

**RESOLUTION 42-2020**

**RESOLUTION AUTHORIZING AWARD OF CONTRACT FOR THE DISPOSAL OF RECYCLABLE MATERIAL WITH OMNI RECYCLING, LLC**

**WHEREAS**, the disposal of recyclable material generated and collected by the Borough of Woodbury Heights to a Class A Recycling Center is exempt from the bidding requirements under the New Jersey Local Public Contracts Law and specifically N.J.S.A. 40A:11-5(s); and

**WHEREAS**, the CFO and the Director of Public Works recommended an award of contract to OMNI Recycling, LLC for the disposal of recyclable material generated and collected by the Borough of Woodbury Heights.

**WHEREAS**, the Borough Solicitor has reviewed and approved the Agreement submitted by OMNI Recycling, LLC dated April 1, 2020, which is attached hereto and made a part hereof.

**NOW, THEREFORE, BE IT RESOLVED** by the Borough Council of the Borough of Woodbury Heights, with the Mayor concurring, that OMNI Recycling is hereby awarded a Contract for the disposal of recyclable material pursuant to the aforementioned Agreement dated April 1, 2020 incorporated herein by reference; and

**BE IT FURTHER RESOLVED** that the Mayor and Borough Clerk are hereby authorized and directed to execute the Contract in furtherance of the above.

**BOROUGH OF WOODBURY HEIGHTS**

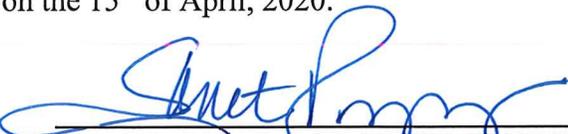
By:   
**WILLIAM C. PACKER, MAYOR**

**ATTEST:**

  
**JANET PIZZI, BOROUGH CLERK**

**NOTICE**

The foregoing Resolution was duly adopted by the Borough Council of the Borough of Woodbury Heights at Regular Meeting held on the 15<sup>th</sup> of April, 2020.

  
**JANET PIZZI, BOROUGH CLERK**

## AGREEMENT FOR DISPOSAL FACILITY

This agreement for the Sale of Goods ("Agreement") made and effective February 1, 2020 between "Woodbury Heights" (Seller) or any designated successor and OMNI Recycling LLC a New Jersey Corporation (Buyer) located at 408 Lambs Road, Pitman, New Jersey 08071. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, certain tangible personal property.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

1. **Award** The award of the material marketing contract shall be to the "Woodbury Heights".

### 2. **Definitions**

Unless otherwise indicated, the following definitions shall be used:

**SINGLE STREAM:** Recyclable materials delivered in one distinct stream. Commingled Paper and Commingled Containers with moisture not to exceed 6%.

**Weight Slips:** Shall mean the slip shall identify the generator, transporter, material delivered and the weight

**Buyer:** Is also known as the Market of designated recyclables

**Seller:** is also known as the Generator of designated recyclables

**Payment:** NET 30 DAYS

### 3. **Certification**

Seller agrees to sell, transfer and convey to Buyer, and Buyer certifies that it is a New Jersey approved recycling facility, by attached copy of permit issued by the New Jersey Department of Environmental Protection, and agree to purchase the following tangible personal property (the "Goods"):

Single Stream: Corrugated, Newspaper, and Commingled Containers.

4. **Price:** Rebate will be (Variable) based on the "Pulp and Paper Week" pricing for fiber and Recycling Markets. Net for Aluminum cans, Steel cans, Natural HDPE, Colored HDPE and Pet. Plastic Bag contamination in load(s) will be a \$50.00 additional charge per vehicle.

### 5. **Shipping**

Seller shall deliver the goods, after collection from seller. No material shall be held by Seller or Collector after the collection has been made. The Buyer shall not deny delivery of designated collected materials to the Seller or their designated Collector. Buyer shall not require delivery to another facility or location without compensation to Sell or Collector. The seller delivered material must not contain more than 3% residue or non-recyclable materials. The buyer (OMNI)

has the right to reject loads above the 3% and the seller has the right to review said load. If agreed the seller will be responsible for the cost. Cost not to exceed Gloucester County Landfill rate for disposal of trash, (only applies to the residual of trash).

## **6. Term**

“Woodbury Heights” guarantees all recyclable materials listed in the contract will be disposed of at Omni Recycling LLC, 408 Lambs Road, Pitman, New Jersey 08071 and these materials shall not be disposed of at any other agencies or business for the life of this contract. This contract will start on April 01, 2020 and terminate on March 31, 2022 (three years) with two (one) year extension options. Either party can terminate the agreement in writing 30 days prior to either of the (one year) option extensions. If for any reason “Woodbury Heights” takes their contracted tons to another Processor other than Omni Recycling LLC. During the agreed contract period, Omni Recycling will hold “Woodbury Heights” liable for a rebate of \$-50.00/ton for the average tonnage received by Omni Recycling for the contracted duration.

