

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In re:)	
)	
HILTZ WASTE DISPOSAL, INC.,)	CHAPTER 11
)	CASE NO. 16-13459-JNF
Debtor.)	
)	

NOTICE OF (A) INTENDED PRIVATE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES, (B) SOLICITATION OF COUNTEROFFERS PURSUANT TO BID PROCEDURES, (C) DEADLINE FOR SUBMITTING OBJECTIONS AND COUNTEROFFERS, AND (D) HEARING DATE

Sept. 28, 2017 IS THE DATE OF THE HEARING ON PROPOSED SALE

Sept. 18, 2017 IS THE DATE BY WHICH OBJECTIONS OR COUNTEROFFERS MUST BE MADE

NOTICE is hereby given, pursuant to Sections 105(a) and 363 of title 11 of the United States Code (as amended, the “Bankruptcy Code”), Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and MLBR 2002-1, 2002-5 and 6004-1, that Mark G. DeGiacomo, the Chapter 11 Trustee (the (“Trustee”) for the bankruptcy estate of Hiltz Waste Disposal, Inc. (the “Debtor”), intends to sell substantially all of the Debtor's assets, free and clear of all liens, claims and encumbrances in connection with the *Chapter 11 Trustee’s Motion for the Entry of an Order Approving the Sale of the Debtor’s Assets Free and Clear of All Liens, Claims, Encumbrances and Interests* (the “Sale Motion”) and the Bid Procedures approved by the Bankruptcy Court pursuant to its *Order Approving (A) Bidding Procedures, (B) the Form and Manner of Notice of the Sale of Bankruptcy Estate Property, and (C) Break-Up Fee* entered on August 24 2017, (the “Bid Procedures Order”), and

annexed thereto as Exhibit A.

PROPERTY TO BE SOLD:

The Trustee's and the bankruptcy estate's right, title and interest in and to substantially all assets of the bankruptcy estate, as more particularly described, and defined as the Purchased Assets in, the Asset Purchase Agreement executed by the Trustee and Hometown Waste LLC dated August 14, 2017 (the "Purchase Agreement"), attached hereto as Exhibit B. The Proposed Sale is to be governed by the Bidding Procedures, attached hereto as Exhibit A.

THE OFFER:

Pursuant to the Purchase Agreement, the Trustee intends to sell the Purchased Assets to the Purchaser, defined in the paragraph immediately below, for the sum of TWO MILLION NINE HUNDRED TWENTY FIVE THOUSAND AND 00/100 DOLLARS (\$2,925,000.00) (the "Purchase Price").

THE PROPOSED BUYER:

The proposed buyer is Hometown Waste LLC (the "Purchaser"). There is no relationship between the Purchaser and the Trustee.

THE SALE DATE:

The terms of the proposed sale are more particularly described in the Purchase Agreement. Pursuant to the terms of the Purchase Agreement, the closing on the sale shall take place within 15 days of the Bankruptcy Court's entry of an Order granting the Sale Motion. The Purchaser has paid a deposit in the sum of \$292,500 towards the Purchase Price. A copy of the Sale Motion and the proposed order submitted in connection with the Sale Motion is available at no charge upon request from the undersigned.

SALE FREE AND CLEAR OF LIENS:

The Purchased Assets will be sold free and clear of all liens, claims, encumbrances and interests. Any perfected, enforceable valid liens shall attach to the proceeds of the sale according to priorities established under applicable law.

“AS IS” AND “WHERE IS”:

The Purchased Assets are being sold “AS IS” AND “WHERE IS” without any representations or warranties, unless expressly indicated in the Purchase Agreement.

COUNTEROFFERS:

ANY HIGHER OFFERS for the Purchased Assets must be submitted in accordance with the Bidding Procedures. The deadline for submission of Competing Offers (as defined in the Bidding Procedures) for the Purchased Assets is **September 18, 2017 at 4:30PM Eastern Daylight Time**, (the “Bid Deadline”).

Through this Notice, higher offers in accordance with the Bidding Procedures for the Purchased Assets are hereby solicited. Higher offers must be submitted in the form of a revised, executed duplicate of the Purchase Agreement (a copy of the Purchase Agreement in “word” format will be provided by request of the undersigned). Any higher offer must meet the requirements of the Bidding Procedures for Competing Offers, be in the amount of at least \$3,040,000.00 and be submitted with a deposit in the form of a good funds check or wire in the amount of at least \$292,500.00 (the “Deposit”). Any higher offer must be filed with the Bankruptcy Court and delivered to the Trustee (along with the Deposit) by the Bid Deadline.

OBJECTIONS:

ANY OBJECTION TO THE SALE MOTION must be made in writing and must be filed in writing with the Clerk, United States Bankruptcy Court at United States Bankruptcy

Court, John. W. McCormack Post Office and Court House, 5 Post Office Square, Suite 1150, Boston, Massachusetts on or before Sept. 18, 2017, at 4:30 ^{pm} ~~am~~ Eastern Daylight Time (the "Objection Deadline"). A copy of any objection also shall be served upon the undersigned. Any objection to the Sale Motion must state the Debtor's name, case number and in addition, state what, if any, interest the party filing an objection has in the case and specifically state with particularity the grounds for the objection and why the intended sale should not be authorized. Any objection to the sale shall be governed by Fed. R. Bankr. P. 9014.

HEARING:

10:30 AM

PLEASE TAKE FURTHER NOTICE THAT on September 28 at ~~XX:00:XX~~ (Eastern Daylight Time), if qualifying higher offers are submitted there shall take place before the Honorable Joan N. Feeney, United States Bankruptcy Judge, Courtroom 1, United States Bankruptcy Court, John. W. McCormack Post Office and Court House, 5 Post Office Square, Boston, Massachusetts: (1) an auction, if required pursuant to the Bid Procedures, and (2) the Sale Hearing. At the Sale Hearing, the Court will consider (a) approval of the Proposed Sale to the Purchaser or other entity submitting the Highest Bid, if any, determined by the Court pursuant to the Bidding Procedures, and (b) any timely filed objections to the Sale Motion. Any party who has filed an objection or higher offer is expected to be present at the hearing, either in person or telephonically if permitted by the Court, failing which the objection may be overruled or the higher offer stricken. The Court may take evidence at any hearing on approval of the sale to resolve issues of fact. If no objection to the Sale Motion or higher offer is timely filed by the Objection Deadline, the Court, in its discretion, may cancel the scheduled hearing and approve the sale to the Purchaser without hearing.

DEPOSIT:

The Deposit will be forfeited to the bankruptcy estate if the successful purchaser fails to complete the sale by the date provided for in the Purchase Agreement. If the sale is not completed by the buyer approved by the Court, the Trustee may, without further hearing, close the sale with the next highest bidder for the amount of its last bid.

The Trustee reserves his right to reject any bid, including the "highest bid".

Any questions concerning the intended sale shall be addressed to the undersigned.

Respectfully submitted,

MARK G. DEGIACOMO, CHAPTER 7
TRUSTEE OF THE ESTATE OF THE
HILTZ WASTE DISPOSAL, LLC

By his counsel,

/s/ Jonathan M. Horne

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Dated: August 15, 2017

EXHIBIT 1

[BID PROCEDURES ORDER]

EXHIBIT 2
[PURCHASE AGREEMENT]

ASSET PURCHASE AGREEMENT

by and between

**MARK G. DEGIACOMO, CHAPTER 11 BANKRUPTCY
TRUSTEE OF
HILTZ WASTE DISPOSAL, INC.**

as Seller

and

HOMETOWN WASTE, LLC

as Purchaser

ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (the "Agreement"), dated as of August 14, 2017 ("Effective Date"), by and between **MARK G. DEGIACOMO, CHAPTER 11 BANKRUPTCY TRUSTEE OF HILTZ WASTE DISPOSAL, INC.**, a Massachusetts corporation ("Seller") and **HOMETOWN WASTE, LLC**, a Delaware limited liability company ("Purchaser").

RECITALS

WHEREAS, on September 7, 2016, Hiltz Waste Disposal, Inc. (the "Debtor") filed for protection from its creditors under Chapter 11 of Title 11, United States Code (as amended from time to time, the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Massachusetts (the "Court" and the "Chapter 11 Case"); and

WHEREAS, the Debtor continued in the management and possession of its properties as the debtor-in-possession in the Chapter 11 Case pursuant to Sections 1107 and 1108 of the Bankruptcy Code, until, by Order dated August 2, 2017, the Court appointed Mark G. DeGiacomo as Chapter 11 Trustee (the "Trustee"); and

WHEREAS, Trustee in his capacity as Seller has determined that it is in its best interest to sell to Purchaser and Purchaser desires to purchase from Seller substantially all of the assets used or usable in connection with Debtor's Business (as hereinafter defined), all on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, the transactions contemplated by this Agreement shall be implemented by the Sale Motion seeking: (i) the entry of an order by the Bankruptcy Court approving the terms of the bidding procedures set forth in this Agreement, the procedures relating to Alternative Offers and the payment of the Break-Up Fee; and (ii) approval of the sale of the Purchased Assets pursuant to the Sale Order in accordance with the terms of this Agreement to Purchaser or its Permitted Designee; and

WHEREAS, subject to the entry of the Sale Order and Bidding Procedures Order and on the terms and conditions set forth herein, Purchaser or its Permitted Designee(s) (as hereinafter defined) shall purchase the Purchased Assets from the Seller; and

NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties, covenants and agreements hereinafter set forth, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the following terms shall have the following meanings:

"Action" means any claim, charge, action, suit, litigation, arbitration, mediation, inquiry, proceeding or investigation by any Person or Governmental Authority before any Governmental Authority.

"Affiliate" has the meaning set forth in the Bankruptcy Code.

"Agreement" means this Asset Purchase Agreement, including all Schedules and Exhibits attached hereto, as amended from time to time in accordance with its terms.

"Alternative Offer" means any written proposal or written offer to Seller from any Person (other than Purchaser) to purchase substantially all of the assets used or usable in connection with the Business.

"Applicable Environmental Law" means any and all federal, state, provincial, local and foreign statutes, Laws, Regulations, ordinances, Orders, common law, and similar provisions currently in existence and applicable and having the force or effect of law, concerning public health or safety, worker health or safety, pollution or protection of the environment, including, but not limited to, the Clean Air Act, 42 U.S.C. § 7401 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Resource Conservation Recovery Act, 42 U.S.C. § 6901 et seq. ("RCRA"), the Toxic Substances Control Act, 15 U.S.C. §2601 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. ("CERCLA"), the Occupational Safety and Health Act of 1970 (all as amended), and any and all other laws which govern: (i) the existence, cleanup, removal and/or remedy of contamination or threat of contamination on or about owned or leased real property; (ii) the emission or discharge of Hazardous Substance into the environment; (iii) the control of Hazardous Substance; or (iv) the use, generation, transport, treatment, storage, disposal, removal, recycling, handling or recovery of Hazardous Substance, including building materials.

"Assumed Contracts" has the meaning set forth in Section 2.1(f).

"Attendant Documents" has the meaning set forth in Section 5.1(a).

"Auction" means a live auction unless otherwise ordered by the Bankruptcy Court.

"Bankruptcy Code" has the meaning set forth in the Recitals.

"Bankruptcy Court" means the United States Bankruptcy Court for the District of Massachusetts, or such other court as may have jurisdiction over the Chapter 11 Case.

"Bidding Procedures" has the meaning set forth in Section 9.2(c).

"Bidding Procedures Order" has the meaning set forth in Section 9.1.

"Books and Records" means all books, records, ledgers, files, reports, plans, drawings and operating records of every kind as pertains to Seller, the Purchased Assets, and the Business including, without limitation, merchandise and marketing analysis reports and creative reports, personnel records and records relating to customers and suppliers and product, business and marketing plans of Seller but excluding the originals of the minute books, stock books and all Tax Returns of Seller for the prior six (6) years and any documents related exclusively to the Excluded Assets.

"Break-Up Fee" has the meaning set forth in Section 12.3(a).

"Business" means all of the business of the Debtor including rubbish collection, recycling and disposal service.

"Business Day" means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in the City of New York.

"CERCLA" has the meaning set forth in the definition of Applicable Environmental Law.

"Chapter 11 Case" has the meaning set forth in the Recitals.

"Claim" has the meaning set forth in Section 101(5) of the Bankruptcy Code.

"Closing" has the meaning set forth in Section 11.1.

"Closing Date" has the meaning set forth in Section 11.1.

"Contract" means any written agreement, arrangement, understanding, purchase orders, lease or instrument or other contractual or similar arrangement pertaining to Seller, the Business and Purchased Assets.

"Customer Deposits" means all cash, credit card or other deposits made by customers of Seller in connection with the placement of any order by a customer of Seller.

"Encumbrance" means any claim, charge, lease, covenant, easement, encumbrance, security interest, lien, option, pledge, mortgage, hypothecation, or similar restriction (whether on voting, sale, transfer, disposition, or otherwise) against or with respect to tangible or intangible property or rights, whether imposed by agreement, understanding, Law, equity, or otherwise.

"Equipment" has the meaning set forth in Section 2.1(e).

"Excluded Assets" has the meaning set forth in Section 2.2.

"Excluded Contracts" means all Contracts of Seller that Seller has not assumed and assigned to Purchaser pursuant to Section 3.2.

