TOWN OF DUDLEY
REQUEST FOR PROPOSALS
FOR
THE OPERATION AND
MAINTENANCE OF THE TOWN OF DUDLEY
TRANSFER STATION
AND ASSOCIATED SOLID WASTE AND RECYCLING
REMOVAL

MARCH 27, 2020

NOTICE

The Town of Dudley (the "Town"), acting through its Board of Selectmen, is accepting proposals in response to a Request for Proposals ("RFP") for the operation and maintenance of the Town's Solid Waste Transfer Station located at 7 Indian Pond Road, Dudley, MA, for a term commencing on July 1, 2020 and terminating on June 30, 2023.The successful offeror will be required to handle all municipal solid waste ("MSW") and recyclable materials delivered to the Transfer Station by or on behalf of the Town. In addition, the successful offeror will be allowed to accept delivery of MSW and recyclable materials from private entities and other municipalities.

Copies of the full RFP may be obtained on request from the address below. A pre-proposal conference regarding this RFP will be held on Friday, March 20, 2020 at 11AM. Respondents to the RFP will be required to submit 5 copies of proposals no later than 1 p.m. on March 27, 2020, to:

Jonathan Ruda
Town Administrator
Dudley Town Hall
71 West Main Street
Dudley, MA 01571

Pursuant to the provisions of G.L. c. 30B, sec. 1(b)(30), a contract for the collection, transportation, receipt, processing or disposal of solid waste, recyclable or compostable materials is exempt from the provisions of G.L. c. 30B. Therefore, this procurement process shall not be subject to the requirements of G.L. c. 30B.

The Town reserves the right to reject any or all proposals, to waive any informality therein, and to accept any proposal which, in the opinion of the Town will be in the best interest of the Town. The contract will not necessarily be awarded to the lowest cost proposer. In particular the Town reserves the right to engage in negotiations with the preferred proposer(s), following the opening of the proposals, to modify the terms and conditions of the contract described herein in the best interests of the Town.

The Town reserves the right to reject any or all proposals or any part thereof; to accept the proposal that the Town deems most advantageous in its sole discretion, in accordance with applicable law and as set forth in the RFP; to waive any informalities; or to cancel this procurement at any time if it is in the public interest.

TOWN OF DUDLEY

REQUEST FOR PROPOSALS

FOR

THE OPERATION AND

MAINTENANCE OF THE TOWN OF DUDLEY TRANSFER STATION

SECTION 1.0 INTRODUCTION/OVERVIEW

1.0 Purpose/Objective

The Town of Dudley (the "Town") has issued this Request for Proposals ("RFP") to obtain proposals from interested and qualified companies to provide full operation of the Town's transfer station located at 7 Indian Pond Road, Dudley, MA as well as solid waste and recycling removal and transportation from the Town's transfer station.

1.1 Background

The Town currently operates the transfer station using municipal employees to staff and operate a resident-only, annual fee-based recycling center, utilizing a contract with a private company to remove municipal solid waste ("MSW") and recycling and transport it from the transfer station to an appropriate disposal facility. The Town intends to eliminate those positions upon execution of an Operating Agreement pursuant to this RFP. As a condition of award of an Operating Agreement, the successful offeror will be required to interview each of the employees and consider offering them continued employment at the transfer station.

The Town is considering that, in order to provide the most cost effective, reliable, and environmentally sound method of processing, transportation, and disposal of MSW, it is highly preferable to engage a single contractor for all these services and for operation of the Town's Transfer Station. Although the processing, transportation, and disposal of MSW and recyclables is exempt from public bidding pursuant to G.L. c. 30B, sec. 1 (b)(30), the award of an Operating Agreement pursuant to this RFP will be conditioned on the successful negotiation of a long-term MSW disposal agreement with the same offeror or a wholly-owned subsidiary or affiliate of the offeror who is awarded the Operating Agreement pursuant to this RFP. The negotiation of a long-term MSW disposal agreement will be conducted separate and apart from this RFP process.

As part of this RFP process, offerors are encouraged to offer additional options as part of

or in addition to their proposals that include both pay-as-you-throw and annual permit-based options for Town residents. A Host Community Agreement or payment may be included or proposed as negotiated outside of the contractor's submission.

1.2 Inquiries

Direct inquiries should be sent to Jonathan Ruda, Town Administrator, at administrator@dudleyma.gov (copy: Selectmen@dudleyma.gov), or mailed to the Town Administrator, Jonathan Ruda, Town of Dudley, 71 West Main Street, Dudley, MA 01571.

1.3 Method of Selection

The Town reserves the right to reject any or all proposals, to waive any informality therein, and to accept any proposal which, in the opinion of the Town will be in the best interest of the Town. The contract will not necessarily be awarded to the lowest cost proposer. In particular the Town reserves the right to engage in negotiations with the preferred proposer(s), following the opening of the proposals, to modify the terms and conditions of the contract described herein in the best interests of the Town.

SECTION 2.0 - INSTRUCTIONS FOR PROPOSAL

2.1 Compliance with the RFP

Pursuant to the provisions of G.L. c. 30B, sec. 1(b)(30), a contract for the collection, transportation, receipt, processing or disposal of solid waste, recyclable or compostable materials is exempt from the provisions of G.L. c. 30B. Therefore, this procurement process shall not be subject to the requirements of G.L. c. 30B.

2.2 Acknowledgement of Insurance Requirements

By signing its proposal, the offeror acknowledges that it has read and understands the insurance requirements for the RFP. The offeror also understands that the evidence of required insurance must be submitted within fifteen (15) working days following notification of its proposal being accepted; otherwise, the Town may rescind its acceptance of the proposal. (See 7.12 below for insurance requirements). The contractor must show evidence of meeting or exceeding Insurance requirements with their proposal.

2.3 Delivery of Proposals

All proposals are to be submitted in a sealed envelope clearly marked "RFP – Proposal for Operation and Maintenance of the Town of Dudley's Solid Waste Transfer Station", and containing two separately sealed envelopes: (1) the Technical Proposal; and (2) the Price Proposal. Proposals must be delivered by 3:00 p.m. Eastern Standard Time (EST), on April 6, 2020 to the following address:

Jonathan Ruda
Town Administrator
Dudley Town Hall
71 West Main Street
Dudley, MA 01571

The Town will not accept any proposals received after the date/time stated herein. Each offeror must submit one original and two exact copies of the RFP.

Specific instructions concerning the content and format of the Technical and Price Proposals are set forth below.

2.4 Technical Proposal Submittal Requirements

Each Technical Proposal shall consist of the forms and narrative descriptions itemized and described below:

Transmittal Letter - This section of each offeror's proposal shall evidence conformance of the Proposal to the requirements of the RFP, including the offeror's acceptance of the mandatory contract provisions. The transmittal letter shall be submitted on letterhead and signed by an authorized representative of the offeror and shall include a description of the company, including the company's history and key contacts. Please provide evidence that the company is in good standing under the laws of the Commonwealth of Massachusetts. Provide evidence in form and substance satisfactory to the Town that the company has been in existence for at least three years and possesses no less than three years actual operating experience in transfer stations and solid waste and recycling collection and disposal services.

Narrative - The purpose of the narrative component of the offeror's Technical Proposal is to provide the Town with a comprehensive overview of the offeror's proposed approach to providing operations and maintenance services for the Transfer Station. The narrative must be sufficiently detailed to permit the Town to conduct the evaluation required by this RFP, including without limitation the comparative

evaluation set forth herein.

