

INTERMUNICIPAL AGREEMENT FOR WASTE DISPOSAL SERVICES

THIS AGREEMENT (the “Agreement”) made between the **COUNTY OF FULTON (“FULTON”)**, a municipal corporation of the State of New York, having its principal offices at the County Office Building, Johnstown N.Y. 12095 and the **COUNTY OF MONTGOMERY**, a municipal corporation of the State of New York, having its principal offices at the County Annex Building, P.O. Box 1500, 20 Park St., Fonda, NY 12068 (hereinafter “Montgomery”) provides as follows:

RECITALS:

WHEREAS, municipal corporations in the State of New York, including the **PARTIES** herein, are authorized under General Municipal Law §119-o to enter into agreements for the performance among themselves or one for the other of their respective functions, powers and duties on a cooperative or contract basis;

WHEREAS, Montgomery County and its constituent municipal governments collect, receives or generates solid waste material, defined herein, that is suitable for disposal at the Landfill complex operated by the County of Fulton at Mud Road, Johnstown, N.Y.; and

WHEREAS, Montgomery County wishes to dispose of the solid waste material defined herein at the Fulton Landfill complex, and Fulton wishes to accept such material for disposal under the terms set forth below.

WHEREAS, the cooperative action of the County and the Montgomery is expected to be to the economic benefit of each Party and will serve a public purpose for each Party.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE MUTUAL COVENANTS AND AGREEMENTS HEREIN CONTAINED THE PARTIES AGREE, WARRANT AND COVENANT AS FOLLOWS:

1. Purpose and Intent. The purpose of this Agreement is to set forth the terms and conditions under which the County of Montgomery will deliver, and the County of Fulton will accept, Municipal Solid Waste (MSW), as defined herein, at Fulton’s Landfill complex located on Mud Road, Johnstown, New York. The parties hereto recognize and agree that the access to the Landfill complex which is hereby granted to Montgomery by Fulton shall be governed solely by the terms of this Agreement.

2. Definitions

- A. The term Acceptable Waste shall mean all waste authorized for acceptance by permit at the Fulton Landfill, including Municipal Solid Waste and Construction and Demolition Debris (C&D) as defined herein.
- B. The term Commissioner shall mean the Commissioner of the Department of Public Works of the County of Montgomery.
- C. The term Construction and Demolition Debris (“C&D”) shall have the meaning set forth in 6 NYCRR 360-1.2(b)(38) (or any subsequent amendment thereto), subject to additional conditions as may be set forth in the New York State Department of Environmental Conservation Permit to Operate the Fulton County Landfill.
- D. The term Director shall mean the Director of the Department of Solid Waste Management of the County of Fulton.
- E. The term Facility Delivery Hours shall mean the hours of Landfill complex operation which are 7:00 am – 4:00pm Monday through Friday, and 7:00 am – 12:00 pm Saturday, except holidays. [**check**]
- F. The term Fulton Landfill Facility shall mean the landfill facility owned and operated by the County of Fulton at the landfill complex located at 847 Mud Road, Johnstown, New York.
- G. The term Fulton County Direct Haul Rate shall mean the rate established from time to time by Fulton County for solid waste delivered for disposal at the Fulton Facility by or on behalf of municipalities located within Fulton County. The Fulton Municipal Rate at the commencement of this Agreement is \$33.00/ton.
- H. The term Hazardous Waste shall have the meaning set forth in 6 NYCRR 371 (or any subsequent amendment thereto).
- I. The term Montgomery Transfer Station shall mean any solid waste transfer station owned and operated by the County of Montgomery which accepts municipal solid waste generated within the County of Montgomery. The Montgomery Transfer Stations in operation at the commencement of this Agreement are the Amsterdam Transfer Station, 1247 route 5S, Amsterdam, N.Y. and the Western Transfer Station, 4583 Route 5S Sprakers, N.Y.
- J. The term Montgomery County Waste shall mean Acceptable Waste received at Montgomery County Transfer Stations, other than clean fill material that is not considered solid waste under New York law or regulation, or material that is the subject of a Beneficial Use Determination and similarly not considered to

be solid waste under New York law or regulation, from any source within or outside of Montgomery County.

