

**EXECUTION VERSION**

**HOST COMMUNITY AGREEMENT**

**Between**

**THE ROCKLAND COUNTY SOLID WASTE MANAGEMENT AUTHORITY**

**and**

**THE TOWN OF CLARKSTOWN**

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## APPENDICES

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- D. Authority Improvements
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THIS HOST COMMUNITY AGREEMENT is made and dated as of October 7, 2009 between the Rockland County Solid Waste Management Authority, a body corporate and politic constituting a public benefit corporation of the State of New York (the "Authority"), and the Town of Clarkstown, a body corporate and politic constituting a municipal corporation of the State of New York (the "Town").

#### RECITALS

WHEREAS, in 1992, the New York State Department of Environmental Conservation approved Rockland County's (the "County") Final Integrated Solid Waste Management Plan and Generic Environmental Impact Statement (the "SWMP/GEIS"); and

WHEREAS, the Authority was formed in accordance with section 2053 (c) et seq. of the Public Authorities Law of the State of New York (the "State"), and resolution no. 301 of 1994 of the County Legislature to implement certain provisions of the SWMP/GEIS and to provide and arrange for solid waste management services within the County; and

WHEREAS, the SWMP/GEIS provides for processing of solid waste, including leaves, brush and other yard waste; and

WHEREAS, the Authority has either constructed or acquired certain solid waste management facilities within the County; and

WHEREAS, the Town owns a solid waste transfer station, a yard waste composting facility, a wood mulching operation, a concrete, brick and asphalt crushing operation and a recyclables drop-off area, such facilities and operations being on land owned or leased by the Town (collectively, the "Clarkstown Solid Waste Facilities"); and

WHEREAS the Town owns separately a leaf composting facility located at 226 Brewery Road in New City, New York (the "French Farms Facility"); and

WHEREAS, the Authority wishes to expand the capacity of its solid waste management system through the acquisition of the Clarkstown Solid Waste Facilities and the use of the French Farms Facility; and

WHEREAS, the Town determined that it would be in the Town's best interest to sell the Clarkstown Solid Waste Facilities to the Authority as set forth in the acquisition agreement between the parties dated November 13, 2008 (the "Acquisition Agreement") and to have the Authority operate the French Farms Facility pursuant to a revocable license; and

WHEREAS, the parties hereto believe that their mutual best interest will be served by the execution of this agreement (the "Host Community Agreement") which specifies the respective rights and obligations of the parties upon the Authority's ownership of the Clarkstown Solid Waste Facilities and use of the French Farms Facility and specifying the respective rights and obligations of the parties relating to the delivery and processing of municipal solid waste and recyclables for transfer to the ultimate disposal or processing facility, as applicable; and

WHEREAS, the parties hereto have agreed to terminate the host community agreement between the Authority and the Town dated as of June 1, 1997 and substitute such agreement with this Host Community Agreement; and

WHEREAS, a resolution authorizing the execution and delivery of this Host Community Agreement was duly adopted by the Town on May 13, 2008; and

WHEREAS, a resolution authorizing the execution and delivery of this Host Community Agreement was duly adopted by the Authority on November 15, 2007; and

WHEREAS, the parties have agreed to act in good faith and to take all necessary and appropriate actions, in cooperation with one another, to effectuate the purpose of this Host Community Agreement; and

WHEREAS, the parties are entering into this Host Community Agreement pursuant to their respective lawful authorities;

NOW, THEREFORE, in consideration of the promises and of the mutual covenants and agreements herein set forth, and, other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties do hereby promise and agree as follows:

**ARTICLE I**  
**DEFINITIONS AND INTERPRETATION**

**SECTION 1.1. DEFINITIONS.** As used in this Host Community Agreement, the following terms shall have the meanings set forth below:

"Acceptable Waste" means Solid Waste, Construction and Demolition Debris, asphalt pavement, brick, uncontaminated concrete and Yard Waste.

"Acquisition Agreement" means the Acquisition Agreement between the Authority and the Town dated as of November 13, 2008 for the acquisition of the Clarkstown Solid Waste Facilities, the Clarkstown Solid Waste Facilities Site, and related assets by the Authority from the Town.

"Act" means the Rockland County Solid Waste Management Authority Act, Title 13-M of Article 8 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State, as amended from time to time.

"Applicable Law" means any law, rule, code, standard, regulation, requirement, consent decree, consent order, consent agreement, permit, guideline, action, determination or order of, or legal entitlement issued by or deemed to be issued by, any governmental body having jurisdiction of any transaction or matter contemplated hereby (including procurement contracting, health, safety, fire, environmental protection, solid waste transportation recycling and disposal, materials recovery processing, quality and use, labor relations, mitigation monitoring plans, building codes, nondiscrimination and the payment of minimum or prevailing wages).

"Assignment of Easements" shall have the meaning set forth in the Acquisition Agreement.

"Authority" means the Rockland County Solid Waste Management Authority, a public benefit corporation organized and existing under the Act, and its successors and assigns.

"Authority Improvements" are the improvements made or to be made to the Clarkstown Solid Waste Facilities as set forth in Section 3.2 herein.

"Basket Amount" has the meaning set forth in Section 7.6(G).

"Clarkstown Solid Waste Facilities" means the Transfer Station, the Scale House, the Yard Waste Facility, the Concrete Crushing Facility and the Recyclables Drop-Off Area, all located on the Clarkstown Solid Waste Facilities Site.

"Clarkstown Solid Waste Facilities Site" means the real property upon which the Clarkstown Solid Waste Facilities are located at Route 303, West Nyack, New York as described in Appendix E.

"Collection Agreements" mean the agreements to be entered into by the Town upon expiration of the Existing Town Collection Agreements and which shall incorporate the Collection Agreement Requirements.

"Collection Agreement Requirements" means the obligations or provisions set forth in Section 3.3(C).

"Concrete Crushing Facility" means the concrete, brick and asphalt crushing facility located on the Clarkstown Municipal Solid Waste Facilities Site.

"Construction and Demolition Debris" shall mean those materials included in 6 NYCRR Part 360-1.2(b) (38), excluding asphalt pavement, brick and uncontaminated concrete, which are delivered to and accepted at the Transfer Station.

"Contract Date" means October 7, 2009, the date of delivery of this Host Community Agreement as executed by the parties hereto.

"Contract Year" means the Authority's fiscal year commencing on January 1 in any year and ending on December 31 of that year; provided, however, that the first Contract Year shall commence on the Contract Date and shall end on the following December 31, and the last Contract Year shall commence on January 1 prior to the date this Host Community Agreement expires. Any computation made on the basis of a Contract Year shall be adjusted on a pro rata basis to take into account any Contract Year of less than 365 days.

"County" means Rockland County.

"DEC" means the New York State Department of Environmental Conservation.

"DEC Order on Consent" means the Order on Consent issued by the DEC concerning the Clarkstown Solid Waste Facilities, Case No. R3-20080502-15.

"DEC Permit" means the permit issued by the DEC relating to the operation of the Transfer Station.

"Easement" shall have the meaning set forth in Section 3.2(K).

"Environmental Insurance Policy" shall have the meaning set forth in Section 7.6(F).

"Environmental Laws" means any federal, state or local statute, law, rule, regulation, ordinance, code, policy, rule of common law, judicial order, administrative order, consent decree, or judgment now or hereafter in effect, in each case, as may be amended from time to time, relating to the environment, health, or safety, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (commonly known as "CERCLA"), the Resource Conservation and Recovery Act (commonly known as "RCRA"), the Toxic Substances Control Act, the Clean Water Act, the Clean Air Act, the Safe Drinking Water Act, the New York Environmental Conservation Law and its implementing regulations, including the regulations in 6 NYCRR Part 360, or any other such federal, state or local legislation or ordinances applicable to the Property or French Farms.



"Existing Collection Agreements" means the Residential Refuse and Bulk Collection Services for One, Two, and Three Family Homes in the Unincorporated Portion of the Town of Clarkstown dated February 26, 2008 between the Town and the Contractor (as such term is defined in such agreement) and the Curbside Collection and Disposal of Residential Recyclable Materials Agreement between the Town and Charles Capasso and Sons Carting, Inc., dated May 2008. The Existing Collection Agreements are incorporated herein by reference.

"French Farms Facility" means the leaf composting facility located on the French Farms Site owned by the Town and licensed to the Authority as set forth in the French Farms License.

"French Farms License" means the agreement by and between the Town and the Authority dated October 7, 2009 granting the Authority a revocable license to utilize the French Farms Facility and the French Farms Site.

"French Farms Site" means the real property upon which the French Farms Facility is located at 226 Brewery Road, New City, New York.

"Hazardous Waste" shall have the meaning as that same term in Section 27-0903 of the New York Environmental Conservation Law and 6 NYCRR 371.1(d) as currently promulgated and as amended from time to time in the future.

"Host Community Agreement" means this agreement between the Authority and the Town as the same may be amended or modified from time to time in accordance herewith.

"Host Fee" has the meaning set forth in Section 5.1(B).

"Indemnified Party" shall have the meaning set forth in Section 7.6(I).

"Indemnitor" shall have the meaning set forth in Section 7.6(I).

"Landfill" means that certain closed landfill owned by the Town and described in Appendix E.

"Landfill Contamination" means any contamination, including but not limited to, contaminated groundwater, soil, surface water, or air, or emissions or migration of gases from the Landfill, including methane gas, each of which is the result of historical operations on the Landfill or the past disposal of materials (whether hazardous or not) into the Landfill. Notwithstanding the foregoing, "Landfill Contamination" shall not include any such conditions or costs to the extent attributable to or exacerbated by the acts or omissions of any Authority Related Parties, or the acts or omissions of third parties on the Property after the Closing Date.