Disposal Information – This section of each offeror's proposal should include information about the landfill or disposal facility to be used in connection with the services to be provided to the Town. List the names and addresses from the past year for the landfills used by the offeror which would be designated for the Town. The Town must be provided with a letter of assurance that company's landfill has a capacity beyond ten years for the offeror's solid waste as part of the contract.

Financial Information - This section of each offeror's proposal should include financial information about the offeror. The offeror must provide its most recent financial audit report from a certified public accountant for the past year.

References - This section of each offeror's proposal should include a minimum of three references, preferably from towns, for operation of a transfer station similar to the Town of Dudley's operation in said RFP. The company must include the name of the town, contact, mailing address, e-mail address, phone number, and number of years of service the offer or provided to the town.

Insurance Requirements – This section of each offeror's proposal should include an Insurance Certificate showing that the company meets or exceeds the Town's insurance requirements. The Insurance requirements are found in Section 7.12.

Performance Bond - This section of each offeror's proposal should include a letter from a corporate surety satisfactory to the Town with nothing less than a A.M. Best, Class XI for $500,000 stating that a Performance Bond in a form acceptable to the Town will be furnished by it to the person/company submitting the Proposal in the event it is the selected person/company. Such letter is to be signed by an authorized representative of the surety together with a certified and effectively dated copy of the Power of Attorney attached thereto.

Bid Bond - This section of each offeror's proposal should include a bid bond in the amount of $5000. The bid bond shall be in full force and effect until the Offeror executes the final contract. Proposals that do not satisfy the bonding requirements will be declared non-responsive. Checks or letters of credit of any type will not be accepted. A certified cashier's check will be acceptable.

Operations – This section of each offeror's proposal should include the company's detailed operational plan and approach for the town's transfer station operations and removal of solid waste and recycling.

The Contractor shall obtain all licenses and permits including local and state approval as required under state law.

Certificate of Authorization indicating that the signatory to the Proposal is duly authorized.

Non-Collusion Certificate.

Tax Certification, in which the Offeror certifies that it has filed all Massachusetts state tax returns, paid all Massachusetts state taxes due, and complied with all Massachusetts state tax laws.

Each Technical Proposal submitted hereunder shall consist of the narrative descriptions and information forms itemized and described below.

2.5 Price Proposal Submittal Requirements

Price Proposals submitted in response to this RFP shall be submitted on the Price Proposal Form attached to this RFP as Attachment E.

Additionally, Price Proposals must include the following information:

1. Pay-as-you-throw fee to be charged to residents

All fees, charges, and surcharges (specifying fixed or variable, with variable limited to dollar amount and year of adjustment):

- Per Ton Rate for Commercial Haulers
- Flat Rate for Bulky Items and Appliances
- Differential rate for non-residents
- Reduced rate for senior citizen residents and veteran residents
- Host Fee to Town for a Transfer Station

2. Optional Permit-Based Inclusion

The proposal must include an optional annual permit fee to dispose of household trash. The annual permit-based inclusion must minimally include:

- Annual permit rates, including projected increases for at the three years of the contract.
- Differential rate for non-residents
- Inclusion of a discounted permit rate schedule for senior citizen residents and veteran residents

3.0 EVALUATION PROCESS AND CRITERIA

3.1 Technical Evaluation Process Overview

The evaluation process will be conducted in accordance with G.L. c. 30B, sec. 6. These laws, taken together, set forth specific requirements and guidelines for the evaluation process to be used by the Town in evaluating proposals to provide the services.

The process of rating each proposal and selecting an offeror for negotiation will be undertaken as follows:

1. Each Technical Proposal will be rated against specific threshold evaluation criteria to determine whether that proposal at a minimum satisfies the relevant RFP requirements and that the offeror meets certain minimum qualifications criteria as set forth in Section 3.3 below. Proposals which do not satisfy the relevant RFP requirements and/or that have been submitted by offerors that do not satisfy the minimum qualifications criteria shall be rated "Unacceptable" and eliminated from further consideration.

2. Each Technical Proposal that has not been rated "Unacceptable" and eliminated from further consideration will be evaluated against certain comparative evaluation criteria as set forth in Section 3.3 below to determine whether, and the extent to which, that Proposal or the Offeror submitting that Proposal exceeds the relevant RFP requirements and/or the minimum qualifications criteria, respectively. The rating of the subject Proposal as "Not Advantageous," "Advantageous," or "Highly Advantageous" against each of the comparative criteria will be made on the basis of the applicable comparative criteria.

The individual criteria ratings for each qualifying Technical Proposal will be compiled into ***a single composite rating*** for each offeror's Technical Proposal.

3.2 Price Proposal Evaluation Overview

1. After completion of the evaluation of the Technical Proposals, the Town Administrator will open the sealed Price Proposals. The Town Administrator will make a preliminary determination of the most advantageous proposal from a responsible and responsive offeror, taking into consideration price, and the other evaluation criteria set forth in this RFP. The Town Administrator will negotiate all terms of the Operating Agreement not deemed mandatory or non-negotiable with the offeror deemed to have offered the most advantageous proposal.

2. If, after negotiation with such offeror, the Town Administrator determines that it is in the Town's best interests, the Town Administrator may determine the next most advantageous proposal from a responsible and responsive offeror, and may negotiate all terms of the Operating Agreement not deemed mandatory or non-negotiable with such offeror.

3. The Town Administrator will recommend to the Board of Selectmen an award of contract to the responsible and responsive offeror that offers the most advantageous proposal and that reaches a negotiated Operating Agreement with the Town on all of the terms of the Operating Agreement, in the Town's best interest, as determined by the Town Administrator.

3.3 Technical Proposal Evaluation Criteria

Technical Proposals will be rated on the basis of the following minimum and comparative evaluation criteria:

3.3.1 Minimum Evaluation Criteria for Technical Proposals

Each Technical Proposal must satisfy the following minimum criteria for completeness, conformance to the RFP requirements, and for demonstrated technical experience and capability of the Offeror and its Transfer Station team.

Completeness

A Technical Proposal will be considered incomplete and rated Unacceptable unless it includes all of the completed and duly executed forms, narratives and other proposal elements required to be submitted in accordance with this RFP.

Conformance to the RFP

A Technical Proposal will be considered non-conforming and rated Unacceptable

unless (i) it is submitted separately from the Price Proposal; and (ii) it demonstrates the offeror's approach to the design of, acquiring permits for, constructing, and operating and maintaining the Transfer Station and will be performed in accordance with all applicable laws, rules, regulations, permits, codes and standards and the relevant Guarantees set forth or referenced in this RFP.

3.3.2 Comparative Evaluation Criteria for Technical Proposals

The Technical Proposals will be assigned ratings of Highly Advantageous, Advantageous, or Not Advantageous on the basis of the following general categories of evaluation criteria:

1. General experience and expertise

   Offerors will be evaluated as follows:

   - A rating of Not Advantageous will be assigned to an offeror that does not demonstrate at least three years of experience operating a MSW transfer station in Massachusetts.

   - A rating of Advantageous will be assigned to an offeror that has at least four but nor more than five years of experience operating a MSW transfer station in Massachusetts.

   - A rating of Highly Advantageous will be assigned to an offeror that demonstrates more than five years of experience operating a MSW transfer station in Massachusetts.

2. The regulatory and environmental expertise and experience of the Transfer Station Team

   Offerors will be evaluated on the basis of the following:

   - A rating of Not Advantageous will be assigned to an Offeror that has been the subject of an enforcement action (either a notice of non-compliance or a consent order) for a permit violation by the Massachusetts Department of Environment Protection on more than five occasions in connection with the operation of a MSW transfer station.

