

ULSTER COUNTY RESOURCE RECOVERY AGENCY

RESOLUTION NO. 2651

RE: Approving the Service Agreement between the Ulster County Resource Recovery Agency and Ulster County

WHEREAS, the County and the Agency had entered into and previously amended a Service Agreement since 1992; and

WHEREAS, that Service Agreement expires on May 31, 2025; and

WHEREAS, the Agency and the County have spent the last six months in negotiations on a new Service Agreement; and

WHEREAS, it was important to the Agency that a new Service Agreement not include a cap on the amount of bonds the Agency can fund without County approval; and

WHEREAS, in order to receive a Service Agreement with no bonding cap, the Agency agreed to exclusion of a net service fee to the County in the new Agreement; and

NOW, THEREFORE, BE IT

RESOLVED, that the Chairman of the Agency is authorized to sign the Service Agreement with the County that is attached hereto, and

FURTHER RESOLVED, that this Resolution shall take effect immediately.

Moved by: _____ Seconded by: _____

Vote: Ayes: _____ Nays: _____ Absent: _____

Date: May 8, 2025

Financial impact: No Financial Impact

SOLID WASTE SERVICE AGREEMENT

Between

THE COUNTY OF ULSTER

And

ULSTER COUNTY RESOURCE RECOVERY AGENCY

Dated as of January 1, 1992

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DRAFT

SOLID WASTE SERVICE AGREEMENT

SOLID WASTE SERVICE AGREEMENT dated as of ~~January 1, 1992~~ June 1, 2025 between THE COUNTY OF ULSTER, a municipal corporation of the State of New York (the "County"), and ULSTER COUNTY RESOURCE RECOVERY AGENCY, a public benefit corporation duly organized and existing under the laws of the State of New York (the "Agency"):

WITNESSETH:

WHEREAS, the County has determined that disposal of solid waste generated in the County is a serious problem and has concluded that the development and implementation of a comprehensive solid waste management plan providing an environmentally sound, efficient and economically acceptable solution to the solid waste disposal problem should be undertaken; and

WHEREAS, at the request of the County, the State Legislature has by special act created the Agency and empowered the Agency, among other things, to plan, develop, finance and construct solid waste management facilities; and

WHEREAS, the County has retained the services of the Agency pursuant to a certain agreement dated January 20, 1988, as amended, to develop a comprehensive solid waste management plan for the County and to present such a plan to the County for approval; and

WHEREAS, the County has appropriated and paid funds to the Agency for the purpose of developing and implementing such a plan; and

WHEREAS, the County further retained the services of the Agency pursuant to a certain agreement dated January 1, 1992, which ended May 31, 2025; and

WHEREAS, the Agency has prepared a comprehensive solid waste management plan (the "Plan"), and as "lead agency", has conducted a review pursuant to Article 8 of the Environmental Conservation Law and 6 NYCRR Part 617 (collectively "SEQRA"), on the Plan, including the following specific issues: adoption of the Plan; implementation of a county-wide recycling plan; selection of solid waste disposal technologies; and implementation of host community benefit programs for municipalities affected by Agency-owned facilities; and

WHEREAS, a Final Generic Environmental Impact Statement and Supplemental Final Generic Impact Statement (the "Final GEIS" and "Supplemental Final GEIS@) were authorized and duly filed, including filing with the County; and

WHEREAS, the Agency adopted and approved the Plan and adopted findings in connection with the Final GEIS and Supplemental Final GEIS; and

WHEREAS, the County, acting through its Legislature, adopted and approved the Plan and adopted findings in connection therewith; and

WHEREAS, the New York State Department of Environmental Conservation has approved the Plan; and

WHEREAS, in Article 3.0 of the findings issued in connection with the approval and adoption of the Plan, the Agency has determined to proceed with the establishment of a County-wide solid waste management strategy using an aggressive reduction, reuse and recycling program, landfill disposal, municipal organic solid waste composting, sewage sludge management, a household hazardous waste program, and transfer stations; and

WHEREAS, the Agency further found and determined in its findings as follows:

Revenue bonds should be issued by the Agency to finance its facilities, not general County debt. Since the General Obligation Bonds impact the County government's debt limit, revenue bond financing should be pursued as the primary financing tool for all facilities.