## **7. Limitation of Liability**

In no event shall Seller be liable for special, indirect, incidental or consequential damages arriving out of or connected with this Agreement or the Goods, regardless of whether a claim is based on contract, tort, strict liability or otherwise, nor shall Buyer’s damages exceed the amount of the purchase price of the Goods.

## **8. Indemnification**

The Buyer shall indemnify and hold harmless the “Borough of Woodbury Heights” and their agents, servants, employees or subcontractors from and against all claims, damages, losses, and expenses incurred by Borough on any of the aforesaid claims that may result or arise directly or indirectly, from or by reason of the performance of the contract or from any act or omission by the Buyer, its agents, servants, employees or subcontractors and that results in any loss of life or property or in any injury or damage to persons or property.

### **Force Majeure:**

- a. “Force Majeure” shall mean any act, event or condition materially and adversely affecting the ability of a party to perform or comply with any material obligation, duty or agreement required under this agreement, if such act, event or condition is beyond the reasonable control of the non-performing party or its agents relying thereon, is not the result of the willful or neglect action, inaction or fault of the party relying thereon, and the non-performing party has been unable to avoid or overcome the act, event or condition by the exercise of due diligence, including, without limitation: (1) an act of God, epidemic, landslide, lightning, earthquake, fire, explosion, storm, flood, equipment failure or similar occurrence; (2) an act of public enemy, war, blockage, insurrection, riot, general unrest or restraint of government and people, civil disturbance or disobedience, sabotage, act of terrorism or similar occurrence; (3) a strike, work slowdown, or similar industrial or labor action; (4) an order or judgment (including without limitation a temporary restraining order, temporary injunction, preliminary injunction, permanent injunction, or cease and desist order) or other act of federal or state, county or local court, administrative agency or governmental office or

body which prevents a party's obligation as contemplated by this agreement; or (5) adoption or change (including a change in interpretation, enforcement or permit requirement) of any federal, state, or local law after the effective date of this agreement, preventing performance of or compliance with the obligations hereunder.

- b. Neither party shall be liable to the other for damages without limitation (including liquidated damages) if such party's performance is delayed or prevented due to an event of Force Majeure. In such event, the affected party shall promptly notify the other of the event of Force Majeure and its likely duration. During the continuation of the Force Majeure event, the non-performing party shall (1) exercise commercially reasonable efforts to mitigate or limit damages to the performing party; (2) exercise commercially reasonable due diligence to overcome the Force Majeure event; (3) to the extent it is able, continue to perform its obligations under this agreement; and (4) cause the suspension of performance to be of no greater scope and no longer duration than the Force Majeure event requires.
- c. In the event of a delay in either party's performance of its obligation hereunder for more than sixty (60) days due to a Force Majeure, the other party may, at any time thereafter, terminate this agreement.

#### **9. Affirmative Action**

##### 1. State and Federal regulations:

- d. The Buyer attention is directed to Attachment #1, entitled "New Jersey Public Law 1975, c. 127; Procurement or Service Contract, Mandatory Language" which is herein incorporated by reference.
- e. The buyer shall also be bound by all Affirmative Action Regulations, Ordinances, Statutes or Laws enacted subsequent to the award of Contract.
- f. Failure to comply with any of the above provisions shall be considered a substantial breach of Contract resulting in a rejection of the Bid or Award.

#### **10. Wage and Hour Requirements**

1. Unless otherwise provided by law and approved by the Borough Council, the following provisions shall govern the performance of the work on this contract.

2. The buyer doing all of the work contemplated by this contract must comply with New Jersey Prevailing Wage Act, N.J.S.A. 34:11-121.25 et seq.

- a. **Workman to be Paid Prevailing Wage Rates.** Each workman employed in the performance of this contract shall be paid the prevailing wage rate determined by the New Jersey Department of Labor and Industry.
- b. **Failure to Pay Prevailing Wage Rates.** In the event that any workman employed by the buyer covered by this contract has been paid a rate of wages less than the prevailing wage required to be paid by this contract, the Borough may terminate the buyer's right to proceed with the work, or such part of the work as to which there has

been failure to pay required Wages and to prosecute the work to completion or otherwise. The buyer hereunder and his/her sureties shall be liable to the "Borough of Woodbury Heights" for any excess cost occasioned thereby.

- c. **Posting Rates:** The buyer engaged in the performance of this contract shall post the prevailing wage rates for each craft and classification involved as determined by current State or Federal regulations, including the effective date of any changes thereof in a prominent and easily accessible place at the site of the work or such place or places as are used by them to pay workmen their wages. A \$1.00 per ton will be added each year to the processing cost due to NJ minimum wage increases.
- d. **Statement of Wages Due:** The buyer involved in the performance of this contract shall file a statement of wages due and comply with the provision of R S 34:11-121.33 prior to any final payment of any moneys due the buyer hereunder.
- e. **Claims:** Where any claim is made that the buyer has failed to pay the prevailing wages or rates as required, the Township may, but shall not be required to, retain such sums of money due the buyer as shall be sufficient to satisfy the said claim if established and proved to the satisfaction of the Law Department.

