

SERVICE AGREEMENT

by and between

MONTGOMERY-OTSEGO-SCHOHARIE SOLID WASTE MANAGEMENT AUTHORITY,

COUNTY OF MONTGOMERY,

COUNTY OF OTSEGO,

and

COUNTY OF SCHOHARIE

Dated as of May 1, 1989

89-M-002

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(This Table on Contents is not a part
of the Service Agreement and is
only for convenience or reference)

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SERVICE AGREEMENT

THIS SERVICE AGREEMENT ("this Agreement") made as of the first day of April, 1989 by and between the Montgomery-Otsego-Schoharie Solid Waste Management Authority, a public benefit corporation of the State of New York, with offices at County Office Building Annex, Park Street, Fonda, New York, 12068 (the "Authority"), the County of Montgomery, a municipal corporation, with offices at the New County Office Building, Broadway, Fonda, New York, 12068 ("Montgomery County"), the County of Otsego, a municipal corporation, with offices at County Office Building, 197 Main Street, Cooperstown, New York, 13326 ("Otsego County"), and the County of Schoharie, a municipal corporation, with offices at the County Office Building, P. O. Box 429, Schoharie, New York, 12157 ("Schoharie County");

WITNESETH THAT:

WHEREAS, Montgomery County, Otsego County and Schoharie County (collectively, the "Counties") are each facing a crisis in how to manage in an environmentally sound manner the increasing quantities of Solid Waste (defined below) generated within their respective boundaries; and

WHEREAS, the Solid Waste Management Act of 1988 (Chapter 70, Laws of 1988) included the New York Solid Waste Management Policy (Section 27-0106 of the Environmental Conservation Law), which established solid waste management priorities as follows: first, reduce the amount of solid waste generated; second, reuse material for the purpose for which it was originally intended or recycle material that cannot be reused; third, recover, in an environmentally acceptable manner, energy from solid waste that cannot be economically and technically reused or recycled; fourth, dispose of solid waste that is not being reused, recycled or from which energy is not being recovered, by land burial or other methods approved by the Department of Environmental Conservation; and

WHEREAS, the management of solid waste in an environmentally sound manner, whether through waste reduction and reuse/recycling programs, the development of facilities for energy recovery, or the development of landfill or other disposal facilities, involves the administration of programs of great complexity and the expenditure of large sums of money for capital and operational costs; and

WHEREAS, the public health and welfare of the residents of the Counties, and the sustained vitality and growth of the economies of the Counties is dependent upon the implementation of long-term solid waste management programs that re environmentally sound and economical; and

WHEREAS, each of the Counties has determined that the management of its solid waste can be accomplished in the most environmentally sound and cost-effective manner through the implementation of a cooperative, coordinated regional solid waste management program with the other Counties that are party to this Agreement; and

WHEREAS, the Counties each petitioned the Legislature of the State of New York to create a public authority that could serve as the vehicle for the implementation of such a cooperative, coordinated regional solid waste management program; and

WHEREAS, in response to such petitions, the Montgomery-Otsego-Schoharie Solid Waste Management Authority Act (Title 13-AA of the New York Public Authorities Law) (the "Act") was enacted as Chapter 747 of the Laws of 1987 (a copy of which is annexed hereto as Exhibit "A"); and

WHEREAS, the Authority has been created pursuant to the Act and the Counties desire to vest in the Authority for the term of this Agreement primary responsibility for the management of solid waste generated or originated within the Counties as set forth herein;

NOW, THEREFORE, it is agreed as follows:

SECTION 1.0 DEFINITIONS

1.1 Definitions in Text. The following words and phrases not defined in the alphabetical list of definitions set forth in Section 1.2 are defined in this Agreement as indicated below:

"Aggregate Guaranteed Annual Tonnage" is defined in Section 10.2. 1.

"Authority Indemnified Parties" is defined in Section 19. 1.

"Counties" is defined in the Recitals.

"County Indemnified Parties" is defined in Section 19.2.

"Excess Tonnage" is defined in Section 10.3. 1.

"Facilities Acquisition Agreement" is defined in Section 3.2. 1.

"Guaranteed Annual Tonnage" is defined in Section 10. 1. 1.

"Hours-of Operation" is defined in Section 4.6.

"Losses" is defined in Section 19.1.

"Montgomery County" is defined in the first paragraph of this Agreement (referred to hereinafter in this Section 1.1 as "Parties").

"Otsego County" is defined in the Parties.

"Schoharie County" is defined in the Parties.

"Termination Date" is defined in Section 17.4.

1.2 **Other Definitions.** The following terms and phrases shall have the following meanings when used in this Agreement:

"Act" means the Montgomery-Otsego-Schoharie Solid Waste Management Authority Act (Chapter 747 of the Laws of 1987, as amended, constituting Title 13-AA of the New York Public Authorities Law), as same may be amended from time to time.

"Area of operation of the Authority" means within the boundaries of the Counties.

"Business Day" shall mean any day, excluding Sundays and legal holidays in the State of New York.

"Change in Law" means (a) the adoption, promulgation, issuance, modification, or official change in interpretation after the Effective Date of any Federal, State or local law, ordinance, code, regulation, rule, or ruling; (b) the imposition of any condition on the issuance, reissuance, or continued effectiveness of any official permit, license, or approval after the Effective Date which establishes requirements more burdensome than those imposed as of the Effective Date and (c) the order and/or judgment of any Federal, State or local court, administrative agency, or governmental body, including the suspension, termination, interruption, or failure of renewal of any permit, license, consent, authorization, or approval, if not the result of willful or negligent action of or failure to act in accordance with this agreement or applicable law as of the Effective Date of this Agreement, by the party relying thereon; provided, however, that the contesting in good faith by such party of any such suspension, termination, interruption, or failure of renewal shall not constitute or be construed to constitute a willful or negligent action or inaction of such party.

"Commencement Date" shall mean the date that all of the conditions precedent described in Section 3.2 are satisfied.

"Designated Facility" or "Designated Facilities" shall mean the facility or facilities designated by the Authority from time to time pursuant to Section 4.5 for the delivery by or on behalf of the Counties of Solid Waste generated in or originating from within the Counties.

"Effective Date" of this Agreement shall mean the date of the execution and delivery of this Agreement by all the parties hereto, provided that such execution and delivery by all parties occurs not later than June 1, 1989. This Agreement shall be null and void and shall not be binding on any party hereto unless executed and delivered by all parties on or before the aforesaid date.

"Event of Force Majeure" means (a) as applied to the Authority, any event or condition having a material and adverse effect on the Authority's ability to perform pursuant to this Agreement, if such event or condition is beyond the reasonable control of the Authority, including but not limited to (1) acts of God, landslides, lightning, earthquakes, hurricanes, tornadoes, blizzards, fires, explosions, floods, acts of a public enemy, wars, blockades, insurrections, riots, or civil disturbance; (2) labor disputes, strikes, work slowdowns, or work stoppages; (3) a partial or entire delay or failure in the provision of necessary utilities or services to the Existing Landfills or other Designated Facilities; or (4) a Change in Law; and (b) as applied to each of the Counties, any event or condition having a material and adverse effect on a County's ability to perform pursuant to this Agreement if such event or condition is beyond the reasonable control of the affected County,

including but not limited to (1) acts of God, landslides, lightning, earthquakes, hurricanes, tornadoes, blizzards, fires, explosions, floods, acts of a public enemy, wars, blockades, insurrections, riots or civil disturbances; (2) labor disputes, strikes, work slowdowns, or work stoppages; or (3) blockage of access to a Designated Facility; or (4) Change in Law. In no event shall a failure to pay any sum owed under this Agreement be deemed to have been caused by an Event of Force Majeure.

"Existing Landfills" shall mean the Eastern Landfill located in the Town of Amsterdam, Montgomery County, and the Central Landfill located in the Town of Root, Montgomery County, which landfills and auxiliary facilities and equipment are to be conveyed to the Authority by Montgomery County, pursuant to the Facilities Acquisition Agreement.

"GAT Solid Waste" means (a) Residential and commercial Solid Waste and (b) other Solid Waste, including, without limitation, non-Hazardous industrial Solid Waste, which is determined by the Authority, in its sole discretion, to be compatible for disposal with residential and commercial Solid Waste at Designated Facilities without adversely affecting the operation of such Designated Facilities or creating a risk of substantial endangerment to the environment or public health and safety.

"Hazardous Waste" shall mean any material which (a) appears on the list or satisfies the characteristics of hazardous waste promulgated by the State Commissioner of Environmental Conservation pursuant to Section 27-0903 of the State Environmental Conservation Law or (b) by reason of its composition and characteristics is hazardous waste, hazardous material or hazardous substance as defined in or under any federal, state or local law, and regulations promulgated thereunder, now in effect or hereafter enacted or promulgated, except for trace amounts of such material normally found in residential and commercial Solid Waste.

"Persons" shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons.

"Recyclables" mean Solid Waste that exhibits the potential to be used repeatedly in place of a virgin material.

"Residential and commercial Solid Waste" means mixed household and commercial solid waste (including trash, refuse and garbage), which has characteristics such as that Solid Waste which is normally collected by standard packer-type refuse trucks from residents, commercial, or governmental establishments within the area of operation of the Authority and non-Hazardous industrial Solid Waste.

"Solid Waste" shall mean "solid waste" as defined in Section 2041-a of the Act as in effect on the Effective Date, but shall not include Hazardous Waste.

"State" shall mean the State of New York.

"Ton" herein refers to a short ton (2,000 pounds).

SECTION 2.0 STATE AND FEDERAL REGULATION

2.1 Jurisdiction and Applicable Law. The parties hereto recognize and acknowledge that the collection, transportation, and disposition of Solid Waste is subject to the jurisdiction of various State and Federal agencies and both State and Federal statutes and regulations.

2.2 Compliance. The Authority and the Counties agree to use their best efforts in good faith, and at their own expense, to comply with all present and future statutes, rules and regulations applicable to this Agreement and the transaction contemplated hereby.

SECTION 3.0 TERM: CONDITIONS PRECEDENT

3.1 Term. The term of this Agreement shall be for twenty-five (25) years commencing on the Effective Date.

3.2 Conditions Precedent. The rights, obligations and liabilities of the Authority and the Counties hereunder shall be subject to the satisfaction of each of the following conditions precedent on or before July 1, 1989.

3.2.1 The Authority and Montgomery County entering into an agreement (the "Facilities Acquisition Agreement") to acquire solid waste facilities and equipment, including the acquisition by the Authority from Montgomery County of the Eastern Landfill located in the Town of Amsterdam, Montgomery County, and the Central Landfill located in the Town of Root, Montgomery County.

3.2.2 The transfer to the Authority by Montgomery County of the Eastern Landfill and Central Landfill and related facilities and equipment, and notice by the Authority to the Counties in writing that (a) such transfers are completed and (b) the Authority is prepared to accept Solid Waste from the Counties at such landfills under this Agreement.

3.2.3 Receipt by the Authority of all applicable environmental and other governmental permits and approvals necessary for the transfer to the Authority of the Eastern Landfill and Central Landfill.

3.2.4 All insurance required by this Agreement shall have been obtained, as evidenced by certificates of insurance delivered to the parties hereunder entitled to obtain such certificates.

3.3 Effect of Failure to Satisfy Conditions Precedent. This Agreement shall be terminated for all purposes and of no further force or effect on any party hereto after July 1, 1989, unless all of the conditions precedent described in Section 3.2 are satisfied on or before such date.

SECTION 4.0

GENERAL PROVISIONS REGARDING SOLID WASTE DISPOSAL

4.1 **Delivery Obligation.** From and after the Commencement Date and until this Agreement is terminated or expires, each County shall deliver, or cause to be delivered to one or more Designated Facilities, all Solid Waste generated or originated within its boundaries (except, for a period of two (2) years from the Effective Date, Solid Waste which is collected and disposed of outside of the area of operation of the Authority pursuant to a binding agreement or agreements in existence on the Effective Date, exclusive of renewals of said agreement or agreements). Anything herein to the contrary notwithstanding, the Counties shall not be obligated pursuant to this Section to deliver or cause to be delivered any scrap or other material separated from the waste stream and held for purposes of reuse or materials recycling (unless such separation has occurred under reuse or recycling programs sponsored, developed or administered by the Authority and the delivery to the Authority is for purposes of reuse or recycling), or sewage sludge emanating from private or public wastewater treatment plants located within the Counties. Recyclables and their delivery are provided for in Section 5.0 of this Agreement.

4.2 **Acceptance Obligation.** From and after the Commencement Date and until this Agreement is terminated or expires, the Authority shall accept all Solid Waste originating within the Counties, and other GAT Solid Waste as described in Section 7.3.2(a), subject to the rejection rights described in Section 4.3, delivered or caused to be delivered by each of the Counties to Designated Facilities. Upon acceptance at a Designated Facility, all Solid Waste shall become the property and the responsibility of the Authority, and the Authority may extract, transport, process, dispose of, sell, store, convey, recycle and deal with such Solid Waste in any lawful manner and way, pursuant to powers granted to the Authority by the Act.

4.3 **Rejection Rights.** The Authority shall be deemed to have accepted a delivery of Solid Waste in the event that it does not exercise any rejection right granted hereby prior to departure of the delivery vehicle. The Authority may reject any delivery of Solid Waste which

4.3.1 contains Hazardous waste;

4.3.2 is delivered by a private hauler or municipality which (a) is delinquent in the payment of any sum owed the Authority for disposal, recycling or other services hereunder or under any other agreement or for any other reason or (b) has regularly and materially failed to comply with procedures for delivery of Solid Waste established by the Authority; or

4.3.3 is not in compliance with procedures for delivery of Solid Waste established by the Authority.

