of the parties, in writing.

4. Delivery and Acceptance of STREET SWEEPINGS

A. Commencing on the date of execution and continuing throughout the Term hereof, and subject to the terms of this Agreement, the Municipality agrees to deliver, or cause to be delivered to the **Brookhaven Facility Street Sweepings collected received or generated by the Municipality, which the parties project will be approximately _____ tons per year**, provided however, that nothing herein shall constitute a warranty by the Municipality that any minimum or maximum quantity shall be delivered on a weekly, monthly or annual basis.

B. Transportation of all material delivered to the Brookhaven Facility pursuant to this Agreement shall be provided by the Village of MASTIC BEACH at its sole cost and expense.

C. During the Term hereof, Brookhaven shall accept at the Brookhaven Facility the material described in paragraph 3(J), subject to Brookhaven's rejection rights set forth in paragraph 9 below.

D. Brookhaven shall have the right to reject any deliveries by or on behalf of the Municipality if such deliveries;

i. Are made at a time other than during the Facility Delivery Hours

ii. Contain Hazardous Waste, medical waste, or otherwise fail to meet the requirements of applicable law or permit governing the Brookhaven Facility. In exercising its rejection rights pursuant to this provision, Brookhaven shall, where practicable, accept the portions of such deliveries that, as the case may be, are not Hazardous Waste or other unauthorized material.

iii. Are made in vehicles not meeting the provisions of paragraph 6 below.

If Brookhaven is unable to accept or MASTIC BEACH is unable to deliver the waste material identified in paragraph 3(J), for any reason, the parties shall use their best efforts to reschedule the delivery of such material for delivery as soon as possible.

5. Tipping Fee and Payment and Weight Records

A. Tipping Fee and Payment. The Municipality shall pay Brookhaven a fee of **Eighteen Dollars ($18.00)** per ton of Street Sweepings delivered during the base term of this Agreement. The fee for any option year shall be modified by multiplying the price for 2014 by the dividend of the Consumer Price Index for All Urban Consumers (CPI-U) for New York-Northeastern New Jersey for January of the option year and the CPI-U for January 2014. All invoices from Brookhaven shall set forth the date, weight and fee for each load of material delivered by the Municipality. Payment shall be made within 30 days of invoice. Late payments may be assessed interest at the rate of 1.5% per month.

B. Weight Records.

i. Billing shall be based upon weights recorded at the Brookhaven scales. Brookhaven may rely on the posted tare weights of delivery vehicles rather than exit weighing, but may check such tare weight by occasionally weighing or reweighing such vehicles upon exit from the Landfill complex.

ii. Brookhaven shall provide and maintain truck scales and associated weighing and recording equipment, calibrated to the degree of accuracy required by the laws of the State of New York, and shall maintain daily records, by truck, of the tonnages received from the Municipality.

iii. In the event that the scales of the Town of Brookhaven are inoperable for reasons of maintenance or other cause, weighing of material and billing shall be based upon the scales of the Village of MASTIC BEACH. If the scales of both parties are inoperable, tare weights may be used.

C. Payment. Billing shall be monthly. All invoices from Brookhaven shall set forth the date, weight and fee for each load of material delivered by the Village of MASTIC BEACH. Payment shall be made within 30 days of invoice. Late payments may be assessed interest at the rate of 1.5% per month.

D. Billing Disputes. In the event of any dispute over billing, the Municipality shall promptly advise Brookhaven of the amount at issue and the basis of such dispute, and shall provide such documentary evidence as may support its position. The Municipality shall pay all amounts set forth on Brookhaven invoices which are

not in dispute and the parties shall utilize the dispute resolution procedures of Paragraph 12 to resolve the dispute.

6. Transportation and Delivery

A. The Village of MASTIC BEACH shall provide Brookhaven with a list of all vehicles owned or hired by the Village of MASTIC BEACH that are authorized to transport material pursuant to this Agreement, together with the identification and registration number of all such authorized vehicles, and shall promptly notify Brookhaven of any change in any such list. The identification and registration number of each vehicle making deliveries hereunder shall be prominently displayed and permanently affixed to each vehicle.

B. It shall be the responsibility of the Village of MASTIC BEACH to ensure that all vehicles delivering material to the Brookhaven Landfill complex shall be properly registered, equipped and insured according to applicable law, and all drivers shall be properly licensed. All drivers shall obey the internal traffic rules and regulations of the Brookhaven Landfill.

