

**A RESOLUTION OF THE TOWNSHIP OF NORTH BRUNSWICK
AUTHORIZING A SHARED SERVICES AGREEMENT WITH
MIDDLESEX COUNTY UTILITIES AUTHORITY
(MCUA) FOR SOLID WASTE DISPOSAL**

WHEREAS, pursuant to the Shared Services Act, N.J.S.A. 40A:65-1 et seq., municipalities within the State of New Jersey are permitted to enter into agreements with other local units of government, including County agencies, for the provision of services; and

WHEREAS, the Middlesex County Utilities Authority (MCUA) has operated Edgeboro Landfill for several decades to allow for the proper disposal of solid waste from municipalities within the County; and

WHEREAS, North Brunswick Township has previously used Edgeboro Landfill as a solid waste disposal site, and is currently operating under a Shared Service Agreement, authorized on November 5, 2018 pursuant to Resolution 258-11.18; and

WHEREAS, the current Shared Service Agreement will expire on December 31, 2021 and the MCUA has offered to continue such service for a five (5) year term, commencing January 1, 2022 and continuing until December 31, 2026; and

WHEREAS, MCUA has offered a solid waste disposal rate of \$70.00/ton (2022), \$71.25/ton (2023), \$72.50/ton (2024), \$73.75/ton (2025) and \$75.00/ton (2026); and

WHEREAS, the Chief Financial Officer has certified that Four Hundred and Ten Thousand Dollars (\$410,000.00) is available for this purpose in the FY2022 Budget under account 2-01-26-305-000-192, and the balance will be available subject to appropriation in future budgets.

NOW, THEREFORE, BE IT RESOLVED, on this 15th day of November 2021, the Township Council of the Township of North Brunswick, County of Middlesex, State of New Jersey, hereby authorizes:

1. The Mayor or Business Administrator are authorized to execute a Shared Service Agreement with the Middlesex County Utilities Authority (MCUA) for solid waste disposal services at the following rates:
 - a. 2022 - \$70.00/ton
 - b. 2023 - \$71.25/ton
 - c. 2024 - \$72.50/ton
 - d. 2025 - \$73.75/ton
 - e. 2026 - \$75.00/ton

2. Prior to execution of Shared Service Agreement, the Township Attorney is authorized to review the agreement as to form; and

3. Said agreement shall commence January 1, 2022 and continue until December 31, 2026 unless either party exercises its right to terminate the agreement in accordance with the agreement.
4. A copy of the Shared Services Agreement shall be filed with the Division of Local Government Services in the Department of Community Affairs for informational purposes

CERTIFICATION

I, Cavel Gallimore, Chief Financial Officer, certify that Four Hundred and Ten Thousand Dollars (\$410,000.00) is available for this purpose in the FY2022 Budget in account 2-01-26-305-000-192, and the balance will be available subject to appropriation in future budgets. Contract PRO21057

Cavel Gallimore
Chief Financial Officer

Eric Chaszar
Director of Public Works

Justine Progebin
Business Administrator

Ronald Gordon, Esq.
Township Attorney
Approved as to legal form

RECORDED VOTE:

COUNCIL MEMBER	YES	NO	ABSTAIN	NOTES
MEHTA				
LOPEZ				
GUADAGNINO				
ANDREWS				
DAVIS				
SOCIO				
MAYOR WOMACK				

I hereby certify that the above Resolution was duly adopted by the Township Council of the Township of North Brunswick, County of Middlesex, at its meeting held on November 15, 2021.

Lisa Russo
Township Clerk



MIDDLESEX COUNTY UTILITIES AUTHORITY

MAIN OFFICES:

2571 MAIN STREET • P.O. BOX 159 • SAYREVILLE, NJ 08872-0159
(732) 721-3800 FAX: (732) 721-0206

MIDDLESEX COUNTY LANDFILL OFFICE:

53 EDGEBORO ROAD • EAST BRUNSWICK, NJ 08816-1636
(732) 246-4313 FAX: (732) 246-8846

June 10, 2021

REPLY TO:

- SAYREVILLE
 EAST BRUNSWICK

Mayor Francis Womack, III
Township of North Brunswick
710 Hermann Road
North Brunswick, NJ 08092

***Re: Solid Waste Disposal Agreement (2022 -2026)
Middlesex County Landfill***

Dear Mayor Womack:

A number of years ago, the Middlesex County Utilities Authority (“MCUA”) developed a program to offer reduced tipping fees at the Middlesex County Landfill (“Landfill”) for the disposal of Acceptable Solid Waste (“ASW”) to municipalities that entered into a multi-year Solid Waste Disposal Agreement (“Agreement”) with the MCUA. The program offers a significant per ton savings to the MCUA’s customers and Middlesex County residents.