4.4 **Solid Waste Delivery Procedures.** The delivery of Solid Waste to the Designated Facilities shall be regulated by a procedure manual to be provided by the Authority to

each of the Counties not fewer than ninety (90) days following the Commencement Date. Prior to delivery of the procedure manual the delivery of Solid Waste to the Existing Landfills shall follow the procedures used by Montgomery County prior to transfer of the Existing Landfills to the Authority. The procedure manual shall set forth a system for the identification of delivery vehicles and persons authorized to deliver Solid Waste originated or generated within the Counties and may provide that the Authority may place unqualified reliance upon representations made by a driver of a delivery vehicle with proper identification that the Solid Waste being delivered by such delivery vehicle is to be credited to the account of a particular County. The Authority shall be under no obligation to accept Solid Waste from persons or vehicles not complying with the identification system or with the delivery procedures established by the procedure manual. The manual shall also establish procedures for weighing of vehicles delivering Solid Waste and such other matters as the Authority determines to be necessary. The procedures manual shall provide for prompt notice to a County if Solid Waste purported to have been generated within its boundaries is rejected for any reason. Such notice shall indicate the date of the rejection, the Person which attempted the delivery and the reason for the rejection. The Authority may from time to time in its discretion change the procedure manual in any manner not inconsistent with this Agreement on not less than thirty (30) days notice to the Counties. The Authority shall make copies of the procedure manual available at reasonable cost to private haulers and municipalities delivering waste to a Designated Facility from a County.

4.5 Designated Facilities. The Authority shall from time to time designate one or more facilities to which Solid Waste generated or originated within each County shall be delivered. Unless the Counties are notified otherwise prior to the Commencement Date, the Central Landfill shall be the initial Designated Facility for deliveries of Residential and commercial Solid Waste (and such other Solid Waste as the Authority shall designate) and the Eastern Landfill for the eastern area of Montgomery County. The Authority shall give the Counties not less than twenty (20) days written notice of changes in the designation of Designated Facilities. This time requirement may be revised by the Authority in the event of an emergency. The Authority may designate different Designated Facilities for different types of Solid Waste. All Designated Facilities shall be within the area of operation of the Authority. The Authority shall consider the distance of transportation of Solid Waste in designating Designated Facilities and shall, consistent with sound management of its overall operations, limit transportation distances from the point of origination to the Designated Facilities to the extent the Authority, in its sole discretion, deems practicable. All Designated Facilities designated for the receipt of Residential and commercial Solid Waste shall accommodate the delivery of residential Solid Waste by the generators thereof.

4.6 Hours of Operation. For each Designated Facility, the Authority shall establish by notice to the Counties the hours that deliveries of Solid Waste may be made to the Designated Facility (the "Hours of Operation"). For the initial Designated Facilities, the initial Hours of Operation shall consist of eight (8) consecutive hours beginning in the discretion of the Authority at anytime between 6:30 a.m. and 9:00 a.m. on any Business Day. The Hours of Operation at all Designated Facilities need not be the same and the Authority can change the Hours of Operation for any Designated Facility, or establish the Hours of Operation for any new Designated Facility, by written notice to the Counties not less than twenty (20) days before such hours become effective,

except in the event of an emergency as determined by the Authority. However, at all times there shall be at least one Designated Facility for receipt of GAT Solid Waste designated for each County, or portion thereof, with Hours of Operation of at least eight (8) hours each Business Day.

4.7 Hazardous Waste.

4.7.1 The parties acknowledge that the Designated Facilities are not and will not be designated and are not intended to be and will not be used in any manner or to any extent for the handling, transportation, storage or disposal of Hazardous Waste. Neither the Authority nor the Counties shall countenance or knowingly permit the delivery of Hazardous Waste to any Designated Facility. Each County shall diligently enforce any laws prohibiting the delivery of Hazardous Waste to the Designated Facilities and the Counties and the Authority shall take all reasonable steps necessary to seek the enforcement of all applicable laws regarding such delivery. If the Authority discovers that Hazardous Waste has been delivered to a Designated Facility, it shall give immediate notice of such discovery to the County from which such was originated, if known, and to all other appropriate governmental authorities. Immediately upon receipt of such notification, the responsible County shall, in the most expeditious manner possible in the circumstances, cause such Hazardous Waste to be cleaned-up, removed from the Designated Facility and transported to and disposed of at a landfill or other disposal site lawfully permitted to receive and dispose of such Hazardous Waste. The Authority agrees, if requested by the responsible County and acting as agent for such County, to locate and arrange with a lawfully authorized third party acceptable to the responsible County to provide such clean-up, removal and transportation services as a subcontractor to the Authority and to administer such arrangements.

4.7.2 The responsible County shall pay all costs of Hazardous Waste clean-up, removal, transportation and disposal incurred pursuant to this Section 4.7 by the Authority and all costs incurred by the Authority acting as agent for the responsible County in administering the agreement between the responsible County and its Hazardous Waste subcontractor except any such costs which result from the Authority's negligence or willful misconduct, which costs shall be borne by the Authority. Any amounts for which a County is responsible shall be paid upon the submission of vouchers therefor in such manner as is applicable with respect to other claims against the County. The Counties hereby acknowledge and agree that, except for the costs of Hazardous Waste clean-up, removal, transportation or disposal incurred as a result of the Authority's negligence or willful misconduct, the Authority shall have no obligation, responsibility or liability for or in connection with or as a result of the delivery of Hazardous Waste to a Designated Facility or in connection with the clean-up, removal, transportation, disposal or storage thereof.

4.8 Access, Inspection and Visitation.

4.8.1 The Counties and their respective representatives shall have (1) at any time during the term of this Agreement and with reasonable notice to the Authority, the right of access to the Designated Facilities in order to determine compliance by the Authority with the terms and conditions of this Agreement, and (2) upon prior reasonable notice to the Authority and the consent of the Authority (which consent shall not be unreasonably withheld), the right during normal business hours to take visitors through such portions of the Designated Facilities as are suitable for such visitation. Such access to the Designated Facilities shall be made available, and such visitation of the Designated Facilities shall be conducted, in a manner which does not interfere with the Authority's performance of its obligations hereunder.

4.8.2 In connection with any visit to a Designated Facility, the Counties shall, on behalf of themselves, their agents, representatives and contractors, comply with all reasonable rules and regulations adopted by the Authority, including a requirement that each person visiting a Designated Facility sign a statement agreeing to assume the risk of the visit but not the risk of injury due to the intentional or negligent acts of the Authority. The Authority may establish such rules and regulations, and require the execution of such risk statement, as it may determine without unduly impairing the right of the Counties under this Section 4.8 to take visitors through the Designated Facilities.

SECTION 5.0 RECYCLING.

5.1 Rejection of and Surcharge or Recyclables. In order to encourage recycling, the Authority may either

(a) decline to accept, or

(b) establish an additional charge on a uniform basis among the Counties in such amounts as the Authority reasonably determines to be appropriate for accepting Solid Waste containing recyclables in amounts determined by the Authority to be in excess of the amounts which would be present if a good faith effort were being made to comply with existing recycling programs or to develop and implement available recycling programs. The surcharge authorized by this Section 5.1 shall be in addition to the surcharge subsidy for waste delivered in excess of the Guaranteed Annual. Tonnage as set forth in Section 10.3.

5.2 Development/Coordination of Recycling Programs. The Authority shall assume responsibility for the development, coordination and administration of an Authority-wide recycling plan or program, the scope of which shall be established by the Authority in its sole discretion. Any such plan or program for recycling promulgated by the Authority shall include, to the extent deemed by the Authority to be beneficial for development of an Authority-wide program, utilization of existing recycling programs and facilities within the Counties. If a County offers to transfer control of any recycling facilities operated by a County, the Authority will offer to enter into a separate agreement for the transfer of control and/or ownership of any such recycling facilities within one (1) year of the date the affected County offers to transfer the Facility.

SECTION 6.0 COUNTY ACTIONS REGARDING BONDS OF THE AUTHORITY.

The Counties do hereby pledge to and agree with the holders of any bonds hereafter issued by the Authority pursuant to the Act that they will not alter, limit or impair the rights vested in the Authority by the Act to: (a) purchase, construct, own and operate, maintain, repair, improve, reconstruct, renovate, rehabilitate, enlarge, increase and extend, or dispose of any project (as defined in the Act), or any part or parts thereof, for which bonds of the Authority shall be issued; (b) establish and collect rates, rents, fees and other charges referred to in the Act; (c) fulfill the terms of any agreements made with or for the benefit of the holders of bonds or with any public corporation or person with reference to such project or holders thereof; or (d) in

any way to impair the rights and remedies of the holders of bonds, until the bonds, together with the interest thereon, including interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders of bonds are fully met and discharged, as set forth in Section 2041-s of the Act as in effect on the Effective Date. The Authority is authorized to include this pledge and agreement of each of the Counties in any agreement with holders of bonds.

SECTION 7.0 SCOPE OF SERVICES: SUPPORT.

7.1 Scope of Services. The services to be provided by the Authority to the Counties under this Agreement include the following:

7.1.1 Providing at all times during the term of this Agreement one or more Designated Facilities within the area of operation of the Authority for the delivery of Solid Waste originated or generated within the Counties for processing, including, to the extent determined by the Authority, separation, processing and marketing of recyclables, and disposal.

7.1.2 Subject to the rejection rights described in Section 4.3, accept and process and/or dispose of, or make arrangements for other persons to process and/or dispose of, all Solid Waste delivered to the Designated Facilities. If processing and/or disposal does not occur at a Designated Facility, the Authority shall make arrangements for the transportation of Solid Waste from the Designated Facility to the location where processing and/or disposal is to occur.

7.1.3 Development of Authority-wide recycling plans or programs, as described in Section 5.0, and implementation of such plans or programs to the extent of developing and operating regional centers for the collection, receipt, processing and storage of recyclables and negotiating contracts and otherwise arranging for the sale or other disposition of recyclables.

7.1.4 Negotiate a separate contract upon request of a County for other Solid Waste services; provided, however, that this Section 7.1.4 shall not be construed to impose on the Authority any obligation to contract to provide any services at any time for compensation that is less than the Authority's cost.

7.2 Limitation on Services. The services to be provided by the Authority to the Counties under this Agreement do **NOT** include, and the Authority shall **NOT** hereby be responsible for, the following:

7.2.1 Collection of Solid Waste from the generators thereof

7.2.2 Transportation of Solid Waste to a Designated Facility.

7.2.3 Acceptance or disposal of any Hazardous Waste.

7.3 Restrictions on Operations.

7.3.1 The Authority agrees that during the term of this Agreement it will not, without the prior consent of two of the Counties, by majority vote of their respective legislative bodies,

(a) undertake any capital project for the development of any facility for [i] the disposal of Solid Waste by landfilling or any other means (excluding recycling or reuse) or [ii] energy recovery from Solid Waste if the operating efficiency of such facility or the economic viability thereof would require on the basis of projections of waste flow and recycling program implementation determined by the Authority to be reasonable, the regular, sustained and continuous importation of Solid Waste generated or originated outside the area of operation of the Authority, or

(b) resolve to undertake any capital project involving energy recovery or any disposal technology other than landfilling without at least one public hearing being held in each County. Notice of such public hearing, specifying the time, date, place and purpose of such public hearing, shall be published in a newspaper published or generally circulated in the County not more than 60 or fewer than 30 days prior to hearing.

7.3.2 The restrictions described in 7.3.1 shall not be construed as prohibiting the Authority from accepting GAT Solid Waste originating from outside the area of operation of the Authority and either (a) delivered on behalf of a County to be credited against its Guaranteed Annual Tonnage obligation or (b) deemed by the Authority to be necessary for the operating efficiency or economic viability of any facility due to an unanticipated shortage, for any reason, of GAT Solid Waste originated or generated within the Counties.

7.4 **Mutual Support.** The parties hereto pledge to cooperate with one another in effecting the transition of solid waste management responsibilities described herein as being assumed by the Authority from the Counties and/or the municipalities located therein to the Authority and further support the solid waste management efforts of the Authority during the term of this Agreement.

SECTION 8.0 ROLE OF COUNTIES.

The Authority hereby acknowledges that the Counties have historically played a limited role in the area of solid waste management, and that none of the Counties currently is active in the collection of Solid Waste. The Authority therefore recognizes that the Counties do not directly control Solid Waste originated or generated within the Counties, such Solid Waste being controlled by the private haulers or municipalities that collect the Solid Waste from the generators thereof, or by the generators themselves if they handle disposal of their Solid Waste.

The primary role of the Counties, therefore, in carrying out this Agreement, is to exercise the powers granted to them under law, including the Act, to cause private haulers and municipalities, and generators of Solid Waste, to make deliveries of the Solid Waste they control to the Designated Facilities. The Counties each acknowledge that they have adequate powers under law, including the Act, to require that such deliveries be made to the Designated Facilities,

and that, therefore, it is appropriate for each County to assume financial liability under this Agreement for shortfalls in deliveries of Solid Waste to the Authority.

SECTION 9.0 TIPPING FEES.

9.1 Establishment of Tipping Fees. The Authority shall establish from time to time and amend rates, fees, and charges for services it provides under this Agreement and the Act. The Authority's charge for GAT Solid Waste accepted at a Designated Facility pursuant to Section 4.2 shall be a price per ton of Solid Waste accepted. The Authority may assess all other rates, fees and charges on such basis as it determines. The collection of its rates, fees and charges for services so provided shall be the responsibility of the Authority. All fees for services shall be established on a uniform basis for all Counties except to the extent that varying fees are determined by the Authority to be appropriate because

- (a) the services benefit only a limited area; or
- (b) procedures required by a County or a municipality within a County impose additional costs on the Authority.