"Final Order" means an order of the Bankruptcy Court (a) as to which the time to appeal shall have expired and as to which no appeal shall then be pending, or (b) if an appeal shall have been filed or sought, either (i) no stay of the order shall be in effect or (ii) if such a stay shall have been granted by the Bankruptcy Court, then (A) the stay shall have been dissolved or (B) a final order of the district court having jurisdiction to hear such appeal shall have affirmed the order and the time allowed to appeal from such affirmance or to seek review or rehearing thereof shall have expired and the taking or granting of any further hearing, appeal or petition for certiorari shall not be permissible, and if a timely appeal of such district court order or timely motion to seek review or rehearing of such order shall have been made, any court of appeals having jurisdiction to hear such appeal or motion (or any subsequent appeal or motion to seek review or rehearing) shall have affirmed the district court's (or lower appellate court's) order upholding the order of the Bankruptcy Court and the time allowed to appeal from such affirmance or to seek review or rehearing thereof shall have expired and the taking or granting of any further hearing, appeal or petition for certiorari shall not be permissible.

"Fixed Assets" has the meaning set forth in Section 2.1 (a).

"Governmental Authority" means any United States federal, state or local or any foreign government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal or judicial or arbitral body.

"Governmental Order" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

"Hazardous Substance" means any material or substance: (i) which is defined as a "hazardous substance," "pollutant" or "contaminant" pursuant to CERCLA and regulations promulgated thereunder; (ii) containing gasoline, oil, diesel fuel or other petroleum products, or fractions thereof; (iii) which is defined as a "hazardous waste" pursuant to RCRA and regulations promulgated thereunder; (iv) containing polychlorinated biphenyls (PCBs); (v) containing asbestos; (vi) which is radioactive; (vii) which is biologically hazardous; (viii) the presence of which requires investigation or remediation under any Law; (ix) which is defined as a "hazardous waste", "hazardous substance", "pollutant" or "contaminant" or other such terms used to define a substance having an adverse effect on the environment under any Law; or (x) any toxic, explosive, dangerous, corrosive or otherwise hazardous substance, material or waste which is regulated by any Governmental Authority.

"Hired Employees" has the meaning set forth in Section 7.1.

"Intellectual Property" means all of the following in any jurisdiction throughout the world: (i) patents, patent applications and patent disclosures; (ii) trademarks, service marks, trade dress, logos, slogans, trade names, Internet domain names, uniform resource locators and the corresponding internet sites and their contents and corporate names, together with all goodwill associated therewith, and all applications, registrations and renewals in connection therewith, (iii) copyrights and applications, registrations and renewals in connection therewith, (iv) trade secrets, proprietary rights and interests and confidential business information (including ideas, research and development and know-how), (v) computer software (including, but not limited to, source code, if any, executable code data, databases and documentation), and (vi) all other intellectual property.

"Knowledge" or words of similar import means the actual knowledge of the Trustee after reasonable inquiry and investigation of Deborah Hiltz or John Favazza on behalf of the Debtor.

"Kondelin Obligation" has the meaning set forth in Section 2.1.

"Kondelin Occupancy Rights" means any lease or agreement or rights, to the extent that any exist, between Seller and Kondelin Road, LLC with respect to Seller's use and occupancy of the Kondelin Road Property.

"Kondelin Road Property" means that certain real property known as 24-25 Kondelin Road, Gloucester, Massachusetts, together with all improvements and fixtures thereon and appurtenances thereto.

"Law" means any statute, law, ordinance, Regulation, rule, policy, code, Order, other requirement or rule of law of any federal, state, local or foreign government and all agencies thereof.

"Liability" means any liability (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due and regardless of when asserted), including, without limitation, any liability for Taxes.

"Material Adverse Effect" means any change or effect that is materially adverse (or event or condition that is reasonably likely to be materially adverse) to (i) the Business, the Purchased Assets or the condition (financial or otherwise), prospects, operations, assets (including intangible assets) or liabilities of Seller or its Affiliate, to the extent related to the Business or Purchased Assets, or (ii) the validity or enforceability of this Agreement or the ability of Seller or Purchaser to perform their respective obligations hereunder in a timely fashion, other than the filing or commencement of the Chapter 11 Case or the impact of such filing.

"Order" means any decree, order, injunction, ruling, judgment, consent of or by any court or Governmental Authority.

"Permitted Designee" means a direct or indirect wholly owned subsidiary of Purchaser or Affiliate of or other entity related to Purchaser that was formed to acquire some or all of the Purchased Assets.

"Person" means an individual, corporation, partnership, association, limited liability company, trust, joint venture, unincorporated organization, other entity or group (as defined in Section 13(d)(3) of the Securities and Exchange Act of 1934, as amended).

"Purchase Price" has the meaning set forth in Section 4.1.

"Purchased Assets" has the meaning set forth in Section 2.1.

"Purchaser" means Hometown Waste, LLC .

"Receivables" has the meaning set forth in Section 2.1(i).

"Regulation" means any law, statute, regulation, ruling or Order of, administered or enforced by or on behalf of, any court or Governmental Authority.

"Sale Hearing Date" has the meaning in Section 9.2(a).

"Sale Motion" has the meaning set forth in Section 9.1.

"Sale Order" means an order of the Bankruptcy Court in form and substance satisfactory to Purchaser and Seller granting the Sale Motion and providing for, among other things, (i) the sale of the Purchased Assets (other than the Excluded Assets) to Purchaser or its Permitted Designee(s) pursuant to Section 363(b), (f) and (m) of the Bankruptcy Code free and clear of all liens, interests, Claims and Encumbrances; (ii) deeming Purchaser or its Permitted Designee(s) to be a qualified and successful bidder pursuant to the previously approved auction and sale procedure; and (iii) other related relief.

"Schedules" has the meaning set forth in Section 5.1.

"Seller" means the Trustee of Hiltz Waste Disposal, Inc..

"Successful Bidder" has the meaning ascribed to such term in the Bidding Procedures Order.

"Tax" or "Taxes" means all taxes, assessments, charges, duties, fees, levies or other governmental charges, including all U.S. and non-U.S. federal, state, local and other income, franchise, profits, capital gains, capital stock, transfer, sales, use, occupation, property, excise, severance, windfall profits, stamp, license, payroll,

withholding and other taxes, assessments, charges, duties, fees, levies or other governmental charges of any kind whatsoever (whether payable directly or by withholding and whether or not requiring the filing of a Tax Return), all estimated taxes, deficiency assessments, additions to tax, penalties and interest.

"Tax Return" means all returns, statements, forms and reports (including, elections, declarations, disclosures, schedules, claims for refunds, estimates and informational Tax returns, and including any amendment thereof) relating to Taxes required to be filed with the appropriate Tax authorities.

"Third Party" means any Person other than Seller, Purchaser or any of their respective Affiliates.

Notwithstanding the foregoing definitions, additional terms are defined herein, bracketed by quotation marks.

Section 1.2 Terms Generally. As used in this Agreement (a) words in the singular shall be held to include the plural and vice versa, words of one gender shall be held to include the other gender as the context requires, and defined words in any verb tense shall be held to be also defined in the present, active and past tenses (e.g., Conduct, Conducting, Conducted); (b) the terms "hereof", "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement and not to any particular provision of this Agreement, and Article, Section, paragraph, Exhibit and Schedule references are to the Articles, Sections, paragraphs, Exhibits and Schedules to this Agreement unless otherwise specified; (c) the word "including" and words of similar import when used in this Agreement, shall mean "including, without limitation", unless otherwise specified; and (d) the word "or" shall not be exclusive.

The terms of this Agreement have been negotiated by the parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under this Agreement. No rule of strict construction will be applied against any Person.

ARTICLE II PURCHASE AND SALE OF ASSETS

Section 2.1 Purchase and Sale of the Purchased Assets. Subject to and in accordance with the Sale Order and the terms of this Agreement, and in consideration of the covenants, representations and obligations of Purchaser hereunder, and subject to the conditions hereinafter set forth, on the Closing Date Seller shall unconditionally transfer, sell, assign and deliver to Purchaser or to one or more of Purchaser's Permitted Designees or to another entity related to Purchaser that was formed to acquire some or all of the Purchased Assets, and Purchaser shall purchase from Seller, on the terms and

subject to the conditions set forth in this Agreement and the Sale Order, all of Seller's right, title and interest in, to and under any and all assets, properties and business of every kind and description, whether tangible or intangible, real, personal or fixed wherever situated, owned, held or used by Debtor in the Business or which in relation thereto, Debtor has any right, title or interest, other than the Excluded Assets (all such assets, properties and business are referred to in this Agreement as the "Purchased Assets"). Pursuant to the Sale Order, the Purchased Assets shall be sold and conveyed free and clear of all liens, interests, Claims and Encumbrances. The Purchased Assets shall include, without limitation, the Seller's right title and interest in the following:

(a) All furniture, fixtures and other fixed assets that are owned by Seller and used or held for use in the operation of the Business (the "Fixed Assets").

(b) All commercial, industrial and residential accounts, Contracts (to the extent they constitute assumed contracts), customer relationships, customer lists and files and all routes and operating rights of Seller together with all goodwill and other intangible assets that are used in, relating to, symbolized by, or associated with the Business.

(c) All inventory owned by Seller as of the Closing Date, and all Intellectual Property or rights thereto, which are owned by Seller or used or held for use in the operation of the Business along with all income, royalties, damages, and payments due or payable to Seller arising as of the Closing Date.

(d) All Books and Records of the Business except as set forth in Section 2.2, provided, that at any time after the Closing, Purchaser shall make all such Books and Records reasonably available to Seller and shall provide copies thereof (upon Seller's payment of any Third Party copying costs) to the extent Seller reasonably deems necessary for the preparation of Tax Returns or of operating reports or for the satisfaction of other requirements of the Bankruptcy Court or as is otherwise required by any Governmental Authority.

(e) All equipment, machinery, containers, compactors, tools, parts, engineering and office equipment, vehicles, communications equipment, spare and replacement parts, all computers, computer servers, computer equipment, electronic devices, computer software, hardware, firmware, middleware, source code, object code, development tools, workstations, routers, hubs, data communication lines and all other information technology equipment and all associated documentation and other tangible or personal property owned by Seller or used or held for use in the operation of the Business ("Equipment"). The Equipment shall expressly exclude any tangible property held or used by Debtor pursuant to a lease, rental agreement, contract, license or similar arrangement unless Purchaser expressly seeks to have Seller assume and assign such underlying lease, rental agreement, executory contract, license or similar agreement relating to such tangible property prior to or after the Closing, pursuant to the procedures set forth in Section 3.2.

(f) All customer lists, and any Contracts that are assumed by Seller and assigned to Purchaser pursuant to the procedures set forth in Section 3.2 (the "Assumed Contracts").

(g) All permits, licenses and authorizations held by Debtor in the operation of the Business, to the extent such transfer is permitted, as set forth on the attached **Schedule 2.1(g)**.

(h) All vehicles and equipment owned by Seller including as set forth on the attached **Schedule 2.1(h)** ("Vehicles").

(i) All of the Business' notes receivable (including therein all notes from current or former employees of Seller, whether or not associated with the Business, but specifically excluding therefrom that certain payment obligation of Kondelin Road, LLC in favor of the Debtor in the approximate amount of \$44,330.97 as reflected in the books and records of the Debtor (the "Kondelin Obligation")), accounts receivable and other receivables, deposits (including security deposits), Customer Deposits, promotional allowances, vendor rebates or advances, together with any unpaid interest or fees accrued thereon or other amounts due with respect thereto, and any security or collateral therefor, including recoverable advances and deposits (collectively, the "Receivables").

(j) All rights under or pursuant to all warranties, representations, indemnities and guarantees made by suppliers, manufacturers and contractors in connection with the operation of the Business or affecting the Equipment, Vehicles, Fixed Assets, or Assumed Business Contracts.

(k) The right to bill and receive payment for services performed, but unbilled or unpaid in connection with the Business.

(l) All rights to proceeds under insurance policies to the extent related to or payable in connection with the operation of the Business or the Purchased, provided however that any "Key Man" or similar type of insurance policies and proceeds ("Key Man Policies") thereof or causes of action related thereto shall remain with the Seller and shall not be included in the Purchased Assets.

(m) Except as set forth in Section 2.2, all Actions, rights, Claims, credits, causes of action, condemnation proceedings, rights of set-off or other rights against Third Parties arising out of the Business, including without limitation any rights concerning any litigation in which, in connection with or with respect to which Seller is a claimant including without limitation, those identified on **Schedule 2.1(m)**.

(n) The right to receive and retain mail, accounts receivable payments and other communications relating to the Business.

(o) All websites, e-mail addresses, telephone and facsimile numbers and domain names owned by Seller or used or held for use by Seller in the operation of the Business.

(p) All right title and interest to the name "Hiltz Waste Disposal" or similar names and the right to use any or all of that name.

(q) All outstanding claims of Seller against Kondelin Road, LLC other than the Kondelin Obligation.

(r) All customer deposits, prepaid expenses, rebates, security deposits, deposits and deposit accounts.

(s) All rights of Seller in and to the Kondelin Occupancy Rights (if any) and the security deposit (if any) arising pursuant thereto.

Section 2.2 Excluded Assets. Any provision of this Agreement to the contrary notwithstanding, the following (collectively, the "Excluded Assets") shall not be included in the Purchased Assets and shall not be sold or assigned by Seller to Purchaser or to a Permitted Designee pursuant to this Agreement:

(a) All cash (including, without limitation, checking account balances, certificates of deposit and other time deposits and petty cash), held by, on behalf or in the name of Seller, along with safety deposit boxes, lock boxes and the like relating to the Seller or the Business.

(b) The equity securities, minute books, stock books, corporate seals and other corporate records of Seller relating to their respective organization and existence; provided, however, that after execution of this Agreement, Seller shall, on request by Purchaser, and at Purchaser's cost, provide copies of such books, records and other materials not previously provided to Purchaser.

