

**PARTICIPATION AGREEMENT FOR RECYCLING
AND/OR MUNICIPAL SOLID WASTE DISPOSAL SERVICES**

Between the

TOWN (CITY) OF _____, CONNECTICUT

and

MURPHY ROAD RECYCLING, LLC

Dated as of _____, 2011

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PREAMBLE

This **PARTICIPATION AGREEMENT FOR RECYCLING AND/OR MUNICIPAL SOLID WASTE DISPOSAL SERVICES** (the "Participation Agreement") is made and dated as of the ____ day of _____, 2011, by and between the **TOWN (CITY) OF _____, CONNECTICUT**, (the "Municipality"), a municipality and political subdivision of the State of Connecticut (the "State"), and **MURPHY ROAD RECYCLING, LLC**, a limited liability company organized under the laws of the State of Connecticut, with its principal corporate headquarters located at 15 Mullen Road, Enfield, Connecticut 06082 (the "Company"). The Municipality and the Company are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties." All capitalized but undefined terms used herein shall have the meaning ascribed thereto in the Master Agreement for Municipal Recycling and Solid Waste Disposal Services (the "Master Agreement") dated as of _____, 2011 between the Central Connecticut Solid Waste Authority ("CCSWA"), a regional solid waste and resource recovery authority established under Chapter 103b of the Connecticut General Statutes (the "General Statutes"), constituting a public body politic and corporate as well as a political subdivision of the State established and created for the performance of an essential public and governmental function, and the Company.

WITNESSETH:

WHEREAS, each municipality in the State has the right and obligation under Section 22a-220 of the General Statutes to make provision for the safe and sanitary disposal and processing of Acceptable Recyclables and Acceptable Solid Waste generated within its corporate boundaries; and

WHEREAS, CCSWA was established pursuant to Chapter 103b of the General Statutes to jointly manage recycling and solid waste disposal services on behalf of its municipal members; and

WHEREAS, the municipal members of CCSWA have decided to exercise a portion of their rights and obligations under Section 22a-220 of the General Statutes by having CCSWA conduct a joint procurement and negotiation process with proposing service vendors, including the Company; and

WHEREAS, having completed its joint procurement and negotiation process, CCSWA has recommended to its municipal members several options for the processing and disposal of Acceptable Recyclables and Acceptable Solid Waste; and

WHEREAS, on the basis of its negotiations with the Company, CCSWA has determined that one of the service options it will recommend to its municipal members is the Master Agreement and this Participation Agreement; and

WHEREAS, CCSWA and the Company have executed and entered into the Master

Agreement, which sets forth most of the substantive terms of the Acceptable Recyclables and Acceptable Solid Waste processing, disposal and payment arrangements which will govern the rights, obligations and other aspects of the relationship between the Municipality and the Company; and

WHEREAS, the Municipality wishes to avail itself of the Acceptable Recyclables processing and/or Acceptable Solid Waste disposal services of the Company, as set forth in Section 2.2 of this Participation Agreement, and the Municipality and the Company wish to enter into this Participation Agreement to set forth their understandings and agreements in connection therewith;

NOW, THEREFORE, in consideration of the undertakings and agreements hereinafter set forth and in reliance upon the preceding representations, the Parties agree as follows:

I. DEFINITIONS

1.1. Incorporation of Recitals

The recitals to this Participation Agreement are incorporated into the body of this Participation Agreement as a part hereof.

1.2. Specific Definitions

Capitalized terms used herein shall have the meanings ascribed to such terms herein or in the Master Agreement.

1.3. General Definitions and Construction

As used in this Participation Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) the terms defined in this Participation Agreement include the plural as well as the singular;
- (b) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles;
- (c) the words “herein,” “hereof” and “hereunder” and words of similar import refer to this Participation Agreement as a whole and not to any particular Article, Section or other subdivision;
- (d) the words “include” and “including” shall be deemed to be followed by the words “without limitation”;
- (e) words of any gender shall be construed to include any other gender; and
- (f) in the case of any discrepancy or conflict between the name and title of any person referred to herein, the title shall control.

II. IMPLEMENTATION AND ACCEPTANCE OF CONTRACT RESPONSIBILITIES

2.1. Purpose of this Participation Agreement; Incorporation of Relevant Master Agreement Provisions

The purpose of this Participation Agreement is to implement and give effect to the relevant substantive provisions of the Master Agreement as they affect the Municipality specifically in its relationship with the Company. Therefore, whether explicitly stated or not, references herein to this Participation Agreement shall incorporate all relevant provisions of the Master Agreement.