- K. The term Montgomery Direct Delivery Waste shall mean Acceptable Waste delivered to the Fulton Landfill by or on behalf of participating municipalities within the County of Montgomery listed in Schedule A hereto.
- L. The term Municipal Solid Waste shall have the meaning set forth in 6 NYCRR 360-1.2(b)(106).
- M. The term Off-Specification Waste shall mean any and all waste, other than Hazardous Waste, which does not conform to the material requirements set forth in the New York State Department of Environmental Conservation Permit to Operate the Fulton County Landfill.
- N. The term “Sludge” shall have the meaning set forth in 6 NYCRR 360-1.2(b)(155).
- O. The term “Street Sweepings” shall mean the municipal solid waste, soil, and other material collected through the street cleaning operations conducted by or on behalf of the County of Montgomery or its constituent municipalities.

3. Term. The term of this Agreement shall commence upon execution by the Parties and shall expire on December 31, 2023. The term of this Agreement may be extended for two (2) additional five (5) year periods by mutual agreement of the parties.

4. Delivery and Acceptance of Montgomery County Waste and Montgomery Direct Delivery Waste

- A. Montgomery County Waste. Commencing on May 1, 2014 and continuing throughout the Term hereof, and subject to the terms of this Agreement, Montgomery agrees to deliver, or cause to be delivered, all Montgomery County Waste as defined herein. In the event that, at any time during the term of this Agreement, Montgomery County receives at its transfer station, but does not deliver to the Fulton Facility, any quantity of Montgomery County Waste, then Montgomery shall pay to Fulton, as liquidated damages and not as a penalty, a sum equal to the number of tons of Montgomery County Waste received at the Montgomery Transfer Station but not delivered to Fulton, times one half of the tipping fee applicable to such waste at the time of receipt, as established by paragraph 5(A) hereof. The parties project that the quantity of Montgomery County Waste to be delivered hereunder shall be in excess of 20,000 tons per year, but nothing herein shall constitute a warranty by Montgomery that any minimum or maximum quantity shall be delivered on a weekly, monthly or annual basis. In order to enforce the provisions hereof, Montgomery shall keep and maintain, for a period of not less than five (5)

years, all incoming and outgoing scale records for inspection by Fulton, upon reasonable notice and during regular business hours.

- B. Montgomery Direct Haul Waste. Commencing on May 1, 2014 and continuing throughout the Term hereof, and subject to the terms of this Agreement, Fulton agrees to accept at the Fulton Landfill Facility, all Montgomery Direct Haul Waste as defined herein. All municipalities delivering Montgomery Direct Haul Waste shall be subject to all rules and regulations governing access to the Fulton Facility, including but not limited to regulations governing vehicles and vehicle insurance. Nothing herein shall constitute a warranty by Montgomery or the municipalities listed on schedule A hereto that any minimum or maximum quantity shall be delivered on a weekly, monthly or annual basis.
- C. Transportation of all material delivered to the Fulton Facility pursuant to this Agreement shall be provided by Montgomery or participating municipalities at their sole cost and expense.
- D. During the Term hereof, Fulton shall accept at the Fulton Facility the material described in paragraphs 4(A) and (B), above, subject to Fulton's rejection rights set forth in paragraph 4(D) below.
- E. Fulton shall have the right to reject any deliveries by or on behalf of Montgomery if such deliveries
 - i. Are made at a time other than during the Facility Delivery Hours
 - ii. Contain Hazardous Waste, medical waste, or otherwise fail to meet the requirements of applicable law or permit governing the Fulton Facility. In exercising its rejection rights pursuant to this provision, Fulton shall, where practicable, accept the portions of such deliveries that, as the case may be, are not Hazardous Waste or other unauthorized material.
 - iii. Are made in vehicles not meeting the provisions of paragraph 6 below.