#### **11. Assignment of Contract**

The buyer shall not assign, transfer, convey, sublet or in any other manner dispose of this Contract or his obligations hereunder, nor shall he/she in any manner dispose of his right, title or interest in or to it or any part thereof, or assign by Power of Attorney or other instrument any of the moneys due, to become due, under this Contract unless the previous written consent to a total or partial assignment shall not dispense with the requirements of obtaining further consent in the event of a further other or partial or complete assignment. No such assignment, transfer, conveyance or other disposition with respect to all or any part of said Contract shall be valid or effective until the document evidencing said assignment, transfer, conveyance or other dispositions shall be filed in the office of the Borough Clerk, Borough of Woodbury Heights, reviewed and approved by the Law Department, endorsed and certified by both or all parties to said transaction to be true and complete copy of the entire transaction. In no case shall assignment become effective without the written approval of the Department.

#### **12. Breach of Contract...Causes for a Breach of Breach of Contract**

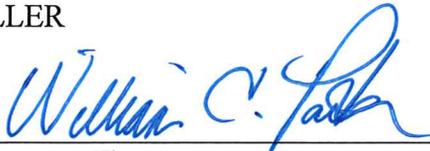
- (1). In addition to those instances specifically referred to in other sections herein contained, the Township shall have the right at its option to terminate the Contract, said termination evidenced by a due and proper resolution of the Borough Council and by facsimile or mailing a certified copy thereof by the Contract Administrator, by certified mail return receipt, to the principal place of business of the buyer, under any one or more of the following circumstances:
  - a. If the buyer becomes insolvent.
  - b. If the Buyer makes an assignment for the benefit of creditors pursuant to the statutes in such case made and provided.
  - c. In the event Buyer fails to commence work in accordance with the specifications
  - d. In the event the Buyer shall abandon the work

- e. If the Buyer makes an assignment for the benefit of creditors pursuant to the statutes in case made and provided.
- f. In the event a voluntary or involuntary petition in bankruptcy shall be filed by or against the Buyer.
- g. In the event the Buyer fails to commence work in accordance with the Specifications.
- h. In the event the Buyer shall abandon the work.
- i. In the event the Buyer shall refuse to accept material delivered by the Seller or their collector.
- j. In the event the Buyer shall abandon any portion of the work to be performed under the Specifications.
- k. If the Buyer shall fail to fully, properly, and in good and workmanlike manner perform any or all of the conditions, covenants or agreements contained within the Specifications
- l. If the Buyer shall sublet, assign, convey, or otherwise dispose of his Contract or any portion thereof other than in accordance with the Specifications.
- m. If a receiver or receivers or any other person shall be appointed by court order to take charge or custody of the Buyer's property, financial affairs or business.
- n. If the Borough Council, upon the advise of the Contract Administrator, shall be of the opinion that the buyer is not or has not been performing the Contract in good faith and in accordance with the terms of the Specifications.
- o. If the Buyer "skims", "light weights" or otherwise diverts or withholds credit of, or "adds", "heavy weights" or inflates or otherwise alters or falsifies weights or weight slips of collected recyclables.

**13. Taxes**

In no event shall Seller be responsible for any sales, use, excise or other tax imposed or levied upon the Goods or with respect to the payment of the purchase price for the Goods or the conveyance of title in the Goods to Buyer. In no event shall Buyer be responsible for any tax imposed upon Seller based upon Seller's income or for the privilege of doing business.

SELLER



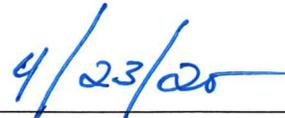
Signature



Print Name



Title



Date

BUYER

_____	_____
Signature	Print Name
_____	_____
Title	Date

ATTACHMENT #1

Procurement and service Contract – Mandatory Language

P. L. 1975, C 127 (N. J. A. C. 17:27)

MANDATORY AFFIRMATIVE ACTION LANGUAGE

During the performance of this contract, the contractor agrees as follows:

The buyer or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The buyer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The buyer or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the buyer, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation.

The buyer or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The buyer or subcontractor, where applicable, agrees to comply with the regulations promulgated by the Treasurer pursuant to P. L. 1975, c. 127, as amended and supplemented from time to time and the Americans with Disabilities Act.

The buyer or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N. J. A. C. 17:27-5.2 promulgated by the Treasurer pursuant to P. L. 1975, c. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N. J. A. C. 17:27-5.2 promulgated by the Treasurer pursuant to P. L. 1975, c. 127, as amended and supplemented from time to time.

The buyer or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The buyer or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

The buyer or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The buyer and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).