The Authority may also establish and amend surcharges or special fees for disposal of specific materials identified by the Authority as requiring special handling, for the purpose of encouraging recycling, for the support of specific projects or for any other purpose consistent with the goals and objectives of the Authority.

9.2 Limitation. The rates, fees and charges established by the Authority shall not exceed that level determined by the Authority to be required, taking into account all other sources of income, to pay on a current basis all of its operational expenses including rent, to meet all of its obligations on a timely basis with respect to the bonds, notes or other debt obligations of the Authority, including capital leases, and to establish such operating and capital reserves, including reasonable contingency reserves, as the Authority in its sole discretion shall deem appropriate to cover reasonably foreseeable future expenses and cash flow needs and unanticipated expenses; provided, however, that no capital reserve for the development of any new solid waste management facility shall be established without identification of the technology of the facility for which the reserve is being established. In the event that the Authority contracts with any person to perform on the Authority's behalf any of the services described herein, the rates, fees and charges of the Authority may include the costs to the Authority of such third-party services. The Counties hereby acknowledge that the historical levels of cost associated with solid waste management, including disposal, are likely to increase significantly in the future as existing landfills are closed for environmental reasons or filled to capacity, and new solid waste management facilities complying with the more stringent environmental regulations now in effect are constructed and become operational. Subject to the limit described in the first sentence of this Section, the Authority may, in agreements for the benefit of its bondholders, agree that, for the terms of such, agreements, one or more of the Authority's rates, fees or charges for services hereunder will be established on a periodic basis, but not more frequently than monthly, pursuant to an agreed upon formula.

SECTION 10.0 GUARANTEED ANNUAL TONNAGE.

10.1 Fixing of Guaranteed Annual Tonnage.

10.1.1 The Authority shall determine in the manner provided by this Section 10.1 the number of tons of GAT Solid Waste (exclusive of materials held for recycling and sewage sludge) which each County shall be required to deliver to Designated Facilities each calendar year, beginning in 1991, during the term of this Agreement ("the Guaranteed Annual Tonnage"). The Guaranteed Annual Tonnage for a County shall be an amount equal to ninety-five percent (95%) of the total number of tons of GAT Solid Waste (exclusive of materials held for recycling and sewage sludge) generated within the County which the Authority estimates that such County will deliver or cause to be delivered to Designated Facilities during such calendar year.

10.1.2 Only that GAT Solid Waste which shall be actually generated in a County and accepted at a Designated Facility shall be credited against the County's Guaranteed Annual Tonnage; provided that the foregoing shall not be construed to prevent the Authority from accepting and crediting against a County's Guaranteed Annual Tonnage requirement GAT Solid Waste described in Section 7.3.2. Materials held for recycling and sewage sludge shall not be credited against a County's Guaranteed Annual Tonnage.

10.1.3 On or before the fifteenth day of October of each year beginning in 1990, the Authority shall prepare (1) an estimate of the number of tons of GAT Solid Waste (as provided and limited by Section 10. 1. 2) to be delivered by each County and the Guaranteed Annual Tonnage for such County for the succeeding calendar year, (2) a budget for the succeeding calendar year and (3) an initial schedule of rates, fees and charges for services under this Agreement for the succeeding calendar year. The estimate of the number of tons of GAT Solid Waste to be delivered for the succeeding calendar year shall be based upon the Authority's operating history, or other available data and estimations believed by the Authority to be reliable, including projections of [a] waste generation on the basis of demographic studies and [b] recycling program implementation.

10.1.4 The parties acknowledge that the guarantee of flow of GAT Solid Waste as provided by this Section 10. 1 is necessary for the assurance of adequate funds for daily operation, compliance with all applicable state and federal laws and regulations, and for the proper sizing of facilities to be constructed by the Authority, as well as requisite stability of flow and/or income or its equivalent for the Authority to obtain appropriate financing. The parties further acknowledge and agree that any computation of Guaranteed Annual Tonnage made on the basis of a calendar year shall be adjusted on a pro rata basis to take into account any calendar year of less than 365 days.

10.2 Delivery Shortfalls.

10.2.1 If in any calendar year, the amount of GAT Solid Waste as defined herein delivered from all three Counties to the Authority shall be less than the total or aggregate of the Guaranteed Annual Tonnages of each County (the "Aggregate Guaranteed Annual Tonnage"),

the County or Counties responsible for the shortfall (being all Counties which did not meet their Guaranteed Annual Tonnage obligation) shall pay to the Authority from its or their own funds a shortfall subsidy in an amount equivalent to its share (as determined under Section 10.2.2) of the shortfall in the Aggregate Guaranteed Annual Tonnage multiplied by the maximum fee during the year in which the shortfall occurred for acceptance of GAT Solid Waste.

10.2.2 If more than one County is responsible for the shortfall in the Aggregate Guaranteed Annual Tonnage, each of the responsible Counties share of the shortfall shall be determined as follows:

10.2.2.1 Calculate the responsible Counties Guaranteed Annual Tonnage shortfall by taking the difference between each responsible County's Guaranteed Annual Tonnage and its delivered tonnage.

10.2.2.2 Calculate, as a percentage, the ratio of each responsible County's shortfall to the sum of shortfalls of all responsible Counties.

10.2.2.3 Calculate each responsible County's share of the Aggregate Guaranteed Annual Tonnage shortfall, by multiplying the percentage for each County from 10.2.2.2 by the Aggregate Guaranteed Annual Tonnage shortfall.

10.2.3 Such shortfall subsidy as calculated shall be due and payable by the responsible County or Counties within 60 days of billing by the Authority therefor, unless the shortfall occurred as a result of (a) an Event of Force Majeure (except for a Change in Law) or (b) the responsible County exceeding its recycling goals. In either of such events, the Authority shall adopt a resolution modifying or foregoing the shortfall subsidy and serve notice thereof upon the Clerk of the governing board of the responsible County or Counties by march 15 of such year. The Authority shall notify in writing the Clerk of the governing board of the responsible County or Counties of the time, date and location of such special or regular meeting and of the intention of the Authority to consider foregoing or modifying said shortfall subsidy under said conditions at least 10 days in advance of such meeting. Notice shall be considered properly served if sent by regular mail and postmarked at least 13 days on or before such meeting.

In the event a shortfall occurs for the year 1991 and no other, and a shortfall subsidy is due by the responsible County or Counties, the Authority may impose a surcharge upon the deliveries of Solid Waste from said County or Counties as provided hereunder, in lieu of a direct payment by the responsible County or Counties of the shortfall subsidy due.

10.3 Deliveries of Excess Tonnage.

10.3.1 If in any calendar year after 1990 the amount of GAT Solid Waste, exclusive of materials held for recycling and sewage sludge, delivered or caused to be delivered by a County to the Authority shall exceed one hundred ten percent (110%) of the Guaranteed Annual Tonnage for such County, such County shall pay a surcharge for all Solid Waste in excess of one hundred ten percent (110%) of the Guaranteed Annual Tonnage for the County ("Excess Tonnage"). The surcharge shall be calculated by multiplying an amount equal to ten percent

(10%) of the maximum tipping fee for the year in which Excess Tonnage was delivered by the amount of the Excess Tonnage. Such a surcharge is being imposed to encourage effective recycling by the Counties and their residents.

10.3.2 Such excess surcharge shall be payable to the Authority only if the members of the Authority, at a regular or special meeting held prior to the 1st day of March of the calendar year following the calendar year in which Excess Tonnage was delivered, adopts a resolution to demand payment of such surcharge subsidy, in full or in part, and serves notice of such demand for payment upon the Clerk of the governing board of the County or Counties responsible therefor prior to March 15th of such year. In addition, the Authority shall notify in writing the Clerk of the governing board of the responsible County or Counties of the time, date and location of such special or regular meeting and of the intention of the Authority to consider the surcharge subsidy at least 10 days in advance of such scheduled meeting. Notice shall be considered properly served if sent by regular mail and postmarked at least 13 days on or before the scheduled meeting date. The responsible County may appear at such meeting of the Authority to consider a surcharge subsidy and be heard in connection therewith including any explanation of the reasons for its delivery of Excess Tonnage. The Authority may maintain, decrease, or forgive the surcharge subsidy as calculated hereunder following the explanation by the County. If a surcharge subsidy is determined to be payable, the County or Counties responsible therefor shall make payment of the determined surcharge subsidy within 60 days of notice of such determination.

SECTION 11.0 ACCOUNTING BY THE AUTHORITY.

11.1 Information System. The Authority shall on and after the Commencement Date establish and maintain an information system to provide storage and ready retrieval of operating data with respect to the facilities and programs of the Authority, including all information necessary to verify calculations made pursuant to this Agreement.

11.2 Books and Records. The Authority shall prepare and maintain proper, accurate and complete books and records and accounts regarding the operations and financial or other transactions related to its facilities and programs to the extent necessary (1) to enable the Authority's independent auditors to prepare financial statements regarding the operations of the Authority's facilities and programs certified in accordance with generally accepted accounting principles, and (2) to verify data with respect to any operations or transactions in which any of the Counties has a financial or other material interest hereunder.

11.3 Monthly Reports. The Authority shall provide each County with monthly operations reports no later than 10 days after the end of each month, including the following operating data: (1) compilations of daily records of Solid Waste deliveries under Section 4.0 (including daily records of deliveries to be applied to each County's Guaranteed Annual Tonnage obligation), and (2) an itemized statement of the revenues received during the prior month.

11.4 Annual Reports. The Authority shall furnish each County, within 60 days after

the end of each Calendar Year, an annual summary of the statistical data related to the Authorities activities in sufficient detail to support a calculation for each County of whether it met its Guaranteed Annual Tonnage obligation.

11.5 **Access to Records.** The Authority shall provide each County and its auditors during normal business hours, upon reasonable prior notice, personal and computer access to those records necessary to substantiate the Service Fee.

11.6 **Other Records and Reports.** The Authority shall maintain such other records and submit such other reports as required by law.

SECTION 12.0 **REPRESENTATIONS AND WARRANTIES OF THE AUTHORITY.**

The Authority represents and warrants that:

12.1 **Existence and Powers.** The Authority is a public benefit corporation of the State of New York 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 Agreement.

12.2 **Due Authorization and Binding Obligation.** The Authority has duly authorized the execution and delivery of this Agreement, and this 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 creditors' rights generally.

12.3 **No Conflict.** Neither the execution nor the delivery by the Authority of this Agreement nor the performance by the Authority of its obligations hereunder nor the consummation by the Authority of the transactions contemplated hereby (a) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Authority or (b) conflicts with, violates or results in a breach of any term or condition 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.

12.4 **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 Agreement, except such as have been duly obtained or made.

12.5 **No Litigation.** There is no action, suit or other proceeding, 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 wherein an unfavorable decision, ruling or finding would materially and adversely affect the validity or enforceability of this 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.

12.6 **No Legal Prohibition.** The Authority has no knowledge of any applicable law in effect on the date of which this representation is being made which would prohibit the performance by the Authority of this Agreement and the transactions contemplated hereby.

SECTION 13.0 **REPRESENTATIONS AND WARRANTIES OF THE COUNTIES.**

Each County hereby represents and warrants with respect to itself that:

13.1 **Existence and Powers.** The County 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 Agreement.

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

13.3 **No Conflict.** Neither the execution nor the delivery by the County of this Agreement nor the performance by the County of its obligations hereunder (a) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the County, or (b) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement or instrument to which the County is a party or by which the County or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument.

13.4 **No Governmental Approval Required.** No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution and delivery by the County of this Agreement, except such as have been duly obtained or made.

13.5 **No Litigation.** There is no action, suit or other proceeding, at law or in equity, before or by any court or governmental authority, pending -or, to the County's best knowledge, threatened against the County wherein an unfavorable decision, ruling or finding would materially and adversely affect the validity or enforceability of this Agreement or any other agreement or instrument to be entered into by the County in connection with the transactions contemplated hereby, or which would materially and adversely affect the performance by the County of its obligations hereunder or under any such other agreement or instrument.

13.6 **No Legal Prohibition.** The County 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 County of this Agreement and the transactions contemplated hereby.

SECTION 14.0 MODIFICATION OF AGREEMENT.

This Agreement may not be modified without the written consent of all parties upon appropriate resolution of the membership of the Authority and the governing boards of the Counties, respectively.

SECTION 15.0 GOVERNING LAW.

This Agreement shall be interpreted according to the laws of the State of New York.

SECTION 16.0 ASSIGNMENTS.

16.1 Requirements of Consent. Neither the Counties nor the Authority (except as specifically provided in Section 16.2) shall assign or in any way transfer their interest in and to this Agreement without obtaining the written consent of the other parties.