(c) All Tax Returns of Seller for the prior six (6) years; provided, however, that after execution of this Agreement, Seller shall, on request by Purchaser, provide copies of such Tax Returns if available not previously provided to Purchaser.

(d) All documents, books and records pertaining exclusively to Excluded Assets.

(e) Any and all avoidance claims or causes of action arising under the Bankruptcy Code, including, without limitation, all rights and avoidance claims of Seller arising under Chapter 5 of the Bankruptcy Code.

(f) All Excluded Contracts and rights thereunder.

(g) Any and all assets listed on **Schedule 2.2(g)**, which Schedule shall be prepared by Purchaser and updated by Purchaser from time to time prior to the Closing Date, provided, that Purchaser may amend **Schedule 2.2(g)** at any time on or before two (2) Business Days prior to the Closing Date, in order to exclude any asset or Contract from the definition of Purchased Assets.

ARTICLE III **LIABILITIES**

Section 3.1 No Assumption of Liabilities. In connection with the acquisition of the Assets, neither Purchaser nor its Permitted Designee shall assume or be liable for any Liabilities of Seller.

Section 3.2 Assumption and Assignment of Contracts. With respect to any Contract of Seller, and provided that such Contract has not been rejected by Seller pursuant to Section 365 of the Bankruptcy Code, upon written notice from Purchaser no later than thirty (30) days following the Closing setting forth such Contracts if any, which Purchaser desires to obtain, Seller shall, as soon as practicable subject to any requirements of the Bankruptcy Court, take all actions reasonably necessary to assume and assign to Purchaser, pursuant to Section 365 of the Bankruptcy Code, all Contracts set forth in Purchaser's notice, subject to any requirements of the Bankruptcy Court that, as to any such Contracts to be assumed by Purchaser, any applicable cure costs shall be satisfied by Seller. Seller agrees and acknowledges that (i) it shall not pursue any motion to reject any Contract for a period of not less than 30 days following the Closing or for such longer period that any such motion to assume filed within such 30 day period is pending determination; and (ii) the covenant set forth in this Section 3.2 shall survive the Closing for such period. Purchaser shall use reasonable best efforts to timely inform Seller of its decisions regarding the Contracts so as to avoid Seller filing multiple motions for this purpose. Notwithstanding anything in this Agreement to the contrary, on the date any Contract set forth in Purchaser's notice is assumed by Seller and assigned to Purchaser or its Permitted Designee(s) pursuant to this Section 3.2, such Contract shall be deemed an Assumed Contract and deemed scheduled on **Schedule 2.1(f)** for all purposes under this Agreement.

ARTICLE IV **PURCHASE PRICE**

Section 4.1 Purchase Price. In consideration of the sale of the Purchased Assets by the Seller, the Purchaser shall pay the Seller a total purchase price (subject to adjustments as set forth herein) totaling **Two Million Nine Hundred Twenty-Five Thousand Dollars exactly (\$2,925,000.00)**

(the "Purchase Price"), which shall consist of the following:

(a) An amount equal to \$292,500 or such other amount as the Bankruptcy Court may order ("Buyer's Deposit"); and

(b) A cash payment equal to the difference between the Purchase Price and the Buyer's Deposit, subject to adjustment as set forth herein ("Cash Payment").

The Buyer's Deposit and Cash Payment shall sum to the Purchase Price.

Section 4.2 Buyer's Deposit. Purchaser shall deliver an earnest money deposit equal to the Buyer's Deposit to counsel for Seller prior to the filing of the Sale Motion. The Buyer's Deposit shall be held in an account established by the Trustee on behalf of Seller, and shall be not subject to any use other than the purposes set forth in this Agreement and in accordance with the terms of the Bidding Procedures Order, and shall be subject to refund in accordance with this Agreement.

Section 4.3 Payment of Purchase Price. On the Closing Date, simultaneous with Seller's delivery to Purchaser of the Purchased Assets and the Seller Deliverables required pursuant to Section 11.1(a) hereof, and in consideration therefor, Purchaser shall deliver to Seller the Purchase Price by wire transfer less the Buyer's Deposit held in accordance with Section 4.2 and the Purchaser Deliverables required pursuant to Section 11.1(b) hereof.

Section 4.4 Allocation of Purchase Price. The Purchase Price shall be allocated among the various Purchased Assets as agreed to by the parties in writing on or before the Closing Date. Such allocation shall be binding on Purchaser and Seller for all Tax purposes, and neither party shall take any contrary position regarding such allocation in any Tax Return, proceeding or contest.

Section 4.5 Prorations and Adjustments. The following items shall be prorated and/or adjusted as of the close of business on the Closing Date or otherwise as follows: (a) all personal property Taxes with respect to the Purchased Assets and, to the extent required to be paid by the tenant under the Kondelin Occupancy Rights, all real estate Taxes, assessments and municipal charges with respect to that portion of the Kondelin Road Property subject to the Kondelin Occupancy Rights, all in accordance with the closing customs of the municipality, county or state (as applicable) in which the Purchased Assets and Kondelin Road Property are located; (b) all rent paid by Seller under the Kondelin Occupancy Rights for the month in which the Closing occurs; (c) utilities; and (d) all other matters of prepaid expenses and credit items as provided for herein, the proration to be made and paid, insofar as reasonably possible, on the Closing Date, with settlement of any remaining items to be made within thirty (30) days following the Closing Date.

ARTICLE V

REPRESENTATIONS AND WARRANTIES AND RELATED UNDERTAKINGS

Section 5.1 Representations and Warranties of Seller. As a material inducement to Purchaser to enter into and perform its obligations under this Agreement, Seller (either based on his own knowledge (where identified herein) or to the best of his

Knowledge (where identified herein), hereby represents and warrants to Purchaser that the statements contained in this Article V are true and complete as of the date hereof, subject to the amendment of the Schedules provided by Seller to Purchaser pursuant to Sections 6.1 and 13.9 (the "Schedules").

(a) Good Standing and Authority. Subject to the receipt of Bankruptcy Court approval, Seller has full power and authority to enter into this Agreement and all documents in connection herewith (the "Attendant Documents") and to consummate the transactions contemplated in this Agreement. This Agreement and all of the Attendant Documents to which Seller is a party, and the consummation of the transactions contemplated in this Agreement, have been or will be, on or prior to the Closing Date, duly authorized and approved by all necessary and proper Bankruptcy Court action on the part of Seller, and will constitute legal, valid and binding obligations of Seller enforceable against such Seller in accordance with their respective terms.

(b) [intentionally omitted]

(c) Consents, Approvals or Authorizations. Except as contemplated by this Agreement or ordered by the Bankruptcy Court, no consent, approval or authorization of, filing or registration with, or notification to any Governmental Authority is required in connection with the execution and delivery of this Agreement or any Attendant Documents by Seller or the consummation of the transactions contemplated hereby.

(d) Assets. Other than the Excluded Assets, there are no assets used in or necessary to the operation of the Business as is presently conducted, which are not included in the Purchased Assets to be transferred to Purchaser on the Closing Date. Upon consummation of the transactions contemplated hereby and pursuant to the entry of the Sale Order, Purchaser will have acquired good and marketable title in and to each of the Purchased Assets to be acquired by it, free and clear of all Encumbrances. Seller does not operate any portion of the Business or hold any of the Purchased Assets under a d/b/a or tradename.

(e) [intentionally omitted]

(f) [intentionally omitted]

(g) Title to Purchased Assets. Seller is the sole owner of and interest holder in all the Purchased Assets, and has good and valid title thereto, free and clear of all Encumbrances.

(h) Absence of Certain Changes. Without the prior written consent of Purchaser there shall not be, prior to Closing (i) any event, development or state of circumstances directly relating to the Business, Purchased Assets or the employees, that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; (ii) any incurrence of indebtedness by Seller other than in the ordinary course of business, consistent with past practice; (iii) any creation or other

incurrence by Seller of any Encumbrance on any Purchased Asset that will not be dismissed and released prior to the Closing; (iv) any change in any method of accounting or accounting principles or practice by Seller or any revaluation of any Purchased Assets; (v) any Liability relating to or affecting the Purchased Assets that would reasonably be foreseen to create a Liability of Purchaser; (vi) any increase in compensation, bonus or benefits payable to any director, officer or employee of Seller or the grant of or adjustment to any severance or termination pay; (vii) any capital expenditures or commitments for capital expenditures; (viii) any material payments, discount activity or any other consideration to customers or suppliers, other than in the ordinary course of business consistent with past practice; (ix) any sale, transfer, lease, exclusive license, or other disposition of any Purchased Asset, including, without limitation, routes, except inventory in the ordinary course of business consistent with past practice; (x) any acquisition of a material amount of the assets of any other Person; or (xi) any agreement to do the foregoing, or any action or omission that would result in any of the foregoing.

(i) [intentionally omitted]

(j) [intentionally omitted]

(k) Contracts. True, correct and complete copies of all Contracts will at Closing be delivered by the Seller or made available to Purchaser. Seller represents and warrants that, to the best of Seller's Knowledge, there are approximately 1200 customers of the Debtor, approximately 360 of which are or were identified in a written Contract, and approximately 150 of which are currently subject to written Contracts that remain in place, each Contract is in full force and effect and, is a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms and there are no material disputes pending or, to the Knowledge of Seller, threatened under any such Contract, and such Contracts have aggregate cure costs of \$0. Seller represents and warrants that, and to the best of Seller's Knowledge, Seller is not subject to any non-competition agreements or similar Contracts and has no outstanding Contract to acquire any debt obligations of others.

(l) Environmental Matters. To the Knowledge of the Seller, except as set forth on **Schedule 5.1(l)** attached hereto, there is no written notice of violation, notification of liability or potential liability or request for information received by Seller or Action pending or threatened with respect thereto. Seller has disclosed on **Schedule 5.1(l)** all environmental reports, studies and analyses which Seller has caused to be prepared or has received within the last five (5) years, together with all written notices it has received from all Governmental Authorities related to the environmental condition of the Purchased Assets respect to the operation of its Business, and has provided Purchaser with copies of and/or access to all such reports, studies, analyses and notices.

(m) [intentionally omitted]

(n) [intentionally omitted]

(o) Employees. No later than five (5) days prior to the Closing Date and earlier upon Purchaser's written request therefor, Seller shall provide Purchaser with list of all of Seller's employees, certified by Seller to be true, correct and complete as of the date given ("Employee Schedule").

(p) Financial Statements. Seller has delivered to Purchaser such true, correct and complete balance sheets, related statements of income and retained earnings and other financial statements for the periods therein set forth (collectively, the "Financial Statements").

(q) [intentionally omitted]

(r) Accounts Receivables. Within two (2) days of Purchaser's request therefor, Seller shall deliver a report to Purchaser listing all Receivables of Seller (with names and addresses redacted) as of the date given, certified by Seller as being true, correct and complete ("Receivables Report"). Purchaser may request updated Receivable Reports from time to time at Purchaser's discretion but no more frequently than on a weekly basis except that, regardless of when last provided, Seller shall deliver an updated current and unredacted certified Receivable Report to Seller at Closing.

(s) Disclosure. This Agreement, the Schedules hereto or any other information furnished or to be furnished to the Purchaser in connection with this Agreement and the transactions contemplated hereby do not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained herein or therein not false or misleading.

Section 5.2 Representations and Warranties of Purchaser. Purchaser hereby represents and warrants to Seller the following:

(a) Good Standing and Authority. Purchaser is a limited liability company organized, validly existing and in good standing under the laws of the State of Delaware. Purchaser has full power and authority to enter into this Agreement, to enter into the Attendant Documents to which it is a party and to consummate the transactions contemplated in this Agreement. This Agreement and all of the Attendant Documents to which Purchaser is a party, and the consummation of the transactions contemplated in this Agreement, have been or will be, on or prior to the Closing Date, duly authorized and approved by all necessary and proper limited liability company action on the part of Purchaser. This Agreement, and all of the Attendant Documents to which Purchaser is a party, have been (or to the extent to be entered into on or prior to the Closing will be) duly executed and delivered, and when executed and delivered, will constitute legal, valid and binding obligations of Purchaser enforceable against such Purchaser in accordance with their respective terms.

(b) Non-Violative Agreement. Neither the execution and delivery of this Agreement and the Attendant Documents to which Purchaser is a party nor the consummation of the transactions contemplated in this Agreement will conflict with,

result in the breach or violation of or constitute a default under (i) Purchaser's certificate of formation or governing documents, (ii) any Law or Order applicable to Purchaser; or (iii) the terms, conditions or provisions of any other agreement or instrument to which Purchaser is a party, or by which Purchaser may be bound or to which it may be subject.

(c) Consents, Approvals or Authorizations. Except as contemplated by this Agreement, no consent, approval or authorization of, filing or registration with, or notification to any Governmental Authority is required in connection with the execution and delivery of this Agreement or any Attendant Documents by Purchaser or the consummation of the transactions contemplated hereby. No consent, approval or authorization of any person, partnership, corporation or entity is required in connection with the execution and delivery of this Agreement by Purchaser or the consummation by Purchaser of the transactions contemplated hereby.

(d) Litigation. There are no Actions pending or, to the knowledge of Purchaser, threatened that question the validity of this Agreement or that could reasonably be expected to have a Material Adverse Effect on Purchaser or on the consummation of the transactions contemplated by this Agreement.