An agreement between the County and the Agency providing that solid waste generated in the county will be delivered to Agency facilities to pay the capital and operating cost of those facilities should be pursued. Such an agreement may be a necessary prerequisite to the issuance of revenue bonds. This issue is addressed in Draft GEIS, Volume I, Section 15.7; and

WHEREAS, the County and the Agency, have determined that it is necessary and desirable to implement the Plan, manage solid waste in the County and obtain financing for facilities to provide for the acceptance, and processing, recycling and/or disposal of Solid Waste during the term of this Agreement; and

WHEREAS, the parties propose to enter into this Agreement in order that the Agency furnish to the County the service of accepting and processing, and/or disposing of all Solid Waste and accepting, processing, and/or disposing of Solid Waste and accepting, processing and marketing of Regulated Recyclable Materials within the County, ~~in consideration for the payment by the County to the Agency for such service of Net Service Fees, if and to the extent required pursuant to the terms hereof;~~

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I - DEFINITIONS AND INTERPRETATION

Section 1.01. Definitions. For the purpose of this Agreement, the following words and terms shall have the respective meanings set forth below, unless the context otherwise requires:

"Agency" means Ulster County Resource Recovery Agency, a corporate

governmental agency constituting a public benefit corporation of the State duly organized and existing under the laws of the State, and any body, board, authority, agency or other political subdivision of the State which shall hereafter succeed to the powers, duties and functions of the Agency.

"Agency Engineer" means a nationally-recognized, independent consulting engineer retained by the Agency to perform services required in connection with this Agreement.

"Agreement" means this Solid Waste Service Agreement and any supplements and amendments hereto made in conformity with the terms hereof.

"Alternate Disposal" means disposal of Solid Waste at any lawfully available facility or facilities within or outside the County as may hereafter be utilized by the Agency from time to time and designated by the Agency pursuant to Section 3.05 hereof for the disposal of Solid Waste for purposes of this Agreement.

"Bonds" shall mean the revenue bonds issued or to be issued by the Agency to finance the System, a portion of the costs of the closure of existing municipal landfills, reimbursement of monies advanced by the County, and such other purposes as are set forth in or contemplated by the Plan and this Agreement, ~~except that the Agency shall not have the authority to issue Bonds in excess of the principal amount or accreted value of \$40 million without the prior approval of the County Legislature.~~

A County" means the County of Ulster, State of New York.

"Effective Date" means the date of the first issuance of the Bonds under this Agreement.

~~"Net Service Fees" means those amounts required to be paid by the County to the Agency pursuant to Article IV hereof.~~

"Regulated Recyclable Materials" has the meaning set forth in Local Law# ____ of 1991.

"Solid Waste" means all materials or substances discarded or rejected within the County as being spent, useless, worthless, or in excess to the owners at the time of such discard or rejection, including, but not limited to garbage, refuse, industrial and commercial waste, sludges from air or water pollution control facilities or water supply treatment facilities, rubbish, ashes, contained gaseous material, incinerator residue, demolition and construction debris and offal, but not including sewage and other highly diluted water-carried materials or substances and those in gaseous form, source, special nuclear or by-product material within the meaning of the United States Atomic Energy Act of 1954, as amended, waste which appears on the list of hazardous waste promulgated by the Commissioner of Environmental Conservation pursuant to Section 27-0903 of the Environmental Conservation Law of the State of New York, and scrap or other material of value separated from the waste stream and held for purposes of materials recycling, as such definition may be amended from time to time by the State.

"Solid Waste Flow Control Laws" means the provisions of Local Law # ~~___4___~~ of ~~1991~~2010 ~~and Local Law #10 2012___ of 1991~~ which respectively require the delivery of Regulated Recyclable Materials and the disposal of Solid Waste at designated facilities,

"Solid Waste Management Plan" means the plan for management of Solid Waste in the County approved by the State Department of Environmental Conservation ~~on DecemberMay, 31 1991~~2020, and approved by the Ulster County Legislature on February 16,

2021, as amended from time to time pursuant to law.

"State" means the State of New York.

"System" means collectively all elements of any sites containing the facilities constructed or obtained by the Agency to carry out the purposes of this Agreement, including interim Satellite Aggregation Centers for the processing of Regulated Recyclable Materials and interim landfills to be obtained pursuant to law and agreement with the municipalities owning such landfills, and the facilities identified in the Solid Waste Management Plan, except that the term System shall not include any ~~combustible~~ incineration, ~~chemical recycling facility, or~~ ~~or~~ waste-to-energy facility, with the exception of anaerobic digestion.