"Operating Hours" means the hours established by the Authority in compliance with Applicable Law for the operation of the Transfer Station or Scale House, as applicable.

"Post-Closing Contamination" shall mean any contamination or other environmental conditions, including but not limited to, abandoned underground storage tanks, drums, product, contaminated soil, surface water or groundwater, the emission of air pollutants, or any hazardous

or dangerous condition that is the result of the Authority Related Parties' operations on the Property after the Transfer Date.

"Pre-Closing Contamination" shall mean any contamination or hazardous or dangerous environmental conditions, including but not limited to, abandoned underground storage tanks, drums, products, contaminated soil, surface water, groundwater or air, or the emission or migration of gases from the Landfill, including methane gas, present on the Landfill or the Property, or emanating from the Property or the Landfill prior to or on the Closing Date, or which was present on the Property or the Landfill prior to or on the Transfer Date but which migrates off the Property or the Landfill after the Closing Date. Pre-Closing Contamination shall not include: (i) the presence of non-hazardous household waste on or under the Property as of the Closing Date, (ii) any item required in the DEC Order on Consent to address violations noted in the Inspection Reports, and (iii) any Pre-Closing contamination that is exacerbated by the acts or omissions of any Authority Related Parties that occur after the Transfer Date; provided, however, that Pre-Closing Contamination shall specifically include any contamination or hazardous or dangerous environmental conditions related to or arising out of the Town's concrete crushing and Transfer Station leachate system inspection and pipe realignment activities which occurred after the Transfer Date but prior to the Closing Date.

"Property" shall have the meaning set forth in the Acquisition Agreement.

"Riverso Obligations" shall mean the obligations of the Town to investigate and remediate municipal solid waste on the Riverso Property pursuant to (i) DEC Order on Consent dated August 7, 1989, Index No. W-3-0234-88-07 and (ii) DEC Record of Decision issued November 28, 1995 regarding Site No. 344001.

"Riverso Property" shall mean that property located directly northeast and adjacent to the Transfer Station Site that is commonly known as 411 West Route 59, West Nyack, NY 10994 (Tax Lot 65.6-1-53).

"Recyclables Drop-Off Area" shall have the meaning set forth in Section 4.2(F).

"Scale House" means the scale house located on the Clarkstown Solid Waste Facilities Site.

"Solid Waste" shall mean "household waste" as that term is defined in 6 NYCRR Part 360-1.2(b)(86) and any other wastes generated by commercial and governmental establishments that is normally collected and disposed of by a municipal or private non-hazardous waste collection contractor, provided, however, that Solid Waste shall not include sewage or sewage sludge, liquid or gaseous waste.

"State" means the State of New York.

"Sublease" shall have the meaning set forth in the Acquisition Agreement.

"Term" has the meaning set forth in Section 7.1 hereof.

"Ton" means a "short ton" of 2,000 pounds.

"Town" means the Town of Clarkstown, New York.

"Town Acceptable Waste" means Solid Waste, Construction and Demolition Debris, and Yard Waste which originates in the Town and is delivered to the Clarkstown Solid Waste Facilities and the French Farms Facility, where applicable, pursuant to the terms of this Host Community Agreement.

"Town Landfill Obligations" mean the obligations of the Town related to the Landfill set forth in Appendix C.

"Transfer Date" means November 17, 2008, the date on which the Authority began operations of the Clarkstown Solid Waste Facilities pursuant to the terms of the Interim Operations Agreement between the Town and the Authority.

"Transfer Station" means the municipal solid waste transfer station located on the Transfer Station Site.

"Transfer Station Site" means the area within the Clarkstown Solid Waste Facilities Site upon which the Transfer Station is located as described in the metes and bounds description set forth in Appendix E.

"Uncontrollable Circumstances" means any act, event or condition (including a change in Applicable Law) which materially and adversely affects the ability of either party to perform any obligation hereunder (other than the payment obligations set forth in Section 5.2), if such act, event or condition is beyond the reasonable control and is not also the result of the willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party relying thereon as a justification for not performing an obligation or complying with any condition required by such party under this Host Community Agreement, except that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as willful or negligent action or inaction or a lack of reasonable diligence of either party.

"Yard Waste" shall have the meaning as that same term in 6 NYCRR 360-1.2(b)(185).

"Yard Waste Facility" means the Yard Waste composting facility, including the wood mulching operations, located on the Yard Waste Facility Site.

"Yard Waste Facility Site" means the area within the Clarkstown Solid Waste Facilities Site upon which the Yard Waste Facility is located.

SECTION 1.2. INTERPRETATION. In this Host Community Agreement:

(A) References Hereto. The terms "hereby," "hereof," "herein," "hereunder" and any similar terms refer to this Host Community Agreement.

(B) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Host Community Agreement shall be solely for convenience of reference and shall not constitute a part of this Host Community Agreement, nor shall they affect its meaning, construction or effect.

(E) Entire Agreement. This Host Community Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Host Community Agreement, and nothing in this Host Community Agreement is intended to confer on any person other than the parties hereto and their respective permitted successors and assigns hereunder any rights or remedies under or by reason of this Host Community Agreement.

(F) Counterparts. This Host Community Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same agreement.

(G) Severability. If any clause, provision, subsection, Section or Article of this Host Community Agreement shall be ruled invalid by any court of competent jurisdiction or administrative agency, then the parties shall: (1) promptly meet and negotiate a substitute for such clause, provision, subsection, Section or Article which shall, to the greatest extent legally permissible, effect the intent of the parties therein; (2) if necessary or desirable to accomplish item (1) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Host Community Agreement; and (3) negotiate such changes in, substitutions for or additions to the remaining provisions of this Host Community Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above to effect the intent of the parties in the invalid provision. The invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Host Community Agreement shall be construed and enforced as if such invalid portion did not exist.

(H) Defined Terms. The definitions set forth or referred to in Section 1.1 hereof shall control in the event of any conflict with the definitions used in the recitals hereto.

(I) Waiver. No waiver by the Town or the Authority of any of the terms or conditions of this Host Community Agreement or any of their respective rights under this Host Community Agreement shall be effective unless such waiver is in writing and signed by the party charged with the waiver.

(J) References and Exhibits. Each reference to an Article, Section or Exhibit in this Host Community Agreement shall mean the articles and sections of this Host Community Agreement and the exhibits attached to this Host Community Agreement, unless the context requires otherwise. Each such exhibit is incorporated herein by this reference.

(K) Effectiveness of Agreement. The preparation and/or delivery of unsigned drafts of this Host Community Agreement shall not create any legally binding rights in the Clarkstown Solid Waste Facilities, Clarkstown Solid Waste Facilities Site, French Farms Facility, the French Farms Facility Site and/or obligations of the parties. The Authority and the Town acknowledge

that this Host Community Agreement shall be of no effect until it is duly executed and delivered by both the Authority and the Town.

**ARTICLE II**  
**REPRESENTATIONS AND WARRANTIES**

**SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE AUTHORITY.** The Authority represents and warrants that:

(A) Existence and Powers. The Authority is a body corporate and politic constituting a public benefit corporation validly existing under the Constitution and laws of the State, with full legal right, power and authority to enter into and perform its obligations under this Host Community Agreement.

(B) Due Authorization and Binding Obligation. The Authority has duly authorized the execution and delivery of this Host Community Agreement, and this Host Community Agreement has been duly executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting the enforcement of creditors' rights and general equitable principles.

(C) No Conflict. Neither the execution nor the delivery by the Authority of this Host Community Agreement nor the performance by the Authority of its obligations hereunder nor the consummation by the Authority of the transactions contemplated hereby (1) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Authority or (2) conflicts with, violates or results in a breach of any term or conditions of any judgment, decree, agreement or instrument to which the Authority is a party or by which the Authority or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument.

(D) No Approval Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority, or any approval of voters by referendum or otherwise, is required for the valid execution, delivery and performance by the Authority of this Host Community Agreement, except such as have been duly obtained or made.

(E) No Litigation. Except as described in Appendix A, there are no actions, suits or other proceedings, at law or in equity, before or by any court or governmental authority pending or, to the Authority's best knowledge, threatened against the Authority which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the validity or enforceability of this Host Community Agreement or any other agreement or instrument to be entered into by the Authority in connection with the transactions contemplated hereby, or which would materially and adversely affect the performance by the Authority of its obligations hereunder or under any such other agreement or instrument.

(F) No Legal Prohibition. The Authority has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the Authority of this Host Community Agreement and the transactions contemplated hereby.

SECTION 2.2. REPRESENTATIONS AND WARRANTIES OF THE TOWN

The Town represents and warrants that:

(A) Existence and Powers. The Town is a municipal corporation validly existing under the Constitution and laws of the State, with full legal right, power and authority to enter into and perform its obligations under this Host Community Agreement.

(B) Due Authorization and Binding Obligation. The Town has duly authorized the execution and delivery of this Host Community Agreement, and this Host Community Agreement has been duly executed and delivered by the Town and constitutes a legal, valid and binding obligation of the Town, enforceable against the Town in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.

(C) No Conflict. Neither the execution nor the delivery by the Town of this Host Community Agreement nor the performance by the Town of its obligations hereunder nor the consummation by the Town of the transactions contemplated hereby (1) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Town or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement or instrument to which the Town is a party or by which the Town or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument.

(D) No Approval Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority, or any approval of voters by referendum or otherwise, is required for the valid execution, delivery and performance by the Town of this Host Community Agreement, except such as have been duly obtained or made.

(E) No Litigation. Except as described in Appendix A, there are no actions, suits or other proceedings, at law or in equity, before or by any court or governmental authority pending or, to the Town's best knowledge, threatened against the Town which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the validity or enforceability of this Host Community Agreement or any other agreement or instrument to be entered into by the Town in connection with the transactions contemplated hereby, or which would materially and adversely affect the performance by the Town of its obligations hereunder or under any such other agreement or instrument.