(e) Kondelin Road Property. Purchaser represents that it is bound to an agreement to purchase the Kondelin Road Property from Kondelin Road, LLC, a Massachusetts limited liability company owned by Debtor's principal, under an agreement where the terms of which will provide a simultaneous closing with the Closing under this Agreement, and will provide for full payment of the mortgage loan in favor of First Ipswich Bank. Seller acknowledges that such loan is identified as a claim asserted against the Debtor in the Chapter 11 Case, the payment of which from the proceeds of the Kondelin Road Property sale will generate a substantial benefit for the creditors of the Debtor's estate.

ARTICLE VI **DISCLOSURE; SURVIVAL**

Section 6.1 Amendments to Disclosure Schedules. From time to time prior to the Closing, Seller shall, by written notice to, but subject to and with the prior written consent of, Purchaser, amend the Schedules hereto relating to the representations and warranties in this Agreement to reflect any matters hereafter arising.

Section 6.2 Survival of Representations and Warranties. The representations and warranties of the parties contained in this Agreement or in any instrument delivered pursuant hereto will survive the Closing and will remain in full force and effect thereafter for ninety (90) days; provided that in the case of fraud, intentional misrepresentation or deliberate or willful misconduct, all representations and warranties shall survive until the expiration of the applicable statute of limitations period.

ARTICLE VII
EMPLOYEE MATTERS

Section 7.1 Employees. Purchaser may make offers of employment to certain employees of the Business, for employment on terms and conditions of employment determined by Purchaser in its sole and absolute discretion that may be different from those provided by Seller. Prior to the Closing, Seller shall terminate the employment of each employee to whom Purchaser has informed Seller that Purchaser intends on making an offer of employment after the Closing. Purchaser shall conduct employee interviews and engage in hiring practices in accordance with applicable Laws and Regulations. The exact number of offers of employment made by Purchaser, and the terms and conditions of such offers, shall be determined by Purchaser in its sole discretion and in accordance with applicable Laws. Seller shall be responsible for any and all Liability for workers' compensation claims, wages, bonuses, commissions, employee benefits, retention or stay bonus arrangements, and other compensation (including all obligations under any employee benefit plans) due to the employees of Seller arising out of their employment with Seller prior to and as of the Closing. For purposes of this Agreement, Seller's employees who, on or within thirty (30) days after the Closing Date, accept and actually commence employment with Purchaser or any subsidiary of Purchaser shall be referred to herein as "Hired Employees." Nothing contained in this Agreement shall require Purchaser to maintain the employment of any Hired Employee. Nothing contained in this Agreement shall confer upon any Person any right with respect to employment or continued employment by Purchaser, nor shall anything herein interfere with the right of Purchaser to terminate the employment of any Person at any time, with or without notice, or restrict Purchaser, in the exercise of its business judgment in modifying any of the terms or conditions of employment of any Person after the Closing.

ARTICLE VIII
RIGHTS OF ACCESS

Section 8.1 Rights of Access. From the date hereof through Closing, Purchaser may continue to make reasonable inquiries with Seller regarding business and legal due diligence of Debtor, the Purchased Assets, and the Business as Purchaser, its employees, members, officers, representatives or agents deems reasonably necessary or desirable. Seller shall promptly disclose to Purchaser all information relating to same and agrees that no such information shall be withheld from Purchaser and no information posted on the data room maintained by Seller shall be withheld or excluded from Purchaser. From and after the Bankruptcy Court approval of Purchaser's bid, Seller (a) shall afford the officers, directors, members, employees, auditors and other agents of Purchaser and its Affiliates reasonable access during normal business hours to (i) all Books and Records, (ii) all legal documents and files of Seller (unless Seller is otherwise prohibited by Law from providing) pertaining to the Business, the Purchased Assets or the Kondelin Road Property and (iii) the properties, offices, plants and other facilities of Seller including, without limitation, access to the Purchased Assets and the Kondelin Road Property for such inspection, investigation or review as Purchaser or its advisors

deem necessary or desirable as part of its due diligence and (b) shall furnish Purchaser and its Affiliates with all financial, operating and other data and information with respect to the business and properties of Debtor, as Purchaser, its Affiliates and their respective officers, employees or agents, may require. All information provided or made available to Purchaser in accordance with this section shall be kept confidential by Purchaser and subject to any confidentiality or non-disclosure agreement previously or hereinafter executed by Purchaser, and Seller, in his sole discretion, may redact portions of any documents or other information provided or made available to Purchaser prior to the Closing Date. Notwithstanding the foregoing, however, such continued rights of due diligence shall not, in and of themselves, constitute a condition to Purchaser's closing obligations hereunder.

ARTICLE IX

ADDITIONAL AGREEMENTS

Section 9.1 Approval of this Agreement. Within five days from the execution hereof, Seller will file with the Bankruptcy Court his Motion for the Entry of Orders (I) Approving Bidding Procedures for the Sale of the Debtor's Assets, and the Form and Manner of Notice Thereof; (II) Scheduling a Hearing to Consider the Proposed Sale; and (III) Approving the Sale of the Debtor's Assets Free and Clear of All Liens, Claims, Encumbrances and Interests (the "Sale Motion"), seeking the entry of an order by the Bankruptcy Court approving the form of this Agreement, specifically including the terms of Section 12.3 and **Exhibit A** of this Agreement, including, without limitation the Bidding Procedures and the payment of the Break-Up Fee (the "Bidding Procedures Order"); and seeking approval of the sale of the Purchased Assets pursuant to this Agreement and supporting papers (including the Sale Order) and seeking entry of the Sale Order. To the extent requested by Purchaser in accordance with Section 3.2 hereof, following the Closing Seller will file with the Bankruptcy Court a Motion For An Order Approving the Assumption and Assignment of Executory Contracts and Leases.

Section 9.2 Approval Proceedings.

(a) Seller shall (i) use its reasonable best efforts to cause the entry of the Sale Order by the Bankruptcy Court on or before the 60th day following the Effective Date (the "Sale Hearing Date") and (ii) use its reasonable best efforts to obtain, and shall refrain from knowingly taking any action that would be likely to delay, prevent, impede or result in the revocation of the entry by the Bankruptcy Court of the Sale Order except as otherwise contemplated by this Agreement.

(b) Seller shall use its reasonable best efforts to provide prompt and timely notice of the proposed sale of the Purchased Assets, in form and substance reasonably acceptable to Purchaser and in such manner as may be required by any Law, to Seller's creditors and all parties entitled to notice of the Sale Motion (the "Required Creditor Notices").

(c) Seller shall use its reasonable best efforts to obtain the entry of the Bidding Procedures Order, subject to revisions agreed to by Purchaser, by the tenth (10th) Business Day following the Effective Date approving, among other things, without limitation, the procedures relating to Alternative Offers, the Break-Up Fee set forth in Section 12.3 and the proposed bidding procedures set forth on **Exhibit A** to this Agreement (the "Bidding Procedures").

(d) Notwithstanding any provision to the contrary herein, Seller shall not seek to amend or modify any provision of the Bidding Procedures Order or the Sale Order without prior consent of Purchaser.

Section 9.3 Insurance; Casualty or Loss.

(a) Seller shall keep and maintain all its insurance policies, with such insurers, upon such terms and for such amounts as exist as of the date hereof in full force and effect through the Closing Date and shall provide evidence of same to Purchaser upon request.

(b) The risk of loss or damage to any of the Purchased Assets shall remain with Seller until Closing and Seller shall keep the Purchased Assets fully insured with respect thereto as set forth above. If any portion of the Purchased Assets valued in excess of \$100,000 is damaged, lost or destroyed (whether by fire, theft or other casualty event) on or prior to the Closing Date, Seller shall promptly notify Purchaser in writing whereupon Purchaser may, at its sole option either (i) terminate this Agreement, in which case the Buyer's Deposit, together with all accrued interest thereon, shall be returned to Purchaser and this Agreement shall be of no further force and effect except as to those obligations, if any, that specifically survive the termination of this Agreement, or (ii) consummate the purchase provided for by this Agreement in which event (A) Except as to any Key Man Policies and proceeds, Seller shall deliver and assign to Purchaser all insurance proceeds and the right to receive all insurance proceeds paid or payable as a result of such loss or destruction, and (B) the Purchase Price shall be reduced by an amount equal to the deductibles under the applicable insurance policies.

Section 9.4 Notification of Certain Matters. Prior to Closing, Seller shall notify Purchaser, and Purchaser shall notify Seller, of any litigation, arbitration, appeal or administrative proceeding pending, or, to its knowledge, threatened against Seller or Purchaser, as the case may be, which challenges the consummation of the transactions contemplated herein or otherwise may result in or lead to a Material Adverse Effect.

Section 9.5 Further Action. Each of the parties hereto covenants and agrees, upon the terms and subject to the conditions contained herein, to pursue diligently and in good faith and use all best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or advisable under applicable Laws and regulations to consummate and make effective the transactions contemplated hereby, subject to the terms and conditions of this Agreement.

Section 9.6 Conduct of the Business. Except (a) as contemplated by this Agreement or (b) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), Seller covenants and agrees that, during the period prior to the Closing, Seller shall (i) conduct the Business in a manner consistent with past practice; (ii) not take any action that would otherwise materially impair the Purchased Assets; (iii) comply in all material respects to applicable Laws; (iv) provide Purchaser reasonable access to confer with Seller to report operational matters and the general status of ongoing operations of Debtor and adverse trends; (v) operate and maintain the Business and the Purchased Assets in the ordinary course; (vi) maintain all routes as currently exists; (vii) use reasonable and good faith efforts to maintain its customers and preserve such good will of the Business as exists as of the date hereof; (viii) continue to make ordinary repairs, replacements and maintenance with respect to the Purchased Assets, not permitting any deterioration in the condition thereof; and (ix) deliver the Business and Purchased Assets to Purchaser at Closing in substantially the same condition as existed on the date hereof, reasonable wear and tear excepted.

Section 9.7 [intentionally omitted].

Section 9.8 Access to Information. After the Closing, as defined in Section 11.1, and for a period of two (2) years thereafter, each party shall afford the other party, its officers, directors, employees, auditors and other agents reasonable access during normal business hours to all books, records and other data relating to the Business in its possession with respect to periods prior to the Closing and the right (at the requesting party's sole cost) to make copies and extracts therefrom, to the extent that such access may be reasonably required by the requesting party in connection with (a) the preparation of tax returns, (b) the determination or enforcement of rights and obligations under this Agreement, (c) compliance with the requirements of any Governmental Authority or (d) the determination or enforcement of the rights and obligations of any party to this Agreement or any of the agreements executed in connection herewith. Seller shall hold any such information from Purchaser in strict confidence and shall only use such information for the reasons set forth above. This obligation shall survive the Closing.

Section 9.9 Change of Name and Case Caption. Within five (5) Business Days of the entry of the Sale Order, Seller shall file a motion with the Bankruptcy Court to, upon closing, change the name of Seller and its Affiliates to any name that does not contain the name "Hiltz Waste Disposal, Inc." or any derivative thereof, which motion shall provide that from and after the Closing Seller and its Affiliates shall make no further use of the name "Hiltz Waste Disposal, Inc." or any derivative thereof except to the extent necessary for winding up Seller's affairs or defending any Claims brought against, or prosecuting any Claim brought by, Seller's estate in Bankruptcy. Seller will not use the name or any derivative thereof subsequent to the Closing except for the limited purposes set forth in this Section 9.9 and shall, at Closing, deliver to Purchaser a duly authorized and executed amendment to Seller's certificate of incorporation, in proper form for filing with the Massachusetts Secretary of State, effecting such name change, together with the appropriate filing fees. Purchaser is hereby authorized to file

said amendment after the Closing upon the Bankruptcy Court's approval of the motion set forth above.

Section 9.10 Post-Closing Payments. After the Closing, if Seller, its Affiliates or successors receives any payment, refund or other amount which is a Purchased Asset or which is otherwise properly due and owing to Purchaser pursuant to the terms of this Agreement, Seller shall promptly remit, or shall cause to be remitted, such amount to Purchaser. The Seller shall promptly endorse and deliver to Purchaser any notes, checks, negotiable instruments or other documents which are Purchased Assets or otherwise properly due and owing to Purchaser under this Agreement, and Purchaser shall have the right and authority to endorse, without recourse, the name of Seller on any such instrument or document.

ARTICLE X

CONDITIONS TO THE CLOSING

Section 10.1 Conditions to Obligations of Purchaser. The obligations of Purchaser to effect the Closing shall be subject to the prior and/or simultaneous satisfaction or written waiver by Purchaser of each of the conditions set forth below.

(a) Entry of the Bidding Procedures Order. The Bidding Procedures Order shall have been entered in form and substance satisfactory to Purchaser in its sole discretion no later than fourteen (14) Business Days after the Effective Date hereof. In the event the Bidding Procedures Order has not been so entered, the Purchaser in its sole discretion, may terminate this Agreement.

