

**INTERMUNICIPAL AGREEMENT
FOR YARD WASTE**

**BETWEEN THE TOWN OF BROOKHAVEN
and
THE VILLAGE OF MASTIC BEACH**

THIS AGREEMENT (the "Agreement") made between the **Town of Brookhaven** ("Brookhaven" or the "Town"), a municipal corporation of the State of New York, having its principal offices at One Independence Hill, Farmingville, NY 11738 and the **Village of Mastic Beach**, a municipal corporation of the State of New York, having its principal offices at 369 Neighborhood Road, Mastic Beach, New York 11951 (hereinafter the Municipality) and collectively the "PARTIES" 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, the Municipality currently collects, receives or generates Yard Waste, as defined herein, that is suitable for processing and marketing at the at the facility engaged by the Town of Brookhaven for such processing Materials Recovery Facility of the Town of Brookhaven (the "Brookhaven Facility") located at the Landfill complex of the Town of Brookhaven at 352 Horseblock Road, Brookhaven, NY; and

WHEREAS, the Municipality wishes to deliver the recyclable material to the Brookhaven Facility for processing and sale, and Brookhaven wishes to accept such material for processing and sale under the terms set forth below.

WHEREAS, the cooperative action of the Town and the Municipality 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 Municipality will deliver, and Brookhaven will accept, Yard Waste generated within and collected by, or on behalf of, the Municipality at Brookhaven's Brookhaven Facility in the

3. Term.

The base term of this Agreement shall commence on June 1, 2016 and shall extend for a term of two (2) years. Upon the expiration of the base term, this Agreement may be extended for two (2) extension terms of two (2) years each, by mutual agreement of the PARTIES, in writing, made not less than thirty (30) days prior to the expiration of the base or any extension term. The Town, in consultation with the Facility Operator, and the Municipality may adjust the terms of the Agreement to be effective for any Extension period.

4. Representations and Operations Plan of the Municipality.

The Municipality is a unit of local government of the state of New York which provides collection services to its residents for Yard Waste. The Municipality shall deliver, or cause to be delivered to the Brookhaven Facility, all Yard Waste generated within, and collected by or on behalf of the Municipality. The Municipality serves approximately 4,900 household units, and is expected to generate, but does not warrant that it will generate, approximately 1000 tons of Yard Waste per year. The collection and handling practices of the Municipality for Yard Waste shall be described in Municipal Operations Plan, to be provided to the Town not less than thirty (30) days prior to the commencement of deliveries pursuant to this Agreement.

The Municipal Operations Plan shall include, but shall not be limited to, both current and planned regular collection schedules at residences served by the Municipality, current and planned staffing and equipment utilized by the Municipality and/or collection contractors employed by the Municipality, and a copy of any contract for collection services applicable to the collection of Yard Waste within the Municipality. If the Operations Plan calls for anything other than direct delivery of the Yard Waste to the Brookhaven Facility, such as but not limited to overnight storage, delivery of Yard Waste to a transfer station, and/or delivery to any other location prior to delivery to Brookhaven, the Town and/or the Facility Operator, as the Town's designee, shall have the right to inspect the storage facility, transfer station, and/or other location, and to negotiate additional provisions to ensure secure delivery of all Yard Waste subject to this Agreement to the Brookhaven Facility. The Municipality represents that it will inform all residents receiving collection service of the Yard Wastes that are acceptable at the Brookhaven Facility. The Municipality further represents that it will inform its collection staff, whether municipal employees or contract haulers, of the Yard Waste that are acceptable at the Brookhaven Facility, and direct them to only pick up Yard Waste and not to commingle Yard Waste with MSW or other solid wastes for delivery to the Brookhaven Facility.

5. Representations of the Town of Brookhaven.

The Town of Brookhaven is the owner of the Landfill complex at 352 Horseblock Road, Brookhaven, N.Y. at which the materials delivered by the village may be weighed for billing, before transport to the processing facility. The Brookhaven Facility is operated by Long Island Compost Corporation to a contract with the Town of Brookhaven. The Town of Brookhaven is authorized by law, and by the terms of agreement with Long Island Compost Corporation, to make this Agreement to accept Yard Waste for processing at the Brookhaven Facility.

C. In the event that a delivery is rejected pursuant to sub-paragraph B above, the following procedure shall apply.

- i. If cause for rejection shall be determined upon inspection of the delivery before the load is discharged to the tipping floor, the driver shall secure the load and remove it from the Brookhaven Facility for proper disposal by the Municipality.
- ii. If cause for rejection shall be determined upon inspection of the delivery after the load is discharged to the tipping floor, the driver of the Municipal vehicle shall be afforded the option of re-loading the Unacceptable Material into the Municipal vehicle for proper disposal by the Municipality, or the Town and/or the Facility Operator shall arrange for proper disposal of the Unacceptable Material. In the event that the Town and/or the Facility Operator assume responsibility for disposal of Unacceptable Material, the Municipality shall be responsible for all costs and expenses incurred by the Town and/or the Facility Operator for the lawful removal and disposal of such material, and said costs shall be assessed in the next regular monthly invoice.