   - A rating of Advantageous will be assigned to an offeror that has been the

subject of an enforcement action (either a notice of non-compliance or a consent order) for a permit violation by the Massachusetts Department of Environment Protection on no more than two occasions in connection with the operation of a MSW transfer station.

- A rating of Highly Advantageous will be assigned to an offeror that has not been the subject of an enforcement action (either a notice of non-compliance or a consent order) for a permit violation by the Massachusetts Department of Environment Protection in connection with the operation of a MSW transfer station.

3. Ownership of Disposal Facility

Offerors will be evaluated based on the following:

- A rating of Advantageous will be assigned to an offeror that can provide MSW disposal capacity to the Town at a facility that is under a disposal contract with the offeror for a ten (10) year term.

- A rating of Highly Advantageous will be assigned to a proposal that can provide MSW disposal capacity to the Town at a facility that is owned by the offeror or an affiliate of the offeror for term of the Operating Agreement.

3.3 Projected Timetable

The following projected timetable should be used as a working guide for planning purposes. The town reserves the right to adjust this timetable as required during the course of the RFP process:

Bid Notice Issued: March 13, 2020

Bids Due: March 27, 2020 @ 9:00AM

Projected Award: April 13, 2020

Contract Execution: April 27, 2020

Contract Start Date: July 1, 2020

SECTION 4.0 - GENERAL DESCRIPTION OF REQUIRED PERFORMANCE OUTCOMES

At a minimum, the selected contractor must achieve and maintain the performance outcomes listed below, and consistent with performance standards agreed to by all parties through a contract as a result of this RFP. Contractors may also propose additional performance outcomes beyond those minimally required.

Scope of Work Service(s) to be provided include manning and operating a transfer station on the following schedule:

Monday - Friday	Saturday	Sunday
7:00 AM – 3:00 PM	8:00 AM - 1:00 PM	Closed

The contractor must use industry standard tractor trailers and related equipment to transport and dispose of the Town of Dudley's solid waste to a fully permitted landfill located within the State of Massachusetts. The Town owns the transfer station that will be operated.

The transfer station will be equipped by the contractor with self-contained compactors, scales (if proposed in response to this RFP) and other containers to store the solid waste and other materials. They will include separate containers for recyclables including newspapers, paper, cardboard, glass, aluminum, food cans, and plastic bottles. The transfer station will also provide open top containers for bulk items including televisions, refrigerators, appliances, scrap metal, furniture, carpeting, and bedding, Demo material, tires and batteries will also be accepted. The attendant will be provided with a restroom, and the ability to collect fees on-site based on a per-pound or per-item rate to be determined.

As part of the proposal, the contractor bid should include the option and cost of providing an additional collection container for the separation of precious metals, the proceeds from which would be kept by The Town.

It is the contractor's responsibility to maintain the housekeeping, record-keeping, transfer station site internally and externally, building/facility, and all solid waste and recycling-associated equipment located on the property. The contractor will also accept all solid waste, bulk items, demo material, trash, and recycling brought into the transfer station by the Town of Dudley Highway Department, at no cost to the Town. All solid waste and recyclables hauled by the contractor shall be so contained, tied, covered, or enclosed such

that leaking, spilling, or blowing are prevented.

SECTION 3.0 - CONSTRAINTS ON CONTRACTOR

The contractor shall perform service in accordance with the Town's solid waste bylaws.

SECTION 4.0 - CONTRACTOR'S PERSONNEL REQUIREMENTS

The contractor must provide a central point of contact to ensure coordination of each service and as well as individuals that have the necessary expertise to troubleshoot the provided solution.

SECTION 5.0 - CONTRACTOR'S RESPONSIBILITIES

Before submitting a proposal, each contractor shall make all investigations and examinations necessary to ascertain all conditions and requirements affecting the full performance of the contract. Failure to make such investigations and examinations shall not relieve the successful contractor from any obligation to comply with every detail and with all provisions and requirements of the contract documents, nor be accepted as a basis for any claim whatsoever for any monetary consideration on the part of the contractor.

SECTION 6.0 - TERMS AND CONDITIONS OF CONTRACT FOR SERVICES

The term of the operating agreement shall be for a period of three (3) years from the effective date.

SECTION 7.0 - INSTRUCTIONS FOR PROPOSAL

7.1 Compliance with the RFP

Proposals must be in strict compliance with the terms laid out in this document. Failure to comply with all provisions of the RFP may result in disqualification.

7.2 Acknowledgement of Insurance Requirements

By signing its proposal, the offeror acknowledges that it has read and understands the insurance requirements for the RFP. The offeror also understands that the evidence of required insurance must be submitted within fifteen (15) working days following notification of its proposal being accepted; otherwise, the Town may rescind its acceptance

of the proposal. (See 7.12 below for insurance requirements). The contractor must show evidence of meeting or exceeding Insurance requirements with their proposal.

7.3 Delivery of Proposals

All proposals are to be submitted in a sealed envelope clearly marked "RFP – Proposal for Operation and Maintenance of the Town of Dudley's Solid Waste Transfer Station", and containing two separately sealed envelopes: (1) the Technical Proposal; and (2) the Price Proposal. Proposals must be delivered by 9:00AM. Eastern Standard Time (EST), on March 27, 2020 to the following address:

Jonathan Ruda
Town Administrator
Dudley Town Hall
71 West Main Street
Dudley, MA 01571

The Town will not accept any proposals received after the date/time stated herein. Each offeror must submit one original and two exact copies of the RFP.

7.4 Ambiguity, Conflict, or Other Errors in the Bid

If a contractor discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, they shall immediately notify the Town of such error in writing and request modification or clarification of the document. The Town will make modifications as it deems necessary by issuing an addendum and will provide written notices to all parties who have previously received a copy of the RFP from the Town.

7.5 Preparation Costs

The Town will not be liable in any way for any costs incurred by any offeror in preparation of its proposal in response to this RFP, nor for the presentation of its proposal and/or participation in any discussions or negotiations.

7.6 Rejection of Proposals

The Town reserves the right to accept or reject, in whole or in part, any or all proposals submitted. The Town shall reject the proposal of any offeror that is determined to be non-responsive.

7.7 Validity of Proposals

All Proposals shall be valid for a period of one hundred and twenty (120) days from the submission date.

7.8 Response Format

Proposals should be prepared simply, providing a straightforward, concise description of the offeror's approach and ability to meet the Town's needs as stated in the RFP.

7.9 Insurance Requirements

The selected Contractor shall, at all times during the duration of the time the Agreement is in effect, maintain Employer's Liability, Workmen's Compensation, Public Liability, and Property Damage Insurance, including Contractual Liability Coverage, for all provisions of work. The Town should be listed as an additional named insured on these policies and must have an indemnification agreement where the Contractor agrees to hold the Town harmless in the event of a claim. All insurance shall be for policy limits acceptable to the Town and will be effective and presented to the Town before commencement of work. The Contractor agrees to furnish the Town with Certificates of Insurance as evidence that such insurance has been procured and is in force. For the purpose of this RFP, the Contractor shall carry the following types of insurance in at least the limits specified below:

Coverage	Limits of Liability
Workers' Compensation	Statutory
Employer's Liability	$1,000,000.00
Personal/Bodily Injury Liability	$5,000,000.00 Combined Single Limit
Property Damage Liability	$5,000,000.00 Combined Single Limit
Automobile Bodily Injury	$5,000,000.00 Combined Single Limit
Automobile Property Damage	$5,000,000.00 Combined Single Limit
Excess Umbrella Liability	$10,000,000.00 Each Occurrence
Professional Liability	$1,000,000

Environmental Impairment. During the Term of this Agreement or for so long as Operator or anyone claiming by and through Operator remains in occupancy of any portion the Property, Operator shall cause the Transfer Station to be insured for third party environmental

impairment under a per occurrence basis. The policy shall provide umbrella coverage of not less than $10,000,000.00.

