

SOLID WASTE DISPOSAL SERVICE AGREEMENT

Between

THE COUNTY OF DUTCHESS

and

DUTCHESS COUNTY RESOURCE  
RECOVERY AGENCY

Dated as of December 1, 1984

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## SOLID WASTE DISPOSAL SERVICE AGREEMENT

SOLID WASTE DISPOSAL SERVICE AGREEMENT dated as of December 1, 1984 between THE COUNTY OF DUTCHESS, a municipal corporation of the State of New York, and DUTCHESS COUNTY RESOURCE RECOVERY AGENCY, a public benefit corporation duly organized and existing under the laws of the State of New York:

### WITNESSETH:

WHEREAS, the County and the Agency have for some time been concerned with the need for providing facilities for managing the solid waste disposal needs of the County in a manner designed to protect the environment and promote the recovery of useful resources from such solid wastes; and

WHEREAS, the County and the Agency have determined that there is a need for such facilities to provide for the acceptance and processing and/or disposal of at least 120,000 tons of Solid Waste annually for the term of this Agreement; and

WHEREAS, the Agency has entered into an agreement (the Construction Agreement as hereinafter defined) with the Contractor whereby the Contractor will design, construct and conduct acceptance testing of a mass-burning, cogenerating, resource recovery facility (the Facility as hereinafter defined) to process solid waste, recover saleable materials and generate steam and electricity; and

WHEREAS, the Agency has entered into an agreement (the Agency Service Agreement as hereinafter defined) with the Contractor whereby the Contractor will receive and process



guaranteed quantities of solid waste and the Agency will provide certain guaranteed quantities of such waste; and

WHEREAS, the parties propose to enter into this Solid Waste Disposal Service Agreement in order that the Agency furnish to the County the service of accepting and processing and/or disposing of Solid Waste 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 purposes of this Agreement, the following words and terms shall have the respective meanings set forth below, unless the context otherwise requires:

"Acceptance" means the acceptance of the Facility by the Agency pursuant to the applicable provisions of the Construction Agreement.

"Acceptance Date" means the date the Agency sets to accept the Facility in accordance with the Construction Agreement.

"Acceptance Test" means test of the Facility, conducted by the Contractor, in accordance with procedures specified in Appendix D of the Construction Agreement.

"Acceptance Test Operations" means the period beginning on the date the Contractor designates pursuant to the Construction Agreement for the Acceptance Test of the Facility and ending on the Acceptance Date or the expiration date of the Extension Period, whichever date occurs first.

"Agency" means Dutchess 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 thereof.

"Agency Engineer" means Gill, Korff & Associate, Architects and Engineer, P.C., an affiliate of Henningson, Durham & Richardson, Inc., or another nationally-recognized, independent, consulting engineer (or firm of engineers) retained by the Agency to perform services required in connection with this Agreement and acceptable to the Trustee.

"Agency Service Agreement" means the Service Agreement dated as of December 1, 1984, among the Contractor, PEC and the Agency, as amended, modified or supplemented from time to time in accordance with its terms and, to the extent applicable, in conformity with the Trust Indenture.

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

"Alternate Disposal Site" means that certain landfill located in the Town of Fishkill, New York and such other lawfully available facility or facilities as may hereafter be utilized by the Agency from time to time and designated by the Agency pursuant to Section 3.06 hereof for the disposal of Solid Waste for purposes of this Agreement.

"Bonds" shall have the meaning given such term in the Trust Indenture.

"Bypass Waste" means that portion of the Solid Waste that the County has agreed to cause to be delivered to the Facility that cannot be processed at the Facility due to the unavailability of the Facility.

"Contractor" means Pennsylvania Resource Systems, Inc., a Delaware corporation having its principal place of business at 32nd Street, Pittsburgh, Pennsylvania 15201, or its successors or assigns, or such other person as may undertake its rights and responsibilities with respect to or be substituted in its place under the Agency Service Agreement.

