

RESOLUTION
of the
BOROUGH OF NEW PROVIDENCE
Resolution No. 2016-382

Council Meeting Date: 12-19-2016

Date Adopted: 12-19-2016

TITLE: RESOLUTION AWARDDING CONTRACT TO GIORDANO COMPANY,
INC. FOR RECYCLING SERVICES FOR THE BOROUGH OF NEW
PROVIDENCE FOR A ONE YEAR PERIOD

Councilperson Galluccio submitted the following resolution, which was duly seconded by Councilperson Muñoz.

BE IT RESOLVED by the Mayor and Council of the Borough of New Providence, in the County of Union and State of New Jersey, that they do hereby award a contract between the Borough of New Providence and Giordano Company, Inc., 82 Bethany Road, Suite #6, Hazlet, New Jersey, N.J. for a one year period commencing February 1, 2017 for the total cost of \$128,300.00; and they do further authorize and direct the Mayor and Borough Clerk to execute same on behalf of the Borough of New Providence.

APPROVED, this 19th day of December, 2016.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
GALLUCCIO	X			
GENNARO	X			
KAPNER	X			
MADDEN	X			
MUÑOZ	X			
ROBINSON	X			
MORGAN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 19th day of December, 2016.

Wendi B. Barry, Borough Clerk

To: Mayor Morgan, Council and Borough Administrator

From: James Johnston, Director of Public Works

Re: 2017 Recycling contract

Date: 12/16/2016

As you are aware our recycling contract is up at the end of January 2107. Doug Marvin and I met with Giordano who requested an initial price \$143,000 per year. This is an increase over our current amount of \$109,600. The reason for such a large increase is due to the fact that the market is down on recycling material. When the market was higher they were able to give us a better price because they keep the revenue from the material recycled.

After additional discussion, I was able to get him down to \$130,000 for a 1 year contract, with the first month (February of 2017) to remain at our current rate.

Doug Marvin asked that I check with other companies to see what pricing might be available. The proposed price equates to \$2.36 per household, per month. Suburban Disposal indicated that they could not compete with Giordano because Suburban is paying to dispose of their material - due to the soft recycling market – and Giordano has their own recycling facility, making them too complete on their pricing.

I recommend that we enter into a one-year agreement with Giordano that will expire on January 31, 2018.

**RECYCLING MARKETING AGREEMENT
BETWEEN
GIORDANO COMPANY, INC.
AND
THE BOROUGH OF NEW PROVIDENCE**

THIS AGREEMENT, made the 19th day of December, 2016 by and between **Giordano Company, Inc. ("the Contractor")**, a New Jersey Corporation, with offices at #82 Bethany Road, Suite #6, Hazlet, New Jersey, and the **Borough of New Providence (the "Municipality")**, a municipality of the State of New Jersey, with offices at 360 Elkwood Avenue, New Providence, New Jersey 07974.

WITNESSETH:

WHEREAS, the Municipality has adopted a mandatory recycling ordinance, requiring generator segregation of Class A recyclable, post-consumer goods by residential and commercial waste generators located within the Borough; and

WHEREAS, the Borough, in order to be able to enforce compliance with its' mandatory recycling ordinance, desires to make provision for the marketing of all post-consumer goods which it has required to be recycled; and

WHEREAS, the legislature has determined that agreements for the marketing of recyclable materials may be negotiated and entered into without the need to resort to public bidding; and

WHEREAS, THE CONTRACTOR has made a proposal to provide marketing services to all residential units, Borough buildings and schools within the Borough.

NOW THEREFORE, for in consideration of the mutual covenants of the parties hereto, they do agree as follows:

1. For purposes of this Agreement, the following terms shall have the meanings set forth below:

BINS OR CONTAINERS shall mean plastic or metal containers specified by THE CONTRACTOR for use in containing recycled material and for setting out recycled material out for collection by THE CONTRACTOR which shall have a capacity no greater than thirty-two (32) gallons.

CLASS A RECYCLABLES shall mean aluminum, bi-metal, glass food and beverage containers, mixed paper, newspaper and corrugated paper, paperback books, hardcover books, plastic beverage containers and plastic soap and

detergent containers which have been segregated from solid waste by the generator.

COMMENCEMENT DATE shall mean February 1, 2017.

COMMERCIAL RECYCLED MATERIAL shall mean recycled material generated by commercial retail establishments located within the Borough.

CONTAINERIZED shall mean placement of recycled materials in bins or other containers for the purpose of containing specific, recycled materials.

CONTRACT YEAR shall mean each twelve-month period following the commencement date.

MARKETING SERVICES shall mean the coordinated activity of collecting, transporting, processing and sale of recycled materials.

BOROUGH RECYCLED MATERIAL shall mean recycled material generated as part of providing municipal services including administrative, library, recreational, senior citizens center, parks and park lands, schools and public works services within the Borough.

NEGATIVE MARKETING CREDIT shall mean any negative dollar amount resulting from calculation of net marketing sales revenues.

NET MARKETING SALES REVENUES shall mean the gross dollar amount paid to THE CONTRACTOR for sale of processed residential recycled material, less the dollar amount paid by THE CONTRACTOR for delivery of processed residential recycled material and the cost of disposal of residue derived from residential recycled material.

POSTIVE MARKETING CREDIT shall mean any positive dollar amount resulting from calculation of net marketing sales revenues.

RECYCLED MATERIAL shall mean Class A recyclables which have been set out for collection, transportation and sale and which shall include:

- a) aluminum, bi-metal, metal and glass food containers, plastic beverage, soap and detergent containers, which have been rinsed to remove residual food and other contents and are containerized; and
- b) newspapers which have been securely bundled and tied without the use of plastic bags and which are co-mingled with mixed paper and corrugated paper and containerized; and

- c) mixed paper comprised of weekly or monthly post-consumer magazines and glossy newspaper inserts which have been securely bundled and tied without the use of plastic or paper bags, office paper (including fax paper, photocopier paper, white ledger, color ledger, NCR paper, envelopes), computer paper, junk mail (including catalogs, coupons, sweepstake entries and envelopes with or without windows), school paper (including notebook paper, construction paper and soft-covered workbooks), hard cover text books, paperback books, real estate books and white-paged telephone books which are co-mingled with newspapers and corrugated paper and is containerized. The following are specifically excluded: carbon paper, blue prints and plastic and paper bags; and
- d) corrugated paper which is free of all non-corrugated paper contents and which has been bundled, securely tied and co-mingled with newspaper and mixed paper and is containerized.

RESIDENTIAL RECYCLED MATERIAL shall mean recycled material generated as part of residential activities within the Borough.

RESIDUE shall mean all material collected with recycled material which is not recycled material, including, without limitation, plastic other than beverage and soap or detergent containers, bottle rings and caps, ceramics, dirt or stones, vegetative waste, light bulbs, plastic films, building material, window or mirror glass, blue prints, carbon paper and plastic bags.

UNCONTROLLABLE CIRCUMSTANCE shall mean events or conditions or any combination thereof (including a labor strike by THE CONTRACTOR, its' employees, affiliates or subcontractors), that has had or may be reasonably expected to have a direct, material, adverse effect on the rights or the obligations of a party to this Agreement or a direct, material, adverse effect on the marketing services to be provided hereunder; provided however that such act, event or condition shall be beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under the terms of this Agreement:

- a) an act of God, lightning, earthquake, acts of public enemy, war, blockage, insurrection, riot or civil disturbance, sabotage, blizzards, hurricanes, tornadoes or similar occurrence or any exercise of the power of eminent domain, police power, condemnation or other taking by or on behalf of any public, quasi-public or private entity; but not including reasonably anticipated weather conditions;
- b) a landslide, fire, explosion, flood or nuclear radiation not created by an act or omission of the party relying thereon; provided however that in the case of a fire or explosion, such fire or explosion shall not be the result of the willful, intentional or negligent action or inaction of the party relying thereon; and
- c) the order, judgment, action and/or determination of any Federal, State or local court of competent jurisdiction, administrative agency or governmental body (other than the Authority), excepting decisions interpreting Federal, State and local tax laws which are generally applicable to all business taxpayers, which in each case materially, adversely affects (including without limitation delay and cost) the marketing services be provided hereunder; provided however that such order, judgment, action and/or determination shall not be the result of the willful, intentional or negligent action or inaction of the party relying thereon and that neither the contesting of any such order, judgment, action and/or determination, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such party; and provided further that any determination not to contest such order, judgment, action and/or determination is accompanied by or based upon an opinion of counsel, stating that actions taken to contest such order, judgment, action and/or determination will not, in the opinion of the signer, result in a successful challenge.

2. Beginning on the commencement date, THE CONTRACTOR shall provide the following marketing services with respect to residential and Borough recycled material:

- a) residential recycled material placed at curbside or, in the case of multi-unit dwellings, at collection locations designated by agreement between THE CONTRACTOR and the management of the dwellings at such times and in such a manner that each residential unit shall be serviced no less than two (2) times per month, except in the case of residential units within multi-unit dwellings which shall be serviced more or less frequently according to their reasonable needs and space availability to store recycled materials. In the case of multi-unit dwellings, the multi-family unit shall supply a sufficient number of bins to contain recycled materials between collection days. All materials will be collected on the same day.
 - b) Borough recycled material collected from those Borough buildings listed in the attached Schedule A. Such services shall be provided at times and on dates when residential units in the area of each municipal building are serviced. Such service shall be provided at the curb.
3. It shall be the responsibility of the Borough to require all residential units and Borough buildings within the Borough to supply those bins necessary to contain recycled material.
4. THE CONTRACTOR shall consult with the Municipality regarding routes, days and times of collections to avoid, to the greatest extent possible, inconvenience to the Borough, its residents. Once established, THE CONTRACTOR shall not alter or modify its' collection routes, times or days of collection or recycled material preparation requirements except on three (3) months' notice to the Municipality.
5. THE CONTRACTOR shall not be required to collect recycled material which is contaminated by the presence of material other than recycled material in amounts which cannot be removed and left at the curb. All material which is rejected shall be accompanied by a "rejection slip" which shall be in a form agreed to by the Borough. At a minimum, such rejection slip shall inform the generator as to the reason for rejection of recycled material. At the

commencement date of this agreement, THE CONTRACTOR shall provide a sample rejection slip to the Borough for its records.

6. Upon placement of recycled material in bins or containers, title to such recycled materials shall pass to THE CONTRACTOR, subject to THE CONTRACTOR'S' right of rejection. Title to material rejected by THE CONTRACTOR shall not pass to THE CONTRACTOR.
7. The Borough agrees to aggressively enforce its' mandatory recycling ordinance so as to obtain the highest level of participation in its' recycling program. The Borough further agrees that it will make a mailing to all residential units containing that information specified in paragraph eight (8) (c) below. The methods and means of such notice shall be designated solely by the Borough.
8. The Borough shall:
 - a) designate at least one (1) individual to act as the Borough Recycling Coordinator, as required by law, who shall be responsible for the recycling program. Said responsibility shall include, but not be limited to enforcement of the Borough's recycling ordinances; responding to citizen inquiries concerning the recycling program, collection schedules and preparation of all recycled materials.
 - b) require that the Borough Recycling Coordinator attend all meetings with THE CONTRACTOR upon reasonable notice regarding collection routes and schedules, as well as recycled materials preparation requirements.
 - c) distribute to all residential units within the Borough, at its' cost, a brochure or other written material describing the program, preparation requirements for recycled materials and collection schedules.
 - d) not less often than twice yearly, place a notice in public places where public notices are customarily posted describing the program, preparation requirements for recycled materials and collection schedules.
9. The scavenging of recycled materials set out on scheduled collection days will not be permitted by the Borough and is expressly prohibited, without exception.

10. THE CONTRACTOR shall be responsible, at its' own expense, to store, handle, process, package, load, sell and ship all recycled material collected pursuant to the terms of this Agreement.
11. THE CONTRACTOR shall maintain accurate records of recycled materials collected and marketed. In the event it is not possible to provide a verifiable means for determining the percentage of each type of recycled material collected by THE CONTRACTOR, the Borough and THE CONTRACTOR shall agree upon a mutually agreeable procedure for sampling the recycled material collected by THE CONTRACTOR. Percentages obtained in such sampling shall be used for purposes of this Agreement. In the event sampling is used, new samples shall be taken no less frequently than every six (6) months. In the event the Borough desires more frequent sampling, it may demand a new sample be taken, provided it agrees to pay the cost of that sampling. The results of each sampling shall be submitted to the Borough after which the results of such sample shall be used for purposes of determining the relative weight of each component of the recycled material collected by THE CONTRACTOR.
12. THE CONTRACTOR shall keep and maintain full and accurate books, records, vouchers and accounts in connection with the marketing services to be provided, pursuant to the terms of this Agreement. All such books and records shall be maintained for a period of five (5) years and may be inspected and/or audited by the Borough at any time during normal working hours. The parties agree however, that all information in the possession of THE CONTRACTOR which relates in any way to its' relationship to markets for recycled materials is confidential and proprietary information and that the Borough may not make such information public until two (2) years after the expiration of the term or any extended term of this Agreement. Additionally, THE CONTRACTOR agrees to provide tonnage reports to the Borough indicating the amount of each recycled material collected within a calendar year, for the purposes of the Borough preparing its annual tonnage report to the State of New Jersey as required by law. Said reports shall be received by the Borough no later than February 28th of the following year (for example, tonnage figures for the 2016 calendar year are due by February 28, 2017). If the information received by the Borough from THE CONTRACTOR is deemed incomplete or insufficient, THE CONTRACTOR

agrees to provide the missing information within five (5) working days from receipt of written notification from the Borough indicating the deficiencies.

13. In consideration of THE CONTRACTOR providing all marketing services specified in this Agreement, the Borough agrees to pay THE CONTRACTOR as follows for all one, two, three and four family residential units, and for all residential units in condominium or apartment structures over four units which consolidate recycled material in containers at off-street locations accessible to THE CONTRACTOR'S trucks during the term of this Agreement in monthly installments:

<u>Month/Year</u>	<u>Annual Rate</u>	<u>Monthly Installment</u>
February 2017	\$109,600.00	\$9,133.33
March 2017 - January 2018	\$130,000	\$10,833.34

14. For purposes of determining the number of residential units within the Municipality, the parties agree that the beginning number shall be 3,483 one, two, three and four family units and 839 condominium or apartment units, and 4 school buildings. At the end of each quarter calendar commencing with the end of the first full quarter after the commencement date, throughout the term of this Agreement, the number of residential units shall be revised to account for all certificates of occupancy issued by the Municipality for new, residential units issued in the prior quarter.
15. In the event any State, County or other governmental body imposes any surcharge, tax or fee not imposed as of the date of this Agreement, other than taxes generally applicable to businesses including host community fees, on the operation of THE CONTRACTOR'S business, then the marketing fee shall be increased by the amount of such surcharge, tax or fee imposed.
16. The Borough and THE CONTRACTOR shall not share the revenues derived by THE CONTRACTOR from the marketing of residential recycled material.
17. The term of this agreement shall commence on February 1, 2017 and terminate on January 31, 2018.

18. This Agreement may be terminated prior to the end of the term set forth in paragraph 17, pursuant to any of the following:
- a) an event of default, in which case the remedies set forth in paragraph 19 shall also apply.
 - b) the existence of an uncontrollable circumstance that cannot be overcome through reasonable efforts by the party whose performance is affected by the uncontrollable circumstance within ninety (90) days of the notice thereof.
 - c) The refusal, revocation or withdrawal as evidenced by a formal decision or declaration of the appropriate governmental entity with jurisdiction over the company of any permit, license or consent that either the company is required to possess in order to carry out its obligations under this Agreement; provided however, that in any such event, the party that is unable to obtain or continue the permit, license or consent shall give the other the maximum possible advance notice, and shall make all reasonable efforts to secure the grant or reinstatement of such permit, license or consent.
19. The following shall constitute events of default on the part of THE CONTRACTOR, unless such events result from the occurrence of an uncontrollable circumstance:
- (i) persistent and repeated failure of THE CONTRACTOR to timely perform any material obligation under the terms of this Agreement;
 - (ii) the failure of THE CONTRACTOR to pay or give credit for undisputed amounts that are owed to the Borough under the terms of this Agreement within thirty (30) days following the date they become due and payable; and
 - (iii) (1) THE CONTRACTOR'S being or becoming insolvent or bankrupt or ceasing to pay its' debts as they mature or making an arrangement with or for the benefit of its' creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its' property, or (2) a bankruptcy, winding up, re-organization, insolvency, arrangement or similar proceeding instituted by THE CONTRACTOR under the laws of any jurisdiction

or against THE CONTRACTOR if THE CONTRACTOR does not take appropriate action to dismiss said proceedings within thirty (30) days of the institution of such proceedings, or (3) any action or answer by THE CONTRACTOR or the approving of, consenting to, or acquiescing in, any such proceeding, or (4) the levy of any distress, execution or attachment upon the property of THE CONTRACTOR, which shall substantially interfere with its' performance hereunder.

- b) the following shall constitute events of default on the part of the Borough, unless such events result from the occurrence of an uncontrollable circumstance:
 - (i) the persistent and repeated failure of the Borough to timely perform and material obligation under the terms of this Agreement.
 - (ii) failure of the Borough to pay undisputed amounts which are owed to THE CONTRACTOR under the terms of this Agreement within thirty (30) days following the date they become due and payable;
 - (iii) (1) the Borough being or becoming insolvent or bankrupt or ceasing to pay its' debts as they mature or making an arrangement with or for the benefit of its' creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its' property, or (2) a bankruptcy, winding up, re-organization, insolvency, arrangement or similar proceeding instituted by the Borough under the laws of any jurisdiction or against the Borough if the Borough does not take appropriate action to dismiss said proceedings, which proceeding has not been dismissed within thirty (30) days of the institution of such proceeding, or (3) any action or answer by the Borough approving of, consenting to, or acquiescing in, any such proceeding, or (4) the levy of any distress, execution or attachment upon the property of the Borough which shall substantially interfere with its' performance hereunder.

20. In the event of the occurrence of an event of default by THE CONTRACTOR, the Borough's sole remedies shall be, at its' option, (1) a suit seeking performance by THE CONTRACTOR of the provisions of this Agreement, including THE

- CONTRACTOR'S obligations to make any payments hereunder, and such ancillary, equitable remedies attendant to the enforcement of a decree, judgment or order for such performance, or (2) termination of this Agreement.
21. In the event the occurrence of an event of default by the Borough, THE CONTRACTOR'S sole remedies shall be, at its' option, (1) a suit seeking performance by the Municipality of the provisions of this Agreement, including the Borough's obligations to make any payments hereunder, and such ancillary, equitable remedies attendant to the enforcement of a decree, judgment or order for such performance, or (2) termination of this Agreement, or (3) by written modification of this Agreement, the terms of which shall be agreed to by the parties.
 22. No delay on the part of either party in giving notice of a default, or in exercising its' remedies, shall be construed to prejudice or waive its' right to give notice of default and to exercise its' remedies for the original default or for any subsequent default.
 23. Upon termination of this Agreement, all rights, privileges and obligations hereunder shall cease, except that no termination of this Agreement shall release either party from any obligation accrued hereunder or rescind any payment made or due to either party hereunder, prior to the time such termination becomes effective. All remaining recyclable materials shall be sold by THE CONTRACTOR in accordance with this Agreement. All bins or containers provided by THE CONTRACTOR shall be returned to THE CONTRACTOR as provided in this Agreement.
 24. THE CONTRACTOR shall, no less than thirty (30) days' prior to the commencement date, furnish the Borough with a Certificate of Insurance in a form acceptable to the Borough, certifying that THE CONTRACTOR carries worker's compensation, automobile and comprehensive, general liability insurance, with a carrier and in such amounts and containing such terms as are reasonably acceptable to the Borough.
 25. THE CONTRACTOR shall hold harmless, indemnify and defend the Borough and its' officers, members and employees from and against any and all liability, claims, actions, demands, losses, judgments, expenses and costs of suit (including reasonable attorney's fees) (hereinafter "Claims") arising or alleged to

arise from the performance or non-performance of THE CONTRACTOR'S obligations under this Agreement. The Borough shall promptly give notice to THE CONTRACTOR of all such Claims of which it is aware, and shall, without prejudice to any right the Borough may have, give all assistance to THE CONTRACTOR as may be reasonably required to enable THE CONTRACTOR to defend against such claims.

26. The Borough shall hold harmless, indemnify and defend THE CONTRACTOR and its officers, members and employees from and against any and all liability, claims, actions, demands, losses, judgments, expenses and costs of suit (including reasonable attorney's fees) (hereinafter "Claims") arising or alleged to arise from the performance or non-performance of the Borough's obligations under this Agreement. THE CONTRACTOR shall promptly give notice to the Borough of all such Claims of which it is aware, and shall, without prejudice to any right THE CONTRACTOR may have, give all assistance to the Borough as may be reasonably required to enable the Borough to defend against such claims.

27. Neither THE CONTRACTOR nor the Borough shall be liable to the other party for any failure or delay in the performance of any obligation under the terms of this Agreement due to the occurrence of an uncontrollable circumstance. Whenever an uncontrollable circumstance shall occur, the party claiming to be adversely affected thereby shall, as quickly as possible, give notice to the other party. The party claiming to be adversely affected shall, as quickly as possible, eliminate the cause therefor, reduce costs and resume performance under the terms of this Agreement.

28. The Borough and THE CONTRACTOR shall mutually agree upon an arbitrator. If the Borough and THE CONTRACTOR have not agreed upon the selection of the arbitrator, the arbitrator shall be selected by the American Arbitration Association upon the joint request of the parties hereto. If THE CONTRACTOR and the Borough cannot agree as to any solution involving any dispute in connection with the interpretation of the provisions of this Agreement, or with the performance of the services hereunder, within a two-week period of time after written notice thereof with respect to any such matter(s), such failure to agree shall be deemed a dispute and, exclusive of any other remedy

following such period, the Borough or THE CONTRACTOR may, by written notice to the other party, bring the dispute to the arbitrator. In such event, the arbitrator shall assume exclusive jurisdiction over the dispute and shall be required to make a final, binding determination and issue a written decision which includes the findings of fact and conclusions of law, which decisions shall be enforceable by a court of competent jurisdiction and shall not be subject to appeal. The arbitrator's charges shall be shared equally by the parties, each of whom shall bear its' own arbitration expenses, including those for attorney's and witnesses' fees.

29. Except as otherwise explicitly provided herein, no party to this Agreement shall have any responsibility whatsoever with respect to services that are to be provided or contractual obligations that are to be assumed by the other party and nothing in 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.
30. Each party represents and warrants that this Agreement has been duly and validly authorized, executed and delivered by it, and that it has all requisite corporate power and authority to execute, deliver and perform its respective obligations under this Agreement and to consummate the transaction contemplated thereby. Each party further represents that there is no action, suit or proceeding, at law or in equity, before or by any court of governmental authority, pending or, to the best of its knowledge, threatened against it, wherein an unfavorable decision, ruling or finding would materially, adversely affect the performance by such party of its' obligations hereunder or the other transactions contemplated hereby, or which in any way, would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by such party in connection with the transactions contemplated hereby.
31. This Agreement may not be assigned by either party without the prior, written consent of the other party, which may not be unreasonably withheld, and any purported assignment without such consent shall be null and void and without effect. Any assignment authorized by the other party shall be in writing and shall be reasonably satisfactory to the Borough or to THE CONTRACTOR, as the case may be, as to form and content. In addition, at the time of any such

assignment, the Borough and THE CONTRACTOR shall modify this Agreement, to the extent required, in order to clearly delineate the respective obligations of the Borough, THE CONTRACTOR and the assignee.

32. This Agreement (including the attachments hereto) constitutes the entire Agreement and understanding of the parties with respect to all matters addressed or referred to herein and supersedes all prior and contemporaneous agreements and understandings, representations and warranties, whether oral or written, relating to such matters.
33. The provisions of this Agreement shall not be modified except by mutual agreement of the parties in writing, duly signed by their authorized representative.
34. Any notice or communication that is required or permitted to be given hereunder shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail, postage prepaid, with a copy sent by overnight mail, courier, or telecopy, as follows:

TO THE CONTRACTOR: Giordano Company, Inc.
142-156 Frelinghuysen Avenue
Newark, NJ 07114

TO THE BOROUGH: Wendi B. Barry
Borough of New Providence
360 Elkwood Avenue
New Providence, NJ 07974

Changes in the respective addresses to which such notices may be directed may be made from time to time by either party by written notice to the other party.

35. This Agreement and any questions concerning its validity, construction or performance shall be governed by the laws of the State of New Jersey, irrespective of the place of execution or of the order in which the signatures of the parties are affixed or of the place or places of performance.
36. This Agreement may be executed in more than one (1) counterpart, each of which shall be deemed an original.
37. In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree to such amendments, modifications or supplements of or to this Agreement or to such other appropriate

actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, supplemented or otherwise affected by such action, remain in full force and effect.

38. Affirmative Action Requirements. The parties to this Contract agree that this is incorporated into this Contract, the mandatory language or N.J.A.C. 17:27 annexed hereto as Exhibit A as if set forth at length herein.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

ATTEST:

GIORDANO COMPANY, INC.

BY: Patsy Giordano, President

**Wendi B. Barry
Borough Clerk**

**BY: Allen Morgan
Mayor**

SCHEDULE A: MUNICIPAL RECYCLING LOCATIONS

**Borough Hall – Elkwood Avenue
Public Works Complex – Park Place
Library – Elkwood Avenue
Senior Citizens Center – Fourth Street
Historical Society Museum – Springfield Avenue
Fire House – Floral Avenue
New Providence High School – Pioneer Drive
A W Roberts Elementary School – Jones Drive
Salt Brook School – Maple Street
Veteran’s Park – South Street
Lions Park – Constance Road
Hillview Field – Central Avenue
Oakwood Park – Park Place – Roesner Place
Warner field – Warner Place
Lincoln Field – Elkwood Avenue
New Providence Train Station Parking Lot – Springfield Avenue
Murray Hill Train Station Parking Lot – Southgate Road
Centennial Park – Springfield Avenue
Morris-Union Jointure Commission – Central Avenue**

EXHIBIT A

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)

N.J.A.C. 17:27

GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS

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

The contractor 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, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity 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 contractor 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 contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

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

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

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

The contractor 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.

In conforming with the targeted employment goals, the contractor 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, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report

Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at www.state.nj.us/treasury/contract_compliance)

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance 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 Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code at N.J.A.C. 17:27**.

Date: _____