ATTACHMENTS

A. Form of Proposal Bond
B. Certificate of Authorization
C. Non-Collusion Certificate
D. Tax Compliance Certificate
E. Price Proposal Form
F. Draft Operating Agreement
G. Prevailing Wage Rates

ATTACHMENT A

FORM OF PROPOSAL BOND

KNOW ALL MEN BY THESE PRESENTS, that we [NAME OF SURETY], a [Corporation], [Partnership] duly organized under the laws of the State of _____, as Surety, are held and firmly bound unto the Town of Dudley, Massachusetts (the "Town") as Obligee, in the sum of $_____ (set amount) lawful money of the United States of America to be paid to the Town, its successors or assigns, for which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these present, and

WHEREAS, _____ (the "Offeror") has submitted or is about to submit to the Town a Proposal in response to the Request for Proposals for the operation of the Town's Solid Waste Transfer Station issued by the Town on [date], 2020 and

WHEREAS, the RFP requires the Offeror to enter into Operating Agreement to design, acquire certain permits for, construct, operate and maintain the Transfer Station in accordance with all applicable rules, regulations, permits, codes and standards as set forth in the RFP, and

NOW, THEREFORE, the Surety hereby agrees that if an Event of Default as defined in Section 2.4 of the RFP should occur, the Surety shall pay to the Town as liquidated damages the full amount of this Bond.

It is agreed that this Bond shall become effective on the date the Proposal is submitted and will continue in full force and effect until _____, 2020, or such later date as the Offeror and the Town agree to in writing, the Surety shall be discharged from all liability under this Bond for any act or omission of the Offeror occurring thereafter.

Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the Commonwealth of Massachusetts.

IN WITNESS HEREOF, Surety, intending to be legally bound hereby, does cause this Proposal Bond to be duly executed on its behalf by its authorized officers, agents or representatives.

Signed and sealed this _____ day of _____, 2020.

_____
Name of Surety

_____
Name of Offeror's Authorized Representative

_____

Signature of Authorized Representative

_____

Title

ATTACHMENT B

CERTIFICATE OF AUTHORIZATION

I, a resident of in the State of DO HEREBY CERTIFY that I am the Clerk/Secretary of , a corporation duly organized and existing under and by Virtue of the laws of the State of ; that I have custody of the records of
The corporation; and that as of the date of this certification, holds the title Of of the corporation, and is authorized to execute and deliver in the name
and on behalf of the corporation the Proposal submitted by the corporation in response to the Request for Proposals for the operation of the Solid Waste Transfer Station issued by the Town of Dudley, Massachusetts (the "Town") on _____ (date), 2020, and all documents, letters, certificates and other instruments which have been executed by such officer on behalf of the corporation in connection therewith.

IN WITNESS THEREOF, I have hereunto set my hand and affixed the corporate seal of the
Corporation this day of 2020.

(Affix Seal Here)

_____
Clerk/Secretary

Note: Separate certifications shall be submitted if more than one corporate officer has executed documents as part of the Proposal.

ATTACHMENT C

NON-COLLUSION CERTIFICATE

The undersigned authorized representative of the Offeror certifies under penalty of perjury that this Proposal is in all respects bona fide and has been made and submitted in good faith without collusion or fraud with any other person. As used in this section of the work "Person" shall mean any natural person, business, partnership, corporation, union, committee, club, joint venture, or other business, legal entity, or organization or group of individuals.

_____
Name of Offeror

_____
Name of Offeror's Authorized Representative

_____
Signature

_____
Title

_____
Date

ATTACHMENT D

TAX CERTIFICATION
M.G.L. c. 62C, s. 49A

The undersigned authorized representative of the Offeror certifies under penalties of perjury that the entity submitting this Proposal has of this date, to the best of my knowledge, filed all state tax returns, paid all state taxes and complied with all laws of the Commonwealth of Massachusetts relating to taxes.

_____
Name of Offeror

_____
Name of Offeror's Authorized Representative

_____
Signature

_____
Title

_____
Date

[Note: This certification must be signed for approval of a contract or Operating Agreement to be granted. The Social Security number or federal tax identification number will be furnished to the Massachusetts Department of Revenue to determine whether the Offeror has outstanding tax filing or payment obligations. Any Offeror that fails to correct its non-fling or delinquency will not have a contract issued, or other Operating Agreement renewed or extended. This request is made under the Town of M.G.L. c.62C s. 49.]

ATTACHMENT E

PRICE PROPOSAL FORM

TOWN OF DUDLEY
OPERATION OF TRANSFER STATION

Host Community Fee: $_____ per ton.[1]

Guaranteed Annual Host Community Fee: $_____.[2]

Submitted By:

_____

(Name of Offeror)

_____

(Signed by Authorized Representative)

[1] Minimum is $__.00 per ton.
[2] Minimum Guaranteed Annual Host Community Fee is $___,000.

ATTACHMENT F

OPERATING AGREEMENT
FOR THE OPERATION AND MAINTENANCE OF THE TOWN OF DUDLEY'S SOLID WASTE TRANSFER STATION

This AGREEMENT FOR THE OPERATION AND MAINTENANCE OF THE TOWN OF DUDLEY'S SOLID WASTE TRANSFER STATION (this "Agreement"), dated as of the ____day of _____, 2020 (the "Execution Date"), is made by and between _____, a_____corporation with an address of _____("Operator"), and the TOWN OF DUDLEY, Massachusetts, acting by and through its Board of Selectmen, with an address of 71 West Main Street, Dudley, MA 01571 ("Town"). All references herein to the "parties" or "Parties" shall mean the above-described Town and Operator.

WHEREAS, the Town presently owns a Solid Waste Transfer Station located at 7 Indian Pond Road, Dudley, MA 01571 ("Transfer Station");

WHEREAS, the Town issued a Request for Proposals for the operation and maintenance of the Transfer Station, pursuant to G.L. c. 30B, Sec. 6, including a Scope of Services, all of which are incorporated herein by reference;

WHEREAS, the Operator submitted a proposal which was evaluated by the Town in accordance with the Request for Proposals as accepted by the Town, all of which are incorporated herein by reference and the Town determined that, based on that evaluation, the award of this Agreement to the Operator was in the best interests of the Town;

NOW, THEREFORE, in consideration of the representations, warranties, promises, covenants and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows.

1. DEFINITIONS

For the purpose of this Agreement, the following words and phrases shall have the following meanings:

"Municipal Solid Waste" shall have the meaning in the Massachusetts department of Environmental protection Solid Waste Regulations.