"Construction Agreement" means the construction agreement dated as of December 1, 1984, by and between PEC, the Contractor and the Agency and any similar agreement entered into between the Agency and any person upon default under or termination of such agreement.

"County" means the County of Dutchess, State of New York.

"Effective Date" means the Acceptance as such term is described in the Construction Agreement.

"EQBA Funds" means New York State Environmental Quality Bond Act funds as further described in Appendix K of the Construction Agreement.

"Facility" means all elements of the resource recovery facility generally described in the Construction Agreement, including the O'Connor Combustion System, the Site, the

buildings, equipment, rolling stock, machinery and other real and personal property, including such improvement to the Site that may be necessary to fulfill the terms of the Construction Agreement and the Agency Service Agreement but excluding those items set forth in Section 4.6 of the Construction Agreement.

"Hazardous Waste" means any waste that is subject to regulation as a hazardous waste under applicable federal or state statute or regulation.

"Independent Engineer" means a nationally-recognized, independent consulting engineer (or firm of engineers) expert concerning design, construction, operation and maintenance of Solid Waste disposal and resource recovery facilities.

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

"Non-Processible Waste" means all Solid Waste other than Processible Waste.

"PEC" means Pennsylvania Engineering Corporation, a Delaware corporation having its principal place of business at 32nd Street, Pittsburgh, Pennsylvania 15201.

"Process Residue" means material that remains after the processing of Solid Waste for energy and materials recovery and that meets the environmental guarantees required under the Construction Agreement.

"Processible Waste" means Solid Waste which (1) will not cause damage to or adversely affect the operation of the Facility

when processed, (2) can physically pass through the Facility and (3) does not, when processed, result in a violation of environmental standards or performance guarantees set forth in the Construction Agreement or Agency Service Agreement.

"Recovered Materials" means ferrous metal, aluminum, mixed heavy non-ferrous metals, aggregate material and any other materials agreed between the Agency and the Contractor to be recovered from Solid Waste.

"Scheduled Acceptance Date" means the date the Contractor has guaranteed to the Agency that the Facility will be completed in accordance with the Construction Agreement and will have passed the Acceptance Test, namely, the date 822 consecutive days after commencement of work beginning with the Commencement Date as defined in the Construction Agreement or such later date as may be provided for pursuant to any Extension Period (as such term is defined in the Construction Agreement).

"Site" means the real property, located in the County, that the Agency has designated for the construction of the Facility and that is more fully described in Appendix B of the Construction Agreement.

"Solid Waste" means all materials or substances discarded or rejected as being spent, useless, worthless or in excess to the owners or those in possession at the time of such discard or rejection, including, but not limited to, garbage; refuse; industrial and commercial waste; rubbish; contained

gaseous material; incinerator residue; demolition and construction debris; offal; occasional beds, mattresses, sofas, heavy appliances, bicycles and baby carriages; automobile or other vehicle tires (to the extent that air emission criteria are not violated); trees of no more than six feet long and one foot in diameter, branches, leaves and other grass and plant cuttings; excluding Unacceptable Waste.

"Start-Up Operations" means the period beginning on the date the Contractor designates pursuant to the Construction Agreement for the initial processing of Solid Waste at the Facility and ending on the day before the commencement of Acceptance Test Operations.

"State" means the State of New York.

"Trust Indenture" means, with respect to any Bonds, the trust indenture entered into by the Agency with a bank and/or trust company pursuant to which such Bonds will be issued and secured, as originally entered into, or, if amended or supplemented as in such Trust Indenture provided, as so amended or supplemented.

"Trustee" means, with respect to each Trust Indenture, the trustee and its successors and any other corporation which may at any time be substituted in its place pursuant to such Trust Indenture.

"Unacceptable Waste" means sewage, sludge of any kind, other highly diluted water-carried materials or substances and

those wastes in gaseous form; special nuclear by-product material within the meaning of the Atomic Energy Act of 1954, as amended; explosives; pathological and biological wastes; radioactive materials; ashes; foundry sand; human remains; motor vehicles, including such major motor vehicle parts as engine blocks, transmissions, rear ends, springs and fenders; agricultural and farm machinery and equipment; bulk liquid wastes; septic and cesspool pumpouts; noncombustible construction material and/or demolition debris; and Hazardous Waste.