ARTICLE II - AGREEMENT TO FINANCE AND CONSTRUCT SYSTEM

Section 2.01. No Responsibility of County with Respect to System; Financing of System. The County is not responsible, by reason of the execution and delivery of this Agreement or any other reason whatsoever, and has not undertaken any responsibility for the design, construction or equipping of the System and related structures or the ownership, operation or, maintenance thereof, and the County shall not in any way be deemed to have incurred any liability to the Agency, any trustee for the Bonds, any holder of the Bonds or any other person whatsoever with respect to any matters relating thereto. It is understood and agreed that the primary interest of the County in the System is to enable the Agency to provide for the service of accepting, processing and/or disposing of Solid Waste and accepting, processing and marketing of Regulated Recyclable Materials delivered to the System in accordance with Sections 3.02 and 3.05 of this Agreement. ~~It is understood that the provisions of this paragraph shall in no way limit the obligation of the county to pay Net Service Fees if and to the extent required under Section 4.01 of this Agreement in consideration for the services rendered hereunder by the Agency to the County.~~

The Agency agrees to cause the costs to planning, designing, constructing and equipping the System to be financed in accordance with a resolution authorizing the Bonds. Any Bonds issued by the Agency to finance a portion of such costs of the System shall not constitute a debt of the State or the County, and neither the State nor the County shall be liable thereon, nor shall the Bonds be payable out of any funds of the Agency other than those pledged in accordance with a resolution authorizing the Bonds.

Section 2.02. Construction of System. The Agency, a part of the service to be provided hereunder, will cause the planning, design, construction, equipping and completion of the System as more fully described in the Solid Waste Management Plan.

The Agency shall notify the County of the existence or occurrence of ~~(a) any circumstance of which the Agency shall have knowledge and which would directly and materially adversely affect the ability of the Agency to construct, equip and complete the System in accordance herewith and (b) any event or circumstance, whether immediate or prospective, of which the Agency shall have knowledge and which would result in the obligation of the County to pay a Net Service Fee. In addition, the Agency shall deliver to the County such additional information as the County may request including but not limited to (a) periodic reports estimating the anticipated Net Service Fee, and (b) periodic statements of costs that will cause adjustments to the Net Service Fee as further provided in Section 4.01 of the Agreement. The County shall have the right to assist in or participate, at its expense, in any action or proceeding in which the Agency shall have a right to assist or participate in relating to an actual or potential increase in the amount of the Net Service Fee but the outcome will in no way reduce the County's obligation to pay the Net Service Fee.~~

Section 2.03. Minimum Performance Standards for the System. The Agency will cause the System to be planned, designed, constructed, equipped and completed so as to meet all applicable permit conditions and environmental requirements, including the obtaining of

commercially available warranties regarding all facilities to be constructed.

Section 2.04 Source Separation and Waste Reduction. Nothing in this Agreement shall be construed to restrict the rights of the inhabitants of the County to practice source separation for the recovery and recycling of any material, or waste reduction, or the right of the Agency or the County to sponsor, encourage or require source separation or waste reduction. ~~No adjustment in the Net Service Fee shall be made as a consequence of any source separation or waste reduction program or the implementation of the New York State Returnable Container Act or similar measures imposing restrictions on the disposal of containers or Regulated Recycle Materials.~~

ARTICLE III - OPERATION OF SYSTEM

Section 3.01. General Operating and Maintenance Responsibilities. The Agency shall operate and maintain the System in such manner as to ensure that the System is able on a continuous basis (subject to the requirements of sound operating practice) to accept, process and/or dispose of Solid Waste and accept, process and market Recyclable Materials ~~with the object of~~ with the objectives of; (1) Reducing and diverting waste; (2) Maximizing the revenues generated by the System while maximizing the revenues generated by the System and minimizing the costs of operation and maintenance, all in accordance with the Solid Waste Management Plan, prudent engineering and operating practices, permit conditions and environmental requirements.

The Agency and the County acknowledge that a substantial objective of the County is to secure solid waste services for the County in an environmentally sound manner and accordingly the Agency agrees that it shall cause the facilities of the System to be kept neat and clean at all times and to ensure that the System will be operated in full compliance with all environmental permits and approvals.

Section 3.02. Obligation of Agency to Accept Solid Waste. On and after the Effective Date, the Agency will provide, or will cause to be provided, the service of accepting, processing and/or disposing of Solid Waste and accepting, processing, and marketing of Regulated Recyclable Materials. In the event that the Agency should, for any reason, be unable to process or dispose of Solid Waste at the System, upon notice of such effect to the County, the Agency shall cause such Solid Waste to be diverted to an Alternate Disposal facility. The diversion of such

Solid Waste shall be deemed ~~to be in compliance with the Agency's obligation hereunder with respect to such Solid Waste, compliance by the Agency of its obligation hereunder~~ to provide the service of accepting, processing and/or disposing of Solid Waste, ~~and such diversion shall not constitute the basis for either reduction, delay or offset of the County's obligation to pay Net Service Fees hereunder.~~

Section 3.03. Obligation of County to Deliver Solid Waste. The County shall deliver or cause to be delivered to any Solid Waste Management facility as defined in local law #1 of 1991, designated by the Agency and in the County, all Solid Waste and Regulated Recyclable Materials generated within the County.