"CPI" means the United States Bureau of Labor Statistics (the "Bureau") Consumer Price Index All Urban Users - Boston. If the CPI is converted to a different standard reference base or otherwise revised, a determination of the CPI shall be made with the use of such conversion factor, formula or table as may be published by the Bureau or, if the Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by any nationally recognized publisher of statistical information, reasonably selected by the Town. If

the CPI shall cease to be published, then there shall be substituted for the CPI any substitute or successor index published by the Bureau or other governmental agency, or if no such index is published, then such other index published by any nationally recognized publisher of statistical information as the parties shall reasonably select. The parties agree that when making any adjustment to a payment in this Agreement to account for the CPI: (a) the adjustment will reflect only the increase, if any, between the CPI for the current year and the CPI for the immediately preceding year; (b) the adjustment will take place on January 1st of the year; and (c) in no event shall the CPI adjustment in any payment due to the Town under this Agreement result in a payment to the Town in any calendar year that is lower than the payment made to the Town for the preceding calendar year.

"Effective Date" shall mean the Execution Date first entered above.

"Force Majeure" shall mean:
Force Majeure will be defined as those items outside of either party's control, including (but not necessarily limited to):

(a) acts of God (but not including reasonably anticipated weather conditions for the geographic area of the Transfer Station);
(b) fire, flood and earthquakes;
(c) the failure of any appropriate governmental agency or private utility to provide and maintain utilities;
(d) the preemption, confiscation, diversion, destruction, or other interference in possession or performance or delivery or supply of materials or services by, on behalf of, or with Town of a governmental body in connection with a declared or asserted public emergency or any condemnation or other taking by eminent domain or similar action of any portion of the Transfer Station;

None of the following acts, events, or conditions shall constitute Force Majeure:

(a) general economic conditions, interest or inflation rate fluctuations, commodity prices or changes in prices, or currency or exchange rate fluctuations;
(b) changes in the financial condition of the Operator, the Guarantor, or any of their affiliates or subcontractors;
(c) union work rules which increase the Operator's operating costs;
(d) any impact of prevailing wage laws on the Operator's costs;
(e) the consequences of Operator error, including any errors of Operator affiliates or subcontractors;
(f) failure of any subcontractor or supplier to furnish labor, services, materials or equipment on the dates agreed to;
(g) strikes, work stoppages or labor disputes of Operator's employees;
(h) failure of equipment owned or leased by the Operator (unless caused by Force Majeure);
(i) litigation against the Operator or an affiliate or subcontractor; or
(j) any unknown subsurface conditions existing at the Transfer Station sites which adversely affects the ability of the Operator to construct the Transfer Station, which could have been discovered with reasonable diligence by the Operator on or before the Proposal due date.
(k) The cost to comply with any permits or approvals issued by any governmental body for the design, construction, or operation of the Transfer Station.

"Governmental Authority" shall mean all agencies, authorities, boards, bodies, commissions, courts, instrumentalities, legislatures and offices of any municipal, local, state or federal governmental unit or subdivision.

"Hazardous Waste" shall mean any pollutant, contaminant, chemical, industrial, toxic or other waste that constitutes hazardous waste as defined pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 9601 *et seq.*, or M.G.L. c. 21E, or any regulations adopted hereunder at 310 C.M.R. 30.00.

"MADEP" shall mean the Massachusetts Department of Environmental Protection.

"Permit" shall mean any and all permits, licenses, certificates, consents, registrations or other approvals required by any Governmental Authority to construct, operate, use, maintain, expand or close the entirety or any portion of the Transfer Station, including without limitation all renewals and modifications thereof.

"Operator" shall mean _____.

"Term" shall have the meaning set forth in Section 20.

"Ton(s)" shall mean 2000 pounds or the volume equivalent.

"Town" shall mean the Town of Dudley, Massachusetts.

2. OPERATOR'S RIGHTS AND OBLIGATIONS

2.1 Exclusive Use. The Town hereby grants Operator the exclusive right to occupy, operate and use, as further set forth herein, the Transfer Station commencing on the Effective Date and continuing during the Term of this Agreement, including without limitation, the following.

a) The exclusive right to take possession of, occupy, and have exclusive use of the Site.

b) The exclusive franchise, license and privilege to manage MSW and recyclable materials, with the full right to accept such material from any source, including but not limited to any person or entity other than the Town or the residents of the Town. In connection with the forgoing, the parties acknowledge that Operator shall have all right to and shall own all revenue generated from any MSW or recyclable material delivered to the Transfer Station.

c) The use of any Permits that have been issued in the name of the Operator or the Town and are required for Operator to operate the Transfer Station and fulfill its obligations under this Agreement.

3.2 Scope of Services.

a) The Operator shall provide all necessary labor to operate the Transfer Station on a

continuous, uninterrupted basis for the Term of the Operating Agreement in conformance with the DEP Solid Waste Management Regulations 310 CMR 19.00. The Operator shall provide administrative and technical support services to ensure efficient operation of the Transfer Station.

b) The Operator shall be responsible for adopting and implementing an OSHA compliance program and a health and safety program for the personnel employed by the Operator that will be involved in the operation of the Transfer Station.

c) Coordination and direction of loaded and unloaded rail cars, loaded and unloaded trucks and trailers on and off the scales and into and out of the unloading and loading areas of the Transfer Station.

d) Staffing and operation of the scale house.

e) Unloading of arriving trucks.

f) Separation and segregation of recyclable materials from non-recyclable materials.

g) Storage of recyclable and non-recyclable materials, whether baled or unbaled.

h) Loading of MSW onto rail cars and/or trucks and trailers from removal from the Transfer Station.

i) Loading of recyclable material onto trucks and trailers for removal from the Transfer Station.

j) Loading of non-recyclable materials and bulkies onto trucks and trailers for removal from the Transfer Station.

k) Routine maintenance, preventative maintenance, and repair of the Transfer Station and associated equipment.

l) Housekeeping of the exterior of the physical premises of the Transfer Station, and only the interior of the Scale House, one office and the Maintenance Shop.

m) Providing, supervising, and training competent and suitably qualified labor and providing all materials (other than purchase of Rolling Stock, as defined below) reasonable and necessary to operate the Transfer Station.

n) Taking all reasonable and necessary actions to operate the Transfer Station in full and complete compliance with all applicable federal, state, and local regulations, laws, codes, ordinances, permits (including, but not limited to the Site Assignment and the DEP Permits), and approvals, as now existing or subsequently promulgated, adopted, amended, enacted, applied, made applicable, or imposed ("Applicable Laws").

o) Taking all reasonable and necessary actions requested by the Town so that the operation of the Transfer Station is done in compliance with engineering, environmental, and safety standards established by the Town and its affiliates.

p) Invoicing and collection for MSW and recyclable materials that is received at the Transfer Station from all haulers as well as preparing and filing of all monthly reports required by the Massachusetts Department of Environmental Protection to identify the tonnage of MSW received at the Transfer Station from commercial haulers.

q) Implement and perform all reasonable and necessary best management practices, as are typical and standard within the industry and in compliance including, but not limited to, best

management practices for (i) chemical handling and storage, (ii) litter and odor control, (iii) bird and other vector and nuisance control; (iv) waste oil management, and (v) unauthorized waste (hazardous, radioactive, medical, waste-ban, etc.) material handling and management.

r) The Operator shall observe the hours of operation set forth in the Site Assignment and the DEP permit to operate.

s) The Operator shall develop plans and be responsible for operation of the Transfer Station during emergencies. These plans shall be revised as necessary and shall include interaction and coordination with the Fire, Police and Public Works Departments; and other relevant agencies and jurisdictions.

t) The Operator shall be responsible for preventing odor emissions from the Transfer Station off-site, minimizing odors on-site, and correcting odor problems that might occur. The Operator shall prepare and implement, as necessary, an odor control plan.