16.2 Permitted Assignments by the Authority. The Authority may assign its interest in and to this Agreement as collateral security in connection with any issuance of bonds, notes or other obligations by the Authority. Such assignment may provide that it shall not constitute an assumption of any obligation of the Authority hereunder on the part of the assignee or assignees. Pursuant to such assignment, (a) any one or more of the assignees may exercise all of the Authority's claims, rights, powers, privileges, benefits, and remedies hereunder, including the right to cure the defaults of the Authority, and shall be entitled to the benefit thereof, all to the extent so assigned, as if the assignee or assignees had been a named party or named parties hereto, (b) the Counties will send a copy of any notice required to be delivered by the Counties to the Authority hereunder to the assignee or assignees, at the same time and in the same manner as notice is given to the Authority and (c) no amendment, termination or modification of this Agreement and no waiver of any provision hereof or consent required hereunder by the Authority shall be valid unless consented to in writing by the assignee or assignees. The Authority shall provide the Counties with names and mailing addresses of all parties who become assignees of this Agreement pursuant to this Section 16.2. Notwithstanding such assignment, the Authority shall not be relieved of any duty or responsibility under this Agreement, this Agreement shall continue in accordance with its terms, the Authority shall be and remain liable to the Counties under all provisions of this Agreement, and any payments made by the Counties to the assignee or assignees or any other actions taken by the Counties with respect to the assignee or assignees pursuant to such assignment shall be in full satisfaction of any duties or responsibilities which the Counties would otherwise owe to the Authority. No such assignment shall impair the rights of the Counties in the event of default by the Authority hereunder.

SECTION 17.0 DEFAULT: REMEDIES.

17.1 Remedies for Breach. The parties agree that, except as otherwise provided in Sections 17.2 and 17.3 hereof with respect to termination rights, (a) because of the public health imperatives of waste disposal and the inadequacy of an award of damages at law, in the event the

Authority breaches its obligation under Section 4.2 hereof to accept Solid Waste for disposal, each of the Counties shall have the right to bring suit to enforce the specific performance of such obligation, (b) in the event any County fails to meet its Guaranteed Annual Tonnage delivery obligations hereunder, the shortfall payment provided for in Section 10.2 hereof shall be the only damages payable by the County with respect to such failure to perform, and (c) in the event that any party breaches any other obligation under this Agreement or any representation made by any party hereunder is untrue in any material respect, the other party shall have the right to take any action at law or in equity it may have to enforce the payment of any damages or to be reimbursed and such right to recover damages or to be reimbursed as provided herein will ordinarily constitute an adequate remedy for any breach of such other obligation or any material untruth in any such representation. No party shall have the right to terminate this Agreement for cause except after an Event of Default determined in accordance with the provisions of Section 17.2 or 17.3 shall have occurred and be continuing.

17.2 Events of Default by the Authority.

17.2.1 Each of the following shall constitute an Event of Default on the part of the Authority vesting in each of the Counties the right to exercise remedies as described herein:

17.2.1.1 Failure to Comply with Agreement. The repeated failure or refusal by the Authority substantially to perform any material obligation under this Agreement unless such failure or refusal is excused by an Event of Force Majeure or County fault; except that no such failure or refusal shall, if and for so long as the Authority is accepting Solid Waste for disposal in accordance with the terms hereof, constitute an Event of Default giving any County the right to terminate this Agreement for cause under this Section unless:

(a) The County seeking termination 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 Agreement on the part of the Authority and which will, in its opinion, give the County right to terminate this Agreement for cause under this Section unless such default is corrected within a reasonable period of time, and

(b) The Authority has neither challenged in an appropriate forum the County's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such default within a reasonable period of time, but not more than 60 days, from receipt of the notice given pursuant to clause (a) of this subsection (but if the Authority shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for as long as the Authority is continuing to take such steps to correct such default.)

17.2.1.2 Bankruptcy. The filing of a petition in bankruptcy (or other commencement of a bankruptcy or similar proceeding) by the Authority under any applicable bankruptcy, reorganization, insolvency or similar law as is now or hereafter in effect.

17.3 Events of Default by Counties.

17.3.1 Each of the following shall constitute an Event of Default on the part of a County vesting in the Authority the right to exercise remedies as described herein:

17.3.1.1 **Failure to Comply with Agreement.** The repeated failure or refusal by a County substantially to perform any material obligation under this Agreement unless such failure or refusal is excused by an Event of Force Majeure or Authority fault; except that no such failure or refusal shall constitute an Event of Default giving the Authority the right to terminate this Agreement for cause under this Section unless:

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

(b) The County 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 Agreement nor corrected or diligently taken steps to correct such default within a reasonable period of time but not more than 60 days from the date of the notice given pursuant to clause (a) of this subsection (but if the County shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for as long as the County is continuing to take such steps to correct such default).

17.3.1.2 **Bankruptcy.** The filing by a County of a petition seeking relief under the Federal Bankruptcy Code or any federal or state statute intended to provide relief for political subdivisions which are insolvent or unable to meet their obligations as they mature.

17.3.1.3 **Failure to Pay.** The failure of a County to pay amounts owed to the Authority under this Agreement within 60 days following receipt of an Authority invoice therefor.

17.4 **Procedure for Termination for Cause.** If any party shall have a right of termination for cause in accordance with this Section 17.0, the same may be exercised by notice of termination given to the party in default at least 90 days prior to (or, in the case of a bankruptcy default, simultaneously with) the date of termination specified in such notice (the "Termination Date").

17.5 **Right of Termination Not Exclusive.** The rights of termination provided under Section 17.2 and 17.3 hereof upon an Event of Default by the Authority or a County, respectively, are not exclusive and may be exercised without prejudice to any rights provided by law to either party to bring appropriate legal action to recover actual damages for failure in the performance by the breaching party of its obligations pursuant to this Agreement for the remainder of the Term hereof.

17.6 **No Consequential or Punitive Liquidated Damages.** In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other any special,

incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations under this Agreement, or the material inaccuracy of any representation made in this Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory.

17.7 Forum for Dispute Resolution. The sole and exclusive forum for the determination of any question of law or fact to be determined in any judicial proceeding relating to this Agreement shall be the Supreme Court of the State of New York within any of the Counties. It is the express intention of the parties that all legal actions and proceedings related to this Agreement or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in such Court.

17.8 No Waiver Implied. No failure or delay on the part of any party to exercise any right or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise by a party of any right or remedy preclude any other or future exercise thereof or the exercise of any other right.

17.9 Expenses and Attorney's Fees. Where an event of default has occurred, the defaulting party agrees to pay all out-of-pocket expenses of the non-defaulting party (including the reasonable fees and expenses of its counsel) in connection with the enforcement of this Agreement, including the collection of amounts due hereunder.

17.10 Procedures Relating to Force Majeure. A party seeking relief from any obligation under this Agreement as the result of an Event of Force Majeure shall notify the other parties by telephone, on or promptly after the party experiencing such Event of Force Majeure first knew of the commencement thereof, followed within fifteen days by a written description of (1) the Event of Force Majeure and the cause thereof (to the extent that the cause is known); (2) its estimated duration, the estimated time during which the performance of such party's obligations hereunder will be delayed, and (3) the estimated impact on the obligations of such party under this Agreement. Each party shall provide prompt written notice of the cessation of such Event of Force Majeure. The party claiming to be adversely affected thereby shall use its best efforts to overcome or minimize the effects of such Event of Force Majeure and resume performance under this Agreement.

SECTION 18.0 INSURANCE.

18.1 Insurance Coverage. The Authority shall obtain, pay for and maintain such insurance coverages at such limits with respect to its operations and facilities, including the designated Facilities, as are then customary for operations and facilities of similar nature operated by governmental entities, including without limitation as to coverages or limits the insurance described in Exhibit "B". The rates, fees and charges established by the Authority pursuant to Section 9.0 of this Agreement shall include an amount sufficient to reimburse the Authority for premiums, fees and other costs associated with obtaining and maintaining such insurance.

18.2 **Additional Insureds.** To the extent that any County has an insurable interest, whether as lessor, lien holder or otherwise, in real or personal property insured by the Authority hereunder, the Authority shall at the request of such County name such County as an additional insured on all insurance policies required pursuant to this Agreement that insure loss of or damage to such real or personal property or provide liability coverage. Each party to this Agreement waives the subrogation rights of its various insurance carriers in favor of the other party.

18.3 **Insurance Certificates.** Insurance required hereunder and any renewals thereof shall be evidenced by certificates of insurance issued or countersigned by a duly authorized representative of the issuer and delivered to the Counties on or before the Commencement Date or, in the case of a renewal, at least 30 days prior to the renewal date.

18.4 **Notice of Coverage Reduction.** The certificates of insurance shall require 30 days notice, by certified or registered mail to each County, of cancellation, intent not to renew, or reduction in its coverage by the insurance company.

18.5 **Non-Recourse Provision.** All insurance policies shall provide that the insurers shall have no recourse against any additional insured for payment of any premium or assessment and shall contain a severability of interest provision in regard to mutual coverage liability policies.

18.6 **Nonattainment of Insurance.** If any insurance coverage required hereby is not obtained or maintained due to the fault of the Authority, the Authority shall assume all risk of loss but only to the extent of the coverage not obtained or maintained. The unavailability of such insurance on commercially reasonable terms shall constitute an Event of Force Majeure and shall relieve the Authority of such risk of loss if the Authority gives the additional insureds reasonable notice of such unavailability.

SECTION 19.0 INDEMNIFICATION.

19.1 **Indemnification by the Authority.** The Authority agrees that it will protect, indemnify and hold harmless the Counties and their respective officers and employees (the "Authority Indemnified Parties") from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and reasonable attorney's fees (collectively, "Losses"), and will defend the Authority Indemnified Parties in any suit, including appeals, for personal injury to, or death of, any person, or loss or damage to property arising out of (1) 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 Agreement, (2) the operation of the Designated Facilities by or under the direction of the Authority, or (3) the performance or nonperformance of the Authority's obligations under this Agreement. This indemnification shall expressly exclude any claim of environmental damage to third parties arising out of operation or usage of any facilities prior to acquisition by the Authority. The Authority shall not, however, be required to reimburse or indemnify any Authority Indemnified Party for any Loss to the extent such Loss was due to (a) the negligence or other wrongful conduct of any Authority Indemnified Party or (b) any Event of Force Majeure

or any act or omission of any Authority Indemnified Party judicially determined to be responsible for or contributing to the Loss, and the Authority Indemnified Party whose negligence or other wrongful conduct, act or omission is adjudged to have caused or contributed to such Loss will reimburse the Authority for the cost of defending any suit to the extent of the contribution to the Loss. An Authority Indemnified Party shall promptly notify the Authority of the assertion of any claim against it for which it is entitled to be indemnified hereunder, shall give the Authority the opportunity to defend such claim, and shall not settle the claim without the approval of the Authority. These indemnification provisions are for the protection of the Authority Indemnified Parties only and shall not establish, of themselves, any liability to third parties. The provisions of this Section 19.1 shall survive termination of this Agreement.

19.2 **Indemnification by the Counties.** Each County agrees that it will protect, indemnify and hold harmless the Authority and its respective officers, directors and employees (the "County Indemnified Parties") from and against all Losses, and will defend the County Indemnified Parties in any suit, including appeals, for personal injury to, or death of, any person, or loss or damage to property arising out of (1) the negligence or fault of the County or any of its officers, employees, agents, representatives, contractors or subcontractors in connection with its obligations or rights under this Agreement, or (2) the performance or nonperformance, of the County's obligations under this Agreement. A County shall not, however, be required to reimburse or indemnify any County Indemnified Parties for any Loss to the extent that such Loss was due to (a) the negligence or other wrongful conduct of any County Indemnified Party or (b) any Event of Force Majeure or any act or omission of any County Indemnified Party judicially determined to be responsible for or contributing to the Loss, and the County Indemnified Party whose negligence or other wrongful conduct, act or omission is adjudged to have caused or contributed to such Loss will reimburse the County for the cost of defending any suit to the extent of the contribution to the Loss. A County Indemnified Party shall promptly notify each County from which it is seeking indemnification of the assertion of any claim against the County Indemnified Party for which it is entitled to be indemnified hereunder, shall give each County the opportunity to defend such claim, and shall not settle the claim without the approval of the involved Counties. These indemnification provisions are for the protection of the County Indemnified Parties only and shall not establish, of themselves, any liability to third parties. The provisions of this Section 19.2 shall survive termination of this Agreement.

SECTION 20.0 **MISCELLANEOUS.**

20.1 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof and all previous agreements, discussions, communications, and correspondence with respect to the subject matter hereof are superceded by the execution of this Agreement.

20.2 **Successors and Assigns.** This Agreement shall inure to the benefit of and bind the respective successors and permitted assigns of the parties hereto.

20.3 **Notices.** All written notices, reports and other documents required or permitted under this Agreement shall be in writing (except as otherwise provided herein) and shall be deemed to have been given or delivered when delivered personally or deposited in the mails,

postage prepaid, registered or certified mail, return receipt requested, addressed to the party to whom notice is being given at its address set forth above, to the attention, in the case of the Counties, of its clerk, with a copy to the contract representative appointed under Section 20.4. Either party may change its address by notice similarly given.

20.4 **Contract Representatives.** Within thirty (30) days of the Effective Date, the Authority and each County, to the extent permitted by law, shall appoint a contract representative to act for and on matters concerning the performance of this Agreement. Each party shall notify the other parties to this Agreement in writing of the appointment of its contract representative and such appointment shall remain in full force and effect until written notice of substitution is delivered to all the other parties.

20.5 **Future Actions.** Each party agrees that it will, at its own expense, execute any and all certificates, documents, and other instruments and take such other further actions as may be reasonably necessary to give effect to the terms of this Agreement.

20.6 **Counterparts.** This Agreement shall be executed in several counterparts, any one of which shall be considered to be an original hereof for all purposes.

20.7 **Severability.** In the event that any of the provisions, portions, or applications of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the Authority and the Counties shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions, portions, or applications hereof shall not be affected thereby.

20.8 **Headings for Convenience.** The headings in this Agreement are for convenience of reference only and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

IN WITNESS WHEREOF, the parties have duly executed and sealed this instrument on the day and year first above written.