The purpose of this letter is to offer the Township of North Brunswick a continuation of this program in light of the expiration of the Township’s current Agreement with the MCUA on December 31, 2021.

In addition to the Landfill’s rates, which are among the lowest in the State, there are several other important benefits to disposing your waste at the Landfill including:

- The ability to know and budget how much your waste disposal costs will be over the next five (5) years.
- Your town will not have to bid for disposal if your waste comes to the Landfill. Municipalities that do not bring their waste to the Landfill could be required to complete a formal public bidding process prior to transporting their waste to a private landfill or transfer station. This would involve additional expenses for creating bid specifications, evaluating prospective facilities, and completing a thorough evaluation of the respective options.
- The cost avoidance of paying the \$9.97 per ton County Solid Waste Management Service Fee on all solid waste generated and transported to a facility other than the Middlesex County Landfill for disposal. This fee is also subject to an annual increase review.
- Your town could be exposed to environmental liabilities and uncertainty as a result of utilizing out-of-district facilities.

The new MCUA Agreement includes the following discounted disposal rates for ASW: \$70.00 per ton (2022), \$71.25 per ton (2023), \$72.50 per ton (2024), \$73.75 per ton (2025) and \$75.00 per ton (2026). These rates represent an approximate 1.8 % increase for each of the five years. Customers that choose not to enter into the new Agreement will pay a Gate Rate which is estimated to be \$76.25 per ton for calendar year 2022.

MIDDLESEX COUNTY UTILITIES AUTHORITY

Mayor Womack

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It is important to note that more than 30% of the Landfill's tip fee is used to pay State Taxes, Host Community Benefits and to support the Middlesex County Division of Environmental Health and recycling efforts.

The Agreement requires your municipality to cause all of its municipally generated ASW, under your town's control, collected and transported by North Brunswick or on its behalf, to be transported directly to the Middlesex County Landfill. If at any time during this Agreement, it is determined that your municipality is not in compliance with this requirement, the Landfill's higher Gate Rate may become applicable.

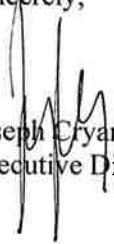
After your review of the Agreement, please be sure to insert the estimated ASW tonnage amount for each of the five (5) years in the space provided in Paragraph 5. The ASW that is controlled by your municipality should be maintained at a level of 85% or greater of the average annual amount of North Brunswick's historical disposal amounts for ASW. For your reference, I have enclosed a chart which identifies the amount of ASW disposed by the Township of North Brunswick during the last three (3) years.

This chart shows only the ASW brought to the Middlesex County Landfill and does not include ID 13 waste types (Bulky/Construction and Demolition Waste) which are not part of this Agreement.

The MCUA is asking the Township of North Brunswick to enter into a new Agreement, two copies of which are attached, in order to guarantee these competitive rates. The new Agreement must be formally approved by your governing body, signed and returned to the MCUA. **Please return the Agreements by August 31, 2021, in order to be afforded the contract rate for 2022.** Subsequent to approval by your municipality, the MCUA Board of Commissioners will also approve the Agreement. A final, fully executed original Agreement will be returned to your municipality shortly thereafter.

I believe this Agreement is comprehensive, cost effective and enables the Middlesex County Landfill to provide sustained disposal capacity for your residents. Please feel free to contact me with any questions you may have regarding this Agreement.

Sincerely,


Joseph Cryan
Executive Director

JC/db

Enclosures

MCUA Solid Waste Disposal Agreement

North Brunswick

Acceptable Solid Waste (ASW) Tonnage History
(Excludes ID 13 Waste Type)

2018	2019	2020
13,218.83	13,251.06	14,197.28

SOLID WASTE DISPOSAL AGREEMENT
(COUNTY GOVERNMENT AND MUNICIPALITIES)

THIS AGREEMENT, made this _____ day of _____, 2021 by and between the MIDDLESEX COUNTY UTILITIES AUTHORITY (the "MCUA" or "Party"), a body corporate and politic of the State of New Jersey, having its principal offices at Main Street Extension, Sayreville, New Jersey, 08872, and the Township of North Brunswick (the "Public Entity" or "Party"), a Municipality of the State of New Jersey, having principal offices at 710 Hermann Road North Brunswick, NJ 08902. Collectively, the MCUA and the Public Entity are referred to herein as the "Parties", and each individually, a "Party."