If Fulton is unable to accept or the Montgomery is unable to deliver the waste material identified in paragraph 4(A) for any reason, the parties shall use their best efforts to reschedule the delivery of such material for delivery as soon as possible.

5. Tipping Fee and Payment and Weight Records

- A. Tipping Fee and Payment. For all tons of Montgomery County Waste or Montgomery Direct Haul Waste delivered and accepted at the Fulton Facility pursuant to this Agreement, Montgomery shall pay Fulton a fee equal to the Fulton County Direct Haul Rate in effect at the time of delivery, plus: i) for the period May 1, 2014 through December 31, 2015, twelve percent (12%); and ii)

for the period January 1, 2016 through the remaining term of this Agreement, fifteen per cent (15%). . Fees for Montgomery County Waste and Montgomery Direct Haul Waste shall be billed by Fulton to the County of Montgomery, which shall be solely responsible for payment of such fees. No municipality within the County of Montgomery shall be eligible for the fee set forth in this paragraph unless it is listed on Schedule A hereto and has made arrangement with Montgomery County for billing. All invoices from Fulton shall set forth the date, weight and fee for each load of material delivered by Montgomery or by the participating municipalities listed on Schedule A hereto. Payment shall be made within 60 days of invoice.

B. Weight Records.

- i. Billing shall be based upon the Fulton scales. Fulton may rely on the posted tare weights of such vehicles rather than exit weighing, but may check such tare weight by occasionally weighing or reweighing such vehicles upon exit from the Landfill complex.
- ii. Fulton shall provide and maintain truck scales and associated weighing and recording equipment, calibrated to the degree of accuracy required by the laws of the State of New York, and shall maintain daily records, by truck, of the tonnages received from Montgomery and municipalities listed on Schedule A.
- iii. In the event that the scales of the County of Fulton are inoperable for reasons of maintenance or other cause, weighing of material delivered from the Montgomery County transfer station shall be based upon the scales of Montgomery County Transfer Station. If the scales of both parties are inoperable, or if the material is directly delivered by the municipalities set forth in Schedule A, tare weights may be used.

C. Billing Disputes. In the event of any dispute over billing, Montgomery shall promptly advise Fulton of the amount at issue and the basis of such dispute, and shall provide such documentary evidence as may support its position. Montgomery shall pay all amounts set forth on Fulton invoices which are not in dispute and the parties shall utilize the dispute resolution procedures of Paragraph 12 to resolve the dispute.

6. Transportation and Delivery

- A. Montgomery shall provide Fulton with a list of all vehicles owned or hired by Montgomery that are authorized to transport material pursuant to this Agreement, together with the identification and registration number of all such authorized vehicles, and shall promptly notify Fulton of any change in any

such list. The identification and registration number of each vehicle making deliveries hereunder shall be prominently displayed and permanently affixed to each vehicle.

- B. It shall be the responsibility of Montgomery to ensure that all vehicles delivering material on behalf of Montgomery to the Fulton Landfill complex shall be properly registered, equipped and insured according to applicable law, and all drivers shall be properly licensed. All drivers shall obey the internal traffic rules and regulations of the Fulton Landfill.
- C. Load Tracking Documents. Fulton reserves the right to require the use of a Load Tracking Document for all materials delivered pursuant to this Agreement. In such event, Fulton shall provide not less than ten (10) days notice of the requirement for the use of a Load Tracking Document and shall provide a copy of the form document to Montgomery. Any load arriving at Fulton's Facility without such a tracking document shall be turned away. Upon presentation of the tracking document to Fulton personnel at the Landfill scale house, the Fulton representative shall mechanically sign and note the time of arrival on the tracking document. The driver of the delivery vehicle shall display the tracking document at all inspection and material sampling points within the Landfill.
- D. Landfill Hours. The Fulton Facility will be open for receipt of the Montgomery's material during the Facility Delivery Hours with the exception of legal holidays. Fulton may, from time to time, modify the Landfill's hours of operation. In the event the Montgomery wishes to access the Landfill beyond the normal hours of operation, Fulton reserves the right to assess any overtime costs incurred by Fulton to Montgomery.