WITNESS:

COUNTY OF SCHOHARIE

By _____
David E. Handy, Chairman
Board of Supervisors

COUNTY OF MONTGOMERY

By _____
Anthony Barone, Chairman
Board of Supervisors

COUNTY OF OTSEGO

By _____
Carl Higgins, Chairman
Board of Representatives

MONTGOMERY-OTSEGO-SCHOHARIE
SOLID WASTE MANAGEMENT AUTHORITY

By _____
James Ottati, Chairman

APPENDIX "A"

MONTGOMERY-OTSEGO-SCHOHARIE
SOLID WASTE MANAGEMENT AUTHORITY

TITLE 13AA

PUBLIC AUTHORITIES LAW

AS WRITTEN AT THE TIME SERVICE AGREEMENT
WAS SIGNED ON MAY 1, 1989

**TITLE 13-AA-MONTGOMERY, OTSEGO, SCHOHARIE SOLID
WASTE MANAGEMENT AUTHORITY**

Section

- 2041. Short title.
- 2041-a. Definitions.
- 2041-b. Montgomery, Otsego, Schoharie solid waste management authority.
- 2041-c. Advances on behalf of authority; transfer of property to authority; acquisition of property by participating counties for authority.
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- 2041-v. Transfer of environmental applications, proceedings, approvals and permits.
- 2041-w. Separability.
- 2041-x. Effect of inconsistent provisions.

§ 2041. Short title

This title shall be known and may be cited as the "Montgomery, Otsego, Schoharie solid waste management authority act".
(Added 1.1987, c. 747, § 1.)

Effective Date; Participation Resolutions. Section 2 of L.1997, c- 747, amended L.1988, c. ill, § 2, eff. June 13, 1988, retroactive to Aug. 5, 1987, provided: "This act [enacting this title] shall take effect immediately [Aug. 5, 1987], provided however that the authority shall not finance or participate in the financing of any project in any participating county which appoints members to the board of the authority until such

time as the governing body of such participating county has adopted a resolution providing for participation in the authority and has appointed members to the board of such authority, and provided further, however, that no such appointment shall be effective unless within four hundred thirty-two days of the effective date of this act, such participating county has adopted a resolution providing for participation in the authority.

2041-a. Definitions

As used or referred to in this title, unless a different meaning clearly appears from the context:

1. "Area of operation" shall mean any or all of the participating counties.
2. "Authority" shall mean the public benefit corporation created by section two thousand forty-one-b of this title, known as the Montgomery, Otsego, Schoharie solid waste management authority.
3. "Bonds" shall mean the bonds, notes or other evidences of indebtedness issued by the authority pursuant to this title and the provisions of this title relating to bonds and bondholders which shall apply with equal force and effect to notes and noteholders, respectively, unless the context otherwise clearly requires.
4. "Construction" shall mean the acquisition, erection, building, alteration, repair, improvement, increase, enlargement, extension, reconstruction, renovation or rehabilitation of a solid waste management resource recovery facility including any appurtenances thereto which may be necessary or desirable to promote the efficiency or effectiveness of a project; the inspection and supervision thereof; and the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures and other actions incidental thereto.
5. "Cost", as applied to any contract, means and includes the cost of construction, the cost of the acquisition of all property, including real property and other property, both real and personal and improved and unimproved, the cost of demolishing, removing or relocating any buildings or structures on lands so acquired, including the cost of relocating tenants or other occupants of the buildings or structures on such land and the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of all systems, facilities, machinery, apparatus and equipment, financing charges, interest prior to, during and after construction to the extent not paid or provided for from revenues or other sources, the cost of engineering and architectural surveys, plans and specifications, the cost of consultants and legal services, the cost of lease guarantee or bond insurance, other expenses necessary or incidental to the construction of such project and the financing of the construction thereof, including the amount authorized in the resolution of the authority providing for the issuance of bonds to be paid into any reserve or other special fund from the proceeds of such bonds and the financing of the placing of any project in operation, including reimbursement to a county, any municipality, state authority, the state, the United States government or any other person for expenditures that would be costs of the project hereunder had they been made directly by the authority.
6. "Governing body" shall mean the members of the authority constituting and acting as the governing body of the authority.
7. "Legislative body" or "legislative bodies" shall mean any or all of the boards of supervisors of the counties of Montgomery and Schoharie and the-board of representatives of the county of Otsego.

8. "Municipality" shall mean any county, including any participating county, city, town, village, refuse district under the county law, improvement district under the town law, any other such instrumentality, including an agency or public corporation of the state, or any of the foregoing, or any combination thereof.

9. "Participating counties" shall mean those of the counties of Montgomery, Otsego and Schoharie that shall have appointed members of the authority and shall have filed a certificate in accordance with section two thousand forty-one-b of this title.

10. "Person" shall mean any natural person, partnership, association, joint venture or corporation, exclusive of a public corporation.

11. "Primary public water supply aquifer" shall mean a highly productive water bearing formation identified by the department consisting of unconsolidated (non-bedrock) geologic deposits, which: (1) receives substantial recharge from the overlying land surface; and (2) is presently utilized as a major source of water for public water supply.

12. "Principal aquifer" shall mean unconsolidated (non-bedrock) geologic deposits identified by the department which: (1) receives substantial recharge from the overlying land surface; (2) is known to be highly productive or whose geology suggests a potentially abundant source of water; and (3) is not presently used as a major source of water for public water supply.

13. "Project" shall mean any solid waste management resource recovery facility and any appurtenances thereto necessary or desirable to promote the efficiency or effectiveness of any facility, of which, or any portion of which, the planning, development, financing, construction, operation or maintenance is authorized to be undertaken in whole or in part by the authority pursuant to this title.

14. "Real property" shall mean lands, structures, franchises and interests in land, waters, lands underwater, riparian rights, air rights, space rights and any fixtures, equipment and articles of personal property affixed to or used in connection therewith, and any and all things and rights included within said term and includes not only fees simple absolute, but also any and all lesser interests including, but not limited to easements, rights-of-way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgment, mortgages or otherwise and all claim for damages for such real estate.

15. "Resource recovery" shall mean the separation, extraction and recovery of usable materials, energy or heat from solid waste through source separation, incineration, recycling centers or other programs, projects or facilities.

16. "Revenues" shall mean all rates, fees, rents, charges and other income derived by the authority from its operations.

17. "Solid waste" shall mean all putrescible and non-putrescible solid wastes, including, but not limited to, materials or substances discarded or rejected, whether as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection or for any other reason, or are being accumulated, stored, or physically, chemically or biologically treated prior to being discarded, having served their intended use, or are a manufacturing by-product, including, but not limited to, garbage, refuse, and other discarded solid materials, including solid waste materials resulting from industrial, commercial and agricultural operations and from

community activities, sludges from air or water pollution control facilities or water supply treatment facilities, rubbish, ashes, contained gaseous material, incinerator residue, demolition and construction debris and offal, but not including sewage and other highly diluted water-carried materials or substances and those in gaseous form, special nuclear or by-product material within the meaning of the Atomic Energy Act of 1954, as amended, or waste which appears on the list or satisfies the characteristics of hazardous waste promulgated by the commissioner of environmental conservation pursuant to section 27.4903 of the environmental conservation law.

18. "Solid waste management resource recovery facility" or "facility" shall mean any facility, plant, works, system, building, structure, improvement, machinery, equipment, fixture or other real or personal property which is being used, occupied or employed for or is incidental to the collecting, receiving, transporting, storage, processing, or disposal of solid waste or the recovery by any means of any material or energy product or resource therefrom including, but not limited to, recycling centers, transfer stations, baling facilities, rail haul or maritime facilities, collection vehicles, processing systems, resource recovery facilities, steam and electric generating and transmission facilities, including auxiliary facilities to supplement or temporarily replace such generating facilities, steam distribution and related plants and facilities, sanitary landfills, leachate treatment facilities, plants and facilities for compacting, composting or pyrolyzation of solid wastes, secure land burial facilities, landspreading facilities, surface impoundments and waste oil storage, reprocessing and recycling facilities, incinerators, and other solid waste disposal, reduction or conversion facilities and resource recovery equipment and disposal equipment as defined in subdivisions four and five of section 51-0903 of the environmental conservation law. Any such facility producing either electricity or shaft horsepower and useful thermal energy shall constitute a co-generation facility as defined in subdivision two-a of section two of the public service law.

19. "Source separation" shall mean the segregation of recyclable materials from the solid waste stream at the point of generation for separate collection, sale or other disposition.

20. "State" shall mean the state of New York.

(Added L.1987, c. 747, § 1.)

Effective Date. Section effective Aug. 5, 1987, pursuant to L.1987, c. 747, § 2, set out as a note under section 2041.

2041-b. Montgomery, Otsego, Schoharie solid waste management authority

1. A corporation known as 'the Montgomery Otsego, Schoharie solid waste management authority is hereby created for the public purposes and charged with the duties and having the powers provided in this title. The authority shall be a body corporate and politic constituting a public benefit corporation consisting of members appointed by the participating counties. Its membership shall consist of a board of no more than eight members, who shall be appointed as follows: three members from the county of Montgomery to be appointed by the chairman of the board of supervisors and confirmed by the board of supervisors of such county all of whom shall

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be residents of the county and at least one of whom shall be a resident of the city of Amsterdam; three members from the county of Otsego to be appointed by the chairman of the board of representatives and confirmed by the board of representatives of such county all of whom shall be residents of the county and at least one of whom shall be a resident of the city of Oneonta; two members from the county of Schoharie both of whom shall be residents of the county, and who shall be appointed by the chairman of the board of supervisors and confirmed by the board of supervisors of such county. The first members of the authority shall be appointed for the following terms from the thirty-first day of December of the year in which this title shall take effect, one member each to be appointed by each county for a term of four years; one member each to be appointed by each county for a term of two years; one member to be appointed by the county of Montgomery for a term of three years; one member to be appointed by the county of Otsego for a term of three years. Subsequent appointments of members shall be made in the same manner and for terms of four years ending in each case on the thirty-first day of December of the last year of each such term. All members shall continue to hold office until their successors are appointed and qualify. Vacancies occurring at the end of a term shall each be filled in the manner provided for original appointment and for a four year term. Vacancies occurring otherwise than by expiration of a term shall be filled by the affected participating county in the same manner respectively, for the unexpired terms. Members may be removed from office by the governing body of the county from which appointed for inefficiency, neglect of duty or misconduct in office after the authority or governing body has given such member a copy of the charges against him and an opportunity to be heard in person or by counsel in his defense, upon not less than ten days notice. If any member shall be so removed, there shall be filed with the chairman of the authority and the chairman of such governing body a complete statement of charges made against such member and the findings of the governing body thereon, together with a complete record of the proceeding.

2. The members of the authority shall receive no compensation for their services whether as members or officers of the authority but shall be reimbursed for all their actual and necessary expenses incurred in connection with the carrying out of the purposes of this title. The powers of the authority shall be vested in the members thereof in office from time to time and a majority of members shall constitute a quorum at any meeting of the authority. No vacancy in the membership of the authority shall impair the rights of such members to exercise all the rights and perform all the duties of the authority. Any action taken by the authority under the provisions of this title may be authorized at a meeting of the authority by resolution approved by a majority of the total number of members then in office, which resolution shall take effect immediately.

3. The officers of the authority shall consist of a chairman, a vice-chairman and a treasurer, who shall be members of the authority and a secretary, who need not be a member of the authority. Such officers shall be selected by the governing body and shall serve in such capacities at the pleasure of the governing body. In addition to the secretary, the governing body may appoint and at pleasure remove an executive director, an attorney, an engineer and such additional officers and employees as it may determine necessary for the performance of the powers, and duties of the authority, which positions shall be in the exempt class of civil service, and fix and determine their qualifications, duties and compensation, subject to the provisions of the civil service law,

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provided however, that no elected official of a participating county or any municipality therein shall be appointed as an employee of the authority; provided, however, that nothing contained in this section shall prohibit an elected official of a participating county or municipality therein from furnishing work, materials, supplies or labor pursuant to a contract which the authority is empowered to make pursuant to this title. The governing body may delegate to one or more of its members, officers, agents, or employees such powers and duties as it may deem proper. The governing body may also from time to time contract for expert professional services. The treasurer shall execute a bond, conditioned upon the faithful performance of the duties of his office the amount and sufficiency of which shall be approved by the governing body and the premium for which shall be paid by the authority.

4. (a) Each of the counties, of Montgomery, Otsego and Schoharie electing to participate in the authority shall file, on or before October first of the year following the year in which this title shall take effect, in the office of the secretary of state, a certificate signed by the chairman of its legislative body setting forth: the name of the authority; the names of the members Appointed by that county; and the effective date of this title.

(b) The authority shall be perpetual in duration and shall continued until terminated by law, except if the certificate referred to in paragraph (a) of this subdivision is not filed by two or more counties on or before the date specified in such paragraph, then the corporate existence of the authority' shall thereupon terminate and it shall be deemed to be and shall be dissolved, provided, however, that no such termination shall take effect so long as the authority shall have bonds or, other obligations outstanding unless adequate provision has been made for the payment or satisfaction thereof. Upon any termination of the existence of the authority, all of the rights and properties of the authority then remaining shall pass to and be vested in the participating counties in accordance with such law.

5. It is hereby determined and declared, that the authority and the carrying out of its powers and duties are in all respects for the benefit of the people of the participating counties and the state for the improvement of their health, welfare, and prosperity and that such purposes are public purposes and that the authority is and will be performing an essential governmental function in the exercise of the powers conferred upon it by this title.

(Added L1987, c. 747, § 1; amended L.1988, c. 111, § 1.)