9. Payment Terms and Weight Records

A. Yard Waste. The Municipality shall pay the Town Sixty-Three Dollars (\$63.00) per ton for all Yard Waste delivered to the Brookhaven Facility in 2016-17, and Sixty-Four Dollars (\$64) per ton for all Yard Waste delivered to the Brookhaven Facility in 2017-18. For all extension periods, the Municipality shall pay to the Town the sum of one dollar (\$1) plus the prevailing contract price payable by Brookhaven to the Facility operator for processing of yard waste delivered by the Town to the Brookhaven Facility.

B. Payment Brookhaven or the Facility Operator shall prepare and deliver to the Municipality an invoice reflecting all amounts of Yard Waste delivered by the Municipality to the Brookhaven Facility in each calendar month within twenty (20) days of the end of each such month. Said invoice shall reflect the type of such Recyclable Material and the sums due and owing by the Town to the Municipality and by the Municipality as the case may be, together with all additional amounts due from each party to the other, pursuant to the terms of this Agreement. Each party shall pay to the other, as applicable, the amount due on said invoice within 45 days of the close of the month. Payment shall be based upon weights recorded at the Brookhaven landfill scales, or, if such scales are not available for any reason, at the Brookhaven Facility scales. All scales shall be maintained and calibrated by Brookhaven or the Facility Operator in accordance with the standards of the Suffolk County Department of Weights and Measures and the laws of the State of New York, but not less frequently than once every 180 days. Brookhaven may rely on the posted tare weights of delivery vehicles rather than exit weighing, but may confirm such tare weights by occasionally weighing or reweighing such vehicles upon exit from the Landfill complex.

14. Insurance.

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

15. Indemnity

- A. The Municipality shall defend, indemnify and save harmless Brookhaven and the Facility Operator 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 property damage, 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 Municipality, its agents, servants or employees.
- B. Brookhaven shall defend, indemnify and save harmless the Municipality 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.

16. Default and Termination

In the event of a breach of an obligation under this Agreement, neither party shall have the right to terminate its obligations under this Agreement except as follows:

- A. Brookhaven's Right to Terminate for Cause. Brookhaven shall have the right to terminate this agreement upon:
 - i. The persistent and repeated breach of the provisions of this agreement by the Municipality, provided that Brookhaven shall have provided written notice of such breach to the Municipality, and provided further that the Municipality shall have failed to cure such breach within fifteen (15) days of said notice; or
 - ii. The failure by the Municipality to pay any sum due, and not subject to dispute resolution pursuant to paragraph 18 hereof, for a period of 90 days.
- B. The Municipality's Right to Terminate for Cause. The Municipality shall have the right to terminate this agreement upon;

20. Compliance.

Both Brookhaven and the Municipality shall comply with all Federal, State and Local Laws, rules, regulations, codes and ordinances in the performance of this Agreement and shall obtain and comply with any and all permits, approvals and renewals thereof which are required to be obtained in the legal performance of this Agreement.

21. 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.

22. No Assignment.

Neither the Municipality 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 the prior written consent of the other, and any attempt to do any of the foregoing without such consent shall be of no effect.

23. No Modification.

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

24. Uncontrollable Circumstances.

Neither the Municipality 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 Municipality or Brookhaven. If such failure persists for at least thirty (30) days, or if after cessation of such failure, either the Municipality or Brookhaven is unable to render full or substantially full performance, either party may terminate this Agreement upon written notice given thirty (30) days in advance of such termination.

25. Provisions Required by Law.

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 of either party.

EXHIBIT C

Haulers' Rules

Scale House:

1. Driver shall approach scales SLOWLY.
2. Driver shall report to scale house operator and identify origin and material type such as Single Stream Material, Commingled Containers Material, or Clean Newspaper and Cardboard Material.
3. Weigh inbound.
4. Weigh outbound and pick up scale ticket.

Tip Floor Rules:

1. Wait for operator's OK to enter tip floor for dumping.
2. All required OSHA safety gear shall be worn when driver and/or helper exits the cab.

Yard Rules:

1. Driver shall maintain safe speeds while traveling within the Landfill complex and the Facility. Driver shall obey all posted speed limits.
2. Driver shall not allow litter to be discharged from the body or cab.
3. Driver shall not loiter in the yard.