u) The Operator shall perform monitoring, sampling, testing, laboratory analyses and reporting for the Transfer Station, as applicable, to ensure compliance with all applicable permits, regulations, and laws.

v) The Operator shall submit monthly to the Town a report summarizing for the previous month the quantities of MSW handled at the Transfer Station. At the end of each fiscal year, the Operator shall submit an annual report to the Town summarizing the previous year's operations including the items described in the preceding sentence. This report shall also include a discussion of major system operating issues anticipated during the coming fiscal year.

w) The Operator shall maintain the grounds, fencing, lighting, signage and landscaping at the Transfer Station in neat, clean, litter free and odor free condition. The Operator shall also maintain the security of these sites and take all reasonable actions to limit vandalism and similar problems.

x) The Operator shall be responsible for obtaining and maintaining all permits and approvals from any governmental entity required to operate the Transfer Station, and shall specifically be allowed to obtain as soon as practicable a permit modification to permit the truck to truck transfer of materials at the Transfer Station in addition to truck to rail transfer. The obligation of the Operator to operate the Transfer Station in accordance with the terms of this RFP shall not be contingent on receiving said permit modification.

3.3. Inspection.

a) Operator expressly agrees that Town officials, as designated by the Town Administrator, may visit the Transfer Station during regular operating hours. All visits or inspections shall be conducted in such a manner so as not to interfere with Operator's operations and in compliance with all reasonable safety rules adopted by Operator. This Section shall not be in derogation of the right of any public official to carry out any public duty in accordance with any applicable laws, including but not limited to Board of Health officials and authorized agents acting under Chapter 111 of the Massachusetts General Laws, or otherwise.

b) During the Term of this Agreement, the Town shall have the right at any time to install, at its sole cost and expense, any video electronic device, including cameras, to monitor the operation of the scale house at the Transfer Station.

c) During the Term of this Agreement, Operator shall at its sole cost and expense construct and maintain a weigh scale to be used to record the weight of incoming loads of Acceptable MSW and recyclable material to the Transfer Station. In connection with the above, Operator shall provide access to the scale by the Town for limited traffic volume (approximately twenty (20) vehicles or less per day.)

3.4 Host Community Payments to the Town. Upon the Effective Date and during the Term of this Agreement, and thereafter for so long as Operator or anyone acting by, through or under Operator remains in occupancy of the Property, Operator shall pay an Annual a Host Community fee and a contribution to the Town for municipal capital projects as set forth in the Operator's Price Proposal, a copy of which is attached hereto. The payments shall be adjusted on an annual basis based on the annual increase in the CPI.

3.5 Late or Inadequate Payments. In the event that any payment is not made as required by this Agreement, interest shall accrue on such late payment at the annual rate of ten percent (10%) on the unpaid balance from the first day of the delinquency until payment has been made in full.

4. OBLIGATIONS OF THE TOWN

4.1 Cooperation. The Town shall execute at Operator's request all documents consistent with the purposes of this Agreement and that are reasonably necessary to obtain any Permits required for the operation, Closure or performance of Post-Closure Activities by Operator at the Transfer Station.

5. USE AND COMPLIANCE WITH LAW

5.1 The Transfer Station shall be kept by Operator in substantial order and repair outside and inside at its sole cost and expense. Operator shall, at its sole cost and expense, operate and maintain the Transfer Station in compliance with the Permits and with all orders, regulations, rules and requirements of every kind and nature, now and hereinafter in effect, of all Governmental Authorities having the power to enact, adopt, impose or require the same whether they be usual or unusual, ordinary or extraordinary or whether they or any of them relate to environmental requirements or otherwise.

5.2 Operator shall be obligated to comply with the terms of this Agreement in addition to the requirements of any applicable Permits. To the extent that this Agreement imposes obligations on Operator that are more stringent than those under any applicable Permit, or that are more favorable to the Town, Operator shall be obligated to comply with the terms of this Agreement in addition to the requirements imposed by such Permit.

6. GENERAL POWERS

6.1 In addition to the other powers granted to Operator, it is expressly acknowledged that in the exercise of the dominion and control of the Transfer Station, Operator will be free to subcontract out those services that it deems appropriate, subject to the approval of the Town, which such approval shall not be unreasonably withheld. The Operator shall require that the subcontractors follow the provisions of this Agreement which shall be incorporated by reference into any subcontract. Operator acknowledges and agrees that, notwithstanding such subcontracting, it shall remain primarily liable for its obligations under this Agreement.

7. RECORDS/AUDITS

7.1 The acceptance by the Town of any payments under this Agreement shall be without prejudice to the Town's rights to an examination of Operator's books and records from the operation of the Transfer Station in order to verify the amount of MSW and recyclable materials received at the Transfer Station and the calculation of any such payments due to the Town.

7.2 Operator shall, with each payment made hereunder by Operator to the Town, deliver to the Town a written statement prepared and certified by Operator, showing in detail the calculation of the respective payment. In addition, no later than thirty (30) days from the termination of each calendar year, Operator shall submit an annual report providing a detailed accounting of the amount of Acceptable MSW and recyclable material and other allowable materials received at the Transfer Station during that calendar year.

7.3 Operator shall keep accurate and true records, books, data and accounts, in compliance with generally accepted accounting principles, with respect to all MSW and recyclable material and other allowable materials of whatever kind received at the Transfer Station, including without limitation all original invoices and payment schedules relating to the operation of the Transfer Station, all trucking records, weight slips, and any and all other documents pertaining to the amount of MSW and recyclable material and other allowable materials received at the Transfer Station per day.

7.4 The Town and its agents and auditors shall have the right at all reasonable times, to inspect and examine the accounts, records, books, contracts and other data concerning the gross volume of business conducted under this Agreement.

8. REPRESENTATIONS AND WARRANTIES OF THE TOWN

8.1 The Town represents and warrants to Operator as follows.

a) The Town is a municipality in the Commonwealth of Massachusetts with full legal right, power and authority to enter into and to fully and timely perform its obligations under this Agreement.

b) Neither the execution or the delivery by the Town of this Agreement nor the performance by the Town of its obligations in connection with the transactions contemplated hereby or the fulfillment by it of the terms and conditions hereof conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to it or materially conflicts with, violates or results in a breach of any term or condition of any order, judgment or decree or any agreement or instrument to which the Town is a party or by which the Town or any of its real or personal property are bound or constitutes a default.

c) No approval, authorization, order, consent, declaration, registration or filing with any Governmental Authority or referendum of voters which has not been obtained is required for the valid execution and delivery by the Town of this Agreement or the performance by the Town of its obligations hereunder.

d) There are no pending, or to the best of the Town's knowledge, threatened actions, suits or proceedings at law or in equity before or by any Governmental Authority against the Town in which an unfavorable decision, ruling or finding would materially adversely affect the performance by the Town of its obligations hereunder or other transactions contemplated hereby or that in any way would materially adversely affect the validity and enforceability of this Agreement.

9. **REPRESENTATIONS AND WARRANTIES OF OPERATOR**

9.1 Operator represents and warrants to the Town as follows.

a) Operator is a corporation duly incorporated, validly existing and authorized to do business under the laws of the Commonwealth of Massachusetts with full legal right, power and authority to enter into and fully and timely perform its obligations under this Agreement. In the alternative, if Operator is a foreign corporation, it has it has registered with the Massachusetts Secretary of State pursuant to G.L. c. 156D, §15.03, and is duly authorized to transact business in the Commonwealth.

b) Operator has duly authorized, executed and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation enforceable against Operator in accordance with its terms.

c) Neither the execution or delivery by Operator of this Agreement nor the performance by Operator of its obligations in connection with the transactions contemplated hereby or the fulfillment of the terms and conditions hereof conflicts with, violates or results in a breach of any law or governmental regulation applicable to it or materially conflicts with, violates or results in a breach of any term or condition of any order, judgment or decree or any agreement or instrument to which Operator is a party or which Operator or any of its real or personal property are bound or constitutes a default thereunder.

d) No approval, authorization, order, consent, declaration, registration or filing with any Governmental Authority is required for the valid execution and delivery by Operator of this Agreement.

e) There are no pending, or to the best of Operator's knowledge, threatened actions, suits, administrative actions or proceedings at law or in equity before or by any Governmental Authority against Operator in which an unfavorable decision, ruling or finding would materially and adversely affect the performance of Operator of its obligations hereunder

or any other transaction contemplated hereby or that in any way would materially adversely affect the validity or enforceability of this Agreement.

10. SURVIVAL OF WARRANTIES, REPRESENTATIONS AND COVENANTS

10.1 All representations, warranties, promises, agreements, covenants and statements made herein or in any Exhibit annexed hereto or in any instruments or document delivered by or on behalf of any party pursuant to this Agreement shall extend for the duration of the Term of this Operating Agreement, as it may be extended, regardless of what investigations the parties may have made before or after the date of this Agreement, except those representations and warranties which are expressly waived in writing by the party benefiting therefrom. Nothing herein contained shall require that a party waive any representations and warranty.

11. INDEMNIFICATION

11.1 Operator's Obligation to Indemnify Town. Operator agrees to defend, indemnify, hold harmless and discharge the Town from and against any and all claims, penalties or assessments arising from Operator's operation or use of the Transfer Station, including without limitation maintenance and use of the Site or the Property. Operator further agrees to indemnify and hold harmless the Town from and against any and all claims by third parties which the Town may suffer, incur, be responsible for or pay out as a result of bodily or personal injuries (including death) to any person, damage (including loss of use) to any property, including environmental remediation, clean up and related costs to the extent caused by or arising out of breach of any of the terms hereof by Operator, or the willful misconduct or negligent acts or omissions of Operator, its employees, subcontractors, assignees or transferees in the performance of this Agreement.

12.1 DEFAULT; TERMINATION; EXPIRATION OF THE TERM

12.1 Termination by the Parties.

a) If any of the following occurs, Operator shall be in default under this Agreement, and the Town may, upon thirty (30) days prior written notice to Operator and in compliance with the provisions of this Section, terminate this Agreement and require Operator to vacate and surrender possession of the Property:

i. any of Operator's representations or warranties were not materially true and accurate when made, which materially and adversely affects the ability of the Town to perform any material obligation hereunder or to obtain the benefits set forth in this Agreement;

ii. Operator fails to pay any amount required to be paid hereunder within ten (10) days from its due date or fails to perform any material obligation;

iii. Operator files a voluntary petition, or there is filed against Operator of an involuntary petition, in bankruptcy or insolvency or adjudication of

bankruptcy or insolvency of Operator, or the filing by Operator of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy act, or any other present or future applicable federal, state, or other statute or law, or the assignment by Operator for the benefit of creditors, or appointment of a Trustee, receiver, or liquidator of all or any part of the assets of Operator, and within one hundred twenty (120) days after the commencement of any such proceeding against Operator, such proceeding shall not have been dismissed, or if, within one hundred twenty (120) days after the appointment of any trustee, receiver, or liquidator of Operator or of all or any part of Operator's property, without the consent or acquiescence of Operator, such appointment shall not have been vacated or otherwise discharged, or if any execution or attachment shall be issued against Operator or any of Operator's property pursuant to which the Property shall be taken or occupied or attempted to be taken or occupied;

iv. Operator fails to maintain any Insurance required under this Agreement.

b) If any of the following occurs, the Town shall be in default under this Agreement, and Operator may, upon thirty (30) days prior written notice to the Town and in compliance with the provisions of this Section, terminate this Agreement if:

i. any of the Town's representations or warranties were not materially true and accurate when made, which materially and adversely impairs Operator's ability to perform any material obligation hereunder or to obtain the benefits of this Agreement; or

ii. the Town fails to fulfill any material obligation under this Agreement.

c) This Agreement may be terminated by either party, upon giving the other party at least one hundred eighty (180) days prior written notice thereof by Operator or the Town, if a Force Majeure event has caused the Transfer Station to cease operation for a period of three hundred sixty five (365) days despite the use of all reasonable efforts to resume operations, or renders the Operator or the Town unable to perform its respective material obligation under this Agreement.

12.2 Right of Non-Defaulting Party to Cure Breach. In the event of a breach of this Agreement, and upon thirty (30) days prior written notice to the breaching party, the non-breaching party may, but shall not be obliged to, cure such breach, provided that the non-defaulting party does not receive, within said thirty (30) day period, written notice from the defaulting party that it will itself cure the breach under Section 12.3 below. The non-defaulting party shall have the right to collect from the defaulting party the reasonable costs of curing the breach. The non-breaching party shall use its best efforts to employ an economically reasonable method of curing any such breach. If any breach occurs and is not cured in the manner allowed hereunder, then this Agreement shall continue in force and the non-breaching party shall, notwithstanding anything to the contrary herein, have the right to initiate dispute resolution.

12.3 Cure. Neither party shall have the right to terminate this Agreement under this Section 12 unless the non-defaulting party gives notice to the defaulting party of such breach and (a) the defaulting party shall fail to cure the breach within ninety (90) days of receipt of written notice from the non-breaching party or (b) if the breach is such that it cannot be reasonably completed within said ninety (90) day period, the defaulting party shall fail to demonstrate within such cure period that it is actively and continuously pursuing a course of action which can reasonably be expected to lead to a curing of the breach (in which case the ninety (90) day period will be extended for so long as the breaching party is actively and continuously pursuing such a course); provided, however, that in the event of the failure of any party to this Agreement to pay the other party or parties any sum or amount required to be paid when due hereunder, cure shall consist of payment which will be made within forty-five (45) days of written demand from the non-breaching party.

12.4 Effect of Breach by Operator. In the event that this Agreement is terminated by the Town pursuant to the provisions of Section 12.2 above.

13. STRICT PERFORMANCE

13.1 The failure of either party to insist on the strict performance of any of the terms, covenants and provisions of this Agreement or to exercise any option herein contained shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition, provision or option.

14. INSURANCE

14.1 Coverage Amounts. Commencing on the Effective Date, Operator agrees to provide and maintain throughout the Term of this Agreement, and for so long as Operator or anyone claiming by, through or under Operator remains in occupancy of any portion of the Property, insurance coverage in the amount set forth below or such other amounts as the parties may agree upon from time to time:

Coverage	Limits of Liability
Workers' Compensation	Statutory
Employer's Liability	$1,000,000.00
Personal/Bodily Injury Liability	$5,000,000.00 Combined Single Limit
Property Damage Liability	$5,000,000.00 Combined Single Limit
Automobile Bodily Injury	$5,000,000.00 Combined Single Limit
Automobile Property Damage	$5,000,000.00

	Combined Single Limit
Excess Umbrella Liability	$10,000,000.00 Each Occurrence
Professional Liability	$1,000,000

14.2 Environmental Impairment. During the Term of this Agreement or for so long as Operator or anyone claiming by and through Operator remains in occupancy of any portion the Property, Operator shall cause the Transfer Station to be insured for third party environmental impairment under a per occurrence basis. The policy shall provide umbrella coverage of not less than $10,000,000.00.