1988 **Amendment** Subd. 1. 1.1988, c. 111, § 1, eff. June- 13, 1988, retroactive to Aug. 5, 1987, in sentence beginning "The first members" substituted "44year in which this title shall take effect" for "year in which their appointment becomes effective".

Subd. 4, par. a. L.1988, c. 111, § 1, eff. June 13, 1988, retroactive to Aug. 5, 1987, substituted "October first" for "March thirty-first".
Effective Date. Section effective Aug. 5, 1987, pursuant to L.1987, c. 747, § 2, set out as a note under section 2041.

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§ 2041-c. Advances on behalf of authority; transfer of property to authority; acquisition of property by participating counties for authority

1. In addition to any powers granted to it by law, any participating county may by resolution advance sums of money to or on behalf of the authority to defray project costs or any other costs and expenses of the authority to be incurred prior to the first issuance of bonds. Subject to the rights of any bondholders, the moneys so appropriated may be repaid by the authority to the participating county at such time and in such manner as may be agreed upon between the authority and the participating county.

2. Any participating county or any other municipality within the area of operation may give, grant, sell, convey, loan or license the use of or lease to the authority any property or facility which is useful to the authority in order to carry out its powers under this title. Any such transfer of property shall be upon such terms and conditions, subject to the rights of any bondholders, as the authority and the participating county or other municipality may agree.

3. Notwithstanding the provisions of any other law, general, special or local, real property acquired by the authority or any participating county from the state may be used for any corporate purpose of the authority.

(Added L.1987, c. 747, § 1.)

Effective Date. Section effective Aug. 5, 1987, pursuant to L.1987, c. 747, § 2, set out as a note under section 2041.

§ 2041-d. Powers of the authority

The authority shall have the power:

1. To sue and be sued.
2. To have a seal and alter the same.
3. To acquire in the name of the authority, hold, sell, lease, mortgage or otherwise dispose of property, real, personal or mixed, or any interest therein, without limitation, for its corporate purposes.
4. To condemn, in the name of the authority pursuant to the eminent domain procedure law, any real property within the area of operation and required by the authority to carry out the powers granted by this title.
5. To collect, receive, extract, transport, process, dispose of, sell, store, convey, recycle, and deal with, in any lawful manner and-way, solid waste and any products or by-products thereof now or hereafter developed or discovered, including any energy generated by the operation of any solid waste management resource recovery facility. Any such disposal or sale may be effected on such terms and in such manner as the authority may deem proper.
6. To plan, develop, purchase and construct projects and to pay the cost thereof and to have the right to contract in relation thereto with municipalities or persons within or without the area of operation and to own and operate, maintain, repair, improve, reconstruct, renovate, rehabilitate, replace, enlarge, increase and extend, subject to the provisions of this title, any of its projects acquired or constructed under this title' and to enter into contracts for any and all such purposes and for the management and operation of a project, and to sell, lease, mortgage or

otherwise dispose of any project or part thereof to the state, any person, public corporation, or municipality, subject to such conditions and limitations as the authority may determine to be in the public interest.

7. To assist in the planning, development and construction of and the financing of the cost of any project to be located in the area of operation whether or not such project is to be owned or operated by the authority, which assistance may include loans to any person or municipality.

8. To collect or receive from the United States, the state, any participating county, any other municipality, public corporation, corporation or person, solid waste for the purpose of treatment or disposal thereof, with the right of the authority to sell and dispose of any products or by-products, including energy, of such process of treatment or disposal, as the authority may deem proper.

9. To contract with any participating county, other municipalities, state agencies, public corporations, corporations or persons within or without the area of operation, for the purpose of collecting, receiving, treating and disposing of solid waste, including, without limitation, to contract with participating counties, other municipalities, state agencies, public corporations or persons for the delivery of all solid waste generated within a stated area to a specific facility.

10. To make by-laws for the management and regulation of its affairs and, subject to agreements with bondholders, for the regulation of the use of any project or other property of the authority, which by-laws and all amendments thereto, duly certified by the secretary of the authority, shall be filed in the office of the authority and in the office of the clerk of the legislative body of each participating county, and to provide for the enforcement of such by-laws by legal or equitable actions or proceedings which are or may be provided or authorized by law. In addition, the legislative bodies shall have power to prescribe that violations of specific by-laws of the authority, including, without limitation, any failure to comply with any by-law requiring the payment of any fee or other charge by any person in connection with the delivery of solid waste to any facility or any other use of any facility by such person, shall constitute offenses or infractions and provide for the punishment of violations thereof.

11. With the consent of the chairman of the legislative body of a participating county or the legislative body of any municipality, to use the officers or employees of such participating county or any municipality within a participating county and to pay a proper portion of the compensation or costs for the services for such officers or employees. Provided, however, that a full time officer, member or employee shall not be compensated in the aggregate in an amount in excess of such officer's, member's or employee's full time compensation without the express approval of the county legislature.

12. To make contracts and to execute all necessary or convenient instruments, including evidences of indebtedness, negotiable or non-negotiable.

13. To enter on any lands, waterways or premises within the area of operation for the purpose of making surveys, soundings, and examinations, any liability for which shall not exceed actual damages.

14. To borrow money and to issue bonds for any of its corporate purposes, to secure the same with its revenues or other funds, to fund or refund the same, and to provide for the rights of the holders thereof.

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15. Subject to any limitations imposed by any contract pursuant to subdivision one of section two thousand forty-one-t of this title, to fix and collect rates, rentals, fees and other charges for the use of the facilities of, or services rendered by, or any commodities furnished by, the authority and to contract with any participating county, other municipality or person in respect thereto, so as to provide revenues sufficient at all times to pay, as the same shall become due, the principal and interest on the bonds of the authority, together with the maintenance of proper reserves therefor, in addition to paying, as the same shall become due, the expenses of operating and maintaining the properties of the authority, together with proper reserves for debt service, depreciation, maintenance and contingencies and all other obligations and indebtedness of the authority, provided, however, that the authority shall not have the power, within any city, to collect rentals, charges, rates or fees from the owners of real estate, or the occupants of real estate (other than the occupants of premises owned or controlled by the authority, or by the state or any civil division thereof), for services or facilities furnished or supplied in connection with such real estate, if such services or facilities are of a character or nature that; as of the effective date of this title, are or formerly were furnished or supplied by the city, unless the electors of the city shall approve the granting to the authority of such powers by a majority vote at a general or special election in the city.

16. To accept gifts, grants, loans or contributions from the United States, the state or any authority or instrumentality of either of them, or any municipality or from any person, by bequest or otherwise, and to expend the proceeds for any corporate purposes of the authority.

17. To enter into agreements, in its discretion, to pay annual sums in lieu of taxes to any municipality, political subdivision or taxing district of the state in respect to any real property which is owned by the authority and located in such municipality, political subdivision or taxing district.

18. To establish standards and criteria which shall be used to determine if real property shall be utilized in conjunction with any solid waste management program provided, however, that in no instance shall such standards and criteria provide for the placement of sanitary landfills, leachate treatment facilities, secure land burial facilities, landspreading facilities, surface impoundments and waste oil storage facilities over a primary public water supply aquifer or principal aquifer. Once such standards and criteria are established, no real property shall be acquired except in accordance with such standards and criteria. Such standards and criteria shall be established after a public hearing in each participating county upon such proposed standards and criteria, which public hearing shall be on at least ten days notice in a newspaper or newspapers of general circulation in the counties of Montgomery, Otsego and Schoharie. Such notice shall also be sent by regular mail to the clerk of each municipality in such three counties, including the clerk of each county.

19. To make payments to, and settle claims asserted by owners of property in proximity to and adversely affected by, landfill facilities of a the authority in order to compensate such owners in whole or in part for diminution of the value of their property, if any, directly resulting from the siting of the authority landfill facility or the activities undertaken therein. The amount and manner of such payments shall be determined by resolution of the authority, and shall be based on real estate market studies and/or appraisals undertaken at the direction of the authority, in

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such form and substance satisfactory to the authority. The authority may establish rules and regulations setting forth the specifications pursuant to which real estate market studies and/or appraisals shall be conducted and such other rules and regulations as may be necessary to effectuate the purpose of this subdivision. Such rules and regulations shall include a requirement that all property owners requesting payments in accordance therewith must file a claim with the authority by a date specified by the authority. Any payments made pursuant to the provisions of this subdivision shall be considered a cost of the authorities in the computation of rates, fees, and charges in accordance with subdivision fifteen of this section.

20. In addition to the power granted by subdivision seventeen of this section, to make payments to and settle claims asserted by municipalities either adversely affected by landfill facilities of the authority, or, in which landfill facilities of the authority are located to compensate such municipalities for additional municipal service support, monitoring and similar activities occasioned by the siting, construction, and operation of said landfill. The amount and manner of such payments shall be determined by resolution of the authority in its discretion and shall be utilized by the recipient municipality in conformance with the purposes heretofore set forth. Any payments made pursuant to the provisions of this subdivision shall be considered a cost of the authority and may be included in the computation of rates, fees and charges in accordance with this section.

21. To do all things necessary or convenient to carry out the powers expressly given in this title.

(Added L.1987, c. 747, § 1; amended L.1994, c. 527, § 1.)

Historical and Statutory Notes

1994 Amendments. Subd. 19. L.1994, c. 527, 1, eff. July 26, 1994, added subd. 19 and renumbered existing subd. 19 as 21.

Subd. 20. L. 1994, c 527, § 1, eff. July 26, 1994, added subd. 20

Subd. 21. L. 1994, c. 527, § 1, eff. July 26, 1994, renumbered former subd. 19 as 21.

Effective Date. Section. effective Aug. 5, 1987, pursuant to L.1987, c. 747, §2., set out as a note under section 2041.

§ 2041-e. Governmental capacity of the authority and municipalities

The authority, participating counties and other municipalities within the area of operation, in carrying out their respective powers and duties under this title, shall be deemed to be acting in a governmental capacity. The construction, operation and maintenance of any project financed in whole or in part by the authority, shall be deemed to be the performance of an essential government function by the authority acting in its governmental capacity, whether such project shall be owned or operated by the authority or by any person or other public corporation.

(Added L.1987, c. 747, §1.)

Effective Date. Section effective Aug. 5, 1987, pursuant to L.1987, c- 747, § 2, set out as a note under section 2041.

§ 2041-f. Transfer of officers and employees

Any officer or employee of a participating county or of any municipality located within a participating county under civil service who is selected by the authority may, with the consent of the legislative body of the employing county or municipality, be transferred to the authority and shall be eligible for such transfer and appointment, without examination, to applicable offices, positions and employment under the authority. The salary or compensation of any such officer or employee, after such transfer, shall be paid by the authority. Any such officers or employees so transferred to the authority pursuant to this section who are members of or benefit under any existing pension or retirement fund or system shall continue to have all rights, privileges, obligations and status with respect to such fund or system as are now prescribed by law but, during this period of their employment by the authority, all contributions to such fund or system heretofore made by the employing county or municipality, shall be made by the authority. All such officers or employees so transferred to the authority who have been appointed to positions under the rules and classifications of the personnel officer of the county or any employing municipality shall have the same status with respect thereto after transfer to the authority as they had under their original appointment.

(Added L.1987, c. 747, § 1.)

Effective Date. -Section effective Aug. 5, 1987, pursuant to L.1987, c. 747, § 2, set out as a note under section 2041.

§ 2041-g. Bonds of the authority

1. The authority shall have the power and is hereby authorized from time to time to issue bonds in such principal amounts as it may determine to be necessary to pay the cost of any project ~~or~~ for any other corporate purpose, including incidental expenses in connection therewith. The authority shall have power and is hereby authorized to enter into such agreements

and perform such acts as may be required under any applicable federal legislation to secure a federal guarantee of any bonds. The authority shall have power from time to time to refund any bonds by the issuance of new bonds whether the bonds to be refunded have or have not matured, and may issue bonds partly to refund bonds then outstanding and partly for any other corporate purpose. Bonds issued by the authority may be general obligations secured by the faith and credit of the authority or may be special obligations payable solely out of particular revenues or other moneys as may be designated in the proceedings of the authority under which the bonds shall be authorized to be issued, subject as to priority only to any agreements with the holders of outstanding bonds pledging any particular property, revenues or moneys. The authority may also enter into loan agreements, lines of credit and other security agreements and obtain for or on its behalf letters of credit in each case for securing its bonds or to provide direct payment of any costs which the authority is authorized to pay.

2. Bonds shall be authorized by resolution of the authority, be in such denominations and bear such date or dates and mature at such time or times, as such resolution may provide, provided that bonds and renewals thereof shall mature within thirty years from the date of original issuance of any such bonds. Obligations with a maturity of five years or less from the

date of their original issuance may be designated as notes. Bonds and notes shall be subject to such terms of redemption, bear interest at such rate or rates, be payable at such times, be in registered form, be executed in such manner, be payable in such medium of payment at such place or places, and be subject to such terms and conditions as such resolution may provide. Bonds may be sold at public or private sale for such price or prices, in such manner and from time to time, as the authority shall determine, provided that no bonds of the authority, other than obligations designated as notes, shall be sold by the authority at private sale unless such sale and the terms thereof have been approved in writing by the state comptroller, where such sale is not to the comptroller, or by the state director of the budget, where such sale is to the comptroller. The authority may pay all expenses, premiums and commissions which it may deem necessary or advantageous in connection with the issuance and sale of bonds.