Section 3.04. Receiving and Operating Hours; Records. The Agency will keep the System open for the receiving of Solid Waste at least from ~~7~~6:00 a.m. until ~~4~~3:00 p.m. Monday through Saturday, excluding legal holidays in the State and at such other times as the Agency and the County mutually agree. The Agency shall cause the System to be operated in accordance with all permit conditions.

The Agency shall maintain and operate such scales as it deems necessary for the operation of the System. These scales shall meet accuracy requirements of the Ulster County Director of Weights and Measures and shall weigh all vehicles transporting Solid Waste and Regulated Recyclable Materials to, and those removing Solid Waste or Regulated Recyclable Materials from the System. The County may, at its own expense, have a representative present

whenever the scales are operated.

Section 3.05. Alternate Disposal Sites The Agency shall provide Alternate Disposal Sites of Solid Waste. The Agency shall designate Alternate Disposal sSites and deliver written notice to the County of such designation. The Agency may change the designation of the Alternative Disposal Ssites from time to time. The Agency agrees to exercise its best efforts to minimize the costs of such disposal.

In the event an Alternate Disposal sSite is used for a period of six months, the Agency shall, within 90 days thereafter, seek public, competitive proposals and award a contract for the Alternate Disposal of Solid Waste to the financially and environmentally responsible proposer submitting the least expensive, responsive proposal. In seeking proposals, the Agency shall seek from the County a list of potential proposers to be used in the process.

Section 3.06. Enforcement of Solid Waste Stream Flow Control Laws. The Agency and the County acknowledge the importance of the Solid Waste Stream Flow Control Laws. The Agency agrees to enforce, and the County agrees to cooperate ~~and assist~~ in the enforcement of the Solid Waste Stream Flow Control Laws to assure that sufficient Solid Waste and Regulated Recyclable Materials enter the System.

ARTICLE IV – PAYMENT OF NET SERVICE FEES TO THE AGENCY

~~Section 4.01. Net Service Fees. (A) In consideration for providing the services of accepting and processing and/or disposing of Solid Waste and accepting, processing and marketing Regulated Recyclable Materials delivered by or on behalf of the County hereunder and such other services being rendered by or on behalf of the Agency to the County in connection therewith, commencing on the Effective Date the Agency shall have the right to charge the County and the County shall have the obligation to pay the Agency Net Service Fees when due, calculated according to the following formula:~~

~~$(BDS + BRF + AE) \text{ minus } (TF + RMR + OR)$~~

~~where:~~

~~BDS = Bond Debt Service, the amount of principal of the interest on Bonds owed during the calculation period, including any coverage requirements.~~

~~BRF = Bond Reserve Funds, the amounts, if any, required to be deposited during the calculation period in the Debt Service Reserve Fund, Operating Reserve Funds, and other reserve funds established under the trust indenture.~~

~~AE = Agency Expenses, the actual expenses of the Agency for the calculation period, including costs incurred in operating the System, and paying the costs of Alternate Disposal, as determined pursuant to Subsection 4.01 (c) hereof.~~

~~TF—The total of the per ton fees collected by the Agency for processing or disposal of Solid Waste, and processing of Regulated Recyclable Materials at the System.~~

~~RMR—Regulated Recyclable Materials Revenue, the total amount of revenues received by the Agency during the calculation period from the sale of Regulated Recyclable Materials.~~

~~OR—Other Revenues, the total amount of other funds available to the Agency for purposes of meeting its obligations hereunder.~~

~~Calculation periods will be the six-month periods ending on September 1 and March 1 of each year. By September 30 of each year, the Agency shall notify the County of the amount, if any, payable as the Net Service Fee for the two prior calculation periods and any Net Service Fees due and owing from previous calculation periods. The amount of the Net Service Fee will be due and payable by the County on the tenth business day preceding the Bond Interest Payment Date next following the end of such calculation period. The County shall appropriate in its annual budget funds sufficient to pay the Net Service Fee.~~

~~(B) The Agency covenants to establish per ton fees for disposal of Solid Waste at the System at rates reasonably calculated to result in $(BDS + BRF + AE)$ being not less than $(TF + RMR + OR)$ for each calculation period described above. The Agency further covenants to fund and maintain throughout the term of this Agreement an operating reserve account which shall be used in the first instance to fund any short-term operating deficit. The Agency shall notify the County of any draw on the operating reserve account. If the Agency fails to receive sufficient revenues in any~~

~~calculation period to pay (BDS + BRF + AE) for such calculation period, or fails to maintain a sufficient operating reserve account, and Net Service Fees are paid by the County pursuant to this Article IV, the Agency shall thereafter exercise its best efforts in consultation with the County to reimburse the County amounts paid by the County for Net Service Fees as a result of such failure. The obligation to reimburse the County for Net Service Fees paid by the County shall be continuing.~~