RECITALS

WHEREAS, the MCUA owns and operates a state-of-the-art Landfill facility located in East Brunswick, Middlesex County, commonly known as the Middlesex County Landfill (the "Landfill"); and

WHEREAS, the Public Entity desires to dispose all of its Acceptable Solid Waste ("ASW"), as defined herein, at the Landfill without aggregation of such ASW with solid waste of any other parties or public entities; and

WHEREAS, the Parties have negotiated favorable terms and conditions regarding the delivery by the Public Entity of ASW and the disposal thereof by the MCUA all as provided herein;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the MCUA and the Public Entity mutually agree as follows:

1. The MCUA will accept for disposal from the Public Entity without aggregation of such ASW with solid waste of any other parties or public entities, all of its ASW, which is defined to mean only that solid waste ID type IO and ID type 27 (non-special handling) as defined by the NJ Department of Environmental Protection ("NJDEP") which (a) the Public Entity collects and transports, or has collected and transported on its behalf by a solid waste collector duly authorized by the Public Entity (the "Contract Hauler"), (b) is generated within Middlesex County, (c) does not include any ID type 13 waste types as defined by the NJDEP, and (d) is authorized for disposal at the Landfill pursuant to Applicable Law, as defined herein, and the MCUA's Policies and Procedures (the "P&P") attached hereto as Exhibit A and incorporated herein, as either Applicable Law may be amended from time to time and the P&P may be revised from time to time by the MCUA. The Public Entity shall at all times during the Term of this Agreement, as defined herein, comply with all Applicable Law, the P&P and the Middlesex County Solid Waste Management Plan and shall require any of its Contract Haulers to be in compliance with same. In the event the NJDEP modifies the definition of solid waste ID type IO, ID type 13, or ID 27 (non-special handling), the MCUA reserves the right to modify the waste types and reclassify the materials designated to be covered by this Agreement.

2. The MCUA agrees to operate and maintain the Landfill in accordance with Applicable Law.

3. The MCUA shall charge the Public Entity and the Public Entity shall pay to the MCUA the Contract Rate, as defined herein, for each ton of ASW, as measured at the Landfill scales, subject to the tonnage limit set forth in paragraph 5 below. The Contract Rate shall be \$70.00 per ton of ASW in 2022, \$71.25 per ton of ASW in 2023, \$72.50 per ton of ASW in 2024, \$73.75 per ton of ASW in 2025 and \$75.00 per ton of ASW in 2026. The Contract Rate includes all charges on account of regulatory or other taxes or charges which may be imposed on the MCUA as of the date of this Agreement. The MCUA reserves the right to adjust rates in the case of (a) any change in Applicable Law which may affect the obligations of the Parties with respect to the delivery of ASW from the Public Entity to the MCUA and the acceptance and disposal of ASW by the MCUA as set forth in this Agreement; and (b) any new or increased regulatory charges or taxes that are imposed on the MCUA during the Term of this Agreement. The Public Entity agrees

to pay such adjusted rates. The Public Entity agrees to cause all of the Middlesex County generated ASW collected and transported by it or on its behalf by its Contract Hauler(s), to be transported to the Landfill. If at any time during this Agreement, the MCUA determines that the Public Entity is not in compliance with this requirement, the Public Entity will be considered in default and subject to the terms outlined in Paragraph 6 of this Agreement.

4. The Term of this Agreement shall commence on January 1, 2022 and shall continue in full force and effect until the expiration on December 31, 2026. This Agreement may not be terminated prior to expiration of the Term except as set forth below in paragraph 6(a). Should the Public Entity desire to terminate the Agreement prior to the expiration of the Term for any reason other than as set forth in paragraph 6(a), the Public Entity agrees to provide six (6) months prior written notice to the MCUA.

5. The Public Entity agrees to cause all of the Middlesex County-generated ASW collected and transported by it or collected and transported on its behalf by its Contract Hauler(s), to be transported to the Landfill for disposal, and the Public Entity further agrees not to deliver to the Landfill for disposal either any waste which is not ASW as defined in paragraph 1 above (herein defined as "Unacceptable Solid Waste" or "USW") or waste aggregated from other parties or public entities. The Public Entity shall be responsible for any USW delivered by it in accordance with the MCUA's Policies and Procedures.