(b) Entry of Sale Order. The Sale Order shall have been entered by the Sale Hearing Date. The Sale Order shall not have been modified, amended, dissolved, revoked or rescinded and shall be in full force and effect as a Final Order on the Closing Date. The Sale Order shall be in form and substance acceptable to Purchaser in its sole discretion, substantially in form and substance as that attached to the Sale Motion, and shall provide, among other things, (1) to the extent allowed by the Bankruptcy Court, a release by Seller and the bankruptcy estate to Purchaser and any Permitted Designee at the time of Closing, of successor liability, that specifically, upon Closing, Purchaser and any Permitted Designee shall not be deemed to (i) be the successor of Seller, (ii) have, de facto or otherwise, merged with or into Seller, or (iii) be a mere continuation or substantial continuation of Seller or the enterprise of Seller; (2) that such sale shall be, pursuant to Sections 105, 363(b) and 363(f) of the Bankruptcy Code, free and clear of all Encumbrances; (3) that Purchaser or its Permitted Designee(s) is deemed to have purchased the Purchased Assets in good faith pursuant to Section 363(m) of the Bankruptcy Code so that the reversal or modification of the Sale Order does not affect the validity of the sale to Purchaser or its Permitted Designee(s) of the Purchased Assets pursuant to the Sale Order; (4) that Seller is authorized and directed to execute, upon request by Purchaser, one or more assignments in form, substance, and number reasonably acceptable to Purchaser, evidencing the conveyance of the Purchased Assets to Purchaser or any Permitted Designee; (5) the transactions contemplated hereunder

shall not be avoidable under Section 363(n) of the Bankruptcy Code; and (6) in the event of a failure by Seller to perform his obligations under the Agreement, including any attempt to terminate the Agreement without the consent of Purchaser or failing to make the deliveries at Closing, that Purchaser shall be entitled to a remedy of specific performance, including the issuance of a mandatory injunction by the Bankruptcy Court to compel the Seller to perform his obligations hereunder, including, without limitation, to make all of the deliveries contemplated herein.

(c) Representations and Warranties. The representations and warranties of Seller set forth in this Agreement shall be true and correct in all material respects.

(d) Compliance with Covenants and Agreements. Seller shall have, in all material respects, performed all obligations and agreements and complied with all covenants contained in this Agreement, to be performed and complied with by Seller at or prior to the Closing.

(e) [intentionally omitted]

(f) No Material Adverse Effect. Since the Effective Date, no Material Adverse Effect (or event or condition that is reasonably likely to result in a Material Adverse Effect) shall have occurred in the Business or in the condition of the Purchased Assets or in the condition (financial or otherwise), prospects, operations, assets or liabilities of Seller.

(g) [intentionally omitted]

(h) Employment. Seller shall have terminated the employment of all its employees in writing effective as of the date immediately preceding the Closing.

(i) Seller Deliverables. Seller shall have provided Purchaser with all of the Seller Deliverables set forth in Section 11.1(a) hereof.

Section 10.2 Conditions to Obligations of Seller. The obligations of Seller to effect the Closing shall be subject to the prior and/or simultaneous fulfillment or written waiver by Seller of each of the conditions set forth below.

(a) Entry of the Sale Order. The Sale Order shall not have been modified, amended, dissolved, revoked or rescinded and shall be in full force and effect on the Closing Date.

(b) Purchaser Deliverables. Purchaser shall have provided Seller with all of the Purchaser Deliverables set forth in Section 11.1(b) hereof.

ARTICLE XI

CLOSING

Section 11.1 Closing and Delivery of Documents. The closing (the "Closing") of the transactions contemplated in this Agreement shall take place as soon as practicable after the satisfaction or waiver of each of the conditions set forth in Article X, but in no event later than fifteen (15) days following entry of the Sale Order (the "Closing Date") at the offices of Seller's Trustee, Mark G DeGiacomo, Esq., Murtha Cullina LLP, 99 High Street, 20th Floor, Boston, MA 02110 or such other time and place as the parties may agree. At the Closing or, at Purchaser's option, at such later time, the parties hereto shall exchange all duly executed Attendant Documents and other instruments required to, as to the sale of the Purchased Assets, consummate the transactions contemplated by this Agreement, including, but not limited to the documents and instruments set forth in Sections 11.1 (a) and (b) below, all in form reasonably satisfactory to Purchaser and Seller.

(a) On or as of the Closing (or at such alternate date as set forth herein), Seller shall deliver the following to Purchaser (collectively, the "Seller Deliverables"): (i) a certified copy of the Sale Order, which shall not, prior to entry by the Bankruptcy Court, have been modified or amended in any manner that has not been agreed to in writing by Purchaser, in its sole discretion and which, unless waived by Purchaser in its sole discretion, shall be a Final Order; (ii) a Bill of Sale, duly executed by Seller with full warranties of title, pursuant to which Seller shall transfer his right, title and interest in and to the tangible Purchased Assets and which shall contain a reasonably detailed list of the Purchased Assets; (iii) if requested by Purchaser within thirty (30) days following the Closing, Seller shall file a Motion for an Order Assuming and Assigning Executory Contracts and Leases and, if approved, shall deliver to Purchaser an Assignment and Assumption of Leases and Contracts executed by Seller assigning its right, title and interest in the Assumed Contracts to Purchaser (the "Assignment of Contracts") (iv) an Assignment and Assumption of Occupancy Rights and Security Deposit with respect to the Kondelin Occupancy Rights (the "Assignment of Occupancy Rights"), to the extent any such rights exist; (v) [intentionally omitted]; (vi) [intentionally omitted]; (vii) within thirty (30) days following the Closing or at such later date as is practicable, original certificates of title endorsed over to Purchaser together with executed bills of sale for each Vehicle; (viii) a Closing Statement mutually acceptable to the parties and duly executed by Seller ("Closing Statement"); (ix) copies of the employee termination letters; (x) if requested by Purchaser within thirty (30) days following the Closing, notice to customers and vendors of the assignment of their contracts ; (xi) [intentionally omitted]; (xiii) originals of all Assumed Contracts, originals (if available) of all permits, third party warranties and such other documentation pertaining to the Purchased Assets, as Purchaser may request) and all keys related to the Purchased Assets, the Business, the Kondelin Road Real Property and all other leased property and (xii) the final Employee Schedule, final Receivable Report and all such other reports, assignments, documents or instruments as Purchaser or Purchaser's counsel may reasonably request in order to

evidence or consummate the transactions contemplated by or to effectuate the purpose or intent of this Agreement.

(b) On or as of the Closing, Purchaser shall deliver the following to Seller (collectively, the “Purchaser’s Deliverables”): (i) the Cash Payment portion of the Purchase Price (subject to adjustment as set forth herein); (ii) counterparts of the Assignment of Contract Assignment of Lease, duly executed by Purchaser or its Permitted Designee(s); (iii) a list of the intended Hired Employees; (iv) a counterpart of the Closing Statement executed by Purchaser; (iv) reasonably appropriate evidence of all necessary corporate action by Purchaser in connection with the transactions contemplated hereby, including certified copies of its articles or organization and operating agreement, a certificate of incumbency and certified resolutions of the Purchaser’s members approving the transactions contemplated by this Agreement and authorizing the execution, delivery, and performance by Purchaser of this Agreement; (v) such counterparts, if any, with respect to all other assignments, documents and instruments arising pursuant to Section 11.1(a) duly executed by Purchaser or its Permitted Designee; and (vi) such other documents reasonably contemplated by this Agreement to be delivered by Purchaser to Seller at Closing.

ARTICLE XII

TERMINATION, AMENDMENT AND WAIVER

Section 12.1 Termination. Notwithstanding anything herein to the contrary, this Agreement may be terminated, whereupon the Buyer’s Deposit shall be immediately returned to Purchaser and the transactions contemplated hereby abandoned at any time prior to the Closing:

(a) by mutual written consent of Purchaser and Seller; or

(b) by Purchaser (i) if any of the conditions set forth in Section 10.1 are not satisfied, as provided therein; or (ii) upon a casualty or loss pursuant to Section 9.3 hereof; or

(c) by Purchaser or Seller, if the Bankruptcy Court or any other court of competent jurisdiction in the United States or other United States Governmental Authority shall have issued any Final Order or Order restraining, enjoining, or otherwise not approving the purchase of the Purchased Assets on the terms and conditions contained herein; or

(d) by Purchaser, if the Auction shall not have occurred on or before the 60th day following the Effective Date hereof and the Closing shall not have occurred on or before the 90th day following the Effective Date; provided, however, that the right to terminate this Agreement under this Section 12.1(d) shall not be available to Purchaser if its failure to fulfill any obligation under this Agreement shall have been the material proximate cause of the failure of the Closing; or

(e) by Purchaser, if there shall have been a material breach of any of the representations or warranties of Seller or a material breach of any of the covenants set forth in this Agreement on the part of Seller, which breach is not cured within ten (10) days following written notice to Seller; or

(f) by Seller, if there shall have been a material breach of any of the representations and warranties of Purchaser or a material breach of any of the covenants set forth in this Agreement on the part of Purchaser, which breach is not cured within ten (10) days following written notice to Purchaser; or

(g) by Purchaser or Seller, in the event Purchaser is not the Successful Bidder at the Auction, except that if Purchaser is not the Successful Bidder at Auction and Closing fails to occur with the Successful Bidder and Purchaser is chosen by the Court as the next candidate to be the Successful Bidder, Seller may in its sole discretion obligate Purchaser to Close on the terms and conditions set forth in this Agreement as modified by additional or different terms offered by Purchaser at Auction; or

(h) by the Purchaser, pursuant to Section 10.1(a) of this Agreement.

Section 12.2 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 12.1, other than pursuant to Subsection 12.1(f), the entire Buyer's Deposit, shall be immediately remitted to Purchaser by the wire transfer of immediately available funds whereupon this Agreement shall forthwith become void and have no effect and there shall be no Liability on the part of any party hereto or its Affiliates, directors, officers, shareholders, or agents except under Section 12.3.

Section 12.3 Break-Up Fee.

If this Agreement is terminated by Purchaser pursuant to Section 12.1(g), then, in addition to the prompt return to Purchaser of the Buyer's Deposit in accordance with Section 12.2 hereof, Seller shall pay to Purchaser in immediately available funds, equal to One Hundred Thousand Dollars \$100,000.00 (the "Break-Up Fee"). The Break-Up Fee shall constitute Purchaser's sole and exclusive remedy or Claim in the event Purchaser is not the Successful Bidder at Auction. Seller and Purchaser agree that the aforesaid amounts constitute a reasonable forecast of the Claim that Purchaser would sustained in the event it is not the Successful Bidder arising from out-of-pocket costs, fees, expenses (including, without limitation the reasonable fees and expenses of consultants, financial advisors, accountants, counsel and financing sources) incurred by Purchaser in connection with the transactions contemplated by this Agreement, whether or not incurred before or after the date of this Agreement.

(a) Seller and Purchaser agree that allowance for payment of the aforesaid amounts shall remain subject to the review and approval of the Bankruptcy Court. If so allowed, Seller's obligation to pay the Break-Up Fee pursuant to this Section 12.3 shall survive termination of this Agreement and shall constitute an administrative expense of Seller under Section 364(c)(1) of the Bankruptcy Code with priority over any and all

administrative expenses of the kind specified in section 503(b) or 507(b) of the Bankruptcy Code.

(b) In no event, shall Purchaser have any Liability to Seller or any other Person for any special, consequential or punitive damages, and any such claim, right or cause of action for any damages that are special, consequential or punitive or for specific performance of this Agreement is hereby fully waived, released, and fully discharged.

ARTICLE XIII MISCELLANEOUS

Section 13.1 Expenses; Sales, Use and Other Taxes.

(a) Except as otherwise set forth in this Agreement, Seller and Purchaser shall each bear the expenses incurred by them in connection with the preparation and negotiation of this Agreement and the Attendant Documents and the consummation of the transactions contemplated in this Agreement.

(b) Any sales, purchases, transfer, stamp, documentary stamp, use or similar taxes under the laws of the states in which any portion of the Purchased Assets is located, or any subdivision of any such state, which may be payable by reason of the sale of the Purchased Assets under this Agreement or the transactions contemplated herein shall be paid by Seller on or prior to the Closing whereupon Seller shall deliver to Purchaser the tax clearance certificate or other written proof of payment provided by the applicable Governmental Authority, if any such payment is required and if any such proof of payment is issued for same.

Section 13.2 Governing Law; Forum.

(a) This Agreement shall be governed by, and construed in accordance with, the Laws of the Commonwealth of Massachusetts, without regard to the conflicts of law principles and, to the extent applicable, the Bankruptcy Code.

(b) Prior to the closing of the Chapter 11 Case, except as otherwise expressly provided in this Agreement, the parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought exclusively in the Bankruptcy Court, and each of the parties hereby irrevocably consents to the jurisdiction of the Bankruptcy Court (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action, or proceeding in the Bankruptcy Court or that any such suit, action, or proceeding which is brought in the Bankruptcy Court has been brought in an inconvenient forum.

(c) Upon the closing of the Chapter 11 Case, except as otherwise expressly provided in this Agreement, the parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the United States Bankruptcy Court for the District of Massachusetts, and that any cause of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the Commonwealth of Massachusetts, and each of the parties hereby irrevocably consents to the jurisdiction of such court (and of the appropriate appellate courts therefrom) in any such suit, action, or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action, or proceeding in such court or that any such suit, action, or proceeding which is brought in such court has been brought in an inconvenient forum.