14.3 Certificates of Insurance. Insurance, and any renewals thereof, shall be evidenced by certificates of insurance issued or countersigned by a duly authorized representative of the issuer and delivered to the Town for its review prior to the execution of the Agreement or, in the case of a renewal, at least thirty days prior to the expiration of the then effective policy. The certificates of insurance shall name the Town as an additional insured, provide for 30 days written notice to the Town of cancellation (except with respect to cancellation for non-payment of premiums to which a 10-day written notice shall be required), intent not to renew, or, to the extent that it would affect the Town or its rights or obligations under such policy or the Agreement, any reduction or change in its coverage by the insurance company.

14.4 Qualification of Insurance and Surety Company. The insurance and surety company providing coverages and the performance bond shall (1) have a rating of "A" or better in the latest revision of the A.M. Best Company's Insurance Report; (2) be listed in the United States Treasury Department's Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies"; and (3) hold a certificate of authority to transact surety business in the Commonwealth of Massachusetts.

15. ASSIGNMENT

15.1 This Agreement shall be binding and inure to the benefit of Operator and the Town, together with their respective successors and assigns. This Agreement may not be assigned or encumbered by any party without the written consent of the other party, not to be unreasonably conditioned, withheld or delayed. Notwithstanding the above, Operator may, without the written consent of the Town, assign: (a) its rights and obligations to an affiliate of the Operator, provided that the Affiliate signs a guaranty to secure the obligations of said affiliate; (b) its duties to subcontractors, provided that Operator shall remain primarily responsible for performing all obligations under this Agreement;

16. GUARANTY (If required by the Town)

16.1 Upon the Effective Date of this Agreement, Operator shall provide a guaranty from _____, as Guarantor, in the form set forth in Exhibit D. The obligations of the Guarantor set forth in Exhibit D shall be binding on the Guarantor's successors and assigns, and may not be assigned or transferred to any other party without the prior written approval of the Town, such approval shall be exercised by the Town in its reasonable discretion; provided, however, the obligations of the Guarantor may be transferred without the written consent of the Town to any new Guarantor that the Town is satisfied has a Tangible Net Worth of not less than the tangible net worth of the original Guarantor. "Tangible Net Worth" means the excess of total assets over total liabilities, in each case as determined in accordance with generally accepted accounting principles consistently applied ("GAAP"), excluding, however, from the determination of total assets all assets which would be classified as intangible assets under GAAP including goodwill, licenses, patents, trademarks, trade names, copyrights, and franchises. Tangible Net Worth shall be evidenced by audited financial statements certified and delivered to the Town by an independent certified public accountant, the cost for which shall be paid by the Guarantor.

17. PERFORMANCE BOND FOR LIQUIDATED DAMAGES (if required by the Town)

17.1 Operator, or its construction subcontractor, shall, prior to the commence of construction of the Transfer Station, furnish an operations performance bond or letter of credit to secure the Operator's performance of its obligations hereunder, including but not limited to all payments due under this Agreement in the amount, said bond to be in the amount of _____TBD_____. The performance bond is to be in a form acceptable to the Town. Operator shall deliver the bond to the Town prior to the Effective Date and shall renew the bond annually as required so long as Operator's obligations secured thereby under this Agreement remain in effect. The amount of each renewal bond shall be increased by the CPI.

17.2 Limitation of Damages. No party shall be entitled to consequential, indirect special, punitive or treble damages as part of non-binding arbitration, other dispute resolution or litigation award.

18. CUMULATIVE REMEDIES

18.1 The specified remedies to which the Town may resort under the terms of this Agreement are cumulative and shall be in addition to, and not in substitution of, any other remedies or means of redress to which the Town may be lawfully entitled under this Agreement or in law or equity in case of any breach or threatened breach by Operator of any provision or provisions of this Agreement.

20. TERM

20.1 The term of this Agreement shall be three years commencing on the Effective Date.

20.2 At the end of the Term, the Town shall have the option to inspect and assume operation of the Transfer Station, including all improvements; to arrange for continuing operation by the then current or an alternative operator; or to close the Transfer Station. The Operator shall cooperate fully with any such transition process. At the end of the Term, on request, the Operator shall turn over to the Town the control of the Transfer Station and the equipment and all associated technology licenses, materials, spare parts, manuals, and supporting technical information. Throughout the Term of the Agreement, , the Operator shall maintain the condition and operating status of the Transfer Station such that the Transfer Station satisfies and can continue to satisfy all applicable performance requirements and standards at the time of assumption of operations by the Town or by a successor operator.

21. CAPTIONS AND HEADINGS

21.1 Captions and headings throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision or of the scope or intent of this Agreement nor in any way affect this Agreement.

22. MODIFICATIONS

22.1 This Agreement cannot be changed orally, but only by agreement in writing signed by the party against whom enforcement of the change, modification or discharge is sought or by its duly authorized agent.

23. NOTICES

23.1 All notices or other communications to be given hereunder shall be in writing and may be given by personal delivery, by Federal Express or by registered or certified United States mail, return receipt requested, properly addressed as follows:

To the Town: Jonathan Ruda
Town Administrator
Dudley Town Hall
71 West Main Street
Dudley, MA 01571

With a copy to: Michele E. Randazzo, Esq.
KP Law, P.C.
101 Arch Street
Boston, MA 02110

To Operator:

With a copy to:

24. FORCE MAJEURE

24.1 Force Majeure Event. If either party is rendered unable, wholly or in part, by an event of Force Majeure to carry out any material obligation under this Agreement, then, in addition to the other remedies provided to the parties in this Agreement, the affected obligation of such party may be suspended during the continuation of the event of Force Majeure, but for no longer a period, provided that such party shall use all reasonable efforts to perform all of its obligations under this Agreement to the extent possible, notwithstanding the occurrence of such event.

25. SEVERABILITY

25.1 In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein; provided, however, that it is the intention of the parties that in lieu of such term, clause or provision that is held to be invalid, illegal or unenforceable, there should be added by mutual agreement as a part of this Agreement a term, clause or provision as similar in terms and intent to such illegal, invalid or unenforceable term, clause or provision as may be possible, valid, legal and enforceable, and that the inability of the parties to add such a term, clause or provision shall be treated in the same manner as a Change in Law.

26. ENTIRE AGREEMENT

26.1 This Agreement constitutes the entire agreement between the Town and Operator, and cancels and supersedes all prior negotiations, representations, understandings and agreements, either written or oral, between such parties with respect to the subject matter hereof. No changes, amendments, alterations, or modifications to this Agreement shall be effective unless in writing and signed by the parties hereto.

27. COUNTERPARTS

27.1 This Agreement may be executed in one or more counterparts, each of which will be considered an original.

28. GOVERNING LAW

28.1 This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and the Operator submits to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement..

29. BINDING EFFECT

29.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and/or assigns.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, each party acting through its duly authorized representative(s) has executed this Agreement under seal as of the date first set forth above.

TOWN OF DUDLEY, MASSACHUSETTS

By Its Board of Selectmen

_____

_____

_____

_____

_____

Date of Execution: _____

Operator

By: _____

Title: _____

Attest: _____

Date of Execution: _____

ATTACHMENT G
PREVAILING WAGE RATES