C. Load Tracking Documents. Brookhaven reserves the right to require the use of a Load Tracking Document for all materials delivered pursuant to this Agreement. In such event, Brookhaven shall provide not less than ten (10) days notice of the requirement for the use of a Load Tracking Document and shall provide a copy of the form document to the Village of MASTIC BEACH. Any load arriving at Brookhaven's Facility without such a tracking document shall be turned away. Upon presentation of the tracking document to Brookhaven personnel at the Landfill scale house, the Brookhaven representative shall mechanically sign and note the time of arrival on the tracking document. The driver of the delivery vehicle shall display the tracking document at all inspection and material sampling points within the Landfill.

D. Landfill Hours. The Brookhaven Facility will be open for receipt of the Municipality's material during the Facility Delivery Hours with the exception of legal holidays. Brookhaven may, from time to time, modify the Landfill's hours of operation. In the event the Municipality wishes to access the Landfill beyond the normal hours of operation, Brookhaven reserves the right to assess any overtime costs incurred by Brookhaven to the Municipality.

7. Material Specifications and Testing Requirements. All material delivered hereunder shall be non-hazardous and meet the applicable requirements set forth in the Brookhaven Landfill permit and the regulations of the New York State Department of Environmental Conservation. Brookhaven reserves the right to take samples and conduct tests upon materials delivered by the Village of MASTIC BEACH for the presence of Hazardous Waste or other unauthorized material. Such testing shall be at the sole cost and expense of the Town of Brookhaven, provided however, that in the event that Hazardous Waste, or other unauthorized material is found to be

present in a delivery from the Village of MASTIC BEACH, the Town of MASTIC BEACH shall bear the costs of all sampling, testing, handling and disposal of such material.

8. Obligations for Off-Specification and Hazardous Wastes. In the event that any material delivered by the Village of MASTIC BEACH under this Agreement is determined to be Off-Specification or Hazardous Waste or other unauthorized material, said material shall be rejected if such determination is made before acceptance. If such determination is made after acceptance, the Municipality shall be responsible for removal of the material if removal is determined by Brookhaven to be required, and shall in all events be responsible to reimburse Brookhaven for all expenses incurred as a result of such delivery and rejection.

9. Insurance. Each party hereto shall proceed on a self-insured basis, provided however, that all delivery vehicles shall be insured as required by law.

10. Indemnity

A. The Town of MASTIC BEACH shall defend, indemnify and save harmless Brookhaven from and against all losses, and all claims, demands, payments, suits, actions, recoveries, judgments, costs and expenses including without limitation attorney's fees, in connection therewith, of every nature, including but not limited to claims for bodily injury, or death, by any third party and by or on behalf of the Municipality's contractors, agents, servants or employees, arising out of or in connection with performance of this Agreement and caused, in whole or in part, by the Village of MASTIC BEACH, its agents, servants or employees.

B. Brookhaven shall defend, indemnify and save harmless the Town of MASTIC BEACH from and against all losses, and all claims, demands, payments, suits, actions, recoveries, judgments, costs and expenses including without limitation attorney's fees, in connection therewith, of every nature, including but not limited to claims for bodily injury, or death, by any third party and by or on behalf of Brookhaven's contractors, agents, servants or employees, arising out of or in connection with performance of this Agreement and caused, in whole or in part, by Brookhaven, its agents, servants or employees.

11. Default and Termination. In the event of a breach of an obligation under this Agreement, the right to recover damages will ordinarily constitute an adequate remedy. Therefore, except as otherwise provided in this Agreement, neither party shall have the right to terminate its obligations under this Agreement except as follows:

A. Brookhaven's Right to Terminate. Brookhaven shall have the right to terminate this agreement upon:

i. The persistent and repeated breach of the provisions of this agreement by the Town of MASTIC BEACH, provided that Brookhaven shall have provided written notice of such breach to the Town of MASTIC BEACH, and provided further that the Town of MASTIC BEACH shall have failed to cure such breach within 30 days of said notice; or

ii. The failure by the Town of MASTIC BEACH to pay any sum due, and not subject to dispute resolution pursuant to paragraph 12 hereof, for a period of 90 days.

B. The Town of MASTIC BEACH's Right to Terminate.

i. The Town of MASTIC BEACH shall have the right to terminate this agreement upon the persistent and repeated breach of the provisions of this agreement by Brookhaven, provided that the Town of MASTIC BEACH shall have provided written notice of such breach to Brookhaven, and provided further that Brookhaven shall have failed to cure such breach within 30 days of said notice.

ii. The failure by the Brookhaven to pay any sum due, and not subject to dispute resolution pursuant to paragraph 12 hereof, for a period of 90 days.