~~The Agency further agrees to plan for future capital improvements by considering increasing per ton fees for disposal of Solid Waste to fund such reserve funds for such capital improvements as the Agency shall from time to time establish.~~

~~(C) Agency Budget; Modifications. No later than July 15 of each year the Agency shall provide to the County Legislature the proposed Agency Budget for the next ensuing calendar year. The County Legislature shall have the right to make reasonable requests for documentation in support of the estimates of all items of revenue and expenditures set forth therein, and the Agency shall promptly and fully comply with all such requests. The County Legislature shall have the right, not later than the following August 15, to request modifications with respect to such proposed Agency Budget, which modifications shall be accepted by the Agency and the adopted Agency Budget for such calendar year shall contain such modifications, provided, however, that in the event the Agency determines that such modifications are not in the best interest of the Agency, the Agency, by the affirmative vote of at least two-thirds of the entire voting strength of the members of the Agency, may adopt a resolution requesting that such modifications not be made or that such modifications be modified, in whole or in part, and stating the reason or reasons therefor, which~~

~~resolution shall immediately be transmitted to the County Legislature not later than the following September 1 by delivery to the Clerk of the County Legislature, in which event the County Legislature shall consider such request, and, not later than twenty one days after receiving such request, notify the Agency whether it agrees to any such request, in whole or in part, which determination by the County Legislature shall be a final and binding determination of such modifications, and failure of the County Legislature to so act within the twenty one day period shall be deemed to be an agreement with such request; provided, further that the Agency Budget shall not, as finally modified, be less than the sum of (i) the principal of and interest on any obligations of the Agency payable during such calendar year; (ii) the amounts, if any, required to be deposited during such calendar year, including bond coverage requirements, in any debt service reserve fund, and/or, operating reserve fund established under any trust indenture with respect any Bonds of the Agency; and (iii) the estimated expenses of the Agency as set forth in the Agency Budget for such calendar year to be incurred in the operation and maintenance of the System and for Alternate Disposal. For purposes of determining the estimated expenses to be incurred in the operation and maintenance of the System and for Alternative Disposal for purposes of this Section, operation and maintenance and Alternative Disposal expenses shall not include any administrative expenses of the Agency, salaries of administrative personnel, including benefits and other perquisites and any other expense not necessary for the physical operation and maintenance of the System or for Alternate Disposal. The determination of whether an operation and maintenance expense is necessary for the physical operation and maintenance of the System or for Alternate Disposal shall be made by the Agency, which determination shall be final and conclusive. Notwithstanding anything herein to the contrary, administrative expenses of the Agency and~~

~~salaries of administrative personnel, including benefits and perquisites for administrative personnel, shall not be reduced by the County Legislature to an amount less than that in the Agency Budget for the then current calendar year as previously submitted to the County Legislature and may be increased to an amount not exceeding twenty percent in excess of that contained in such Agency Budget for the then current fiscal year without being subject to the modification process herein set forth.~~

~~For the purpose of this subsection, the term ACounty Legislature@ shall mean the legislative body of the County, commonly known as the County Legislature, or a duly appointed committee or representative of the County Legislature, and the term AAgency Budget@ shall mean the annual operating budget of the Agency and shall not include any capital fund or account established under any trust indenture with respect to the Bonds.~~

~~Section 4.02. Obligation of County to Pay Net Service Fees. The amount of Net Service Fees payable hereunder from time to time, if any, shall be deemed to be an operating expense of the County, and the County agrees that, for so long as the services of accepting and processing and/or disposing of Solid Waste and accepting, processing and marketing Regulated Recyclable Materials is provided in accordance with this Agreement, the obligation of the County to pay Net Service Fees hereunder, in the amount and at the times herein specified, whether to the Agency or a trustee of the Bonds, shall be absolute and unconditional and shall not be subject to any defense (other than payment) or any right of set off, recoupment, counterclaim, deduction or other right which the County or any other entity may have against the Agency, a trustee of the Bonds, any holder of~~

~~Bonds, or any other person whatsoever. The County shall take such action as may be necessary to provide for the timely payment of the Net Service Fees due hereunder. The County hereby acknowledges that the services to be provided by the Agency pursuant to this Agreement are of a valuable and unique nature to the County and that the Net Service Fees to be paid by the County to or for the account of the Agency constitute fair consideration therefor.~~

~~Section 4.03. Annual Settlement Statement. The Agency shall cause all records related to the computation of Net Service Fee and all weight tickets to be audited by a firm of independent public accountants selected by the Agency within 30 days following the end of the Agency=s fiscal year. The Agency shall deliver a certified copy of the audit report to the County and any adjustment required thereby shall take place within 60 days of delivery of the audit report, and any such adjustment shall constitute a final settlement of the account between the parties for such year.~~