3. Any resolution or resolutions authorizing bonds or any issue of bonds may contain provisions which may be a part of the contract with the holders of the bonds thereby authorized as to:

(a) pledging all or any part of the revenues, other moneys or property of the authority to secure the payment of the bonds, or any costs of issuance thereof, including but not limited to any contracts, earnings or proceeds of any grant to the authority received from any private or public source subject to such agreements with bondholders as may then exist;

(b) the setting aside of reserves and the creation of sinking funds and the regulation and disposition thereof;

(c) limitations on the purpose to which the proceeds from the sale of bonds may be applied;

(d) the rates, rents, fees and other charges to be fixed and collected by the authority and the amount to be raised in each year thereby and the use and disposition of revenues;

(e) limitations on the right of the authority to restrict and regulate the use of the project or part thereof in connection with which bonds are issued;

(f) limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured and the refunding of outstanding or other bonds;

(g) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(h) the creation of special funds into which any revenues or moneys may be deposited;

(i) the terms and provisions of any trust, mortgage, deed or indenture securing the bonds under which the bonds may be issued;

(j) vesting in a trustee or trustees such properties, rights, powers and duties in trust as the authority may determine which may include any or all of the rights, powers and duties of the trustees appointed by the bondholders pursuant to section two thousand forty-one-h of this title and limiting or abrogating the rights of the bondholders to appoint a trustee under such section or limiting the rights, duties and powers of such trustee;

(k) defining the acts or omissions to act which may constitute a default in the obligations and duties of the authority to the bondholders and providing for the rights and remedies of the bondholders in the event of such default, including as a matter of right the appointment of a

receiver, provided, however, that such rights and remedies shall not be inconsistent with the general laws of the state and other provisions of this title;

(l) limitations on the power of the authority to sell or otherwise dispose of any project or any part thereof;

(m) limitations on the amount of revenues and other moneys to be expended for operating, administrative or other expenses of the authority,

(n) the payment of the proceeds of bonds, revenues and other moneys to a trustee or other depository, and for the method of disbursement thereof with such safeguards and restrictions as the authority may determine; and

(o) any other matters of like or different character which in any way affect the security or protection of the bonds or the rights and remedies of bondholders.

4. In addition to the powers herein conferred upon the authority to secure its bonds, the authority shall have power in connection with the issuance of bonds to enter into such agreements as the authority may deem necessary, convenient or desirable concerning the use or disposition of its revenues or other moneys or property, including the mortgaging of any property and the entrusting, pledging or creation of any other security interest in any such revenues, moneys or property and the doing of any act, including refraining from doing any act which the authority would have the right to do in the absence of such agreements. The authority shall have power to enter into amendments of any such agreements within the powers granted to the authority by this title and to perform such agreements. The provisions of any such agreements may be made a part of the contract with the holders of bonds of the authority.

5. Any provision of the uniform commercial code to the contrary notwithstanding, any pledge of or other security interest in revenues, moneys, accounts, contract rights, general intangibles or other personal property made or created by the authority shall be valid, binding and perfected from the time when such pledge is made or other security interest attaches without any

physical delivery of the collateral or further act, and the lien of any such pledge or other security interest shall be valid, binding and perfected against all parties having claim-, of any kind in tort, contract or otherwise against the authority irrespective of whether or not such parties have notice thereof. No instrument by which such a pledge or security interest is created nor any financing statement need be recorded or filed.

6. Whether or not the bonds are of such form and character as to be negotiable instruments under the terms of the uniform commercial code, the bonds are hereby made negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, subject only to the provisions of the bonds for registration.

7. Neither the members of the authority nor any person executing bonds shall be liable personally thereon or be subject to any personal liability or accountability by reason of the issuance thereof.

8. The authority, subject to such agreements with bondholders as then may exist, shall have power out of any moneys available therefor to purchase bonds of the authority, which shall thereupon be cancelled, at a price not exceeding (i) if the bonds are then redeemable, the redemption price then applicable, plus accrued interest to the next interest payment date or, (ii) if the bonds are not then redeemable, the redemption price applicable on the first date after such

purchase upon which the bonds become subject to redemption plus accrued interest to the next interest payment date.

(Added L1987, c 747, § 1.)

Effective Date. Section effective Aug. 5, 1987, pursuant to L1987, c. 747, § 2, set out as a note under section 2041.

2041-h. Remedies of bondholders

Subject to any resolution or resolutions adopted pursuant to subdivision three of section two thousand forty-one-g of this title:

1. In the event that the authority shall default in the payment of principal or of interest on any issue of bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the authority shall fail or refuse to comply with the provisions of this title or shall default in any agreement made with the holders of any issue of bonds, the holders of twenty-five percent in aggregate principal amount of the bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county in which the principal office of the authority is located and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds for the purpose -herein provided.

2. Such trustee may, and upon written request of the holders of twenty-five per centum in principal amount of such bonds outstanding, shall in its own name:

(a) by action or proceeding in accordance with the civil practice law and rules, enforce all rights of the bondholders, including the right to require the authority to collect rents, rates and charges adequate to carry out any agreement as to, or pledge of, such rents, rates and charges and to require the authority to carry out any other agreements with the holders of such bonds to perform its duties under this title;

(b) bring an action or proceeding upon such bonds;

(c) by action or proceeding, require the authority to account as if it were the trustee of an ex-Dress trust for the holders of such bonds;

(d) by action or proceeding, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds; and

(e) declare all such bonds due and payable, and if all defaults shall be made good, then with the consent of the holders of twenty-five per centum of the principal amount of such bonds then outstanding, to annul such declaration and its consequences.

3. Such trustee shall in addition to the foregoing have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of bondholders in the enforcement and protection of their rights.

4. The supreme court shall have jurisdiction of any action or proceeding by the trustee on behalf of such bondholders. The venue of any such action or proceeding shall be laid in the county where the principal office of the authority is located.

5. Before declaring the principal of bonds due and payable, the trustee shall first give thirty days notice in writing to the authority.

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6. Any such trustee whether or not the issue of bonds represented by such trustee has been declared due and payable, shall be entitled as of right to the appointment of a receiver of any part or parts of the project, the revenues of which are pledged for the security of the bonds of such issue, and such receiver; may enter and take possession of such part or parts of 'the project and, subject to any pledge or agreement with the holders of such bonds, shall take possession of all moneys and other property derived from such part or parts of the project and proceed with any construction thereon or the acquisition of any property, real or personal, in connection therewith that the authority is under obligation to do, and operate, maintain and reconstruct such part or parts of the project and collect and receive all revenues thereafter arising therefrom subject to any pledge or agreement with bondholders relating thereto and perform the public duties and carry out the agreements and obligations of the authority under the direction of the court. In any suit, action or proceeding by the trustee, the fees, counsel fees and expenses of the trustee and of the receiver, if any, shall constitute taxable disbursements and all costs and disbursements allowed by the court shall be a first charge on any revenues derived from the project.

(Added L.1987, c. 747, § 1.)

Effective Date. Section effective Aug. 5, 1987, pursuant to L.1987, c. 747, § 2, set out as a note under section 2041.

§ 2041-i. State, county and municipalities not liable on authority bonds

Neither the state, the participating counties nor any other municipality or public corporation shall be liable on the bonds of the authority and such bonds shall not be a debt of the state, the participating counties or any other municipality or public corporation, and such bonds shall contain on the face thereof a statement to such effect.

(Added L.1987, c. 747, § 1.)

Effective Date. Section effective Aug. 5, 1987, pursuant to L.1987, c. 747, § 2, set out as a note under section 2041.

§ 2041-j. Moneys of the authority

All moneys of the authority from whatever source derived shall be paid to the treasurer of the authority and shall be deposited forthwith in interest-bearing accounts in a bank or banks in the state designated by the governing body. The moneys in such accounts shall be paid out on check of the treasurer upon requisition by the governing body or of such other person or persons as the governing body may authorize to make such requisitions. All deposits of such moneys shall be secured by obligations of the United States, the state, or the participating counties, of a market value equal at all times to the amount on deposit and all banks and trust companies are authorized to give such security for such deposits. The authority shall have power, notwithstanding the provisions of this section, to contract with the holders of any bonds as to the custody, collection, security, investment and payment of any moneys of the authority or any moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds, and carry out any such contract notwithstanding that such contract may be inconsistent with the provisions of this section. Moneys held in trust or otherwise for the payment of bonds or in any

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way to secure bonds and deposits of such moneys may be secured in the same manner as moneys of the authority and all banks and trust companies are authorized to give such security for such deposits. Any moneys of the authority not required for immediate use or disbursement may, at the discretion of the authority, be invested in those obligations specified pursuant to the provisions of section ninety-eight-a of the state finance law. Subject to the provisions of any contract with bondholders and with the approval of the comptroller, the authority shall prescribe a system of accounts.

(Added L.1987, c. 747, § 1.)

Effective Date. Section effective Aug. 5, 1987, pursuant to L.1987, c. 747, § 2, set out as a note under section 2041.

§ 2041-k. Bonds legal investment for fiduciaries

The bonds of the authority are hereby made securities in which all public officials and bodies of the state and all municipalities, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, investment companies and other persons carrying on a banking business, and administrators, guardians, executors, trustees and other fiduciaries and all other persons whatsoever, who are now or may hereafter be authorized to invest in bonds or other obligations of the state may properly and legally invest funds including capital in their control or belonging to them. The bonds are also hereby made securities which may be deposited with and may be received by all public officers and bodies of this state and all municipalities for any purposes for which the deposit of bonds or other obligations of this state is now or hereafter may be authorized.

(Added L.1987, c. 747, § 1.)

Effective Date. Section effective Aug. 5, 1987, pursuant to L.1987, c. 747, § 2, set out as a note under section 2041.

§ 2041-l. Agreement with state

The state does hereby pledge to and agree with the holders of any bonds issued by the authority pursuant to this title that the state will not alter, limit or impair the rights hereby vested in the authority to purchase, construct, own and operate, maintain, repair, improve, reconstruct, renovate, rehabilitate, enlarge, increase and extend, or dispose of any project, or any part or parts thereof, for which bonds of the authority shall have been issued, to establish and collect rates, rents, fees and other charges referred to in this title, to fulfill the terms of any agreements made with or for the benefit of the holders of bonds or with any public corporation or person with reference to such project or part thereof, or in any way to impair the rights and remedies of the holders of bonds, until the bonds, together with interest thereon, including interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders of bonds, are fully met and discharged, provided, however, that this section shall not be construed to limit in any manner the ability of the state to alter, amend or enforce laws or regulations to protect public health and the environment. The authority is

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authorized to include this pledge and agreement of the state in any agreement with the holders of bonds.

(Added L1987, c. 747, § 1.)

Effective Date. Section effective Aug. 5, 1987, pursuant to L1987, c. 747, § 2, set out as a note under section 2041.

§ 2041-m. Exemption from taxes, assessments and-certain fees

1. It is hereby determined that the creation of the authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of the participating counties and the state and is a public purpose and the authority shall be regarded as performing a governmental function in the exercise of the powers conferred upon it by this title and shall not be required to pay any taxes or assessments upon any property acquired or owned by it or under its jurisdiction, control or supervision or upon its activities, income and operations, or any filing, recording or transfer fees or taxes in relation to instruments filed, recorded or transferred by it or on its behalf. The construction, use, occupation or possession of any property owned by the authority or any participating county, including improvements thereon, by any person or public corporation under a lease, lease and sublease or any other agreement shall not operate to abrogate or limit the foregoing exemption, notwithstanding that the lessee, user, occupant or person in possession shall claim ownership for federal income tax purposes. Mortgages made or financed, directly or indirectly, by the authority shall be exempt from the mortgage recording taxes imposed by article eleven of the tax law. The authority shall be deemed a public authority for the purposes of section four hundred twelve of the real property tax law.

2. Any bonds issued pursuant to this title together with the income therefrom as well as the property of the authority shall be exempt from taxes, except for estate or gift taxes on such bonds and taxes on transfers. The state hereby covenants with the purchasers and with all subsequent holders and transferees of bonds issued by the authority pursuant to this title, in consideration of the acceptance of any payment for the bonds of the authority issued pursuant to this title and the income therefrom and all revenues, moneys, and other property pledged to secure the payment of such bonds shall at all times be free from taxation, except for estate or gift taxes on such bonds and taxes on transfers.

(Added L.1987, c. 747, § 1.)

Effective Date. Section effective Aug. 5, 1987, pursuant to L1987, c. 747, § 2, set out as a note under section 2041.

§ 2041-n. Actions against authority

1. No action or special proceeding shall be prosecuted or maintained against the authority, its members, officers, or employees for personal injury or damage to real or personal property alleged to have been sustained by reason of the negligence, tort or wrongful act of the authority

or of any member, officer, agent or employee thereof, unless (i) a notice of claim shall have been made and served upon the authority within the time limit by and in compliance with section

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fifty-e of the general municipal law, (ii) it shall appear by and as an allegation in the complaint or moving papers that at least thirty days have elapsed since the service of such notice and that adjustment or payment thereof has been neglected or refused, and (iii) the action or special proceeding shall be commenced within one year and ninety days after the happening of the event upon which the claim is based. Except that actions to recover damages for personal injury or injury to property caused by the latent effects of exposure to any substance or combination of substances, in any form, upon or within the body or upon or within property shall be governed by section two hundred fourteen-c of the civil practice law and rules.

2. Whenever a notice of claim is served upon the authority, it shall have the right to demand an examination of the claimant relative to the occurrence and extent of the injuries or damages for which claim is made, in accordance with the provisions of section fifty-h of the general municipal law.

3. The authority may require any person presenting for settlement an account or claim for any cause whatever against the authority to be sworn before a member, counsel or an attorney, officer or employee of the authority designated for such purpose; concerning such account or claim and, when so sworn, to answer orally as to any facts relative to such account or claim. The authority shall have power to settle or adjust all claims in favor of or against the authority.