2.2. Acceptable Recyclables Processing and/or Acceptable Solid Waste Disposal Services to be Provided by the Company

[Choose one of the following four paragraphs and delete the other three:]

Recycling Services Only:

On and after the General Effective Date and during the term of this Participation Agreement as set forth in Section 2.4 hereof, for so long as the Municipality honors its covenant in subparagraph (b) of the “Recycling Deliveries Only” paragraph of Section 2.3 hereof, the Company hereby agrees to provide the Municipality with the Acceptable Recyclables processing services set forth in the Master Agreement, as particularly described in Section 2.1(a)(ii) of the Master Agreement.

[or]

Recycling and Bulky Waste Services Only:

On and after the General Effective Date and during the term of this Participation Agreement as set forth in Section 2.4 hereof, for so long as the Municipality honors its covenant in subparagraph (b) of the “Recycling and Bulky Waste Deliveries Only” paragraph of Section 2.3 hereof, the Company hereby agrees to provide the Municipality with the Acceptable Recyclables processing services and Bulky Waste disposal services set forth in the Master Agreement, as particularly described in Section 2.1(a)(ii) of the Master Agreement.

[or]

Recycling, Bulky Waste and General Solid Waste Disposal Services:

(1) On and after the General Effective Date and during the term of this Participation Agreement as set forth in Section 2.4 hereof, the Company hereby agrees to provide the Municipality with the Acceptable Recyclables processing services and Bulky Waste disposal services set forth in the Master Agreement, as particularly described in Section

2.1(a)(ii) of the Master Agreement, and (2) on and after the Acceptable Solid Waste Effective Date and during the term of this Participation Agreement as set forth in Section 2.4 hereof, the Company hereby agrees to provide the Municipality with all the general Acceptable Solid Waste disposal services set forth in the Master Agreement, as particularly described in Section 2.1(a)(i) of the Master Agreement.

[or]

General Solid Waste Disposal Services Only:

On and after the Acceptable Solid Waste Effective Date and during the term of this Participation Agreement as set forth in Section 2.4 hereof, the Company hereby agrees to provide the Municipality with all the Acceptable Solid Waste disposal services set forth in the Master Agreement, as particularly described in Section 2.1(a)(i) of the Master Agreement.

In addition, the Company hereby agrees to be bound by all of the other relevant terms, provisions, rights, obligations, representations and warranties set forth in the Master Agreement, as implemented by its execution of this Participation Agreement.

2.3. Municipality to Deliver Acceptable Recyclables and/or Acceptable Solid Waste

[Choose one of the following four paragraphs and delete the other three:]

Recycling Deliveries Only:

On and after the General Effective Date and during the term of this Participation Agreement as set forth in Section 2.4 hereof, the Municipality agrees: (a) to use its best efforts to deliver or cause to be delivered to its Designated Recycling Facility all Acceptable Recyclables over which it has Direct Control, as set forth in the Master Agreement, as particularly described in Section 2.2(b) of the Master Agreement, and (b) that, during the term of this Participation Agreement, it shall not dispose of or exercise control over the disposal of Solid Waste (including commercial Solid Waste delivered to a transfer station) which does not meet the definition of Acceptable Solid Waste subject to Direct Control within the meaning of the Master Agreement, including, but not limited to, violating such restriction through the execution of a disposal contract which commits Solid Waste outside the Direct Control of the Municipality to a facility not owned and operated by the Company.

[or]

Recycling and Bulky Waste Deliveries Only:

On and after the General Effective Date and during the term of this Participation Agreement as set forth in Section 2.4 hereof, the Municipality agrees: (a) to use its best

efforts to deliver or cause to be delivered: (1) to its Designated Recycling Facility all Acceptable Recyclables over which it has Direct Control and (2) to its Designated Waste Facility all Bulky Waste over which it has Direct Control, as set forth in the Master Agreement, as particularly described in Section 2.2(b) of the Master Agreement, and (b) that, during the term of this Participation Agreement, it shall not dispose of or exercise control over the disposal of Solid Waste (including commercial Solid Waste delivered to a transfer station) which does not meet the definition of Acceptable Solid Waste subject to Direct Control within the meaning of the Master Agreement, including, but not limited to, violating such restriction through the execution of a disposal contract which commits Solid Waste outside the Direct Control of the Municipality to a facility not owned and operated by the Company.