~~Section 4.04. Default of the County and Remedies of Agency. The Agency shall have all the remedies prescribed by law and by this Agreement for the enforcement of collection of the Net Service Fees to be made by the County under this Agreement. Notwithstanding the initiation of any of such remedies, the County shall remain obligated to pay the Net Service Fees required to be made by it under this Agreement.~~

~~Section 4.05. Default of the Agency and Remedies of County. The County shall have the right to enforce this Agreement by the exercise of all the remedies set forth in this Agreement or prescribed by or otherwise available under law, provided such remedies shall not include a right~~

~~to terminate this Agreement as long as there are Bonds outstanding. Notwithstanding the initiation of any of such remedies, the Agency shall remain obligated to provide such services required to be undertaken by it under this Agreement.~~

~~Section 4.06. Assignment of Claim. In the event and to the extent that the County's payment of Net Service Fees results from the failure of another person to fulfill a payment obligation to the Agency, the Agency shall assign to the County its claim for payment from such person. To the extent the County is reimbursed for the payment of such Net Services Fees from a source other than such claim for payment, such claim for payment shall be assigned by the County back to the Agency.~~

ARTICLE IV - ADDITIONAL COVENANTS

Section 54.01. Licenses, Approvals and Permits. The County will provide or cause to be provided all such cooperation and assistance as may reasonably be requested by the Agency in connection with the obtaining and maintaining in a timely manner of all licenses, approvals, user fees and permits to be obtained for the System and its operation as provided in the Agreement. This provision shall not be construed as a waiver by the County of its own requirements.

Section 54.02. Right of Inspection. The Agency covenants and agrees to permit duly authorized representatives of the County to have reasonable access to the System for the purpose of inspection and verification of the construction, operation and maintenance of the System, provided that the County will comply with all reasonable safety rules and will use its best efforts to cause minimum interference with the operation of the System.

Section 54.03. Insurance. The Agency shall obtain and maintain throughout the term of this Agreement insurance, to the extent commercially available, to cover the properties and liabilities in such coverage amounts as are reasonable and customary.

Section 54.04. Non-Interference with the Obligations of the Agency. The County pledges and agrees that the County will not limit or impair the rights vested in the Agency to purchase, construct, maintain, operate, repair, improve, increase, enlarge, extend, reconstruct,

renovate, rehabilitate or dispose of the System, or any part of partes thereof, to establish and collect rates, rents, fees and other charges as contemplated hereunder and to fulfill the terms of this Agreement, and any other agreements with any person with respect to the System, or in any way impair the rights and remedies of the holders of the Bonds, until the Bonds, together with interest thereon, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceeding by or on behalf of the holders of the Bonds are fully met and discharged.

Section ~~54~~.05. Activities of the Agency. The Agency covenants and agrees that it will not engage in any activities other than those authorized or reasonably contemplated by the Solid Waste Management Plant or this Agreement without the written consent of the County Legislature.

Section ~~54~~.06. Other Users of the System. The Agency shall not accept and dispose of and/or process in the System Solid Waste or Regulated Recyclable Materials from outside the County, unless the County shall consent in writing prior thereto. This section shall only apply if the Agency is successful in siting an in-county landfill. It is permissible for the Agency to accept and dispose of Solid Waste and/or Regulated Recyclable Materials outside of Ulster County

Section ~~54~~.07. Reports; ~~Net Service Fee Estimates~~ and Other Information. The Agency shall report on a regular basis to the appropriate committees of the County Legislature and to the County ~~Administrator=s office and Treasurer=s~~ Executive's office on request. The Agency shall submit ~~monthly~~annual written reports to the County with respect to such matters relating to the operation and maintenance of the System and the administration of this Agreement, ~~including estimated and projected Net Service Fees including monthly written reports which shall, at a minimum, certify: (i) the number of gross tons of Solid Waste or Regulated Recyclable Materials delivered to the System; (ii) the quantity of Solid Waste disposed of and Regulated Recyclable Materials processed and sold; (iii) the types of and quantity of wastes which were refused acceptance for disposal or processing; (iv) the amount and price of Regulated Recyclable Materials sold and other revenues.~~

Section ~~54~~.08. Indemnification with Respect to System Operation. The Agency agrees that it will protect, indemnify, and hold harmless the County and its officers, employees and agents (collectively, the ~~@~~"Indemnified Parties"~~@~~) from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and attorneys'= fees, and will defend the Indemnified Parties in any suit, including appeals, for personal injury to, or death of, any person or persons, or loss or damage to property arising out of the operation of the System or the performance (or non-performance) of the Agency='s obligations under this Agreement. The Agency shall not, however, be required to reimburse or indemnify any Indemnified Party for loss or claim due to the negligence of any Indemnified Party, and the

Indemnified Party whose negligence is adjudged to have been the primary cause of such loss or claim will reimburse the Agency for the costs of defending any suit as required above. An Indemnified Party shall promptly notify the Agency of the assertion of any claim against it for which it is so entitled to be indemnified, shall give the Agency the opportunity to defend such claim, and shall not settle such claim without the approval of the Agency. These indemnification provisions are for the protection of the Indemnified Parties only and shall not establish, of themselves, any liability to third parties.

The County agrees that it will protect, indemnify, and hold harmless the Agency and its officers, employees and agents (collectively, the "Indemnified Parties") from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and attorneys' fees, and will defend the Indemnified Parties in any suit, including appeals, for personal injury to, or death of, any person or persons, or loss or damage to property arising out of the operation of the System or the performance (or non-performance) of the County's obligations under this Agreement. The County shall not, however, be required to reimburse or indemnify any Indemnified Party for loss or claim due to the negligence of any Indemnified Party, and the Indemnified Party whose negligence is adjudged to have been the primary cause of such loss or claim will reimburse the County for the costs of defending any suit as required above. An Indemnified Party shall promptly notify the County of the assertion of any claim against it for which it is so entitled to be indemnified, shall give the County the opportunity to defend such claim, and shall not settle such claim without the approval of the County. These indemnification provisions are for the protection of the Indemnified Parties only and shall not establish, of themselves, any liability to third parties.

Section ~~54~~.09. Effect of Breach. Failure on the part of the Agency in any instance or under any circumstance to observe or fully perform any obligation assumed by or imposed upon it by this Agreement or law shall not make the Agency liable in damages to the County or relieve the County of ~~its obligations to make payments of Net Service Fees hereunder or to fully perform~~ any other obligation required of it under this Agreement for so long as the Agency shall be providing the solid waste dispose services contracted to be provided by the Agency under this Agreement. The Agency specifically recognizes that the County is entitled to sue the Agency, and the County specifically recognizes that the Agency is entitled to sue the County, for injunctive relief, ~~madamus~~mandamus, specific performance or to exercise such other legal or equitable remedies (other than termination of this Agreement except under the conditions set forth herein) not herein excluded, to enforce the obligations and covenants of the other under this Agreement.

Section ~~54~~.10. Notice of Litigation. The County shall deliver written notice to the Agency of any litigation or similar proceeding to which the County shall be a party and which shall question the validity or enforceability of this Agreement. The Agency shall have the opportunity to contest any such litigation or proceeding.

The Agency shall deliver written notice to the County of any litigation or similar proceeding to which the Agency shall be a party and which shall question the validity or enforceability of this Agreement. The County shall have the opportunity to contest any such litigation or proceeding.

~~Section 5.11. Funds Toward Closure of Existing Landfills. The Agency agrees~~

~~to provide funds to municipalities within the County to assist in the proper closure of existing landfills, which funds shall be allocated in accordance with a formula to be agreed upon by the Agency and the County.~~

ARTICLE VI - MISCELLANEOUS

Section ~~65~~.01. Term of Agreement. This Agreement shall be in full force and effect and be legally binding upon the Agency and the County from the date of the execution and delivery hereof. This Agreement shall remain in full force and effect through May~~re~~h ~~31~~, 201730. This Agreement may be extended by mutual agreement by the parties.

Section ~~65~~.02. Termination of Agreement.~~The County shall not have the right to terminate this Agreement for so long as any Bonds remain outstanding. Except as expressly provided above, the County shall have no right to terminate this Agreement for any reasons whatsoever, including breach or default by the Agency in its obligations hereunder; notwithstanding the foregoing, the County's obligation to pay Net Service Fees hereunder is conditioned upon the provision by the Agency of the service of accepting and processing and/or disposing of Solid Waste and accepting, processing, and marketing Regulated Recyclable Materials in accordance with this Agreement.~~

~~Notwithstanding any contrary provision contained in the Agreement, t~~The County shall have the right to terminate the Agreement on 360 days written notice, subject to completion

of the following conditions in advance of such termination:

- (i) the payment by the County to the Agency of an amount sufficient to defease ~~the~~any Bonds, or upon other provisions satisfactory to the trustee for the Bonds being made to protect and preserve the rights of the owners of the Bonds under the trust indenture;
- (ii) County acquisition of all assets and assumption of all liabilities of the Agency, subject to any defenses that may exist; and
- (iii) the satisfaction of all necessary regulatory and other approvals.

The Agency shall have no right to terminate this Agreement.

Section 65.03. Amendment of Agreement. This Agreement may be amended, waived, modified, and supplemented by agreement of the parties. Any amendment of this Agreement so consented to as provided above shall be by written agreement, duly authorized and executed by the Agency and the County.

Section 65.04. Further Assurances. At any and all times the Agency and the County so far as may be authorized by law shall pass, make, do, execute, acknowledge and deliver any and every such further resolution, acts, deeds, conveyances, instruments, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning, and confirming all and singular the rights and interests ~~and payments of Net Service Fees~~ now or hereafter pledged or assigned, or intended so to be, as security for the Bonds or any portion thereof. The Agency and the County shall each at all times, to the full extent

permitted by law, defend, preserve and protect the pledge of ~~the Net Service Fees and~~ all rights of every holder of any Bonds against all claims and demands of all persons whomsoever. The County shall also provide such information, execute such further instruments and documents and take such reasonable action as may be reasonably requested by the underwriters for the Agency, not inconsistent with the provisions of this Agreement and not involving the assumption of obligations other than those provided for in this Agreement, to permit the offer and sale of the Bonds.

Section ~~65~~.05. Nonassignability. Except as expressly provided in this Section 6.05, no party to this Agreement may assign or encumber any interest herein to any person without the consent of the other party hereto, and the terms of this Agreement shall inure to the benefit of and be binding upon the respective successors or assigns of each party hereto. The parties hereto retain the right to reorganize and to have any other body corporate and politic succeed to the rights, privileges, powers, immunities, liabilities, disabilities, functions and duties of either party hereto, as may be authorized by law, in the absence of any prejudicial impairment of any obligation of contract hereby imposed. The Agency may assign its rights hereunder to a trustee as security as may be required in connection with the issuance of Bonds or to the providers of any surety/insurance or credit facility securing the Bonds.

Section ~~65~~.06. Beneficiaries of Agreement. Except as specifically provided in Section 6.05, nothing in this Agreement whether express or implied, shall be construed to give to any other person whatsoever other than the parties hereto, a trustee of the Bonds, the providers of any surety/insurance or credit facility and the holders of the Bonds any legal or equitable right,

remedy or claim under or in respect of this Agreement, and this Agreement shall be for the sole and exclusive benefit of the parties hereto, a trustee of the Bonds, the providers of any surety/insurance or credit facility and the holders of the Bonds, and their successors and assigns.

Section 65.07. Notices. Any notice of communication required or permitted hereunder shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail, postage prepaid, as follows:

If to the County: Chairman County Attorney
Ulster County Legislature
244 Fair Street
P.O. Box 1800
Kingston, New York 12401

If to the Agency: Ulster County Resource Recovery Agency
Attention: Executive Director
52 Main Street, UPO Box 4298999 Flatbush Road, PO Box 6219
Kingston, New York 12401

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

Section 65.08. Severability. If any provision of this Agreement shall for any reason be ~~held to~~ held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not effect any of the remaining provisions of this Agreement and this Agreement shall be construed and enforced as if such invalid and unenforceable provision had not been contained herein.

Section 65.09. Execution of Document. This Agreement may be executed in any number of counterparts, any of which shall be regarded for all purposes as an original and all of which shall constitute but one and the same instrument. Each party agrees that it will execute any and all deeds, documents or other instruments, and take such other action as is and take such action as is necessary to give effect to the terms of this Agreement.

Section 65.10. Entirety. This Agreement merges and supersedes all prior negotiations, representations and agreements between the parties hereto relating to the subject matter hereof and constitutes the entire agreement between the parties hereto in respect thereof, all prior negotiations, representations and agreements, whether oral or written, having been merged herein.

Section 65.11. Waiver. Unless otherwise specifically provided by the terms of this Agreement, no delay or failure to exercise a right resulting from any breach of this 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. Any waiver must be in writing and signed by the party granting such waiver. If any covenant or agreement contained in this Agreement is breached by any party and thereafter waived by any other party, such waiver will be limited to the particular breach so waived and will not be deemed to waive any other breach under this Agreement.

Section 65.12. Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State.

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ARTICLE VII - CONTINGENCY

Section 76.01. Contingency. This Agreement is contingent upon the validity and enforceability of the County's local laws dealing with recycling and flow control (Local Law #84 of 19912010 and Local Law #910 of 19912012) or, alternatively, upon the Agency obtaining valid and enforceable agreements with each municipality in the County which will allow the Agency the exclusive right to dispose of the municipalities' Solid Waste and Regulated Recyclable Materials for the duration of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers or representatives as of the day and year first above written.

ULSTER COUNTY RESOURCE RECOVERY AGENCY

By: _____
TITLE: CHAIRMAN

COUNTY OF ULSTER

By: _____
TITLE: CHAIRMAN, COUNTY LEGISLATURE