Section 13.3 Notices. Any and all notices, requests, demands, and other communications permitted under or required pursuant to this Agreement shall be in writing and shall be deemed given (i) if personally delivered, when delivered; (ii) if mailed, postage prepaid, certified or registered mail, return receipt requested, upon receipt by the sender of the return receipt so requested; (iii) sent via overnight courier service, the next business day and (iv) if sent by facsimile, when receipt is confirmed by the person to whom the facsimile was sent, to the parties at the addresses set forth below, or at such other addresses as they may indicate by written notice given as provided in this Section 13.3:

If to Purchaser:

HOMETOWN WASTE, LLC
40 Nod Road
Clinton, Connecticut
Attention: David Perotti
Email: dperrotti@hometownwaste.com

With required copies to (which shall not constitute notice):

Zeisler & Zeisler, P.C.
10 Middle Street, 15th Floor
Bridgeport, CT 06604
Attention: James Berman, Esq.
Facsimile No.: (203) 367-0960
Email: jberman@zeislaw.com

and

Burns & Levinson LLP
125 Summer Street

Boston, MA 02110
Attention: William V. Sopp, Esq.
Facsimile No.: (617) 345-3297
Email: wsopp@burnslev.com

If to Seller:

Mark G DeGiacomo, Esq.
Murtha Cullina LLP
99 High Street, 20th Floor
Boston, MA 02110
617-457-4000
Email: mdegiacomo@murthalaw.com

Section 13.4 Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

Section 13.5 Assignment. Seller may not assign its rights and obligations under this Agreement without the prior written consent of Purchaser. Purchaser may assign all or any of its rights and obligations to one or more Permitted Designees, provided, however, that such assignment shall not relieve Purchaser of its obligations hereunder if any such Permitted Designee does not perform such obligations. Purchaser may not assign all or any of its rights and obligations to any Third Party, unless Purchaser obtains the prior approval thereof from the Bankruptcy Court. In the event of an assignment to a Third Party by Purchaser with the approval of the Bankruptcy Court, Purchaser shall be relieved of its obligations hereunder. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

Section 13.6 Entire Agreement. This Agreement, including the Exhibits and the Schedules attached or to be attached to it, is and shall be deemed to be the complete and final expression of the agreement between the parties as to the matters contained in and related to this Agreement and supersedes any previous agreements between the parties pertaining to such matters.

Section 13.7 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile transmission or other electronic transmission shall be effective as delivery of a manually executed counterpart thereof and shall be deemed an original signature for all purposes.

Section 13.8 Waiver. At any time prior to the Closing Date, any party hereto may (a) extend the time for the performance of any of the obligations or other acts of the

other parties hereto, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions contained herein. Any such extension or waiver shall only be valid if set forth in an instrument in writing signed by the party or parties to be bound thereby. The failure of any party to assert any of its rights hereunder shall not constitute a waiver of any such rights. The waiver by any party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or similar breach.

Section 13.9 Amendment. This Agreement may only be amended by written agreement executed by all of the parties.

Section 13.10 Finalizing Schedule. Notwithstanding anything to the contrary, the parties hereto acknowledge that as of the date of this Agreement the Schedules, other than 2.1(f) have been finalized. At least two days prior to the Closing, Seller will provide Purchaser with copies of the Contracts such that at the Closing the parties can complete Schedule 2.1(f)

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase Agreement to be executed by its duly authorized officers as of the day and year first written above.

SELLER:

By: 

Name: Mark G. DeGiacomo, as Chapter 11 Trustee of Hiltz Waste Disposal, Inc., and not individually or as a partner of Murtha Cullina LLP

PURCHASER:

HOMETOWN WASTE, LLC

By: 

Name: DAVID FERRANTI
Title: MEMBER

Schedule 2.1(g)

Permits, Licenses and Authorizations: attached

Determination of Need attached



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NORTHEAST REGIONAL OFFICE

205B Lowell Street, Wilmington, MA 01887 • (978) 694-3200

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Governor

TIMOTHY P. MURRAY
Lieutenant Governor

IAN A. BOWLES
Secretary

LAURIE BURT
Commissioner

NOV 23 2010

Donald Hiltz
Hiltz Waste Disposal, Inc.
24 Kondelin Road
Gloucester, MA 01930

RE: GLOUCESTER-Solid Waste Management/COR
Essex County Recycling Center
24 Kondelin Road
Gloucester, MA 01930
FMF Number: 364665

Final Determination of Need
BWP SW17 / Determination of Need, Small Operation
Transmittal Number: X234864

Dear Mr. Hiltz:

The Massachusetts Department of Environmental Protection, Northeast Regional Office, Bureau of Waste Prevention, Solid Waste Management Section ("MassDEP") has received your application for a Determination of Need (BWP SW17) for the Essex County Recycling Center located at 24 Kondelin Road in Gloucester, Massachusetts (the "Facility"). The Facility is currently owned and operated by Hiltz Waste Disposal, Inc. ("Hiltz") as a conditionally-exempt recycling operation.¹ On October 22, 2010, MassDEP issued a Draft Determination of Need for Site Assignment (the "Draft DON") regarding your application.

The application (Transmittal No.: X234864) was prepared by North Coastal Environmental, Inc. of Rockport, MA ("North Coastal") and was received by MassDEP on August 30, 2010. On September 15, 2010, MassDEP received supplemental information prepared by North Coastal that included additional discussion regarding "in-process" material quantities and revised site plans. Hiltz proposes the receipt of certain recyclable material for transfer to off-site markets/processing facilities. The materials proposed for receipt at the Facility are pre-sorted recyclable materials received from various customers in the Greater Gloucester /Cape Ann area. Materials to be received include: clean asphalt pavement, brick, concrete, leaf & yard waste, clean wood, gypsum wall board and asphalt shingles. These materials will be transferred off-site as marketable commodities or for further handling at regional recycling processors.

The application states that Hiltz is seeking the DON for the handling, recycling, and temporary storage of pre-sorted clean asphalt pavement, brick, concrete, leaf and yard waste, clean wood, gypsum wall board, and asphalt shingles. All materials will be transported by Hiltz to appropriate off-site recycling facilities for processing or reuse. All materials handled at the Facility will be organized through "direct-dumping" into containers or trailers. The application does not propose any on-site processing of the materials,

¹ In January 2010 (with further clarification in February 2010), MassDEP received notification of Hiltz's intent to conduct certain conditionally-exempt recycling activities at the site, pursuant to 310 CMR 16.05(3).

GLOUCESTER – Solid Waste Management
Essex County Recycling Center (Hiltz Waste Disposal, Inc.)
Determination of Need, Final
Transmittal No. X234864

Page 2 of 2

including grinding or other size-reduction methods. The application further states that the handling of these materials at the Facility is intended to support the Massachusetts waste ban compliance regulations and provide the Cape Ann area with a centralized and regionally-desirable recycling operation where materials will be recovered and reclaimed via small-scale commercial and residential drop-off.

As stated above, on October 22, 2010, MassDEP issued a Draft DON regarding this application. MassDEP received no written comments during the 21-day comment period following the issuance of the Draft DON.

MassDEP has determined that the Facility, as described in the application and supplemental information, complies with the requirements established at 310 CMR 16.05(6), et seq, and the applicable MassDEP policies, for a recycling facility not subject to Site Assignment. MassDEP, therefore, issues the attached Final Determination of Need for Site Assignment for the Facility.

If you have any questions regarding this draft decision, please contact Mark Fairbrother at (978) 694-3298.

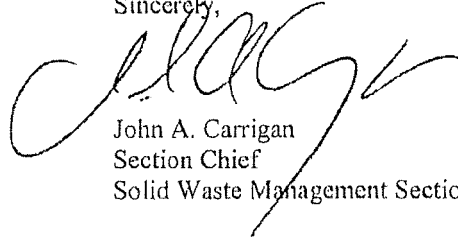
Sincerely,



Mark G. Fairbrother
Environmental Analyst
Solid Waste Management Section

JAC/MGF/mgf

Sincerely,



John A. Carrigan
Section Chief
Solid Waste Management Section

Enclosure: Determination of Need, Final

cc: John Tognazzi (Hiltz Waste Disposal, Inc.)
email: john@hiltzdisposal.com

Michael Rostkowski, Jr. (North Coastal Environmental, Inc.)
email: mrostkowski@northcoastalenv.com

Jack Vondras (City of Gloucester Department of Public Health)
email: healthdept@ci.gloucester.ma.us

Michael Hale (City of Gloucester Department of Public Works)



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
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Secretary

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Commissioner

Essex County Recycling Center – Hiltz Waste Disposal, Inc.

DETERMINATION OF NEED FOR SITE ASSIGNMENT
(Transmittal Number: X234864)

Effective Date: **NOV 23 2010** MassDEP Region: Northeast
FMF No.: 364665

Expiration Date: Ten (10) years from the Effective Date.

Applicant Name: Hiltz Waste Disposal, Inc.
Mailing Address: 24 Kondelin Road
Gloucester, Massachusetts 01930

Name of Facility: Essex County Recycling Center
Facility Address: 24 Kondelin Road
Gloucester, Massachusetts 01930

I. FACILITY DESCRIPTION

1. Facility Operator: Hiltz Waste Disposal, Inc.
24 Kondelin Road
Gloucester, Massachusetts 01930

2. Description:

(a) Type of recyclable material received at the Facility:

Pre-sorted Recyclable¹ Materials, not mixed with other solid waste and consisting of:

¹ As defined at 310 CMR 16.02, "Pre-sort" means to segregate a material for reuse, recycling or composting by preventing the material from being commingled with solid waste at the point of generation or to separate and recover the material from solid waste at a processing facility, and "Recyclable" or "Recyclable Material" means a

GLOUCESTER – Essex County Recycling Center (Hiltz Waste Disposal, Inc.)
Determination of Need
Transmittal No. X234864

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- i. Clean Wood, defined as wood derived from residential and commercial wood-frame construction sites, such as lumber end-cuts and trimmings, wood shipping pallets and excluding wood pieces or particles containing or likely to contain asbestos, chemical preservatives such as creosote or penta-chlorophenol, or paints, stains or other coatings;
- ii. Clean Gypsum Wallboard, defined as a panel (also known as drywall) with a gypsum core and faced with a heavy paper or other material on both sides that is not contaminated with paint, wallpaper, joint compound, adhesives, nails, or other substances after manufacture;
- iii. Clean Asphalt Pavement, Brick, and Concrete, defined as weathered (cured) asphalt pavement, brick with attached mortar, and concrete that may contain rebar from construction activities and demolition of buildings, roads and bridges and similar sources and excluding material that is painted², coated, or impregnated with any substance;
- iv. Leaf and Yard Waste, defined as deciduous and coniferous seasonal deposition (e.g., leaves), grass clippings, weeds, hedge clippings, garden materials and brush (excluding diseased plants); and
- v. Asphalt Shingles, defined as source-separated new/unused and post-consumer tear-off asphalt shingles, which do not contain asbestos and excluding flat roof, built-up roofing or asbestos cement shingles and are not mixed with other hazardous and non-hazardous debris/materials.

(b) Approved amount of Recyclables Received [defined above at Sec. I.2.(a)]:

Maximum: Not more than 100 tons per day, total
[Specific on-site storage limits defined below at Sec. IV.3.]

3. Project Description:

The application package (Transmittal No.: X234864) was prepared by North Coastal Environmental, Inc. of Rockport, MA ("North Coastal") and was received by MassDEP on August 30, 2010³. A site plan depicting the Facility layout and

material that has the potential to be recycled and which is pre-sorted and not contaminated by significant amounts of toxic substances.

² Clean Asphalt Pavement and Concrete may include *incidental* painted roadway markings and painted curbing.

³ On September 15, 2010, MassDEP received supplemental information prepared by North Coastal that included additional discussion regarding "in-process" (or stored) material quantities and revised site plans.

GLOUCESTER – Essex County Recycling Center (Hiltz Waste Disposal, Inc.)
Determination of Need
Transmittal No. X234864

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equipment is included in the application package. Hiltz Waste Disposal, Inc. (“Hiltz” or “the applicant”) operates Essex County Recycling Center at 24 Kondelin Road in Gloucester, Massachusetts (the “Facility”). As set forth in this Determination of Need for Site Assignment and described in the application submittals, Hiltz proposes the receipt of certain recyclable material for transfer to off-site markets/processing facilities. The materials proposed for receipt at the Facility are pre-sorted recyclable materials received from various customers in the Greater Gloucester/Cape Ann area that are not mixed with or contaminated by any other debris. Materials to be received include: clean wood, clean gypsum wall board (scrap from new construction), leaf and yard waste, asphalt shingles, and clean asphalt pavement, brick, and concrete. The application does not propose any on-site processing of the materials, including grinding or other size-reduction methods.

As described in the application:

- Recyclable materials arrive at the Facility loose in collection vehicles.
- Incoming loads will be weighed at an on-site vehicle scale.
- All vehicles entering the Facility will be inspected for unacceptable materials at the scale and during unloading. Monitoring of incoming materials for unacceptable materials will include inspection by a certified asbestos inspector.
- All materials handled at the Facility will be organized through “direct-dumping” into designated enclosed containers or trailers (except leaf and yard waste which will be managed in a three-sided storage bunker).⁴
- All materials will subsequently be transferred off-site as marketable commodities or for further handling at regional recycling processors.
- Prior to shipment, all outgoing materials will be weighed at the on-site vehicle scale.
- The operation will generate no off-specification materials or processing residue.

II. DETERMINATION OF NEED (DON) – Small Operation APPLICATION REVIEW AND APPROVAL

This application complies with the requirements of 310 CMR 16.00, the Site Assignment Regulations for Solid Waste Facilities and was reviewed in accordance with Section 16.05 (6), Determination of Need for Site Assignment. The Massachusetts Department of Environmental Protection (“MassDEP”) hereby approves the application as follows.

MassDEP has determined that the proposed operation constitutes a Recycling Facility pursuant to 310 CMR 16.05(6)(a), and as defined at 310 CMR 16.02. Therefore, when operated as

⁴ For the purposes of this determination, direct dumping means unloading of material from incoming vehicles directly into the designated container, trailer or storage bunker only and not to the ground surface. Received materials shall remain inside the designated containers/areas at all times prior to off-site shipment.