[or]

Recycling, Bulky Waste and General Solid Waste Deliveries:

(1) On and after the General Effective Date and during the term of this Participation Agreement as set forth in Section 2.4 hereof, the Municipality agrees to use its best efforts to deliver or cause to be delivered to: (a) its Designated Recycling Facility all Acceptable Recyclables over which it has Direct Control and (b) to its Designated Waste Facility all Bulky Waste over which it has Direct Control, as set forth in the Master Agreement, as particularly described in Section 2.2(b) of the Master Agreement, and (2) on and after the Acceptable Solid Waste Effective Date and during the term of this Participation Agreement as set forth in Section 2.4 hereof, the Municipality agrees to use its best efforts to deliver or cause to be delivered to its Designated Waste Facility all Acceptable Solid Waste (in addition to Bulky Waste) over which it has Direct Control as set forth in the Master Agreement, as particularly described in Section 2.2(a) of the Master Agreement.

[or]

General Solid Waste Deliveries Only:

On and after the Acceptable Solid Waste Effective Date and during the term of this Participation Agreement as set forth in Section 2.4 hereof, the Municipality agrees to use its best efforts to deliver or cause to be delivered to its Designated Waste Facility all Acceptable Solid Waste over which it has Direct Control as set forth in the Master Agreement, as particularly described in Section 2.2(a) of the Master Agreement.

In addition, the Municipality hereby agrees to be bound by all of the other relevant terms, provisions, rights, obligations, representations and warranties set forth in the Master Agreement, as implemented by its execution of this Participation Agreement.

2.4. Term of Participation Agreement

This Participation Agreement shall first become binding and effective against the Parties

as follows:

- (a) if the Municipality chooses the Recycling Services Only option or the Recycling and Bulky Waste Services Only option under Section 2.2 of this Participation Agreement, this Participation Agreement shall become binding and effective on the Parties on the General Effective Date as defined in the Master Agreement, which shall be the Commencement Date of this Participation Agreement (the "Commencement Date").
- (b) if the Municipality chooses the Recycling, Bulky Waste and General Solid Waste Disposal Services option under Section 2.2 of this Participation Agreement, this Participation Agreement shall become generally binding and effective on the Parties on the General Effective Date as defined in the Master Agreement, which shall be the Commencement Date of this Participation Agreement (the "Commencement Date"); provided, however, that the Acceptable Solid Waste (other than Bulky Waste) delivery, disposal and payment rights and obligations of the Master Agreement and this Participation Agreement shall not become binding and effective on the Parties until the occurrence of the Acceptable Solid Waste Effective Date as defined in the Master Agreement.
- (c) if the Municipality chooses the General Solid Waste Disposal Services Only option under Section 2.2 of this Participation Agreement, this Participation Agreement shall become binding and effective on the Parties on the Acceptable Solid Waste Effective Date as defined in the Master Agreement, which shall be the Commencement Date of this Participation Agreement (the "Commencement Date").

Starting with the Commencement Date, this Participation Agreement shall last for an initial term of five (5) years, with an option in the Municipality and the Company, upon their mutual written agreement, to extend such five-year term twice for an additional two (2) years in the case of each such extension.

III. ADDITIONAL AGREEMENTS

3.1. Amendments

This Participation Agreement may be amended from time to time by a writing duly authorized and executed by the Parties.

3.2. Severability

If any provision of this Participation Agreement shall for any reason be determined to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions hereof, and this Participation Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

3.3. Execution of This Document

This Participation Agreement may be executed in any number of original or facsimile counterparts, all of which when so executed and delivered will together constitute one and the same instrument. If the Parties elect to execute this Participation Agreement by facsimile or other electronic means, the same shall have the same force and effect as if this Participation Agreement had been manually executed by the Parties in one complete document, and the Parties shall exchange wet-signature original signature pages within a reasonable time after such execution.

3.4. Waiver

Unless specifically provided for by a written waiver signed by the party against whom such waiver is to be enforced, no delay or failure to exercise a right resulting from any breach of this Participation Agreement or failure to insist upon the strict performance of any of the terms and conditions of this Participation Agreement will impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. If any covenant or agreement contained in this Participation Agreement is breached by any party and thereafter waived by another party, such waiver will be limited to the particular breach so waived in writing and will not be deemed to waive any other breach of this Participation Agreement. Making payments or applying credits pursuant to the Master Agreement and this Participation Agreement during the existence of a dispute shall not constitute a waiver of any claims or defenses of the party making such payment or applying such credit.

3.5. Entirety

This Participation Agreement merges and supersedes all prior negotiations, representations, and agreements among the parties hereto and thereto relating to the subject matter hereof and thereof and constitutes the entire agreement among the Parties hereto.