(F) No Legal Prohibition. The Town has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the Town of this Host Community Agreement and the transactions contemplated hereby.

## ARTICLE III

### ACQUISITION, USE AND AUTHORITY OPERATION OF THE FACILITIES

SECTION 3.1. GENERAL. The Clarkstown Solid Waste Facilities shall be acquired, leased or used as set forth in the Acquisition Agreement, and the French Farms Facility shall be licensed as set forth in the French Farms License.

#### SECTION 3.2. AUTHORITY RESPONSIBILITIES.

(A) Compliance With Applicable Law. The Authority shall own, operate and maintain the Clarkstown Solid Waste Facilities in accordance with and in compliance with Applicable Law.

(B) Actions of the Authority. During the Term hereof, the Authority shall do and perform all acts and things which may be necessary or desirable in connection with (1) its ownership of the Clarkstown Solid Waste Facilities for the management, handling and disposal of solid waste delivered thereto, including any planning, development, permitting, administration, implementation, construction, operation, maintenance and contract work related thereto; (2) its use of the French Farms Facility for the management, handling and processing of Yard Waste delivered thereto, including any planning, development, permitting, administration, implementation, operation, maintenance and contract work related thereto; (3) those certain easements assigned to the Authority pursuant to the Assignment of Easement; and (4) the Sublease.

(C) Authority Improvements. The Authority shall comply with the requirements set forth in the DEC Order on Consent and make any improvements required by the DEC Order on Consent. The Authority shall also make the improvements described in Appendix D (the "Authority Improvements"). As between the parties, all Authority Improvements shall be made at the Authority's sole cost and expense. The Town shall have the right to review, but not approve, current and future Authority Improvement plans.

(D) Town Employees and Engineers. The Authority shall reimburse the Town for the following costs of the Town employees and consulting engineers:

(1) Employee to Assist in Transition. The Town has designated the Town employee listed in Appendix B to be available to assist the Authority in the transition of the Clarkstown Solid Waste Facilities operations from the Town to the Authority, for a three year period. If such designated employee is not available to assist the Authority as set forth herein, the Town shall make available to the Authority the alternate employee set forth in Appendix B. The Authority shall pay the Town up to \$75,000 a year as a partial reimbursement for such employee's salary. The Authority shall pay the Town in quarterly installments within 30 days after receipt by the Authority of the Town's invoice for such services. The Town shall provide the Authority with a statement signed by an authorized representative of the Town stating that one of the Town employees listed in Appendix B was available to provide the transition services set forth herein for such payment period. If both of the employees listed in Appendix B become unavailable to



provide the transition services, the Authority's obligation to pay the Town for such services shall cease, as shall the Town's obligation to provide such services.

(2) Town Employees. The Authority shall have offered full-time, regular employment to the Town employees listed in Appendix B for the positions and tasks outlined in Appendix B.

(E) Payment To Town For Engineer. The Town shall have the right to engage a consulting engineering firm to provide assistance to the Town in connection with the coordination between the Town and the Authority during the implementation of any Authority Improvements and the performance of the Town Landfill Obligations which impact Authority operations. For the first seven years of the Term of this Host Community Agreement, the Authority shall reimburse the Town for the cost of such consulting engineer as set forth herein. The Town shall pay the consulting engineer and the Authority shall, upon receipt of an invoice from the Town, reimburse the Town up to \$70,000 per Contract Year for such engineering services within 30 days of receipt by the Authority of the invoice for such services. Upon request by the Authority, the consulting engineer shall provide the Authority with documentation as appropriate to support its monthly invoices. The parties may, by mutual agreement, have the Authority continue to pay the Town's consulting engineer for such services beyond the initial seven year period.

(F) Collection Agreements. During the Term of this Host Community Agreement the Town shall, prior to procuring any new Collection Agreements pursuant to Section 3.3(C), request from the Authority and the Authority shall provide, the tipping fee that will be charged by the Authority at the Transfer Station during the term of the new Collection Agreement. If the Authority increases the tipping fee charged at the Transfer Station during the term of the Existing Collection Agreement or any new Collection Agreement, the Authority shall reimburse the Town, on a quarterly basis, for any amounts paid by the Town to the collection haulers under such Collection Agreement on account of the increased tipping fee.

(G) Access Routes. The Authority shall require all haulers transporting Acceptable Waste from the Clarkstown Solid Waste Facilities for disposal, processing or sale, as applicable, to use the routes approved in writing by both the Authority and the Town. If an emergency condition exists which prevents a hauler from utilizing the designated routes, such alternative routes as are reasonably necessary may be used while such emergency condition exists.

(H) Authority Not Responsible for Landfill. Except for the Authority obligations set forth in Appendix C, the Authority shall have no responsibility or any obligation whatsoever relating to the Landfill under this Host Community Agreement. The performance of Town Landfill Obligations and the liability relating thereto, shall be the sole responsibility of the Town.

(I) No Authority Interference with Town Landfill Obligations. The Authority shall not interfere with the Town's performance of the Town Landfill Obligations.

(J) Notice of Material Change. The Authority shall provide written notification to the Town of any material change in the use of the Clarkstown Solid Waste Facilities. As used herein, "material change in use" shall be defined as a change in use at the Clarkstown Solid

Waste Facilities that requires preparation of an Environmental Impact Statement pursuant to the New York State Environmental Quality Review Act and its implementing regulations at 6 NYCRR Part 617.

(K) Storage of Landfill Contamination Monitoring Equipment; Access to Landfill Controls. The Authority shall allow the Town to continue to use the maintenance building located on the Clarkstown Solid Waste Facilities Site for storage and repairs of the Landfill Contamination monitoring equipment. If the Authority replaces the maintenance building with a new building, the Authority shall make available to the Town a 20 feet by 30 feet bay for the storage of such Landfill Contamination monitoring equipment. The Town shall have the right to access the maintenance building (or alternate space as set forth above) as set forth in Section 3.4(B) and as set forth in the easement reserved and retained by the Town pursuant to the Acquisition Agreement (the "Easement"). To the extent permitted by Applicable Law, the Town shall indemnify the Authority in connection with the Town's use of such building or alternate space as set forth in the Easement and in Section 7.6. herein.

(L) Authority Obligations. The Authority shall comply with the Authority obligations set forth in Appendix C.

### SECTION 3.3. TOWN RESPONSIBILITIES.

(A) Compliance With Applicable Law. The Town shall comply with Applicable Law in performing its duties under this Host Community Agreement.

(B) Town Landfill Obligations. The Town shall comply with the Town's obligations set forth in Appendix C, including those related to the Landfill (the "Town Landfill Obligations").

(C) Collection Agreement Requirements.

(1) Incorporation of Required Provisions in Collection Agreements. The Town shall incorporate the Authority's reasonable delivery requirements and standard Hazardous Waste related provisions into any bid documentation and into any Collection Agreement entered into pursuant thereto. The Town shall use good faith efforts to: (i) give the Authority reasonable time to review any new bids prior to issuance of any such bid by the Town; (ii) provide the Authority with copies of any bid documentation; (iii) provide the Authority with notice of the award of any such bid; (iv) inform the Authority of any renewals or amendments of the Collection Agreements and (v) provide the Authority with a copy of any new or amended Collection Agreement.

(2) Town Collection of Tip Fees. The Town, when paying the haulers for the collection of Acceptable Waste under the Collection Agreements, shall use good faith efforts to simultaneously collect from the Collection Agreement haulers the amounts owed to the Authority for the delivery by the Collection Agreement haulers of such Acceptable Waste to the Transfer Station. The Town shall timely remit such payment to the Authority and the parties shall mutually develop any policies or procedures necessary to implement the payment process set forth herein.

(D) No Town Interference. The Town shall not interfere with the Authority's operation of the Clarkstown Solid Waste Facilities or the French Farms Facility except as required by Applicable Law or as necessary by the Town in the performance of the Town Landfill Obligations. The Town shall, however, have access to the Clarkstown Solid Waste Facilities Site and the French Farms Site as set forth in Section 3.4 herein.

(E) Agreement to Discuss Use of Landfill. In the event that the Authority operations require additional space, the parties agree to use good faith efforts to discuss alternatives to provide the Authority with such additional space, including use of the Landfill.

#### SECTION 3.4. FACILITIES SITE ACCESS.

(A) Town. The Town shall have unfettered access to the Landfill from the Route 303 entrance to the Clarkstown Solid Waste Facilities at all times. For access outside of the operating hours, the Town shall use best efforts to take all necessary steps to prevent damage to the Clarkstown Solid Waste Facilities by the Town's representatives, employees or invitees. For any such access outside the operating hours, the Town shall also ensure that the gate from Route 303 is locked after such access.

(B) Town Employees. The Town employees authorized by the Town to perform the Town Landfill Obligations may access those areas of the Clarkstown Solid Waste Facilities and the Clarkstown Solid Waste Facilities Site necessary to perform the Town Landfill Obligations.

(C) Town Invitees. Town invitees shall have access to the Landfill from dawn to dusk seven days a week so long as the Town invitees comply with the Authority's sign in and safety provisions and the Town indemnifies the Authority as set forth in Section 7.6.

(D) Other Individuals. All other individuals accessing any of the Clarkstown Solid Waste Facilities or Clarkstown Solid Waste Facilities Site shall comply with the Authority's sign in and safety procedures.

(E) Notice for Activities Causing Disruption of Authority Activities. For any activities that the Town anticipates might cause a disruption to the Authority's operations, the Town shall provide the Authority with reasonable written notice prior to the start of any such activity.