GL. OUCESTER – Essex County Recycling Center (Hiltz Waste Disposal, Inc.)
Determination of Need
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proposed and pursuant to the following conditions imposed by MassDEP pursuant to 310 CMR 16.05(7)(e)5., the facility is exempt from the requirements for a Site Assignment pursuant to 310 CMR 16.00, et seq, and/or a permit pursuant to 310 CMR 19.000, et seq.

This Determination of Need for Site Assignment supercedes and replaces in its entirety any previous Determination of Need issued by the MassDEP regarding the Facility.

III. GENERAL CONDITIONS

1. The operation of this Facility shall not adversely affect the public health, safety or the environment, nor cause or contribute to a condition of nuisance.
2. This determination does not relieve the applicant from the requirement to comply with solid waste management statutes and regulations. In addition, this determination does not relieve the applicant from the requirement to comply with all other applicable local, state and federal laws and regulations.
3. The Facility, including, without limitation, relevant operating records, shall be subject to periodic inspections by MassDEP and/or the City of Gloucester, without prior notice, for the purposes of determining compliance with this determination and the requirements of 310 CMR 16.00 and 19.000.
4. MassDEP may rescind, suspend, or modify this determination by the imposition of additional conditions, based upon a determination of actual, or the threat of, adverse impacts from the construction, operation, maintenance or closure of the facility, as authorized at 310 CMR 16.05(8), or if the applicant fails to comply with the provisions of this determination or other applicable MassDEP approvals.
5. The applicant shall provide MassDEP, within a reasonable time, any information, which MassDEP may request and which is deemed by MassDEP to be relevant in determining whether a cause exists to modify, revoke, or suspend this determination, or to determine whether the applicant is complying with the terms and conditions of the determination and regulation.
6. Pursuant to 310 CMR 16.05(9), the applicant shall notify MassDEP and the board of health in writing of proposed changes in design or operation where:
 - a. The Facility operator intends to recycle materials substantially different from those materials for which the current determination was granted;
 - b. The design and/or operation of the Facility is to be altered; or
 - c. The Facility operator proposes to increase the volume or quantity of materials to be handled by the operation above that volume or quantity established in the current determination.

No such alterations or modifications in design or operation may proceed without prior written approval from MassDEP. Prior written approval from MassDEP is required before any changes or modifications can be made to the Facility's determination.

7. Failure to comply with the provisions of this determination, and any applicable MassDEP approvals or permits (including Bureau of Waste Prevention approvals/permits) shall be grounds for suspension and revocation of this determination.
8. Pursuant to 310 CMR 16.05(7)(e)5.e., this determination shall terminate on the Expiration Date set forth above, unless the applicant has submitted to MassDEP an application for renewal of the Determination of Need for Site Assignment at least 180 days prior to the Expiration Date. Such a renewal application shall be filed as a Modification of Determination of Need for Site Assignment (BWP SW18), pursuant to 310 CMR 4.00, and shall include the information required by 310 CMR 16.05(7) and all appropriate information relating to the operation of the Facility. This determination shall remain in full force and effect pending issuance of a final decision by MassDEP on the renewal application submitted pursuant to the requirements of this paragraph.

IV. SPECIFIC CONDITIONS

1. The Facility shall not accept materials in excess of the quantities identified at section I.2.(b), above. Materials of a nature or in quantities that cause odor or pose a threat to the public health, welfare or the environment shall not be accumulated.
2. All receiving, handling and storage activities shall occur within the designated areas and/or containers and on impervious surfaces. All such containers/storage areas, and the surrounding areas, shall be maintained in a clean, orderly and sanitary condition, which protects the public health, safety, welfare and the environment.
3. As described in the application, the maximum quantity of material stored at the Facility prior to off-site shipment shall be as follows:
 - a. *Clean Wood:* The maximum quantity of Wood Waste stored at the Facility shall not exceed two (2) active collection containers of forty (40) cubic yards each at the receiving area and three (3) additional containers of forty (40) cubic yards each awaiting off-site shipment.
 - b. *Gypsum Wallboard:* The maximum quantity of Gypsum Wall Board stored at the Facility shall not exceed one (1) active collection container of

GLOUCESTER – Essex County Recycling Center (Hiltz Waste Disposal, Inc.)
Determination of Need
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- thirty (30) cubic yards at the receiving area and two (2) additional containers of thirty (30) cubic yards each awaiting off-site shipment
- c. *Asphalt Pavement, Brick and Concrete:* The maximum quantity of Asphalt Pavement, Brick and Concrete stored at the Facility shall not exceed three (3) active collection containers of fifteen (15) cubic yards each at the receiving area and three (3) additional containers of fifteen (15) cubic yards each awaiting off-site shipment.
 - d. *Leaf and Yard Waste:* The maximum quantity of Leaf and Yard Waste stored at the Facility shall not exceed the capacity of the designated enclosed storage bunker depicted on the site plan and one (1) active collection container of forty (40) cubic yards at the receiving area.
 - e. *Asphalt Shingles:* The maximum quantity of Asphalt Shingles stored at the Facility shall not exceed one (1) active collection container of thirty (30) cubic yards at the receiving area and two (2) additional containers of thirty (30) cubic yards each awaiting off-site shipment.
4. *Storage Areas:* All designated storage areas and containers shall be covered at the end of each day of operation. All full containers awaiting shipment off-site shall remain covered at all times.
 5. *Weighing Facilities:* The Facility shall provide, operate and maintain on a continuous basis a weigh scale for the weighing of all material delivered to, and transferred from, the Facility. Such weigh devices shall be maintained at all times and shall be certified/calibrated in accordance with all applicable laws, regulations, ordinances, and the manufacturer's recommendations.
 6. *Unloading:* Access to the Facility shall be limited to such periods of time as an attendant is on duty. The Facility operator shall provide for continuous supervised unloading of materials from incoming vehicles and shall post appropriate signs or other means to indicate clearly where incoming vehicles are to unload by direction of the attendant or equipment operator on duty. Authorized users shall unload material only at the direction of Facility staff and only at the Facility's designated containers/areas.
 7. *Inspection of Incoming Material:*
 - a. All incoming loads of material at the Facility shall be inspected to determine the presence of unacceptable materials.
 - b. The individual(s) assigned to inspect and supervise the unloading of material at the Facility shall have adequate training, knowledge and understanding of all applicable regulations, the requirements of this determination and shall possess a valid Asbestos Inspector certification by the Massachusetts

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- Department of Labor and Workforce Development (“DLWD”), Division of Occupational Safety (“DOS”). The Inspector(s) shall possess:
- i. A certificate of completion of a DOS-approved training as specified in 453 CMR 6.10(4)(d) and field experience as specified by 453 CMR 6.07(2)(a)(1) or (2);
 - ii. a valid and legible Massachusetts DOS Asbestos Inspector Certification Card (photo ID) issued by DOS pursuant to 453 CMR 6.07(2)(a); and
 - iii. a minimum 40 hours of on-the-job training, in addition to classroom certification, in identifying potential asbestos-containing materials (“ACM”) and sampling protocols and/or two months field experience under the direct supervision of a certified Asbestos Inspector or Management Planner, as prescribed in DLWD regulations at 453 CMR 6.07(2).
- c. For each load of asphalt shingles accepted at the Facility, the Facility shall obtain a written certification from the Facility user, prior to accepting the load, certifying that the shingles are not asbestos-containing materials.
- d. All loads that contain unacceptable materials shall be handled and managed in accordance with all applicable state laws and regulations including without limitation, 310 CMR 19.000, 310 CMR 7.00, 310 CMR 30.000, and 310 CMR 40.0000 and as set forth in this determination.
- e. In the event an incoming load containing, or suspected of containing, ACM is rejected from the Facility, the Facility operator shall document, without limitation, the following details:
- i. date the load was encountered and rejected;
 - ii. name of hauler and vehicle license number;
 - iii. generator/origin of material (if known);
 - iv. quantity and nature of the material causing the rejection; and
 - v. disposition of the subject material.
8. *Nuisance Conditions:* The operation of the Facility shall not cause or allow nuisance conditions to exist. Nuisance conditions shall include without limitation, wind-blown dust, fugitive dust emissions, odors, noise, and potential public health issues associated with the operation of the Facility. The Facility shall take the necessary measures to abate and eliminate said nuisance conditions, including but not limited to, ceasing or reducing the receipt of material, ceasing the processing/handling of material at the Facility, removing stockpiled material and preventing the accumulation of large stockpiles of material.
- a. *Odor Control:* The Facility operator shall implement measures to control and prevent the occurrence of nuisance odors from the Facility, including, without limitation, covering or removing odiferous materials from the Facility to prevent the development of nuisance conditions, and removing from the

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Facility any materials determined by MassDEP as resulting in MassDEP verified off-site nuisance odors within 48 hours of the receipt of MassDEP's notice.

- b. *Noise Control:* The Facility operator shall implement measures to control and prevent noise wherever and whenever necessary at the Facility to prevent the occurrence of nuisance noise.
 - c. *Dust Control:* The Facility operator shall undertake suitable measures to control and prevent dust wherever and whenever necessary at the Facility, the access road, and any other areas related to or under control of the Facility operator to prevent nuisance conditions. Water shall not be used for dust control in amounts that produce excessive infiltration, ponding, runoff or erosion.
 - d. *Vector Control:*
 - i. Facility operations shall be carried out promptly in a systematic manner and shall take preventative measures to maintain conditions unfavorable for the attraction or production of insects, birds, rodents and other vectors.
 - ii. The Facility operator shall implement a routine program for the control and elimination of insects and rodents and other vectors at the Facility site, and when necessary, shall cause supplemental control measures, including but not limited to the use of effective insecticides and rodenticides, to be implemented.
 - iii. The application of pesticides shall be made only by a pesticide operator licensed by the Massachusetts Pesticide Board.
9. *Fire Protection:* The Facility operator shall take suitable measures for the prevention and control of fires at the Facility by complying with at least the following:
- a. Mount detachable fire extinguishers, maintained in working order, on all equipment and in all buildings.
 - b. Ensure that no materials are stored, held, maintained or placed in such a manner as to pose a fire hazard.
 - c. The Facility operator shall be responsible for seeking fire-fighting assistance, initiating and providing assistance and/or resources for fire-fighting actions until all smoldering, smoking and burning cease.
10. *Employee Facilities:* The Facility operator shall provide proper shelter and facilities for employees working at the Facility. The shelter and facilities shall contain:

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- a. sufficient light and heat;
 - b. a safe drinking water supply;
 - c. sanitary hand-washing and toilet facilities;
 - d. an operational telephone or two-way radio system; and
 - e. other equipment or appurtenances necessary for full compliance with federal and state worker health and safety requirements.
11. *Staffing:* The Facility operator shall provide an adequate number of trained staff to ensure that the Facility is operated and maintained as designed, in accordance with good management practices and in accordance with the conditions set forth in this determination.
- a. During all hours of operation, a Facility manager or supervisor shall be continuously present at the Facility and shall be knowledgeable of the requirements of 310 CMR 16.00 and 310 CMR 19.000, and the procedures and plans for the proper operation and maintenance of the Facility, including, without limitation, the conditions set forth in this determination.
 - b. The Facility operator shall ensure that all employees, and substitute employees, of the Facility, including without limitation, material inspectors, scale attendants, workers, laborers, handlers, equipment operators, and supervisors, are properly trained, licensed and/or certified to perform the functions that they are required to perform. The Facility operator shall maintain at the Facility a record of employee training and a certification by the Facility operator that Facility employees have been trained and that said individuals are knowledgeable regarding the requirements of this determination, good solid waste management practices and the respective functions that they are required to perform. Such training certifications shall include a description of each individual's job duties and training.
12. *Waste Disposal Restrictions:* In the event that the Facility receives materials restricted from disposal pursuant to 310 CMR 19.017(3), such materials shall be properly managed and transferred for recycling pursuant to the waste disposal restrictions set forth at 310 CMR 19.017(3) and all other applicable regulations.
13. *Speculative Accumulation:* There shall be no speculative accumulation of material. As set forth in 310 CMR 16.05, speculative accumulation shall be presumed to occur if materials, whether in their as-received, in-process or processed condition, are stored for more than ninety (90) days from the date of their receipt at the Facility. This time limit may be exceeded in the case of storage of a processed material pending accumulation of a transportable load (one

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full truck load). Refer to specific on-site storage limits defined above at Sec. IV.3.

14. *Litter:* The Facility operator shall take adequate measures to prevent the scattering of wind-blown litter. The applicant/operator shall provide for routine maintenance and general cleanliness of the Facility.
15. The Facility shall not operate as a solid waste management facility, solid waste storage facility, or processing facility, for which a site assignment would be required.
16. In the event the Facility's operations are discontinued for any reason, the applicant shall, in a timely manner, remove, recycle or dispose of all remaining materials and products from the site in accordance with applicable regulations, including, but not limited to, 310 CMR 16.00 and 19.000.
17. *Records:* The Facility operator shall maintain, on-site at the Facility, a complete copy of this determination and all application submittals, plans, protocols and attachments. The Facility operator shall maintain accurate records of the operational information necessary to demonstrate compliance with this determination. The Facility shall make such records available to representatives of MassDEP and the board of health upon request. Without limitation, the Facility operator shall maintain a daily log documenting:
 - a. the type and quantity of material received and processed at the Facility;
 - b. the type and quantity of material shipped from the Facility for disposal or recycling/re-use;
 - c. the records necessary to document the proper management of unacceptable materials;
 - d. copies all asphalt shingle/asbestos certifications required by this determination; and
 - e. the details of any load rejected for containing, or suspected of containing, ACM.
18. *Special Reporting:* The Facility operator shall notify MassDEP and the City of Gloucester in writing within twenty-four (24) hours, if not otherwise required to do so sooner, of the following:
 - a. the discovery of any Special Waste (including asbestos-containing material) or Hazardous Waste;

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- b. any incidents or disruptions which occur at the Facility that result in a shut-down of the Facility; or
- c. any emergency response to the Facility from other agencies, including without limitation, fire department, police department, or Occupational Health and Safety Administration.

Such notifications shall be in addition to, and shall not substitute for, any notification(s) which may be required pursuant to 310 CMR 40.0000 (the Massachusetts Contingency Plan; "MCP") and 310 CMR 30.000 (the Massachusetts Hazardous Waste Regulations), or other applicable law or regulation.

This written notification shall be made by FAX to MassDEP's Solid Waste Management Section, Northeast Regional Office (FAX No.: 978-694-3499). If a FAX machine is not available, this notification may be made by telephone instead. Such notification by telephone or FAX shall be followed up by a certified letter within 24 hours. This notice shall, at a minimum, provide to MassDEP a description of the incident, the impact on the Facility's operations, and a description of the actions the Facility intends to take to resume operations.

19. *Annual Report:* The applicant/Facility operator shall submit to MassDEP by February 15th of each year, an Annual Report summarizing the Facility's operation for the previous calendar year. A copy shall also be submitted to the City of Gloucester Board of Health. These reports shall include a summary, in tons, of the following:
- a. total material received;
 - b. total material processed;
 - c. total material shipped for disposal; and
 - d. total materials, by type, shipped for recycling or re-use.

Submission of an annual "Recycling Processor Survey", or substitute annual reporting form provided by MassDEP shall constitute submission of an Annual Report as required by this section. Provided, MassDEP may request supplemental information as necessary to demonstrate compliance with this determination, including, but not limited to, demonstration that the Facility is not speculatively accumulating material.

Please be advised that if this determination is rescinded or suspended, this facility shall be regulated under all applicable sections of Massachusetts General Laws (MGL), Chapter 111, Section 150A, and the regulations promulgated there under at 310 CMR 16.00 "Site Assignment Regulations for Solid Waste Facilities"; and 310 CMR 19.000 "Solid Waste Management Facility Regulations". Failure to comply with these requirements may lead to legal action including but not limited to, criminal prosecution, court imposed civil penalties, or civil administrative penalties assessed by MassDEP.

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V. RIGHT OF APPEAL

A. Right to Appeal - This decision has been issued pursuant to Massachusetts General Laws (MGL), Chapter 111, Section 150A and 310 CMR 16.05: Determination of Need, of the "Site Assignment Regulations for Solid Waste Facilities". Any person aggrieved by the issuance of this determination, may file an appeal for judicial review of said decision, in accordance with the provisions of MGL Chapter 111, Section 150A and MGL Chapter 30A, not later than thirty (30) days following the receipt of the final decision.

B. Notice of Appeal - Any aggrieved person intending to appeal the decision to the superior court shall provide notice to MassDEP of intention to commence such action. Said notice of intention shall include the MassDEP File Number, and shall identify with particularity the issues and reason(s) why it is believed the approval decision was not proper. Such notice shall be provided to the Office of General Counsel of MassDEP, and the Regional Director for the regional office which made the decision. The appropriate addresses to send such notices are:

Office of General Counsel
Department of Environmental Protection
One Winter Street-Third floor
Boston, MA 02108

Regional Director
Department of Environmental Protection
Northeast Regional Office
205B Lowell Street
Wilmington, MA 01887

No allegation shall be made in any judicial appeal of this decision unless the matter complained of was raised at the appropriate point in the administrative review procedures established in those regulations, provided that matter may be raised upon a showing that it is material and that it was not reasonably possible with due diligence to have been raised during such procedures, or that the matter sought to be raised is of critical importance to the public health or environmental impact of the authorized activity. Unless the person requesting an appeal requests and is granted a stay of the terms and conditions of the approval by a court of competent jurisdiction, this decision shall remain effective.



Mark G. Fairbrother
Environmental Analyst
Solid Waste Management



John A. Carrigan
Section Chief
Solid Waste Management

11/23/10
Date

Schedule 2.1(h)

Vehicles: attached lists (1) Equipment List, and
(2) Container List.

MODEL	TRUCK #	ROLLOFF	YEAR	VIN #	PLATE #	G.W.	IN SERVICE	MILEAGE	HOURS
DM6888	351	MACK - BME	1985	1M2B128C4FA011808	Yard	60,000	6/13/2001	442,714	8,364
RD6888S	5	MACK - BME	1999	1M2P267C3XMO46660	APN-77527	77,000	Feb-99	793,398	37,439
RD6888S	7	MACK - Accurate	2000	1M2P270C1YM052104	APN-50924	60,000	Mar-00	146,762	7,866
CV713	331	MACK - Accurate	2004	1M2AG11C74M010372	APN59727	66,000	Aug-03	562,214	26,557
GU713	3131	MACK - Galbreath	2013	1M2AXO4C9DM014137	APN90554	66,000	Aug-13	182,894	7,861
337	3151	PETE - BME	2015	2N2PHJ7X0FM270358	APN92457	33,000	Aug-14	112,411	4,491
400SER	352	INTERNAT'L - BME	2005	1HTMKAAAN85H103139	R22734	33,000	Nov-06	47,458	74,847
PACKER									
MR6885	281	MACK-LEACH 25YD	2000	1M2K1905C9YV016548	M64070	68,000	10/7/2007	228,197	771
MR6885	272	MACK - Leach 32 yd	2007	1M2K189C87M035157	L92785	60,000	6/13/2006	107,741	23,947
RD6885	291	MACK - Leach - 31yd	1999	1M2P268C4XMD46147	G61915	69,000	2/1/1999		
MR6885	15	MACK - Leach - 31yd	1999	1M2K195C8XM014370	K79655	70,000	6/1/1999	502,275	39,403
MR6885	201	MACK - Leach - 31yd	2001	1M2K195C71M017932	H51043	60,000	6/1/2000	400,354	24,487
MR6885	212	MACK - Leach -31yd	2002	1M2K189C02M019687	J18293	60,000	6/1/2001	392,448	33,256
MR6885	211	MACK - Leach-31yd	2002	1M2K189C92M019686	J18294	60,000	6/1/2001	320,751	31,420
MR6885	231	MACK - Leach - 31yd	2004	1M2K189CX4M023720	K20700	60,000	6/3/2004	345,560	29,169
MRU613	2101	MACK - Leach - 32 yd	2010	1M2AV02C6AM005867	N46824	72,000	6/9/2009	147,182	15,337
MRU613	2102	MACK - Leach - 32 yd	2010	1MAV02C4AM005866	N46823	72,000	6/9/2009	182,721	16,787
GU713	2151	Mack-New Way 25 yd	2015	1M2AX04C2FM023605	R68047	70,000	9/14/2014	36,032	5,251
MRU600	282	Mack-McNielus 32yd	2008	1M2AV04CX8M002011	S33943	72,000	10/23/2015	105,131	15,973
FRONT LOAD									
MODEL	TRUCK #		YEAR	VIN #	PLATE #	G.W.	IN SERVICE	MILEAGE	HOURS
MDD600	5111	MACK - Heil Auto Can	2011	1M2AU02C8BM005356	N61664	67,000	7/1/2010	153,233	14,256
LEU613	5101	MACK - Heil Carry Can	2010	1M2AU02C9AM003906	N46825	68,040	6/9/2009	178,912	14,210
MR6885	551	MACK - Leach Comm.	2005	1M2K189C95M025511	L49874	60,000	8/5/2005	441,695	25,594
LEU613	5131	MACK - Heil Comm	2014	1M2AU02C6EMO08468	R33405	66,000	Sept.-14	84,586	6,911
MR6885	552	MACK - Heil Comm.	2005	1M2K189C25M028301	L35920	72,000	9/20/2005	568,714	1,010
LE613	5121	MACK - Heil Comm	2012	1M2AU02C1CM006611	R65026	65,000	7/1/2014	83,771	6,686

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Doc	Main	Desc	YEAR	VIN #	PLATE	GW	IN SERVICE		
LE613	5141	MACK - McNeilus Res	2014	1M2AU02C5EM008607	R75831	72,000	8/14/2014	81,974	5,000
MRU613	5142	MACK- New Way	2014	1M2AV04C0EM011697	S12799	66,000	5/1/2015	84,404	5,348
7400SER	472	<u>RECYCLE</u> INT - Labrie SL	2007	1HTWGAZT27J359639	M97969	56000	6/23/2008	94,648	7,484

LE613	461	MACK- Labrie SL	2006	1M2AC08C26M012187	M15675	60,000	9/20/2006	159,371	3,954
LEU613	4142	Mack-New Way 32yd	2014	1M2AU02C9EM008531	R63897	72,000	6/1/2014	55,724	5,681
LEU613	4121	MACK -Heil Split	2012	1M2AU02CXCM006798	P52318	69,000	3/19/2012	64,523	9,689
GU813	491	MACK - Heil Split	2009	1M2AX13C79M002678	N17113	66,000	7/30/2008	104,155	6,184
WXLL64	451	AUTOOCAR - Heil SL	2006	5VCHG6MF56H202535	N65929	49,000	12/21/2009	82,062	1,066
400SER	4101	INTL - Labrie SL	2009	1HTWGAZT29J145172	N48647	56,000	7/1/2009	79,240	13,801
400SER	4102	INTL - Labrie SL	2009	1HTWGAZT49J145173	N46858	56,000	7/1/2009	81,895	14,571
MRU613	4141	MACK - McNeilus Split	2014	1M2AV02C4EM011625	R56703	72,000	4/1/2014	38,503	5,681

Doc	YEAR	VIN #	PLATE#	GW	IN SERVICE		
400SER	2003	1HTMMAAM73H583964	P98425	24000	9/7/2007	280,588	15,662
Doc 222							

400SER	121	INTERNATIONAL	2002	1HTMMAAM82H408279	N47710	26,000	5/28/2009	178,846
100SER	616	INTL-MAINTENANCE	1996	1HTMGABMXTH245478	J39477	14,000	3/1/2007	105,995

6-10	151	CHEVY	2005	1GCCS148258135518	99XZ85		5/29/2008	
16-10	1500	CHEVY	2015	1GCVKPEC8FZ387140	R77140		1-Dec	
base	191	CHEVY SILVERA	2009	1GCHK44K29E125534	N19356	10,000	5/21/2009	160,158
2500HD	PICKUP	FORD F250	2011	1FTTW2BT8BEA60906	N40866	10,000	9/17/2010	
C2500HD	PICKUP	CHEVY 2500HD	2005	1GCHK29U65E234832	N97990	10,000	11/5/2010	
FORESTER	WAGON	SUBARU	1998	JF1SF6552WH763040	46RD94		5/21/2008	

Item	Quantity	Description	Year	Model	Location	Value	Acq. Date	Current Value
TRANSFER TRAILER								
PTRB	661	PETE TRACTOR	1996	1XP5DR9X1TN419799	79394	99,000	6/28/2010	1,068,923
STECCO	T1	100 YD TRAILER	1999	1SWAR2T4X1252977	SM87304	80,000	4/23/2010	6,310
MCCLAIN	T2	75 YD TRAILER	1991	1M9CE392XM1309220	SM88085	80,000	4/9/2011	
W.G. LAKES	T3	PUP TRAILER	2000	1G9CDD2225YS139008	866253	40,000	1/10/2002	
FARR	T4	100 YD TRAILER HEAVY EQUIP.	1999	2A9SWF9B2XT053949	SM91794	80,000	6/26/2012	
JCB	215S-3	BACKHOE	1998	SLP215FCWE0473409	Yard		2/23/2011	
KOMATSU	PC220LC	EXCAVATOR	1994	A-80281	Yard		3/30/2001	
HYSTER	MH60XL	FORK LIFT	1986	A177811099F	Shop		11/16/2002	

Type (FL/RL/RO)	Size	# of Containers
FL	2	132
FL	4	135
FL	6	200
FL	8	154
FL	10	219
RL	1	0
RL	1.5	0
RL	2	82
RL	3	0
RL	4	30
RL	6	96
RL	8	18
RL	10	61
Carts	32	0
Carts	64	158
Carts	96	1357
Recycle Bins		50 - 18 gal
Drums	55	430
RO	8	0
RO	10	50
RO	15	74
RO	20	2
RO	30	267 / 1-rolling roof
RO	40	10
RO (Box only)	42	1
RO (Box only)	47	4
Compactors		
RL	2	0
RL	6	2
FL	2	0
FL	6	1
SC	15	3
SC	18	1
SC	35	8
SC-SPLIT	35	1
B-A	42	5
Pre-Crusher	42	1
B-A 5yd Rec Center	75	1

Schedule 2.1(m)

Actions, Rights, Claims, Credits, Causes of Action

- (1) Norfolk Superior Court Civil Action, Docket No. 1682-CV-01172, Town of Marblehead and its Board of Health v. Hiltz Waste Disposal and First Ipswich Bank as Trustee Defendant – about \$20,000 as trustee defendant.
- (2) Accounts Receivable as identified in Section 2.1(m) and Section 2.2(n).

Schedule 2.2(g)

Excluded Assets: None

Schedule 5.1(h)

Certain Changes: None

Schedule 5.1(l)

Environmental Matters: None known to persons with Knowledge
Environmental Reports: Purchaser's Phase 1 report prepared in connection with the
proposed acquisition of the Kondelin Road Property

Exhibit A [Bid Procedures, Sale Order]

4811-4025-5308.6