4. Any action or proceeding to which the authority or the people of the state may be parties, in which any question arises as to the validity of this title, shall be preferred over all other civil causes of action or cases, except election causes of action or cases, in all courts of the state and shall be heard and determined in preference to all other civil business pending therein except election causes, irrespective of position on the calendar. The same preference shall be granted upon application of the authority or its counsel in any action or proceeding questioning the validity of this title in which the authority may be allowed to intervene. The venue of any such action or proceeding shall be laid in the supreme court of the county in which the principal office of the authority is located.

5. The rate of interest to be paid by the authority upon any judgment for which it is liable, other than a judgment on its bonds, shall be the rate prescribed by section five thousand four of the civil practice law and rules. Interest on payments of principal or interest on any bonds in default shall accrue at the rate borne by such bonds from the due date thereof until paid or otherwise satisfied.

(Added L.1987, c. 747, § 1.)

Effective Date. Section effective Aug. 5, 1987, pursuant to L.1987, c. 747, § 2, set out as a note under section 2041,

§ 2041-o. Contracts

All contracts or orders for work, material or supplies performed or furnished in connection with construction, shall be awarded by the authority pursuant to resolution of the governing body except as hereinafter provided. Such awards, when applicable, shall be made in compliance with paragraph (e) of subdivision four and subdivision seven of section one hundred twenty-w of the general municipal law. In any construction contract, the authority may provide a

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program for the payment of damages for delays and incentive awards in order to encourage timely project completion. An action, suit or proceeding contesting the validity of a contract awarded pursuant to this section, or the validity of the procedures relating to such award, shall be governed by the provisions of subdivision six of section one hundred twenty-w of the general municipal law and the term "municipality" as used in such subdivision six shall mean the authority.

The bidder whose bid is accepted shall give security for the faithful performance of the contract, and such other security as the authority may require, and may be required to maintain any construction done under the contract for such period as shall be stipulated, all in the manner prescribed and required by the authority and the sufficiency of such security shall, in addition to the justification and acknowledgement, be approved by the authority. All bids or proposals shall be publicly opened by the governing body or its duly authorized agent. If the bidder whose bid or proposal has been accepted after advertising shall neglect or refuse to accept the contract within five days after written notice that the contract has been awarded to him on his bid proposal or, if he accepts but does not execute the contract and give proper security, the authority shall have the right to declare his deposit forfeited. In case any work shall be abandoned by any contractor, the authority may, if it determines that the public interest is thereby served, adopt on behalf of the authority any or all subcontracts made by such contractor for such-work and all such subcontractors shall be bound by such adoption if made. No bid proposal shall be accepted from or any contract awarded to, any person or corporation who is in arrears to the authority or any participating county upon any obligation of the authority or any participating county. Every contract shall be executed in duplicate, one copy of which shall be held by the authority and one copy of which shall be delivered to the contractor. The authority may adopt, utilize, ratify and confirm any request for proposals, invitation for sealed bids, plans, specifications and notices heretofore or hereafter published by any participating county with respect to any proposed project. The provisions of this section shall supersede any inconsistent provisions of the general municipal law, or any other general, special or local law, or the charter of any participating county.

The authority shall ensure that, where possible, all employees or applicants for employment are afforded equal employment opportunity without discrimination.

(Added L.1987, c. 747, § 1.)

Effective Date. Section effective Aug. 5, 1987, pursuant to L.1987, c. 747, § 2, set out as a note under section 2041.

§ 2041-p. Interest in contracts prohibited

It shall be a misdemeanor for any member of the governing body or any officer, agent, servant or employee of the authority to be in any way or manner interested, directly or indirectly, in the furnishing of work, materials, supplies or labor, or in any contract therefor. which the authority is empowered by this title to make.

(Added L.1987, c. 747, § 1.)

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Effective Date. Section effective Aug. 5, 1987, pursuant to L.1987, c. 747, § 2, set out-as a note under section 2041.

§ 2041-q. Audit and annual report

In conformity with the provisions of section five of article ten of the constitution, the accounts of the authority shall be subject to the supervision of the state comptroller and an annual audit shall be performed by an independent certified accountant. The authority shall annually submit to the governor and state comptroller and to the state legislature a detailed report pursuant to the provisions -of section two thousand eight hundred of title one of article nine of this chapter, and a copy of such report shall be filed ' with the chairman of the legislative body of each participating county. The authority shall comply with the provisions of sections two thousand eight hundred one, two thousand eight hundred two, and two thousand eight hundred three of title one of article nine of this chapter.

(Added 1"1987, c. 747, § 1.)

Effective Date. Section effective Aug. 5, 1987, pursuant to L.1987, c. 747, § 2, set out as a note under section 2041.

§ 2041-r. Limited liability

Neither the members of the governing body, nor any municipality, officer, or employee acting in its behalf, while acting within the scope of his or her authority, shall be subject to any personal liability resulting from the construction, maintenance or operation of any of the properties of the authority or from carrying out any of the powers expressly given in this title provided, however, that this shall not be held to apply to any independent contractor.

(Added L.1987, c. 747, § 1.)

Effective Date. Section effective Aug. 5, 1987, pursuant to L.1987, c. 747, § 2, set out as a note under section 2041.

§ 2041-s. Agreements with the participating counties

Each participating county is authorized to pledge to and agree with the holders of any bonds issued by the authority pursuant to this title that the county will not alter, limit or impair the rights hereby vested in the authority to purchase, construct, own and operate, maintain, repair, improve, reconstruct, renovate, rehabilitate, enlarge, increase and extend, or dispose of any project, or any part or parts thereof, for which bonds of the authority shall be issued, to establish and collect rates, rents, fees and other charges referred to in this title, to fulfill the terms of any agreements made with or for the benefit of the holders of bonds or with any public corporation or person with reference to such project or part thereof, or in any way to impair the rights and remedies of the holders of bonds, until the bonds, together with the interest thereon, including interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders of bonds are fully met and discharged.

(Added L.1987, c. 747, § 1.)

Effective Date. Section effective Aug. 5, 1987, pursuant to L.1987, c. 747, § 2, set out as a note under section 2041.

§ 2041-t. Special powers of participating counties and municipalities

1. The participating counties and one or more municipalities within the area of operation, or the authority and the participating counties, shall have power to contract from time to time between or among themselves, or among themselves and with the authority, in relation to the collecting, receiving, transporting, storage, processing or disposal of solid waste or for the purchase or use of any materials, energy, by-products or residue generated by or resulting from the operation of any facility. Any such contract to which the authority, or any participating county, or any municipality within the area of operation, are parties may include provisions stipulating the minimum or maximum rates, rentals, fees and other charges to be collected for the use and availability of facilities. Any such contract may also include provisions in connection with a facility obligating such participating county or municipality to deliver or cause to be delivered, periodically to a specified facility or facilities, all or any portion of the solid waste generated in such participating county or municipality for processing or disposal and to make periodic payments for such processing or disposal whether or not delivery of any such solid waste shall be made, subject only to such exceptions, terms and conditions as may be provided therein.

2. To further the governmental and public purposes of the authority, including the implementation of any contract or proposed contract contemplated by this title, any participating county and municipalities within the area of operation shall have power to adopt and amend local

laws, ordinances and regulations imposing appropriate and reasonable limitations on competition with respect to collecting, receiving, transporting, delivering, storing, processing and disposing of solid waste or the recovery by any means of any material or energy product or resource here from, and shall further have the power to adopt and amend local laws requiring that all solid waste generated, originated or brought within their respective boundaries, subject to such exceptions as may be determined to be in the public interest, shall be delivered to a specified facility or facilities; provided, however, that any such local law enacted by a participating county shall take precedence over and shall supersede any inconsistent provisions of any such local law enacted by a municipality within that participating county. Any such local law shall be adopted in accordance with the procedure provided by the municipal home rule law, except that no such local law shall be subject to either mandatory or permissive referendum. For the purposes of this section, solid waste shall have the same meaning as defined in section two thousand forty-one-a of this title, but shall not include any scrap or other material of value separated from the waste stream and held for purposes of materials recycling. Upon the adoption of any local law, ordinance or regulation pursuant to this section, the participating county or municipality shall file with the commissioner of the department of environmental conservation a verified copy of such local law, ordinance or regulation.

3. Each participating county is authorized to resell or otherwise dispose of all or any part of the materials, energy, by-products or residue purchased, received or obtained from the authority pursuant to subdivision one of this section. Any resale or other disposition may be

made in such manner as each participating county may deem proper and upon such terms and conditions as may be agreed upon by the parties there to.

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4. Each participating county and all other municipalities within the area of operation shall have power to perform such other acts, to enter into such other contracts, including contracts between or among themselves, execute such instruments and to undertake such future proceeding's as shall be determined necessary or desirable to effectuate the purpose of this title, including the making of gifts, grants, loans or contributions to the authority.

5. Except as otherwise provided by section one hundred twenty-w of the general municipal law, any contract entered into by a municipality in connection with, or in any manner relating to, any project or facility pursuant to this section may be for such term or duration, not to exceed twenty-five years, as may be agreed upon by the parties thereto.

6. Any contract entered into pursuant to this section to which the authority shall be a party may be pledged by the authority as security for any issue of bonds, and may be assigned, in whole or in part, by the authority to any public corporation or person which shall construct, purchase, lease or otherwise acquire any facility, or part thereof, financed in whole or in part by the authority.

7. Any contract, lease or agreement entered into by the authority pursuant to this title and which provides for the construction of a facility which combusts solid waste shall provide for the utilization of Best Available Control Technology to control the environmental impact of such facility. Such technology may include fabric filtration and dry scrubbers to control particulate and acid gas emissions. Any facility at a minimum shall be constructed and operated in compliance with requirements of the department of environmental conservation. Any such contract, lease or agreement also shall include but not be limited to provisions for:

(a) monitoring of emissions for toxic air contaminants or surrogates thereof where appropriate to determine permit compliance at least twice during the first year of operation and after any detection of permit violations, and at least annually thereafter; such monitoring to include provisions for use of statistically valid sampling procedures in all monitoring, and

(b) sampling and testing of ash and dust residues at least semi-annually, pursuant to a method assuring statistical validity, to determine appropriate disposition or disposal based on relative toxicity.

(Added L.1987, c- 747, § 1.)

Effective Date. Section effective Aug. 5, 1987, pursuant to L.1987, c. 747, § 2, set out as a note under section 2041.

§ 2041-u. Solid waste reserve fund

The legislative body of each participating county may establish a special fund, to be known as the solid waste reserve fund of that county. There shall be credited to such reserve fund all amounts paid to the participating county and specifically designated by the pay or for deposit in such reserve fund, together with such county moneys as may be appropriated thereto from time to time. Moneys in such reserve funds may be appropriated only for the purpose of paying amounts due from the county under the terms of any contract entered into pursuant to this title, for which an insufficient or no provision has otherwise been made, except that upon

the adoption of a resolution by at least a two-thirds vote of the voting strength of the participating county's legislative body, all or any portion of the moneys in such reserve fund

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may be transferred to any other reserve fund established by the county pursuant to the general municipal law. To the extent not inconsistent with the provisions of this section, the management of such reserve fund and the investment, of moneys therein shall be subject to the provisions of section six-h of the general municipal law.

(Added L1987, c. 747, § 1.)

Effective Date. Section effective Aug. 5, 1987, pursuant to L1987, c. 747, § 2, set out as a note under section 2041.

2041-v. Transfer of environmental applications, proceedings, approvals and permits

1. Any application in relation to the purpose of or contemplated by this title or any proceeding commenced by any participating county, with the department of environmental conservation, the department of transportation or any other state agency or instrumentality or with the United States environmental protection agency or any other federal agency or instrumentality shall inure to and for the benefit of the authority to the same extent and in the same manner as if the authority had been a party to such application or proceeding. and the authority shall be deemed a party thereto, to the extent not prohibited by any federal law. Any license, approval, permit or decision issued or granted pursuant to or as a result of any such application or proceeding shall inure to the benefit of and be binding upon the authority and shall be assigned and transferred by the participating county to the authority, unless such assignment and transfer is prohibited by federal law.

2. All such applications, proceedings, licenses, approvals, permits and decisions shall further inure to and for the benefit of and be binding upon any person leasing, acquiring, constructing, maintaining, using or occupying any facility financed in whole or in part by the authority.

(Added L.1987, c. 747, § 1.)

Effective Date. Section effective Aug. 5, 1987, pursuant to L.1987, c. 747, § 2, set out as a note under section 2041.

§ 2041-w. Separability

If any clause, sentence, paragraph, section, or part of this title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof involved in the controversy in which such judgment shall have been rendered.

(Added L.1987, c. 747, § 1.)

Effective Date. Section effective Aug. 5, 1987, pursuant to L.1987, c. 747, § 2, set out as a note under section 2041.

§ 2041-x. Effect of inconsistent provisions

Insofar as the provisions of this title are inconsistent with the provisions of any other act, general or special, or of the county charter, any local law, ordinance or resolution of a participating county or any other municipality within the area of operation, the provisions of this title shall be controlling. Nothing contained in this section shall be held to supplement or otherwise expand the powers or duties of the authority otherwise set forth in this title. Nothing contained in this title shall be held to alter or abridge the powers and duties of the department of environmental conservation or the department of health.

(Added L1987, c. 747, § 1.)

Effective Date. Section effective Aug. 5, 1987,
pursuant to L1987, c. 747, §2, set out as a note under section 2041.