#### SECTION 3.5. RIVERSO PROPERTY OBLIGATIONS.

(A) Assumption of Rivero Obligations. The Authority shall, at the Authority's own cost and expense, assume the Rivero Obligations from the Town and implement such obligations to the satisfaction of the DEC.

(B) DEC Remediation Funds. If the Authority acquires the Rivero Property and/or assumes the Rivero Obligations, the parties shall cooperate to have funds held by DEC for remediation of such property made available to the Authority (not including retainage being held back by DEC). Parties agree that funds DEC is holding as retainage on work performed will not be allocated to the Authority.

## ARTICLE IV

### DELIVERY AND DISPOSAL OF ACCEPTABLE WASTE, USE OF COMPOST AND MULCH

SECTION 4.1. TOWN OBLIGATIONS. In addition to the obligations set forth in Article III, the Town shall also comply with the following obligations in relation to the delivery of Acceptable Waste.

(A) Delivery of Acceptable Waste. The Town shall deliver or cause to be delivered during the Term all Acceptable Waste collected by or on behalf of the Town to the Clarkstown Solid Waste Facilities for transfer and disposal.

(B) Delivery of Yard Waste. During the Term hereof, the Town shall deliver or cause to be delivered Yard Waste collected by or on behalf of the Town to the Yard Waste Facility, the French Farms Facility or any area designated by the Authority from time to time to receive such waste. The Authority shall have the exclusive right to operate all public yard waste facilities within the Town.

SECTION 4.2. AUTHORITY OBLIGATIONS. In addition to the obligations set forth in Article III, the Authority shall also comply with the following obligations in relation to disposal services for Acceptable Waste.

(A) Disposal Services. During the Term hereof, the Authority shall provide disposal services for all Acceptable Waste delivered by or on behalf of the Town to the Clarkstown Solid Waste Facilities and French Farms in accordance with the terms of this Host Community Agreement. The Authority shall do and perform all acts and things which may be necessary or desirable in connection with the Authority's performance of its disposal obligation.

(B) Weigh Scale. During the Term hereof, the Authority shall obtain all required certification and seals for the weigh scales required under Applicable Law. The Town may, at its sole cost and expense and with prior notice and approval from the Authority, observe the weighing of Solid Waste, Construction and Demolition Debris, and Yard Waste and test the accuracy and precision of any weigh scale to certify whether the weigh scales meet the Applicable Law standards. The Town may authorize a representative or agent of the Town to conduct such observation and testing. If such tests indicate any errors in the operation of the weigh scales, the Town shall notify the Authority and the Authority shall repair or replace any inoperable weigh scale as soon as practicable.

(C) Town Acceptable Waste. The Authority shall accept at the Clarkstown Solid Waste Facilities all Acceptable Waste originating within the Town ("Town Acceptable Waste") that is delivered to the Clarkstown Solid Waste Facilities during the Operating Hours or as otherwise set forth herein. In case of a curtailment or partial shutdown at the Clarkstown Solid Waste Facilities which affects the Authority's ability to receive Acceptable Waste at the Clarkstown Solid Waste Facilities and French Farms, the Authority shall give priority to Town Acceptable Waste over all other Acceptable Waste.

(D) Landscaper Coupon Program. The Authority shall provide the Town with resident yard waste drop-off coupons for distribution by the Town to Town residents in Town mailings or any other similar process to be agreed to by the parties.

(E) Queuing. The Authority shall use reasonable efforts to operate or cause the Clarkstown Solid Waste Facilities to be operated in a manner to minimize queuing on the roads leading to and from the Clarkstown Solid Waste Facilities Site.

(F) Recyclables Drop-Off Area. The Authority shall make available an adequate area within the Clarkstown Solid Waste Facilities Site for the collection of recyclables generated in the Town and the Town of Orangetown for transfer by their respective contractors to the Authority's materials recovery facility (the "Recyclables Drop-Off Area").

(G) Existing Operating Protocols. On the Contract Date, the Authority shall provide the Town with the Authority's existing operation protocols and contact information of the Authority's operations personnel to facilitate communication and coordination between the parties on operational issues that affect the Town.

#### SECTION 4.3. USE OF YARD WASTE COMPOST AND MULCH BY TOWN AND TOWN RESIDENTS.

(A) Compost and Mulch for Town Use. A representative of the Town's department of public works shall have the right to access the Clarkstown Solid Waste Facilities Site during Operating Hours pursuant to the requirements set forth in Section 3.4 to obtain compost or mulch produced at the Yard Waste Facility in the proportion set forth in subsections (1) and (2) below at no cost to the Town. The Town shall be responsible, at its sole cost and expense, for transporting such compost and mulch to the Town's designated location.

(1) Compost. The Town shall be entitled, during any Contract Year, to obtain 75 cubic yards of compost per 1,000 Tons of leaves, originating within the Town, that are delivered to the Clarkstown Solid Waste Facilities and the French Farms Site.

(2) Mulch. The Town shall be entitled, during any Contract Year, to obtain 100 cubic yards of mulch per 1,000 Tons of Yard Waste (excluding leaves), originating within the Town, that are delivered to the Clarkstown Solid Waste Facilities.

(3) Compost and Mulch for Residential Use. During any Contract Year, the Authority shall make available 3,000 cubic yards of compost and 3,000 cubic yards of mulch to the Town for the use of the Town's residents.

(B) Residential Yard Waste Drop Off. The Authority shall allow Town residents to drop-off residential Yard Waste at the Clarkstown Solid Waste Facilities at no cost; provided, however, that the Authority shall (1) have the right to direct the location where such drop-off is permitted; (2) resident drop-off amounts are commensurate with non-commercial, residential use, as solely determined by the Authority; and (3) have the right to establish delivery requirements for such materials.

## ARTICLE V

### HOST FEES, INOPERABILITY AND TOWN RIGHT TO REVIEW RECORDS

#### SECTION 5.1. HOST PAYMENTS.

(A) Purpose For Payments. In consideration of the special concerns raised by the Town and in recognition that the Town may incur increases in costs as a result of the amounts of Acceptable Waste being delivered to the Clarkstown Solid Waste Facilities or the French Farms Facility, the Authority agrees to the payment of host community fees set forth below.

(B) Per Ton Fee. The Authority shall pay the Town the following fees: \$6.50 per Ton for each Ton of Solid Waste and Construction and Demolition Debris delivered to the Transfer Station; \$3.00 per Ton for each Ton of Yard Waste delivered to the Yard Waste Facility, including the French Farms Facility as set forth in the French Farms License, so long as the French Farms License remains in effect; \$2.00 per Ton for each Ton of asphalt pavement, brick, and uncontaminated concrete delivered to the Concrete Crushing Facility (the "Host Fees").

(C) Effect of Flow Control on Per Ton Fee. From the Contract Date and for so long as County's local flow control law is valid and enforceable (i.e.: there is no injunction or judicial action which prevents the law from being enforceable or the law is deemed invalid and unenforceable pursuant to a final non-appealable order), the Authority shall pay the Town the Host Fee per Contract Year for Solid Waste and Construction and Demolition Debris on the greater of (i) 125,000 Tons total of Solid Waste and Construction and Demolition Debris or (ii) the actual number of Tons of Solid Waste and Construction and Demolition Debris received at the Transfer Station during such Contract Year. If the Authority is no longer delegated the legal authority to direct Solid Waste within the County as set forth above, the Authority shall pay the Town the Host Fees based on the actual Tons of Solid Waste and Construction and Demolition Debris received at the Transfer Station and the Authority shall use good faith efforts to cause Solid Waste and Construction and Demolition Debris to be delivered up to the Transfer Station's permitted capacity. Tons of Acceptable Waste shall be based on Tons recorded by the applicable scale records and volume measurement methods employed by the Authority as of the Contract Date.

#### SECTION 5.2. INOPERABILITY OF FACILITY.

##### (A) Uncontrollable Circumstances.

- (1) Transfer Station. If the Transfer Station operations are suspended or terminated due to Uncontrollable Circumstances and Solid Waste and Construction and Demolition Debris are no longer delivered to the Transfer Station, the Authority's obligation to make the minimum payment set forth in Section 5.1(C) shall be prorated in accordance with the length of the suspension, or the portion of the Contract Year during which operations were terminated based on the average Host Fee payment made for Solid Waste and Construction and Demolition Debris in the preceding 12 months. To the extent the Clarkstown Transfer Station is inoperable for any period of time due to Uncontrollable Circumstances, the

Authority will use good faith efforts to permit such facility to accept Acceptable Waste up to its permitted capacity as soon as reasonably possible. In the event an Uncontrollable Circumstance causes a total constructive loss of the Transfer Station, the Authority shall have the right to suspend the applicable payment under Section 5.1(C) to the Town. A "total constructive loss" for this purpose shall be deemed to have occurred: (a) if so determined by the casualty insurance carrier; or (b) if the Transfer Station is substantially inoperable for a period of three years following the occurrence of the Uncontrollable Circumstance. The Authority shall not allow the Transfer Station to become a public nuisance in the event of such suspension or termination.

- (2) Yard Waste Facility and Concrete Crushing Facilities. If the Yard Waste Facility or Concrete Crushing Facility operations are suspended or terminated due to Uncontrollable Circumstances and Acceptable Waste is no longer delivered to such facilities, the Authority's obligation to make payments pursuant to Section 5.1(B) shall be suspended until such time as such facilities resume operations.

(B) Inoperability of the Facility in All Other Circumstances. If the Clarkstown Transfer Station operations are suspended or terminated and such suspension or termination is not the direct result of an Uncontrollable Circumstance and Solid Waste and Construction and Demolition Debris is no longer delivered to the Transfer Station, the Authority shall continue to make payments to the Town in accordance with Section 5.1(B), provided, however, that such payment shall be based on 125,000 Tons per Contract Year.

SECTION 5.3. LEGALITY OF PAYMENTS. The Authority shall continue to make payments to the Town pursuant to this Article V in the event any State or federal law is enacted which would permit the Authority to reduce the amount of payments required to be made to the Town as set forth in subsection 5.1(B). The Authority shall not be obligated to continue to make such payments to the Town in the event it becomes forbidden to do so under State or federal law.

SECTION 5.4. PAYMENT OF HOST FEES AND OTHER AMOUNTS. The Authority shall pay the Town the Host Fees calculated pursuant to subsection 5.1(B) on a semi-annual basis within 45 days from June 30<sup>th</sup> and December 31<sup>st</sup> of each Contract Year.

SECTION 5.5. TOWN RIGHT TO REVIEW RECORDS.

(A) Records Related to Host Fee. The Town shall have the right, in accordance with Applicable Law, to request to review all books, data, records, vouchers, reports, and any and all similar material related to the payment of the Host Fees. The Authority shall make all such documentation available for periodic inspection and review by the Town so long as the Town provides the Authority with 15-day prior notice.

(B) Records Related to Weigh Scale. The Town shall have the right to request all delivery data relating to the quantity of Acceptable Waste delivered to the Clarkstown Solid Waste Facilities and shall have the right to observe and test the weigh scale as set forth in Section 4.2(B).

## ARTICLE VI

### BREACH, ENFORCEMENT AND TERMINATION

SECTION 6.1. BREACH. Neither party shall have the right to terminate this Host Community Agreement except as provided in Section 6.2 below. In the event of a breach or threatened breach by either party of any of its obligations under this Host Community Agreement, the non-breaching party shall also have the right to obtain equitable relief, including but not limited to an injunction or an order for specific performance, as the case may be, and the breaching party hereby waives any requirement for the posting of a bond in connection with any application therefor by the non-breaching party. In no event shall either party be entitled to consequential, punitive or "special" damages (except for damages relating to the third party indemnification provisions contained in Section 7.6 hereof). The remedies to which either party may resort under this Host Community Agreement are cumulative and are not intended to be exclusive of any other remedies to which either party may be lawfully entitled at any time and either party may bring an action for damages or otherwise exercise any remedies available at law or in equity as if specific remedies were not provided for herein.

#### SECTION 6.2. TERMINATION.

(A) By Authority. The Authority shall have no right to terminate this Host Community Agreement for cause except in the event of the repeated failure or refusal by the Town substantially to perform any material obligation under this Host Community Agreement unless such failure or refusal is excused by an Uncontrollable Circumstance; except that no such failure or refusal shall give the Authority the right to terminate this Host Community Agreement for cause under this subsection unless:

(1) The Authority has given prior written notice to the Town stating that a specified failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Host Community Agreement on the part of the Town and which will, in its opinion, give the Authority the right to terminate this Host Community Agreement for cause under this subsection unless such breach is corrected within a reasonable period of time, and

(2) The Town has neither challenged in an appropriate forum the Authority's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Host Community Agreement nor corrected or diligently taken steps to correct such breach within a reasonable period of time but not more than 90 days from the date of the notice given pursuant to clause (1) of this subsection (but if the Town shall have diligently taken steps to correct such breach within a reasonable period of time, the same shall not constitute a breach giving rise to the right of termination for as long as the Town is continuing to take such steps to correct such breach).

(B) By Town. The Town shall have no right to terminate this Host Community Agreement for cause except in the event of the repeated failure or refusal by the Authority substantially to perform any material obligation under this Host Community Agreement unless such failure or refusal is excused by an Uncontrollable Circumstance; except that no such failure



or refusal shall give the Town the right to terminate this Host Community Agreement for cause under this subsection unless:

(1) The Town has given prior written notice to the Authority stating that a specified failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Host Community Agreement on the part of the Authority and which will, in its opinion, give the Town the right to terminate this Host Community Agreement for cause under this subsection unless such breach is corrected within a reasonable period of time, and

(2) The Authority has neither challenged in an appropriate forum the Town's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Host Community Agreement nor corrected or diligently taken steps to correct such breach within a reasonable period of time but not more than 90 days from the date of the notice given pursuant to clause (1) of this subsection (but if the Authority shall have diligently taken steps to correct such breach within a reasonable period of time, the same shall not constitute a breach giving rise to the right of termination for as long as the Authority is continuing to take such steps to correct such breach).

SECTION 6.3. WAIVER. Unless otherwise specifically provided by the terms of this Host Community Agreement, no delay or failure to exercise a right resulting from any breach of this Host Community 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 Host Community Agreement is breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and will not be deemed to waive any other breach under this Host Community Agreement.

## ARTICLE VII

### MISCELLANEOUS

#### SECTION 7.1. TERM OF HOST AGREEMENT.

(A) Term. This Host Community Agreement shall become effective on the Contract Date, and shall continue in effect until the 30th anniversary of the Contract Date (the "Term"), unless earlier terminated in accordance with its terms, in which event the Term shall be deemed to have expired as of the date of such termination.

#### SECTION 7.2. INSURANCE.

(A) Authority. The Authority shall maintain or cause to be maintained commercial liability insurance and shall comply with its obligations set forth in subsection 7.6(F) with respect to the Environmental Insurance Policy.

(B) Town. The Town shall maintain or cause to be maintained commercial liability insurance and shall comply with its obligations set forth in subsection 7.6(F) with respect to the Environmental Insurance Policy.

SECTION 7.3. AMENDMENTS. Neither this Host Community Agreement nor any provision hereof may be changed, modified, amended or waived except by written agreement duly executed by both parties hereto.

SECTION 7.4. NOTICE OF LITIGATION. Each party shall deliver written notice to the other of any litigation or similar proceeding to which it is a party and which questions the validity or enforceability of this Host Community Agreement or any other contract or agreement executed by the Authority or the Town or any regulatory license, permit or approval issued in connection herewith.

SECTION 7.5. ASSIGNABILITY. Except as expressly provided in this Section, no party to this Host Community Agreement may assign or encumber any interest herein to any person without the consent of the other party hereto, which consent cannot be unreasonably withheld and the terms of this Host Community 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 or political subdivision of the State 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.

#### SECTION 7.6. INDEMNIFICATION.

##### (A) General Indemnification.

(1) By Authority. The Authority, to the extent permitted by Applicable Law, and to the extent not addressed in Section 7.6(B) below, shall protect, indemnify and hold harmless the Town and its representatives, officers, employees, and agents (collectively with the Town, the

"Town's Related Parties") from and against (and pay the full amount of) all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and reasonable attorneys' fees, and will defend such parties in any suit, claim, enforcement action or governmental directive or order, including appeals arising out of (a) the negligence or fault of the Authority or any of its officers, members, employees, agents, representatives, contractors or subcontractors in connection with its obligations or rights under this Host Community Agreement or (b) the performance or nonperformance of the Authority's obligations under this Host Community Agreement. The Authority's indemnification obligations pursuant to this Section 7.6(A)(1) shall be limited to damages incurred by the Town that exceed amounts finally and actually paid to the Town pursuant to any insurance. To the extent permitted by its insurance policies, the Town waives any right of subrogation. The provisions of this Section 7.6(A)(1) shall survive the termination of this Host Community Agreement.

(2) By Town. The Town, to the extent permitted by Applicable Law, and to the extent not addressed in Section 7.6(B) below, shall protect, defend, indemnify and hold harmless the Authority and the Authority's representatives, officers, directors, employees and agents, (collectively with the Authority and its successors and assigns, the "Authority's Related Parties") from and against (and pay the full amount of) all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and reasonable attorneys' fees, and will defend such parties in any suit, claim, enforcement action or governmental directive or order including appeals, arising out of: (a) the negligence or fault of the Town or any of its officers, members, employees, agents, representatives, invitees, contractors or subcontractors (i) in connection with its obligations or rights under this Host Community Agreement; (ii) arising from the Town's use of the Recyclables Drop-Off Area; and (b) the performance or nonperformance of the Town's obligations under this Host Community Agreement. For purposes of this Host Community Agreement, the Authority's successors and assigns shall be limited to those entities that are governmental entities or public benefit corporations succeeding in whole or in part to the Authority's governmental or public responsibilities. The Town's indemnification obligations pursuant to this Section 7.6(A)(2) shall be limited to damages incurred by the Authority that exceed amounts finally and actually paid to the Authority pursuant to any insurance. To the extent permitted by its insurance policies, the Authority waives any right of subrogation. The provisions of this Section 7.6(A)(2) shall survive the termination of this Host Community Agreement.

(B) Special Environmental Indemnification.

(1) The Town shall, to the extent permitted by Applicable Law, protect, defend, indemnify and hold harmless the Authority's Related Parties from and against:

(a) all third party claims arising out of or caused by Pre-Closing Contamination or Landfill Contamination including any losses, costs, damages, expenses (including reasonable attorneys,' experts' or consultants' fees), demands or other liabilities incurred by the Authority's Related Parties in responding to such third party claims;

(b) any fines, penalties, sanctions, costs, reasonable attorneys' fees, expenses, damages, charges, environmental investigation or remediation, including operations and

maintenance and institutional controls, arising out of any governmental orders, directives or demands attributable to Pre-Closing Contamination, or Landfill Contamination; and

(c) any investigation, remediation, operations or maintenance, including institutional controls, to address Pre-Closing Contamination or Landfill Contamination that the Authority Related Parties must undertake to comply with Environmental Laws or comply with Governmental Orders or Directives.

Notwithstanding the provisions of 7.6(B)(1)(a) – (c), the Town shall not be required to indemnify or defend the Authority's Related Parties for the performance of the Authority's obligations under the DEC Order on Consent or for any Landfill Contamination, or Pre-Closing Contamination attributable to or exacerbated by the acts or omissions of any Authority Related Parties and/or third parties on the Property after the Transfer Date.

(2) The Authority shall, to the extent permitted by Applicable Law, protect, defend, indemnify and hold harmless the Town's Related Parties from and against:

(a) all third party claims arising out of or caused by Post-Closing Contamination including any losses, costs, damages, expenses (including reasonable attorneys', experts' or consultants' fees), demands or other liabilities incurred by the Town's Related Parties in responding to such third party claims;

(b) any fines, penalties, sanctions, costs, reasonable attorneys' fees, expenses, damages, charges, environmental investigation or remediation, including operations and maintenance and institutional controls, arising out of any governmental orders, directives or demands attributable to Post-Closing Contamination, and

(c) any investigation, remediation, operations or maintenance, including institutional controls, to address Post-Closing Contamination that the Town's Related Parties must undertake to comply with Environmental Laws or comply with Governmental Orders or Directives.

(C) Landfill Contamination After Closing Date. If Landfill Contamination has been discovered after the Transfer Date or if it is discovered after the Closing Date, the Authority shall give notice to the Town as soon as possible, but in any event within seven (7) business days of such discovery. The Town shall take all action required by Environmental Laws to address Landfill Contamination and to comply with any orders, directives or demands of DEC or EPA to remedy such Landfill Contamination, whether on the Property or on third-party property, subject in each such instance, to such right as the Town may have under Applicable Law to contest same. The Authority shall have no obligation to investigate, remediate, address or monitor Landfill Contamination, other than any obligations under the DEC Order on Consent.

(D) Failure to Agree. If the Town and the Authority are unable to agree whether any environmental condition for which indemnity is sought is Pre-Closing Contamination, Post-Closing Contamination or Landfill Contamination, or, in any such event, attributable to or exacerbated by the acts or omissions of either party, or the acts or omissions and/or third parties on the Property after the Transfer Date, the Town and the Authority shall conduct good faith negotiations to determine same or whether the parties can agree to a cost sharing arrangement

concerning joint remediation, litigation or defense related to the environmental condition. If the Town and the Authority have not reached agreement regarding the asserted obligation to indemnify or have not entered into a cost sharing agreement within sixty (60) days after the date of notification by the party asserting the claim for indemnity, either party hereto may, by written notice, invoke the terms and conditions of Subsection (E) below.

(E) Third-Party Neutral. If either party has elected to invoke this provision pursuant to Subsection (D) above, then the Town and the Authority shall select a neutral third-party environmental consultant with at least ten years of experience in investigation, remediation and characterization of contamination in soils, groundwater, surface water and ambient air as well as forensic evidence of the sources and possible causes of environmental contamination. Such third-party consultant shall review and consider such evidence as the parties elect to submit and shall make the requested determination as promptly as practicable. The Town and Authority will each pay one-half of the fees and expenses of such third-party consultant and the decision of said third-party consultant shall be binding on both parties.

(F) Insurance. The Town shall use good faith efforts to cooperate with the Authority in obtaining commercially available environmental insurance policy ("Environmental Insurance Policy") provided, however, that the Authority shall pay the cost of such insurance.

(G) Limits of Town's Indemnification on Environmental Insurance. The Town's indemnification obligations pursuant to Section 7.6(B) shall be limited to damages incurred by the Authority that exceed amounts finally and actually paid to the Authority pursuant to any insurance, including the Environmental Insurance Policy. The Authority shall not be entitled to receive any indemnification payments under Section 7.6(B) until the aggregate amount of indemnified costs incurred by the Authority's Related Parties exceeds \$100,000 (the "Basket Amount"), but only for such excess. The maximum aggregate amount of out of pocket indemnification payments by the Town (not including insurance proceeds) that the Authority Related Parties shall be entitled to receive shall not exceed \$3,000,000 (the "Cap Amount") during the Term of this Host Community Agreement, provided, however, that the Basket Amount and Cap Amount shall not apply to any of the Town's indemnification obligations under Section 7.6(A) or any costs incurred by the Authority Related Parties relating to, resulting from or arising from: (i) Pre-Closing Contamination or Landfill Contamination that migrates onto or under property owned by third parties, and (ii) solid or Hazardous waste from the Landfill that was placed by the Town on or under property owned by third parties.

(H) Termination. The indemnity obligations set forth in Section 7.6(B) shall expire upon termination of the Host Community Agreement.

(I) Indemnity Procedures Applicable to General and Special Environmental Indemnities. In case any claim or liability is asserted or assessed against either party in respect of which indemnification may be sought (a "Claim") by such party (an "Indemnified Party") pursuant to sections 7.6(A) or (B) hereto, the Indemnified Party shall give prompt written notice thereof to the other party (the "Indemnitor"), provided, however, that the failure of an Indemnified Party to so notify the Indemnitor shall not limit or affect such Indemnified Party's rights to be indemnified pursuant to this Section except to the extent the Indemnitor is materially prejudiced by such failure. Upon receipt of such notice of Claim, the Indemnitor shall, at its sole

cost and expense, in good faith defend any such Claim with counsel reasonably satisfactory to such Indemnified Party (it being understood that counsel selected by such Indemnitor's third party insurance carrier shall be deemed to be acceptable to such Indemnified Party). In the alternative, such Indemnified Party may elect to conduct its own defense through counsel of its own choosing and at the reasonable expense of the Indemnitor, if (A) such Indemnified Party reasonably determines that the conduct of its defense by the Indemnitor is not possible due to a conflict of interest, (B) the Indemnitor shall have failed or refused to defend such Claim, or (C) the Indemnitor shall have failed, in such Indemnified Party's reasonable judgment, to defend the Claim in good faith (unless such Claim is being defended by the Indemnitor's third party insurance carrier), provided in each instance that the Indemnified Party shall have given not less than thirty (30) days written notice of such election and an explanation, in reasonable detail, of the basis for its conclusion that such election is permitted hereunder. The Indemnitor may settle any Claim against such Indemnified Party without such Indemnified Party's consent, provided (i) such settlement is without any liability, cost or expense whatsoever to such Indemnified Party, (ii) the settlement does not include or require any admission of liability or culpability by such Indemnified Party under any federal, state or local statute or regulation, whether criminal or civil in nature, (iii) the Indemnitor obtains an effective written release of liability for such Indemnified Party from the party to the Claim with whom such settlement is being made, which release must be reasonably acceptable to such Indemnified Party, and a dismissal with prejudice with respect to all legal actions commenced by the party against such Indemnified Party in connection with such Claim and (iv) the settlement does not impose any obligation on such Indemnified Party or its property. The Indemnified Party shall reasonably cooperate with the Indemnitor, at the Indemnitor's sole cost and expense, in connection with the defense or settlement of any Claim in accordance with the terms hereof. If the Indemnitor refuses to defend any Claim or fails to defend such Claim in good faith (other than a Claim that is being defended by the Indemnitor's third party insurance carrier) and such Indemnified Party elects to defend such Claim by counsel of its own choosing in accordance with the preceding sentence then the Indemnitor shall be responsible for any good faith and commercially reasonable settlement of such Claim entered into by such Indemnified Party. Except as provided in the preceding sentence, no Indemnified Party may pay or settle any Claim and seek reimbursement therefor under this Section without the prior written consent of the Indemnitor, which shall not be unreasonably withheld, delayed or conditioned. Nothing contained herein shall be construed as requiring any Indemnified Party to expend funds or incur costs to defend any Claim in connection with the matters for which such Indemnified Party is entitled to indemnification pursuant to this Section. The obligations of each Indemnitor hereunder shall specifically include the obligation to expend its own funds, to incur costs in its own name and to perform all actions as may be necessary to protect any Indemnified Party from the necessity of expending its own funds, incurring cost or performing any actions in connection with the matters for which such Indemnified Party is entitled to indemnification hereunder.

**SECTION 7.7. UNCONTROLLABLE CIRCUMSTANCES.** Neither party shall be liable to the other for any failure or delay in the performance of any obligation under this Host Community Agreement to the extent due to the occurrence of an Uncontrollable Circumstance. The Authority, however, shall continue to make payments to the Town as set forth in Section 5.2. The party experiencing an Uncontrollable Circumstance shall give prompt written notice to the other, and use all reasonable efforts to eliminate the cause thereof, reduce costs and resume performance hereunder.

SECTION 7.8. BINDING EFFECT. This Host Community Agreement shall bind and inure to the benefit of the parties hereto and any successor or assignee acquiring an interest hereunder consistent with the provisions of Section 7.5.

SECTION 7.9. APPLICABLE LAW, FORUM FOR DISPUTE RESOLUTION AND WAIVER OF JURY TRIAL. All legal actions and proceedings related to this Host Community Agreement or to the Clarkstown Solid Waste Facilities or to any rights or any relationship between the parties hereto arising therefrom shall be governed solely by the laws of the State of New York and shall be solely and exclusively initiated and maintained in the courts of the State located in the County. In all such actions the parties hereto shall have waived their rights to a trial by jury.

SECTION 7.10. 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 Authority:                             Chairman  
  Rockland County Solid Waste Management Authority  
  420 Torne Valley Road  
  Hillburn, NY 10931

With a copies to:                             Executive Director  
  Rockland County Solid Waste Management Authority  
  420 Torne Valley Road  
  Hillburn, NY 10931

  Authority Counsel  
  Rockland County Solid Waste Management Authority  
  420 Torne Valley Road  
  Hillburn, NY 10931

If to the Town:                                 Town Supervisor  
  Town of Clarkstown  
  10 Maple Avenue  
  New City, New York 10956

With a copy to:                                Town Clerk  
  Town of Clarkstown  
  10 Maple Avenue  
  New City, New York 10956

And a copy to:                                 Town Attorney  
  Town of Clarkstown  
  10 Maple Avenue  
  New City, New York 10956

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 7.11. TERMINATION OF PREVIOUS HOST COMMUNITY AGREEMENT; SURVIVAL OF CERTAIN PROVISIONS. The parties hereto have terminated

the Host Community Agreement between the Authority and the Town dated June 1, 1997 on November 17, 2008.


SECTION 7.12. SURVIVAL OF CERTAIN PROVISIONS. The rights and obligations of the parties hereto pursuant to Section 7.6 (Indemnification) and 7.12 (Survival of Certain Provisions) shall survive the termination or expiration of this Host Community Agreement, and no such termination or expiration of this Host Community Agreement shall limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination or expiration. At the end of the Term, all other obligations of the parties hereunder shall terminate unless extended.

SECTION 7.13. COOPERATION AND ASSISTANCE. The parties shall use good faith efforts to provide reasonable cooperation and assistance to each other in connection with the performance of each of their respective obligations under this Host Community Agreement.




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

ROCKLAND COUNTY SOLID WASTE  
MANAGEMENT AUTHORITY

By:   
Printed Name: Christopher P. St. Lawrence  
Title: Chairman

TOWN OF CLARKSTOWN

By:   
Printed Name: Alexander J. Gromack  
Title: Town Supervisor

**APPENDIX A**  
**LITIGATION**

**TOWN**

**A. Pending Claims:**

1. Claim No. 3343/08 - James Sturtevant v. Town of Clarkstown, Miele Sanitation Co. NY, Inc., Clarkstown Recycling Center, Inc., and Miele Sanitation Company

Address:

James Sturtevant  
51 Brown Street  
Johnson City, New York

Plaintiff claims that on 7/2/07, in the morning, he sustained serious personal injuries after securing or tarping the load of the trash hauler trailer he operated. Plaintiff claims he was injured after a 10-13 foot fall while attempting to descend from a ladder or raised walkway fixedly mounted to a structure located within a building of the Clarkstown Transfer Station.

2. Claim No. 2794/06 - In the Matter of the Claim of Katie K. Chang, individually and as Administratrix of the Estate of Simon D. Chang, deceased v. Town of Clarkstown, County of Rockland and Rockland County Solid Waste Management Authority

Summons and Complaint – Supreme Court Index No. 02370/07

In the Matter of the Claim of Katie K. Chang, individually and as Administratrix of the Estate of Simon D. Chang, deceased v. Town of Clarkstown, County of Rockland and Rockland County Solid Waste Management Authority and John Luther

Address:

Katie K. Chang  
270 Ridge Road  
New City, New York

Plaintiff claims that on 9/12/06, in the morning, the decedent (Plaintiff's husband) was pickup up a load of mulch from the Landfill when he was buried alive under smoldering compost dumped into the bed of his truck by the Respondents. The Town has assumed the Authority's defense in this matter. The Town is obligated under its Host Community Agreement with the Authority, dated June 1, 1997, to defend, indemnify and hold harmless the Authority with regard to Chang's claim. The Town has assumed the Authority's defense in this matter.

3. NYSDEC Violations – See consent order between the Town and the NYSDEC.

4. C&A Carbone, Inc., Scruffy Carting, Inc., Provenza Contracting, Inc., Mr. J. Jr. Excavating, Inc., and Michael Ricklie, Jr., v. The County of Rockland, Legislature of the County

of Rockland, Rockland County Solid Waste Management Authority, C. Scott Vanderhoff, individually and as Rockland County Executive, Christopher P. St. Lawrence individually and as Chairman of the Rockland County Solid Waste Management Authority, The Town of Clarkstown, Town Board of the Town of Clarkstown, Alexander J. Gromack, individually and as Supervisor of the Town of Clarkstown, and Clarkstown Recycling Center, Inc. Case No. 08 CIV. 6459

This action was filed on July 18, 2008 in the United States District Court Southern District of New York; however, the Town was not served until November, 13, 2008, after the complaint was amended to add different allegations and additional parties. The amended complaint, which supersedes the allegations of the original complaint, argues that, among other things, the Flow Control Act is illegal and unconstitutional because it violates the United States Constitution and State law. Specifically, the Plaintiffs argue in their amended complaint, among other things, that the law (a) constitutes a constraint on interstate trade and interstate commerce in violation of the United States Constitution, (b) deprives the Plaintiffs of their property and contract rights without just compensation, due process and equal protection in violation of the United States Constitution, and (c) was enacted without complying with certain administrative environmental procedures under State law, commonly referred to as SEQRA (6 NYCRR §617.3, et. seq). The Town will move to dismiss the allegations against the Town, the Town Board and Supervisor Gromack.

#### **B. Threatened Claims:**

1. RIVERSO – As part of the landfill closure, the Town entered into a consent decree with the NYSDEC whereby the Town was required to cap the landfill and install a leachate system around it. The remediation plan called for the Town to consolidate solid waste, cap and install a leachate collection system on an adjoining parcel owned by Raphael RIVERSO (the "RIVERSO Property"). Attempts to acquire the RIVERSO Property and/or obtain a license to conduct the work on the RIVERSO Property were unsuccessful. Two condemnation proceedings followed, however, by the conclusion of the litigation the Town had already remediated its site and built a leachate collection system around the RIVERSO Parcel, and no taking ever occurred. The Town has recently submitted a Scope of Work to the NYSDEC which calls for drilling test pits so that the Town and the DEC may determine the scope of any remaining solid waste or hazardous waste and what, if any, remediation efforts must be undertaken. Mr. RIVERSO has claimed, and continues to claim, that he has suffered damages as a result of the Town's actions, though there is no pending litigation.

#### AUTHORITY

C&A Carbone, Inc., Scruffy Carting, Inc., Provenza Contracting, Inc., Mr. J. Jr. Excavating, Inc., and Michael Ricklie, Jr., v. The County of Rockland, Legislature of the County of Rockland, Rockland County Solid Waste Management Authority, C. Scott Vanderhoff, individually and as Rockland County Executive, Christopher P. St. Lawrence individually and as Chairman of the Rockland County Solid Waste Management Authority, The Town of Clarkstown, Town Board of the Town of Clarkstown, Alexander J. Gromack, individually and as Supervisor of the Town of Clarkstown, and Clarkstown Recycling Center, Inc.

This action was filed on July 18, 2008 in the United States District Court Southern District of New York; however, the Authority was not served until November, 2008, after the complaint was amended to add different allegations and additional parties. The amended complaint, which supersedes the allegations of the original complaint, argues that, among other things, the Flow Control Act is illegal and unconstitutional because it violates the United States Constitution and State law. Specifically, the Plaintiffs argue in their amended complaint, among other things, that the law (a) constitutes a constraint on interstate trade and interstate commerce in violation of the United States Constitution, (b) deprives the Plaintiffs of their property and contract rights without just compensation, due process and equal protection in violation of the United States Constitution, and (c) was enacted without complying with certain administrative environmental procedures under State law, commonly referred to as SEQRA (6 NYCRR §617.3, et. seq). The Authority is obligated by contract to defend the County defendants, and intends to enter into a joint defense agreement with the Town defendants.

**APPENDIX B**  
**TOWN EMPLOYEES**

1. **Town Employees to Assist in Transition:** The following employee shall be available to provide the Authority the transition services as set forth in Section 3.2(D)(1) of the Host Community Agreement.

- Ralph Lauria

If such employee is not available to provide such services, the Town shall provide the following employee as an alternate to provide the required services:

- Luke Kalarickal

2. **Town Employees to be Offered Employment:** The Authority shall offer employment as set forth in Section 3.2(D)(2) of the Host Community Agreement to the following employees:

**Employees:**

- George Kent – Weigher II
- Theresa Fortier -- Weigher II
- Robert Barruco – Transfer Station Monitor
- Michael D’Elia – Assistant Maintenance Mechanic

The terms of employment are set forth in the agreement between the Town and the Authority dated November 17, 2008.

**APPENDIX C**  
**AUTHORITY AND TOWN RESPONSIBILITIES**

1. The chart below sets forth the parties' responsibilities in connection with the Clarkstown Solid Waste Facilities and the Landfill.

	Landfill		Transfer Station/ Compost/Concrete		Comment
	Town	Authority	Town	Authority	
Gas Detection	NP*	NP -	100%	-	
Gas Venting	100%	-	-	100%	Transfer Station
Gas Wells and Collection System	100%	-	100%	-	
Lawn Mowing	100%	-	-	100%	
Snow Plowing	100%	-	-	100%	
Roadways	100%	-	-	100%	
Settlement Plates	100%	-	-	NP	Town responsible for settlement plates on paved landfill road
Culvert	100%	-	-	100%	
Subsurface Leachate Collection	100%	-	NP	NP	
Surface Liquid Collection	-	-	-	100%	
Leachate Pump Station(s)	100%	-	NP	NP	Flow meters needed
Leachate Storage Tank	100%	-	100%	-	
Gas Flare	100%	-	NP	NP	
Maintenance Building	-	-	-	100%	Access for leachate controls
Fencing	100%	-	-	100%	
Leachate Pond	NP	NP	-	100%	Yard waste composting
Security	100%	-	-	100%	
Odor Control	100%	-	-	100%	

\*NP = Not Present

2. The chart below outlines the parties' responsibilities in connection with the Riverso Property.

	Riverso Property		Comment
	Town	Authority	
Investigation, remediation, operation and maintenance obligations as set forth in Section 3.5 of the Host Community Agreement.		100%	

**APPENDIX D**  
**AUTHORITY IMPROVEMENTS**

The Authority shall implement the following improvements:

- (A) Improvements required under the DEC Order on Consent
- (B) Other Improvements
  - (1) Improvements to Overpass. The Authority shall make the following improvements to the overpass leading to the Concrete Crushing Facility:
    - Installation of Guard Rails
  - (2) Aesthetic Improvements to Route 303 Entrance. The parties agree that the aesthetic improvements will be completed within 24 months of the Contract Date.
  - (3) Water Meters. The Authority shall reimburse the Town for the cost of the installation of separate meters for water usage and surface water discharge.