3.6. Notices

All notices or other communications required to be given or authorized to be given by either Party hereunder and under the Master Agreement shall be in writing and shall be served personally, or sent by certified or registered mail, or recognized overnight carrier, addressed: in the case of the Municipality, to _____, and in the case of the Company, to the individual named as the Company Contract Manager in the Master Agreement, Murphy Road Recycling, LLC, 15 Mullen Road, Enfield, Connecticut, 06082. All notices sent by certified or registered mail, or recognized overnight carrier shall be effective when received.

3.7. Conformity with Laws

The Parties agree to abide by and to conform to all Applicable Laws; provided, however, that nothing in this Section 3.7 shall require either Party to comply with any law, the validity or applicability of which shall be contested in good faith and, if necessary or desirable, by appropriate legal proceedings.

3.8. Assignment

The Company agrees to retain control and to give full attention to the fulfillment of the Master Agreement and this Participation Agreement, and the Contract Services to be performed for the benefit of the Municipality under the Master Agreement and this Participation Agreement shall not be assigned or sublet without the prior written consent of the Municipality, which consent shall not be unreasonably withheld. The Company further agrees that the subletting of any portion or feature of the Contract Services provided under the Master Agreement and this Participation Agreement, or materials required in the performance of such Contract Services shall not relieve the Company from its full obligations to the Municipality as provided by the Master Agreement and this Participation Agreement.

3.9. Successors

This Participation Agreement, to the extent permitted herein, shall inure to the benefit of and be binding upon the Company, CCSWA and the Municipality and any and all successors and permitted assigns.

3.10. Dispute Resolution

All disputes, differences, controversies or claims pertaining to or arising out of or relating to this Participation Agreement or the breach hereof which the Parties are unable to resolve themselves, shall be resolved by a court of competent jurisdiction in the State (including the appellate courts thereof) in accordance with Section 3.16 of this Participation Agreement, unless the Parties agree to do so by binding arbitration or non-binding mediation. Any arbitration or mediation proceedings shall be held in Hartford, Connecticut. The Party seeking to initiate arbitration or mediation shall do so by submitting a formal written request to the other Party and to the American Arbitration Association, or such other Person or arbitration/mediation service as the Parties may agree upon. All statements of any nature made in connection with such arbitration or mediation shall be privileged and shall not be admissible in any subsequent court or other proceeding involving or related to the same claim to the maximum extent consistent with the rules and procedures governing any such arbitration or mediation. The Parties shall share the cost of any mediation, with the Company paying fifty percent (50%) of the cost and the Municipality paying the remaining fifty percent (50%). With respect to any dispute settled by litigation or binding arbitration, the prevailing party shall

recover its reasonable costs of engaging in such litigation or binding arbitration, including, without limitation, reasonable attorneys' fees, from the non-prevailing party.

3.11. Relationship Among the Parties

The Company is an independent company and not an officer, employee or agent of the Municipality. Therefore, it is mutually agreed that this Participation Agreement is a contract for services and not a contract of employment, and that, as such, the Company and its employees and any and all Subcontractors and their employees shall not be entitled to any employment benefits from the Municipality such as, but not limited to: vacation, sick leave, insurance, worker's compensation, and pension and retirement benefits. All personnel matters affecting the Company team responsible for providing the Contract Services shall be the responsibility of the Company.

3.12. Disclaimer of Agency or Third-Party Beneficiary Rights

Except for the rights conferred upon CCSWA under the Master Agreement and this Participation Agreement, in no event shall anything in the Master Agreement and this Participation Agreement be deemed to confer upon any Person or entity agency status or third-party beneficiary rights.

3.13. Copyright

No reports or other documents produced in whole or in part under this Participation Agreement shall be subject to an application for copyright by or on behalf of the Company.

3.14. Findings Confidential

All of the information, reports, and documents provided by one party to another under the Master Agreement and this Participation Agreement shall become the property of the party receiving such material upon payment of any required compensation therefor as provided in the Master Agreement and this Participation Agreement.

3.15. Cumulative Rights and Remedies

All rights and remedies of the Company and the Municipality under this Participation Agreement and the Master Agreement shall be cumulative, and the exercise or beginning of the exercise by any Party of any of its rights or remedies hereunder and thereunder shall not preclude that Party from exercising any other right or remedy granted hereunder or thereunder.

3.16. Governing Law and Venue

The Master Agreement and this Participation Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut. The Parties agree that the venue for any legal proceeding with respect to the Master Agreement and this Participation Agreement shall be Connecticut Superior Court, Judicial District of Hartford at Hartford.

IN WITNESS WHEREOF, the Parties have caused this Participation Agreement to be executed by their duly authorized officers as of the day and year first hereinabove set forth.

TOWN (CITY) OF _____, CONNECTICUT

Name:
Title:

MURPHY ROAD RECYCLING, LLC

Name:
Title: