

**AMENDMENT NO. 5
TO
SOLID WASTE DISPOSAL SERVICE AGREEMENT**

THIS AMENDMENT NO. 5 to that certain Disposal Agreement as defined below, is made as of the 7th day of JANUARY, 2016, by and between THE COUNTY OF DUTCHESS (the "County") and THE DUTCHESS COUNTY RESOURCE RECOVERY AGENCY (the "Agency").

WITNESSETH:

WHEREAS, as of December 1, 1984, the County and the Agency entered into a certain Solid Waste Disposal Service Agreement (the "Disposal Agreement"), whereby the Agency agreed to furnish to the County the service of accepting and processing and/or disposing of Solid Waste (as defined in the Disposal Agreement) in consideration of the payment by the County to the Agency for such service of Net Service Fees (as defined in the Disposal Agreement) if and to the extent required by the Disposal Agreement; and

WHEREAS, the Agency and the County have previously executed Amendments 1 through 4 of the Disposal Agreement, and desire to further amend the Disposal Agreement relating to the payment of Net Service Fees from the County to the Agency.

NOW, THEREFORE, in order to provide for the continued disposal of Solid Waste by the Agency, the continued obligation of the County to provide the Guaranteed Annual Tonnage and pay Net Service Fees as required under the Disposal Agreement, and to convert the Net Service Fee calculation, application and payment schedule to a calendar year basis, in consideration of the premises and agreements herein and other good and valuable consideration, the parties hereto agree to and do hereby amend the Disposal Agreement to read as follows:

Section 1.01. Definitions

...

6-0852-5

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

...

Section 4.01 sub paragraph (A) of the Disposal Agreement is amended to read as follows:

Section 4.01. Net Service Fees. (A) In consideration for providing the service of accepting and processing and/or disposing of Solid Waste 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 to the Agency Net Service Fees when due, calculated according to the following formula:

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

where:

BDS = Bond Debt Service, the amount of principal of and interest on Bonds accrued and to accrue during the calculation period (excluding amount due by acceleration).

BRF = Bond Reserve Funds, the amounts, if any, required to be deposited during the calculation period in the Debt Service Reserve Fund and Reserve and Contingency Fund established under the Trust Indenture.

CSF= Contractor Service Fee, the base compensation to the Contractor accrued during the calculation period consisting of the Service Fee, Supplemental Electrical Compensation, any property taxes or assessments directly related to ownership of the Facility and any other amounts provided in the Service Agreement subject to the limitations set forth in subsections 4.01(B) and (C) hereof.

AE= Agency Expenses, the accrued expenses of the Agency for the calculation period, including costs incurred for providing alternate disposal, subject to the limitation set forth in subsection 4.01(C) hereof.

TF= The total of the per ton fees accrued by the Agency for disposal of Solid Waste at the Facility or at the Alternate Disposal Site.

ER= Energy Revenues, the total amount of revenues accrued by the

Agency during the calculation period from the sale of energy generated by the Facility.

RMR= Recovered Materials Revenues, the total amount of revenues accrued by the Agency during the calculation period from the sale by the Contractor of Recovered Materials.

OR= Other Revenues, the total amount of other funds available to the Agency under the Trust Indenture for purposes of meeting its obligations thereunder, including ER and RMR actually received the accruals of which could not be taken into account under (i) and (ii) below, including amounts for the payment of capitalized interest during the calculation period and earnings from the investment of amounts on deposit under the Trust Indenture but excluding amounts on deposit in the Construction Fund and the Debt Service Reserve Fund but not excluding earnings on these funds.

The calculation periods will be the three-month period beginning on each January 1st and ending on each March 31st, and the nine-month period beginning on each April 1st and ending on each December 31st. Within ten business days after the end of each January 1st through March 31st calculation period, the Agency shall notify the County of the amount, if any, payable as the Net Service Fee for such calculation period. Not later than the ninth day of November during each April 1st through December 31st calculation period the Agency shall notify the County of the amount, if any, estimated to be payable as the Net Service Fee for such calculation period. The amount of Net Service Fee for each January 1st through March 31st calculation period and the amount of the estimated Net Service Fee for each April 1st through December 31st calculation period will be due and payable by the County on the tenth business day preceding the Bond Interest Payment Date next following the end of each such calculation period, both of which payments shall be subject to the audit and adjustment provisions of Section 4.03 below. For purposes of calculating Net Service Fee, (i) amounts accrued shall only include actual and estimated accruals during such calculation period and shall not include amounts accrued in any previous calculation period and (ii) amounts accrued during such calculation period for accounts for which actual payments are more than forty-five days in arrears as of the calculation date shall not be included as accrued amounts, provided however, that (iii) for the calculation period ending December 31, 2015, accruals from January 1, 2015 may be included.

All other terms of the Disposal Agreement, except to the extent expressly amended hereby, shall remain in full force and effect.

This Amendment No. 5 may be executed in any number of counterparts, any one of which shall be regarded for all purposes as an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 5 to be executed by their duly authorized officers or representatives as of this 7TH day of ~~December~~, JANUARY 2016.

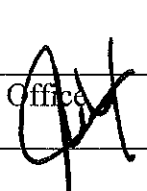
DUTCHESS COUNTY RESOURCE RECOVERY AGENCY

COUNTY OF DUTCHESS

By  12/22/15
WILLIAM J. CALOGERO
Executive Director

BY: 
William F.X. O'Neil
Deputy County Executive

APPROVED AS TO FORM:

County Attorney's Office  1/6/16
By _____

84-0700-1/08-WM-A5

1/7/16