**APPENDIX E**  
**DESCRIPTION OF CLARKSTOWN TRANSFER STATION AND LANDFILL**

**1. Legal Description of Transfer Station Real Property**

All that certain plot, piece or parcel of land situate, lying and being in the Town of Clarkstown, County of Rockland and State of New York. Being more fully bounded and described as follows:

BEGINNING at a point on the westerly right of way line of N.Y.S. Route 303, said point being located at the southeast corner of lands now or formerly of EklecCo NewCo, LLC (Tax Lot 65.10-1-3) and the northeast corner of the hereinafter intended to be described parcel; running thence along the westerly right of way line of N.Y.S. Route 303 the following two (2) courses and distances:

- 1) On a non tangent curve to the left having a radius of 1,950.00 feet, an arc length of 575.10 feet, chord bearing and distance of S16-09-41E, 573.02 feet;
- 2) S23-56-27E, 461.45 feet; running thence along the northerly line of lands now or formerly of George Hogan (Tax Lot 65.10-1-16) the following two (2) courses and distances:
- 3) S85-33-33W, 109.00 feet;
- 4) S66-03-33W, 109.00 feet; running thence along the northeasterly line of Lot 1 the following thirteen (13) courses and distances:
- 5) N68-38-15W, 78.01 feet;
- 6) S77-47-27W, 92.70 feet;
- 7) N77-47-24W, 256.39 feet;
- 8) N50-58-58W, 189.77 feet;
- 9) N11-31-52W, 457.71 feet;
- 10) On a curve to the left, having a radius of 150.00 feet, an arc length of 127.29 feet;
- 11) N60-09-03W, 468.61 feet;
- 12) On a curve to the left, having a radius of 250.00 feet, an arc length of 98.27 feet;
- 13) N82-40-22W, 225.69 feet;
- 14) On a curve to the right, having a radius of 250.00 feet, an arc length of 130.93 feet;
- 15) N52-39-58W, 227.07 feet;
- 16) On a curve to the right, having a radius of 50.00 feet, an arc length of 68.35 feet;
- 17) N25-39-40E, 112.19 feet; thence
- 18) S81-23-58E, 14.98 feet along the southerly line of lands now or formerly of EklecCo NewCo, LLC (Tax Lot 65.06-1-61.1); running thence along the southerly line of lands now or formerly of EklecCo NewCo, LLC (Tax Lot 65.10-1-19) the following two (2) courses and distances:
- 19) S63-05-58E, 460.96 feet;
- 20) N72-54-01E, 351.41 feet; thence
- 21) S07-15-03W, 298.46 feet along the westerly line of lands now or formerly of Raphael Riverso (Tax Lot 65.06-1-53); thence

- 22) N86-19-38E, 853.58 feet along the southerly line of lands now or formerly of EklecCo NewCo, LLC (Tax Lots 65.06-1-51, 65.10-1-2 & 65.10-1-3) to the point or place of BEGINNING.

Consisting of 846,431 square feet or 19.4314 acres of land.

## **2. Legal Description of Landfill**

All that certain plot, piece or parcel of land situate, lying and being in the Town of Clarkstown, County of Rockland and State of New York. Being more fully bounded and described as follows:

BEGINNING at a point on the westerly right of way line of N.Y.S. Route 303, said point being located at the southeast corner of lands now or formerly of EklecCo NewCo, LLC (Tax Lot 65.10-1-3) and the northeast corner of the hereinafter intended to be described parcel; running thence along the westerly right of way line of N.Y.S. Route 303 the following two (2) courses and distances:

- 1) On a non tangent curve to the left having a radius of 1,950.00 feet, an arc length of 575.10 feet, chord bearing and distance of S16-09-41E, 573.02 feet;
- 2) S23-56-27E, 461.45 feet; running thence along the northerly, westerly and southerly line of lands now or formerly of George Hogan (Tax Lots 65.10-1-16 and 65.10-1-15) the following five (5) courses and distances:
- 3) S85-33-33W, 109.00 feet;
- 4) S66-03-33W, 109.00 feet;
- 5) S23-56-27E, 400.00 feet;
- 6) N66-03-33E, 109.00 feet;
- 7) N85-33-33E, 109.00 feet; thence
- 8) S23-56-27E, 140.24 feet again along the westerly right of way line of N.Y.S. Route 303; thence
- 9) S72-18-30W, 401.10 feet along the northerly line of lands now or formerly of Alfredo Gulla (Tax Lot 65.14-2-5); thence
- 10) S19-43-24E, 523.46 feet along the westerly line of lands now or formerly of Alfredo Gulla (Tax Lot 65.14-2-5), Marz Enterprise Corp. (Tax Lot 65.14-2-6) and Cliff & Kimball Parker (Tax Lot 65.14-2-7); thence
- 11) S71-41-51W, 2,602.45 feet along the division line between the Town of Orangetown to the south and the Town of Clarkstown to the north; running thence along the easterly line of lands now or formerly of Bradley Industrial Park (Tax Lots 65.13-2-13 and 65.13-2-12) the following twenty seven (27) courses and distances:
- 12) N11-48-06W, 48.49 feet;
- 13) N15-37-54E, 186.71 feet;
- 14) N19-53-14E, 39.98 feet;
- 15) N42-55-14E, 45.37 feet;
- 16) N03-41-34E, 35.25 feet;
- 17) N31-25-26W, 108.07 feet;
- 18) N10-29-14E, 36.46 feet;
- 19) N18-21-54E, 59.66 feet;

- 20) N11-49-26W, 136.90 feet;
- 21) N29-34-54E, 157.00 feet;
- 22) N19-08-06W, 60.58 feet;
- 23) N30-01-06W, 28.00 feet;
- 24) N05-35-46W, 42.00 feet;
- 25) N04-38-26W, 43.85 feet;
- 26) N12-49-26W, 86.26 feet;
- 27) N36-20-06W, 67.00 feet;
- 28) N06-01-46W, 44.73 feet;
- 29) N31-32-46W, 36.63 feet;
- 30) N20-22-34E, 48.76 feet;
- 31) N38-35-06W, 39.13 feet;
- 32) N42-18-46W, 105.27 feet;
- 33) N43-41-46W, 87.53 feet;
- 34) N63-13-06W, 79.61 feet;
- 35) N15-18-46W, 31.12 feet;
- 36) N47-54-54E, 28.75 feet;
- 37) N31-32-46W, 44.70 feet;
- 38) N24-16-16W, 146.30 feet; thence
- 39) N15-58-50W, 42.56 feet along the easterly line of lands now or formerly of Diane Voges (Tax Lot 65.09-2-37); thence
- 40) N16-30-16W, 112.64 feet along the easterly line of lands now or formerly of Diane Voges (Tax Lot 65.09-2-37) and C. Charlemagne & J. Torres (Tax Lot 65.09-2-38); thence
- 41) N11-03-05W, 130.42 feet along the easterly line of lands now or formerly of C. Charlemagne & J. Torres (Tax Lot 65.09-2-38) and DRC Holding Corp. (Tax Lot 65.09-2-41); running thence along the easterly line of lands now or formerly of DRC Holding Corp. (Tax Lot 65.09-2-41) the following five (5) courses and distances:
- 42) N29-44-42W, 56.44 feet;
- 43) N03-42-55E, 77.16 feet;
- 44) N33-05-05W, 78.77 feet;
- 45) N23-04-13E, 58.69 feet;
- 46) N20-51-33W, 79.49 feet; thence
  
- 47) N62-52-34W, 231.69 feet along the northeasterly line of lands now or formerly of DRC Holding Corp. (Tax Lot 65.09-2-41) and James Kohut (Tax Lot 65.09-2-28); running thence along the easterly line of lands now or formerly of Corwick Realty Corp. (Tax Lot 65.09-2-7) the following eight (8) courses and distances:
- 48) N28-41-38E, 64.99 feet;
- 49) N32-36-49W, 218.03 feet;
- 50) N10-21-44E, 52.74 feet;

- 51) N66-48-55E, 120.07 feet;
- 52) N20-49-24E, 98.52 feet;
- 53) N32-23-35W, 143.87 feet;
- 54) N17-42-13W, 48.67 feet;
- 55) N27-15-01E, 67.78 feet; running thence along the southerly and easterly line of lands now or formerly of Jill S. Geddes & Jonathon L. Urla (Tax Lot 65.09-2-5) the following two (2) courses and distances:
- 56) N77-18-22E, 574.79 feet;
- 57) N10-15-12E, 204.37 feet; thence
- 58) S81-23-58E, 596.01 feet along the southerly line of lands now or formerly of EklecCo NewCo, LLC (Tax Lot 65.06-1-61.1); running thence along the southerly line of lands now or formerly of EklecCo NewCo, LLC (Tax Lot 65.10-1-19) the following two (2) courses and distances:
- 59) S63-05-58E, 460.96 feet;
- 60) N72-54-01E, 351.41 feet; thence
- 61) S07-15-03W, 298.46 feet along the westerly line of lands now or formerly of Raphael Rivero (Tax Lot 65.06-1-53); thence
- 62) N86-19-38E, 853.58 feet along the southerly line of lands now or formerly of EklecCo NewCo, LLC (Tax Lots 65.06-1-51, 65.10-1-2 and 65.10-1-3) to the point or place of BEGINNING.

Consisting of 160.7455 acres of land.