C. Termination at Will and Liquidated Damages Notwithstanding any other provision of this Agreement to the contrary, either party may terminate this Agreement at any time after commencement upon i) not less than sixty (60) days written notice to the other party and ii) payment of the sum of five thousand ($5,000) dollars to the other party as liquidated damages in compensation for premature termination, it being agreed that the actual damages suffered by either party in the event of premature termination will be substantial but difficult to determine, and that the damages set forth herein are intended to serve as full compensation for the injured party in the event of such termination.

D. Survival of Obligations It is expressly understood and agreed that any and all claims and obligations for payment of costs and expenses incurred under this Agreement prior to termination under this paragraph shall survive such termination.

12. Dispute Resolution In the event of any dispute under this Agreement, either party shall serve written notice to the other of the existence and nature of the dispute, the amount at issue, if any, and the provision of this agreement governing the dispute. The parties shall negotiate the dispute in good faith until either party advises the other, in writing, that an impasse exists. Thereafter, the exclusive means to resolve any dispute between the parties that arises out of this Agreement shall be through an action initiated in New York State Supreme Court, Suffolk County. Unless otherwise agreed in writing by the Parties, the Parties shall continue to perform their respective obligations under this Agreement during any Dispute proceeding.

13. Contact Persons. The contact persons for the parties to this Agreement shall be the following contact persons at the following addresses:

Commissioner
Dept. of Waste Management
Town of Brookhaven
One Independence Hill
Farmingville, New York 11738

Village of MASTIC BEACH

MASTIC BEACH, New York

14. Compliance. Both Brookhaven and the Town of MASTIC BEACH shall comply with all Federal, State and Local Laws, rules, regulations, codes and ordinances in the performance of this Agreement and shall obtain, pay for and comply with any conditions contained in any permits, approvals and renewals thereof which are required to be obtained in the legal performance of this Agreement.

15. Invalidity of Particular Provisions. If any term of this Agreement or the application thereof to any person or circumstances shall to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

16. No Assignment. Neither the Town of MASTIC BEACH nor Brookhaven shall assign, transfer, convey, sublet or otherwise dispose of this Agreement, or any of its right, title or interest therein, or its power to execute this Agreement, to any other person or corporation, except for the purposes described herein, without prior written consent, and any attempt to do any of the foregoing without such consent shall be of no effect.

17. No Modification. No modification of this Agreement shall be valid unless written in the form of an Addendum or Amendment signed by all parties.

18. Uncontrollable Circumstances. Neither the Town of MASTIC BEACH nor Brookhaven shall be liable for failure to fulfill their responsibilities as provided for in this Agreement, nor for any resultant damages or financial losses if such failure is caused by a catastrophe, riot, war, governmental order or regulation (other than by or of Brookhaven), act of God or other similar event beyond the reasonable control of the Town of MASTIC BEACH or Brookhaven. If such failure persists, or if after cessation of such failure, either the Town of MASTIC BEACH or Brookhaven is unable to render full or substantially full performance, Brookhaven may terminate this Agreement upon written notice given 30 days in advance of such termination.

19. Law Provisions. All provisions as required by Law are hereby deemed inserted. The Parties agree that nothing in this Agreement shall be construed so as to interfere with or diminish any municipal powers or authority.

20. Entire Agreement. It is expressly agreed that this instrument represents the entire agreement of the parties and that all previous understandings are merged in this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the date and year first above written.

TOWN OF BROOKHAVEN

By:_____ _____
Supervisor/Deputy Supervisor Date

VILLAGE OF MASTIC BEACH

By:_____ _____
Mayor Date

STATE OF NEW YORK)
) SS.:
COUNTY OF SUFFOLK)

On the _____ day of _____, 2014, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he is the Supervisor/Deputy Supervisor of the **TOWN OF BROOKHAVEN**, the municipal corporation described in and which executed the foregoing instrument; that he signed his name thereto by order of the Town Board of the Town of Brookhaven.

_____
Notary Public

STATE OF NEW YORK)
) SS.:
COUNTY OF SUFFOLK)

On the _____ day of _____, 2014, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he is the Supervisor/Deputy Supervisor of the VILLAGE **OF MASTIC BEACH**, the municipal corporation described in and which executed the foregoing instrument; that he signed his name thereto by order of the Town Board of the Town of MASTIC BEACH.

_____
Notary Public