The following delivery amounts are the estimated ASW Provided by the Public Entity for the next five (5) years:

(Please note Municipality must fill in the delivery amounts for each year below)

2022	14,300 Tons
2023	14,500 Tons
2024	14,700 Tons
2025	14,900 Tons
2026	15,100 Tons

If at the end of any contract year, the Public Entity has provided less than 85% of the estimated ASW, the Public Entity shall provide to the MCUA a written explanation for the deficiency no later than thirty (30) days after the end of that contract year.

6.(a) In the event that either the MCUA or the Public Entity, as the case may be, fails to fulfill a material obligation required by this Agreement (the "Defaulting Party"), the other Party (the "Non-Defaulting Party") shall provide written notice therefore to the Defaulting Party no later than five (5) business days after such default. The Defaulting Party shall have an opportunity to cure such default within a reasonable time under the circumstances then existing, as agreed to by the Parties. In the absence of a cure or efforts to commence cure, or timely completion of the cure, as appropriate, the Non-Defaulting party may deliver to the Defaulting Party a Notice of Termination hereof, not to be effective sooner than the 15th business day thereafter.

6.(b) Notwithstanding the above, in the event that the Public Entity does not deliver all of its ASW to the Landfill during a particular year of the Agreement, and the MCUA exercises its right of termination as set forth in the Notice of Termination, the Public Entity shall pay as damages to MCUA the difference between the Gate Rate and the Contract Rate for the relevant year, for all ASW delivered during the relevant year.

EXAMPLE:

If the Public Entity delivers 2000 tons of ASW to the Landfill by December of 2022 and MCUA discovers that it has not delivered all of its ASW to MCUA, the damages shall be determined as follows if the Gate Rate is \$76.25:

Gate Rate	\$76.25/ton
Contract Rate	<u>\$70.00/ton</u>
	\$6.25/ton x 2000 tons or \$12,500

7. Each Party agrees to indemnify and hold harmless (and, upon request, defend), the other from and against any "Losses" arising out of or in connection with any failure to fulfill their respective obligations set forth in this Agreement, or any actions pursuant to this Agreement, to the fullest extent permitted by Applicable Law. For purposes of this Agreement, "Losses" means and includes any and all loss, expense, damage, injury, claim, demand, liability, judgment, award or settlement asserted, suffered or sustained by a Party to this Agreement. This indemnity obligation of each Party shall survive any termination or expiration of this Agreement.

8. Either Party shall be excused from any failure to perform as required herein to the extent caused by an Uncontrollable Circumstance ("UC"). An UC is any event the cause of which is beyond the control and without the fault of the Party alleging the occurrence of an UC excusing that Party from performance. The Parties agree to cooperate in order to eliminate said UC, by providing prompt and complete notice to the other thereof, as is reasonable under the circumstances, and by taking action which is reasonably appropriate in response thereto, as each Party may in its sole discretion and in good faith determine.

9. Any disputes arising in connection with this Agreement shall be resolved by a court of competent jurisdiction located within the County of Middlesex, State of New Jersey and each Party consents to the jurisdiction of such court. The Public Entity agrees that service of process on the Public Entity may be made, at the option of the MCUA, either by registered or certified mail or overnight delivery addressed to the applicable office as provided for in this Agreement, by registered or certified mail, overnight delivery or by personal delivery on the agent or representative of the Public Entity identified in paragraph 25 below.

10. During the pendency of any dispute, the Parties shall continue to perform their obligations set forth herein unless this Agreement shall be terminated. The foregoing notwithstanding, the Public Entity agrees to promptly pay to the MCUA any sums due which are not in dispute.

11. As used in this Agreement, "Applicable Law" means any federal, state, county or local statute, ordinance, regulation, ruling, order, enactment, requirement, permit, approval or authorization of any Government Agency (which includes any regional, federal, state or local court, administrative agency or governmental office, officer or body, including any federal, state or local legislative body, court or tribunal, having jurisdiction over the Parties), with which the MCUA or the Public Entity, as the case may be, must comply in connection with the performance of their respective obligations under this Agreement. However, Applicable Law shall not include any ordinance, regulation or policy of the Public Entity which has the purpose or effect of frustrating the intent of this Agreement or interfering with the ability of the Public Entity or the MCUA, as the case may be, to fulfill its respective obligations hereunder.

12. The Parties hereto acknowledge that each is independent of the other and as such, is wholly responsible for methods and means to be utilized to fulfill its obligations contained in this Agreement.

Nothing herein shall create any responsibility other than that which is expressly provided by or reasonably inferable from the terms of this Agreement. No provision of this Agreement shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create any fiduciary relationship between the Parties. Both Parties represent that they possess the legal authority to enter into this Agreement and that the individual signing this Agreement has the authority to bind the Party for which he or she is signing.

13. Nothing contained in this Agreement is intended to create any rights for or to otherwise benefit any parties other than the Parties to this Agreement. To the extent possible, the Parties agree to cooperate to defend against any actions which may be brought against either of them by persons not parties to this Agreement.

14. The Parties shall in good faith consult and cooperate with each other, in every reasonable respect, regarding contacts or communications with any Governmental Agency which may impact in a material way any rights or obligations of either of them.

15. Each Party agrees to take all actions, including but not limited to the execution of documents, which are necessary or reasonably required or requested in order to fulfill the intent of this Agreement, and to ensure its full force and effect. The foregoing notwithstanding, neither Party shall be required to perform any act which modifies in any respect the obligations assumed or imposed upon it by this Agreement and the transaction which it reflects.

16. Except as expressly provided herein, the failure of either the MCUA or the Public Entity to enforce at any time any provision of this Agreement or to require at any time performance by the other of any of the provisions hereof, shall not be construed as a waiver of such provision and shall not, in any way, affect the validity of this Agreement or any provision hereof. This Agreement shall be governed by the laws of the State of New Jersey and shall for all purposes be enforced in accordance therewith.

17. As soon as practicable, either Party shall provide notice pursuant to Paragraph 25 hereof of any conditions or circumstances of which it becomes aware which may materially impact upon obligations assumed by either Party hereunder.

18. Any ambiguity in this Agreement shall be resolved in favor of the most reasonable interpretation in light of the context of the provision, its purpose and its conformity to the other requirements of this Agreement and Applicable Law. This Agreement, having been prepared with the participation of the Parties hereto and their respective counsel, shall be construed without regard to any presumption or other rule requiring construction against the Party who prepared or drafted the instrument.

19. Each Party acknowledges that it is an equal opportunity employer and shall not discriminate against any employee or applicant for employment because of race, creed, sex or national origin. Each Party agrees to comply with all Applicable Laws regarding non-discrimination including but not limited to the affirmative action requirements of P.L. 1975, c.127 and the rules and regulations issued by the Treasurer, State of New Jersey (hereinafter the "Treasurer") pursuant thereto. The Parties to this Agreement agree to comply with P.L. 1975, c.127 and the mandatory language promulgated by the Treasurer of the State of New Jersey set forth in N.J.A.C. 17:27 et.seq. and N.J.S.A. I 0:5-31 et.seq.

20. If any provision of this Agreement shall be held or deemed to be or shall in fact be inoperative or unenforceable because it conflicts with any other provision or provisions hereof or of any Applicable Law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or of rendering any other provision(s) herein invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity or any one or more phrases, sentences, clauses, sections or articles contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof and same shall remain in effect and be fully enforceable.

21. This Agreement shall not be changed, modified or amended except by a written agreement which is executed by both Parties.

22. This Agreement may be signed in two or more original counterparts, each of which shall be deemed to be an original hereof but all of which shall constitute one and the same instrument.

23. This Agreement shall not be assigned or transferred by either Party.

24. No official, employee or agent of the MCUA or the Public Entity shall be charged by a Party hereto with any individual or personal liability or expenses of defense or be held personally liable to either of them in connection with (i) any term or provision of this Agreement; (ii) either the Public Entity's execution or attempted execution, or the MCUA's execution or attempted execution of this Agreement; or (iii) a breach of this Agreement which occurs within the scope of any such official's responsibilities.

25. Notices, reports and other communications required or permitted under this Agreement shall be in writing and transmitted to the Executive Director on behalf of the MCUA and to the Administrative or other authorized representative of the Public Entity, as the case may be, at their respective addresses first identified above.

26. This Agreement and its Exhibits embody the complete agreement of the Parties hereto and shall supersede all previous and contemporary oral or written agreements, discussions or other communications.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the date first above written.

ATTEST:

MIDDLESEX COUNTY UTILITIES AUTHORITY

By: _____
JOSEPH CRYAN
Executive Director

ATTEST:

TOWNSHIP OF NORTH BRUNSWICK

By: _____
FRANCIS WOMACK III
Mayor