7. Material Specifications and Testing Requirements. All material delivered hereunder shall be non-hazardous and meet the requirements set forth in the Fulton Landfill permit and the regulations of the New York State Department of Environmental Conservation (NYSDEC). Fulton shall provide to Montgomery a copy of the NYSDEC permit for the Landfill, as the same may be renewed or amended from time to time, during the term of this Agreement. Fulton reserves the right to take samples and conduct tests upon materials delivered by Montgomery for the presence of Hazardous Waste or other unauthorized material. Such testing shall be at the sole cost and expense of the County of Fulton, provided however, that in the event that Hazardous Waste, or other unauthorized material is found to be present in a delivery from the Montgomery, the Montgomery shall bear the costs of all sampling, testing, handling and disposal of such material.

8. Obligations for Off-Specification and Hazardous Wastes. In the event that any material delivered by Montgomery under this Agreement is determined to be Off-Specification or Hazardous Waste or other unauthorized material, said material shall be rejected if such determination is made before acceptance. If such determination is made after acceptance, Montgomery shall be responsible for removal of the material if removal is determined by Fulton

to be required, and shall in all events be responsible to reimburse Fulton for all expenses incurred as a result of such delivery and rejection.

9. Insurance. Each party hereto shall proceed on a self-insured basis, provided however, that all delivery vehicles shall be insured as required by law.

10. Indemnity

A. Montgomery shall defend, indemnify and save harmless Fulton from and against all losses, and all claims, demands, payments, suits, actions, recoveries, judgments, costs and expenses including without limitation attorney's fees in connection therewith, of every nature, including but not limited to claims for bodily injury, or death, by any third party and by or on behalf of Montgomery's contractors, agents, servants or employees, arising out of or in connection with performance of this Agreement to the extent caused, in whole or in part, by Montgomery, its agents, servants or employees.

B. Fulton shall defend, indemnify and save harmless Montgomery from and against all losses, and all claims, demands, payments, suits, actions, recoveries, judgments, costs and expenses including without limitation attorney's fees in connection therewith, of every nature, including but not limited to claims for bodily injury, or death, by any third party and by or on behalf of Fulton's contractors, agents, servants or employees, arising out of or in connection with performance of this Agreement to the extent caused, in whole or in part, by Fulton, its agents, servants or employees.

11. Default and Termination. In the event of a breach of an obligation under this Agreement, the right to recover damages will ordinarily constitute an adequate remedy. Therefore, except as otherwise provided in this Agreement, neither party shall have the right to terminate its obligations under this Agreement except as follows:

A. Fulton's Right to Terminate. Fulton shall have the right to terminate this agreement upon:

- i. The persistent and repeated breach of the provisions of this agreement by the Montgomery, provided that Fulton shall have provided written notice of such breach to the Montgomery, and provided further that the Montgomery shall have failed to cure such breach within 30 days of said notice; or
- ii. The failure by Montgomery to pay any sum due, and not subject to dispute resolution pursuant to paragraph 12 hereof, for a period of 90 days after written demand therefor.

- B. Montgomery's Right to Terminate Montgomery shall have the right to terminate this agreement upon;
- i. The persistent and repeated breach of the provisions of this agreement by Fulton, provided that the Montgomery shall have provided written notice of such breach to Fulton, and provided further that Fulton shall have failed to cure such breach within 30 days of said notice; or
 - ii. The failure by Fulton to pay any sum due, and not subject to dispute resolution pursuant to paragraph 12 hereof, for a period of 90 days after written demand therefor.
- C. Termination at Will and Liquidated Damages Notwithstanding any other provision of this Agreement to the contrary, either party may terminate this Agreement at any time after commencement upon
- i. not less than eighteen (18) months written notice to the other party, and
 - ii. payment of the sum of one hundred thousand (\$100,000) dollars to the other party as liquidated damages in compensation for premature termination, it being agreed that the actual damages suffered by either party in the event of premature termination will be substantial but difficult to determine, and that the damages set forth herein are intended to serve as full compensation for the injured party in the event of such termination.
- D. Survival of Obligations It is expressly understood and agreed that any and all claims and obligations for payment of costs and expenses incurred under this Agreement prior to termination under this paragraph shall survive such termination.

12. Dispute Resolution. In the event of any dispute under this Agreement, either party shall serve written notice to the other of the existence and nature of the dispute, the amount at issue, if any, and the provision of this agreement governing the dispute. The parties shall negotiate the dispute in good faith until either party advises the other, in writing, that an impasse exists. Thereafter, the exclusive means to resolve any dispute between the parties that arises out of this Agreement shall be through an action initiated in New York State Supreme Court, venue in the county of the defendant. Unless otherwise agreed in writing by the Parties, the Parties shall continue to perform their respective obligations under this Agreement during any Dispute proceeding.

13. Contact Persons. The contact persons for the parties to this Agreement shall be the following contact persons at the following addresses:

Director, Dept of Waste Management
County of Fulton
847 Mud Road,

Commissioner, Dept. of Public Works
County of Montgomery
6 Park St., P.O. Box 1500

14. Compliance With Law. Both Fulton and Montgomery shall comply with all Federal, State and Local Laws, rules, regulations, codes and ordinances in the performance of this Agreement and shall obtain, pay for and comply with any conditions contained in any permits, approvals and renewals thereof which are required to be obtained in the legal performance of this Agreement.

15. Invalidity of Particular Provisions. If any term of this Agreement or the application thereof to any person or circumstances shall to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

16. No Assignment. Neither Montgomery nor Fulton shall assign, transfer, convey, sublet or otherwise dispose of this Agreement, or any of its right, title or interest therein, or its power to execute this Agreement, to any other person or corporation, except for the purposes described herein, without prior written consent of the other party, and any attempt to do any of the foregoing without such consent shall be of no effect.

17. No Modification. No modification of this Agreement shall be valid unless written in the form of an Addendum or Amendment signed by all parties.

18. Uncontrollable Circumstances. Neither Montgomery nor Fulton shall be liable for failure to fulfill their responsibilities as provided for in this Agreement, nor for any resultant damages or financial losses if such failure is caused by a catastrophe, riot, war, governmental order or regulation (other than by or of Fulton), act of God or other similar event beyond the reasonable control of the party failing to perform. If such failure persists, or if after cessation of such failure, either Montgomery or Fulton is unable to render full or substantially full performance as a result of the Uncontrollable Circumstance, either party may terminate this Agreement upon written notice given 30 days in advance of such termination.

19. Required Provisions. All provisions as required by Law are hereby deemed inserted. The Parties agree that nothing in this Agreement shall be construed so as to interfere with or diminish any municipal powers or authority held by either party.

20. Entire Agreement. It is expressly agreed that this instrument represents the entire agreement of the parties and that all previous understandings are merged in this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the date and year first above written.

COUNTY OF FULTON

By: _____

_____ Date

COUNTY OF MONTGOMERY

By: _____

_____ Date

STATE OF NEW YORK)
) SS.:
COUNTY OF FULTON)

On the ____ day of _____, 2013, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he is the _____ of the COUNTY OF FULTON, the municipal corporation described in and which executed the foregoing instrument; that he signed his name thereto by order of the County Legislature of the County of Fulton.

Notary Public

STATE OF NEW YORK)
) SS.:
COUNTY OF MONTGOMERY)

On the ____ day of _____, 2013, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he is the _____ of the COUNTY OF MONTGOMERY, the municipal corporation described in and which executed the foregoing instrument; that he signed his name thereto by order of the Board of supervisors of the County of Montgomery.

Notary Public