ARTICLE II - AGREEMENT TO FINANCE AND CONSTRUCT FACILITY.

Section 2.01. No Responsibility of County with Respect to Facility; Financing of Facility. 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 Facility and related structures or the ownership, operation or maintenance thereof, or for the acquisition, construction, operation or maintenance of any Alternate Disposal Site, and the County shall not in any way be deemed to have incurred any liability to the Agency, the Contractor, PEC, the Trustee, any holder of 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 Facility and in any Alternate Disposal Site is in assuring the availability of the Facility and the Alternate Disposal Site to the Agency for the purposes, respectively, of enabling the Agency to render the service to the County of providing for the acceptance and processing and/or disposal of all Solid Waste delivered to the Facility in accordance with Section 3.04 of this Agreement and, in the event the Facility is not available to accept or process such Solid Waste, providing for the acceptance of such Solid Waste at the Alternate Disposal Site. 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 whether or not the Facility is operating.

The Agency agrees to cause the costs of designing, constructing and equipping the Facility to be financed in accordance with the Construction Agreement, the Agency Service Agreement, the Trust Indenture and the EQBA Grant Agreement. Any Bonds issued by the Agency to finance a portion of such costs of the Facility 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 therefor under the Trust Indenture.

Section 2.02. Construction of Facility. The Agency will cause the Contractor to design, construct, equip and complete the Facility, including the Start-Up Operations and Acceptance Test Operations thereof, in accordance with the Construction Agreement except in the event of a termination of the Construction Agreement in accordance with Section 13.2 or 13.4 thereof. In addition, the Agency will provide or cause to be provided those items set forth in subsections (a) through (e) of Section 4.6 of the Construction Agreement.

The Agency shall promptly 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 Contractor to construct, equip and complete the Facility in accordance with the Construction Agreement, (b) any audit requested by the Agency pursuant to Section 12.4 of the Agency Service Agreement, and (c) 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, (b) periodic statements of costs that will cause adjustments to the Net Service Fee, and (c) information set forth in Section 4.4 of the Construction Agreement. The County shall have the right to assist or participate, at its expense, in any action or proceeding in which the Agency shall have a right to assist or participate 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.

The County, at its cost, shall maintain and repair the access road to the Site limits, and shall not restrict the use of the access road by or for the benefit of the Agency. The Agency will reimburse the County for all reasonable costs of repair and maintenance of the access road.

Section 2.03. Start-Up Testing. Upon the receipt by the Agency of respective written notices from the Contractor as to the dates upon which Start-Up Operations and Acceptance Test Operations of the Facility will commence and estimates of the quantity and dates of delivery of Solid Waste required for such start-up and testing operations in accordance with the Construction Agreements, the Agency shall promptly furnish a copy of each such notice to the County. Promptly upon receipt of such notice from the Agency, the County will cause Solid Waste to be delivered to the Facility at the times and in the amounts required. The acceptance and disposal of such Solid Waste shall be without fee to the County and no Net Service Fee shall be due from the County in connection with such acceptance and disposal.

Section 2.04. Notice of Acceptance Date. Upon Acceptance of the Facility by the Agency in accordance with the Construction Agreement, the Agency shall give prompt notice to the County of the actual Acceptance Date, and the Agency shall also deliver to the County such evidence of Acceptance as is required to be delivered to the Agency and the Trustee under the Construction Agreement and the Trust Indenture respectively.

Section 2.05. Minimum Performance Standards for Facility. Solely for the purpose of assuring that the Facility will conform to the service requirements of the County (and in light of the provisions of the first paragraph of Section 2.01 of this Agreement). The Agency agrees to cause the Facility to be

designed, constructed, equipped and completed so as to meet minimum performance standards and environmental requirements as determined in accordance with the Construction Agreement.

Section 2.06. Source Separation. Nothing in this Agreement shall restrict the rights of the inhabitants of the County to practice source separation for the recovery and recycling of any material, or the right of the Agency or the County to sponsor, encourage or require source separation. No adjustment in the Net Service Fee shall be made as a consequence of any source separation program or the implementation of the New York State Returnable Container Act or similar measures imposing restrictions on the disposal of containers or recyclable materials.

### ARTICLE III - OPERATION OF FACILITY

Section 3.01. General Operating and Maintenance Responsibilities. Upon Acceptance of the Facility, the Agency shall cause the Contractor to operate and maintain the Facility in such manner as to ensure that the Facility is able on a continuous basis (subject to the requirements of sound operating practice) to receive and process Solid Waste, generate steam and electricity and recover metals and other resources, with the object of maximizing the revenues generated by the Facility and minimizing the costs of operation and maintenance, all in accordance with prudent engineering and operating practices.

The Agency and the County acknowledge that a substantial objective of the County is to secure solid waste disposal services for the County in an environmentally sound manner and accordingly the Agency agrees that it shall cause the Contractor to keep the exterior of the Facility neat and clean at all times and to ensure that the operation of the Facility does not create odor, litter, noise, pollutants or other negative effects. The Facility shall be operated and the Contractor shall guarantee the operation as follows:

- a. No odors emitted from the Facility will be detectable at or beyond the Site boundary.
- b. The Site will be free of litter or Solid Waste of any type at all times.
- c. Noise from the Facility, as measured at the boundary of the buffer zone (described in Appendix

B of the Construction Agreement), will not exceed 70 dB(A) between the hours of 7 a.m. - 10 p.m., and 60 dB(A) between the hours of 10 p.m. - 7 a.m., as required by Part 360 of the New York Code of Rules and Regulations.

- d. The appearance of the buildings and the landscaping within the Site boundary will be maintained in a neat and orderly manner throughout the term of this Agreement.
- e. The interior of the Facility will be neat and clean at all times with daily maintenance schedules include vacuuming and cleaning.
- f. Interior equipment components and machinery, including pipes, will be well-maintained in a clean condition, being painted where required and coded or labeled by system and function.
- g. All Solid Waste, Process Residue and Recovered Materials will each be confined only to enclosed areas designed for their storage or processing.
- h. Spillage of any substances will be cleaned up immediately upon occurrence.
- i. Non-Processible Waste will be available for removal from the Site within 48 hours of receipt at the Facility.
- j. Non-Processible Waste and Unacceptable Waste will be stored in a neat, clean and safe manner.
- k. The Facility will be operated in full compliance with all environmental permits and approvals.
- l. The Facility shall be operated and maintained in accordance with the plan set forth in Appendix E of the Agency Service Agreement.

### Section 3.02. Obligation of Agency to Accept Solid

Waste. On and after the Effective Date, the Agency will provide, or will cause the Contractor, pursuant to the Agency Service Agreement, to provide the service of accepting and processing and/or disposing of all Solid Waste delivered to the

Facility, at a minimum weekly rate of 2,000 tons, and at a maximum weekly rate of 2,800 tons or such lesser amounts as may be determined to be applicable pursuant to Article 9 of the Construction Agreement. In the event that the Agency or Contractor should for any reason be unable to process the Solid Waste it is required to accept under the Agency Service Agreement, upon notice to such effect received from the Contractor, the Agency shall cause such Solid Waste (or so much thereof as shall be set forth in such notice from the Contractor) to be diverted to an Alternate Disposal Site. The diversion of such Solid Waste shall be deemed with respect to such Solid Waste compliance by the Agency of its obligation hereunder to provide the service of accepting and processing and/or disposing of Solid Waste and such diversion shall not constitute a 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 the Facility a minimum of 120,000 tons of Solid Waste per year at a minimum weekly schedule of 2,000 tons, and at a maximum weekly schedule of 2,800 tons or such lesser amounts as may be determined to be applicable pursuant to Article 9 of the Construction Agreement. Bypass Waste shall be counted in determining the County's compliance with this Article.



Section 3.04. Receiving and Operating Hours; Records.

The Agency will cause the Contractor to keep the Facility open for the receiving of Solid Waste from 8:00 a.m. until 5:00 p.m. Monday through Saturday, excluding legal holidays in New York State; provided, however, that the Facility shall be open for the receipt of Solid Waste from 8:00 a.m. until 5:00 p.m. on the Sunday following a week in which a legal holiday occurs. The Agency shall cause the Contractor to operate the Facility continuously seven days per week, 24 hours per day, every day of the year. In the event that the County requests, with not less than 24 hours advance notice, the Agency to accept additional quantities of Solid Waste at times beyond or different from those specified above, the Agency shall use all reasonable efforts to cause the Contractor to accommodate such request. The Agency shall cause the Contractor to make a reasonable effort to accommodate such a request on shorter notice.

The Agency shall cause the Contractor to maintain, and the Agency shall operate, the truck scales at the entrance-exit to the Facility. These scales shall meet accuracy requirements of the Dutchess County Director of Weights and Measures and shall weigh all vehicles transporting Solid Waste to, and those removing Solid Waste or other materials from, the Facility. Each vehicle will be weighed before being emptied or loaded at the Facility, with the time, truck identification, gross weight and tare weight (for exiting vehicles) being entered on a weight

record. The record shall also include a description of the contents and identity of each truck, the driver's signature and the origin of the contents. If, upon testing, the scales do not meet accuracy requirements, the Agency will calculate an appropriate adjustment of completed weighing records and of Service Fees paid since the previous test. If all scales are incapacitated or are being tested, the Agency shall, without delay, notify the Contractor and shall estimate the quantity of Solid Waste delivered. These estimates shall take the place of actual weighing records during the period the scales are unavailable. Copies of all weight records in the form of printed summaries shall be available from the Agency. The County may, at its own expense, have a representative present at the scales utilized at the Facility by the Contractor whenever the scales are operated.

Section 3.05. Manner of Deliveries. All vehicles used to deliver Solid Waste to the Facility shall have a net capacity of at least eight cubic yards and shall be capable of dumping directly into the Facility's storage pit. The Agency shall cause the Contractor to establish, with the approval of the Agency and the County, safety rules and regulations relating to such vehicles and to the conduct of deliveries and removals.

Section 3.06. Residue Disposal. The Agency, or its designated agent, shall provide for the disposal of all Non-Processible Waste and Process Residue. The Agency will make an

Alternate Disposal Site available for the disposal of Solid Waste. The Agency shall designate an Alternate Disposal Site and deliver written notice to the County of such designation. The Agency may change the designation of the Alternate Disposal Site from time to time. The Agency agrees to exercise its best efforts to minimize the costs of such disposal.

ARTICLE IV - PAYMENT OF SERVICE CHARGES  
TO THE AGENCY

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 for Net Tonnage Processed, as adjusted pursuant to Articles 6.5, 7.2.2 and 7.2.3 of the Agency

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 first calculation period will be from the dated date of the Bonds to April 1, 1985; thereafter, the calculation periods will be the six-month periods ending on each September 30 and March 31. Within ten business days after the end of each calculation period, the Agency shall notify the County of the amount, if any, payable as the Net Service Fee for such calculation period. The amount of Net Service Fee for each such 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 such calculation period. For purposes of calculating Net Service Fee, (i) amounts accrued shall only include actual 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.

(B) In calculating the CSF component of the Net Service Fee under subsection 4.01(A) hereof, if any amounts are payable by the Agency to the Contractor pursuant to Article 7.2.3 of the Agency Service Agreement, such amounts shall be included in the calculation of CSF only if and to the extent such amounts represent operating costs actually incurred by the Contractor and shall not include amounts payable for energy and Recovered Material revenues that the Contractor would have realized from the disposal of Solid Waste that the Agency was obligated to

deliver had a Shutdown not occurred. The County shall in no event be obligated to pay the Agency amounts payable by the Agency to the Contractor as a consequence of the failure of the Agency to otherwise fulfill its obligations to the Contractor under the Agency Service Agreement.

(C) In the event it is determined by an Independent Engineer that the Facility has been substantially inoperable for a period of two years for the purpose of processing Solid Waste accepted by the Agency pursuant to this Agreement, the total of the amounts of CSF and AE, including the costs of providing alternate disposal, included in the calculation of Net Service Fees shall not exceed an amount equal to twice the sum of the average respective amounts of CSF and AE included in such calculation for each calculation period during the preceding three complete operational fiscal years, as adjusted in accordance with the formula for adjusting the Service Fee for Net Tonnage Processed up to the Guaranteed Annual Tonnage in paragraph numbered one of Article 6.5 of the Agency Service Agreement, or such greater amount as the County may determine to be reasonable under the circumstances considering, among other things, public health requirements and the availability and cost of alternate disposal options, to the extent permitted by law. If such determination that the Facility has been substantially inoperable is made during the third year of operation, the limitation expressed in the preceding sentence shall be based on

the amounts of CSF and AE included in the Agency's budget for the first complete fiscal year; if such determination is made during the fourth or fifth year of operation, such limitation shall be based on the budget for the last complete fiscal year prior to the beginning of the period of substantial inoperability.

(D) The Agency covenants to establish per ton fees for disposal of Solid Waste at the Facility or at the Alternate disposal Site at rates reasonably calculated to result in  $(EDS + BRF + CSF + AE)$  being not greater than  $(TF + ER + RMR + OR)$  for each calculation period. If the Agency fails to receive revenues at such level for any calculation period, the Agency shall thereafter exercise its best efforts to pay the County amounts paid by the County as a result of such failure.

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 service of accepting and processing and/or disposing of Solid Waste 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 the Trustee, 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, the Trustee, any holder of Bonds, the Contractor, PEC or any other person whatsoever. The County shall take all 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 30 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. Reports. The Agency shall cause the Contractor to submit monthly written reports to the Agency with respect to such matters relating to the operation and maintenance of the Facility and the administration of this Agreement as the Agency shall reasonably request. The monthly report shall, at a minimum, certify: (i) the number of gross tons the Agency

delivered to the Facility; (ii) the number of tons returned to the Agency as Process Rejects; (iii) the number of tons of Process Residue transferred to the Agency; (iv) the quantity of Solid Waste accepted but not processed; (v) the types and quantity of wastes which the Contractor refused to accept for processing; (vi) the amount and price of Recovered Materials sold and (vii) the amount of steam and electricity sold. The Agency shall provide copies of such reports to the County upon request by the County.

Section 4.05. 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 4.06. Assignment of Claims. 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 Service Fees from a source other than such claim for payment, such claim for payment shall be reassigned by the County to the Agency.

ARTICLE V - ADDITIONAL COVENANTS

Section 5.01. Energy Purchase Agreements. The Agency will take such action in respect of its rights under the Energy Purchase Agreements and Articles Four and Five of the Agency Service Agreement as the County shall from time to time request.

Section 5.02. 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 and permits to be obtained for the Facility 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 5.03. Right of Inspection. The Agency covenants and agrees to permit duly authorized representatives of the County to have reasonable access to the Facility Site and the Facility for the purpose of inspection and verification of the construction, operation and maintenance of the Facility, provided that the County will comply with all reasonable safety rules adopted by the Contractor and will use their best efforts to cause minimum interference with the operation of the Facility.

Section 5.04. Insurance. The Agency shall cause the Contractor to obtain and maintain throughout the term of this Agreement insurance to cover the Contractor's properties and

liabilities in the coverage amounts required by Article Nine of the Agency Service Agreement.

Section 5.05. 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 Facility, or any part or parts thereof, to establish and collect rates, rents, fees and other charges as contemplated hereunder and to fulfill the terms of this Agreement, the Construction Agreement, the Agency Service Agreement, the Indenture, and any other agreements with any person with respect to the Facility, or in any way impair the rights and remedies of the bondholders, 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 bondholders are fully met and discharged.

Section 5.06. Successor Operators of Facility. In the event that the Contractor shall be unable to perform its obligations under the Service Agreement or shall be relieved of its obligations thereunder, the Agency shall use its best efforts to provide for the continued operation of the Facility for the acceptance and disposal of Solid Waste as provided hereunder and for a successor to the Contractor to be designated under the Agency Service Agreement and the County shall cooperate with the

Agency and provide such assistance to the Agency for such continued operation and in securing such successor operator.

Section 5.07. Other Users of Facility. The Agency shall not execute contracts for providing the service of accepting and disposing and/or processing of Solid Waste at the Facility or any Alternate Disposal Site with any other user, except as may otherwise be permitted by this Agreement, unless the County shall consent in writing prior thereto.

Section 5.08. Net Service Fee Estimates and Information. The Agency agrees to provide to the County, and to cause the Contractor to provide to the County to the extent set forth with respect to the Agency in the Agency Service Agreement, such reasonable information as shall be available to the Agency with respect to estimated and projected Net Service Fees including monthly written reports with respect to such matters relating to the operation and maintenance of the Facility which shall, at a minimum, certify: (i) the number of gross tons the County delivered to the Facility or any Alternate Disposal Site; (ii) the number of tons of Non-Processible Waste (iii) the number of tons of Process Residue; (iv) the quantity of Solid Waste accepted but not processed; (v) the types and quantity of wastes which were refused acceptance for processing; (vi) the amount and price of Recovered Materials sold, (vii) the amount and dollar value of steam and electricity sold and (viii) the amount of damages payable by the Contractor under the Service Agreement.

Section 5.09. Indemnification with Respect to Facility Operation. The Agency agrees that it will cause the Contractor to 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 cause the Contractor to 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 Facility or the performance (or nonperformance) of the Contractor's obligations under the Agency Service Agreement. The Contractor 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 Contractor for the costs of defending any suit as required above. An Indemnified Party shall promptly notify the Contractor of the assertion of any claim against it for which it is so entitled to be indemnified, shall give the Contractor the opportunity to defend such claim, and shall not settle such claim without the approval of the Contractor. These indemnification provisions are for the protection of the Indemnified Parties only and shall not establish, of themselves, any liability to third parties.

Section 5.10. 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 by law shall not make the Agency liable in damages to the County (except to the extent that such damages shall have been paid to the Agency by the Contractor or the Contractor) 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 disposal 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, 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. The Agency covenants and agrees that the County shall be entitled to require the Agency to enforce the Agency Service Agreement in the event that as a result of the failure of the Agency to enforce the Agency Service Agreement, the Agency is in breach of this Agreement. If the service of accepting and processing and/or disposing of Solid Waste delivered to the Facility or to an Alternate Disposal Site is not

provided in accordance with this Agreement as a result of a failure by the Contractor under the Agency Service Agreement, (i) the Agency will enforce all such rights and remedies available against the Contractor and all other persons as a consequence of such failure under the Agency Service Agreement as may be requested by the County or otherwise, and (ii) the County will not claim against the Agency any greater or different rights or remedies than those available to the Agency against the Contractor under the Agency Service Agreement on account of such failure.

Section 5.11. 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.

Section 5.12. Licensing System. The County covenants and agrees to take all actions necessary to cause the Commissioner of Solid Waste Management of the County to implement by the Acceptance Date a licensing system for private haulers of Solid Waste and to promulgate by the Acceptance Date rules and regulations for monitoring, enforcement and penalties with respect to said licensing system adequate and sufficient to achieve the purpose of enabling the County to fulfill its obligation hereunder to deliver the Guaranteed Annual Tonnage of



Solid Waste to the Agency as provided hereunder, all in furtherance of the purposes of Chapter 675 of the Laws of 1982 of the State of New York and Local Law No. 1 of 1984 of the County Legislature of the County of Dutchess.

ARTICLE VI - MISCELLANEOUS

Section 6.01. 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 January 1, 2008, provided, however, that in the event the Agency shall exercise its option to extend the Agency Service Agreement for an additional five year term pursuant to Section 11.2 thereof, the term of this Agreement shall automatically be extended for a like term.

Section 6.02. Termination of Agency Service Agreement. The Agency shall not terminate the Agency Service Agreement without the prior written consent of the County. If the Agency shall have the right to terminate the Agency Service Agreement pursuant to Article Ten thereof, then the County shall be entitled under such circumstance (and such circumstance only) to require the Agency to exercise such right of termination and shall deliver written notice of same to the Agency and the Trustee at least thirty (30) days prior thereto.

Section 6.03. Termination of Agreement. The County shall not have the right to terminate this Agreement notwithstanding any termination of the Agency Service 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 reason 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 in accordance with this Agreement.

The Agency shall have no right to terminate this Agreement.

Section 6.04. Amendment of Agreement. This Agreement may not be amended, waived, modified, supplemented or rescinded without the prior written consent of the Trustee (so long as any Bonds remains outstanding) and any such amendment, waiver, modification, supplement or rescission without such prior consent shall be void and of no effect. Any amendment to this Agreement so consented to as provided above shall be by written agreement, duly authorized and executed by the Agency and the County.

Section 6.05. 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 the 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 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 6.06. Nonassignability. Except as expressly provided in this Section 6.06, 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 the Trustee as security as may be required in connection with the issuance of Bonds. The Agency may assign,

for the benefit of the Contractor, the Agency's right to enforce the County's obligations hereunder, to the extent and only to the extent that such obligations also constitute obligations of the Agency under the Agency Service Agreement. The County specifically consents to the foregoing assignments.

Section 6.07. Beneficiaries of Agreement. Except as specifically provided in this Section, nothing in this Agreement, whether express or implied, shall be construed to give to the Contractor, to PEC, to the providers of any surety, insurance or other credit facility, or to any other person whatsoever other than the parties hereto, the Trustee, 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, the Trustee, and the holders of the Bonds, and their successors and assigns. The obligations of the Agency hereunder to take or omit to take any action under the Construction Agreement, the Agency Service Agreement and the Energy Sales Agreements are subject to and subordinate to the assignment of rights to the Trustee under the Trust Indenture.

Section 6.08. Notices. Any notice or 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: M. Philip Amodeo  
Commissioner of Finance  
County of Dutchess  
22 Market Street  
Poughkeepsie, N.Y. 12601

If to the Agency: Dutchess County Resource Recovery Agency  
Attention: Robert J. Vrana  
22 Market Street, 5th Floor  
Poughkeepsie, N.Y. 12601

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 6.09. Severability. If any provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect 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 6.10. Execution of Documents. 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 necessary to give effect to the terms of this Agreement.

Section 6.11. 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.

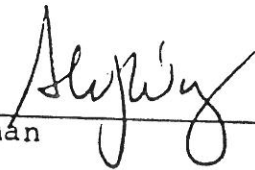
Section 6.12. Waiver. Unless otherwise specifically provided by the terms of this Agreement, no delay or failure to exercise a right resulting from any breach of this Agreement will impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as 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 6.13. Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State.

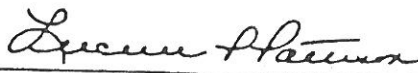
Section 6.14. References and Headings. Except as otherwise indicated, all references herein to Sections and Articles are to sections and articles of this Agreement. Section and article headings herein have been inserted for convenience of reference only and will not limit, expand or otherwise affect the construction 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.

DUTCHESS COUNTY RESOURCE  
RECOVERY AGENCY

By   
Chairman

COUNTY OF DUTCHESS

By   
County Executive