

**HOST COMMUNITY AGREEMENT BETWEEN THE COUNTY OF FRANKLIN
SOLID WASTE MANAGEMENT AUTHORITY AND THE TOWNS OF CONSTABLE
AND WESTVILLE**

THIS AGREEMENT, made as of March 26, 2009 by and among the County of Franklin Solid Waste Management Authority, a public authority duly organized and existing under the laws of the State of New York and having its office at 828 County Rt 20, Constable, NY 12926, (the "Authority"); the Town of Constable, a municipal corporation duly organized and existing under the laws of the State of New York and having its office at c/o Susan Prue, Town Clerk, 62 Poplar St, Constable, NY 12926 ("Constable" or "Host Community"); and the Town of Westville, a municipal corporation duly organized and existing under the laws of the State of New York and having its office at Linda Jackson, Town Clerk, 699 Fay Rd, N. Bangor, NY 12966 ("Westville" or "Host Community"),

WITNESSETH:

WHEREAS, since 1994, the Authority has operated a landfill (the "Landfill") located partially in Constable and partially in Westville to handle the disposal of solid waste, and

WHEREAS, the location of the Landfill and any expansion within the Host Communities has the potential for numerous impacts and

WHEREAS, in recognition of said concerns the State Legislature, through the enabling legislation creating the Authority, has authorized the Authority to enter into appropriate Host Community Benefit Contracts,

WITNESSETH that in consideration of the mutual representations, warranties, covenants, agreements and conditions contained herein, the parties hereby agree as follows:

1. **DEFINITIONS.** The terms of this paragraph shall have the meanings ascribed to them herein, for all purposes of this Agreement, unless the context clearly indicates some other meaning. Words in the singular shall include the plural and words in the plural shall include the singular where the context so requires.
 - a. Agreement. This Agreement and all amendments or supplements thereto.
 - b. Authority. The public authority known as the County of Franklin Solid Waste Management Authority.
 - c. Facility. All elements of the Authority Landfill, including sites, buildings, offices, and maintenance areas.
 - d. Landfill. The sanitary landfill presently owned and operated by the Authority and any expansion thereof in Constable and/or in Westville.

- e. Municipal Solid Waste (MSW). Any matter that is defined as municipal solid waste in New York Code, Rules and Regulations, part 360 (hereinafter “6 NYCRR part 360”), as the same may be amended from time to time hereafter.
- f. New York State Department of Environmental Conservation (DEC). The department or agency of the government of the State of New York created by chapter 140 of the Laws of 1970, and having the jurisdiction, powers, and duties described in article 3 of the Environmental Conservation Law (ECL) of the State of New York, or any successor thereto.
- g. Constable. The municipal corporation known as the Town of Constable in the County of Franklin and State of New York.
- h. Westville. The municipal corporation known as the Town of Westville in the County of Franklin and State of New York.
- i. Host Communities. Constable and Westville
- j. Year. The fiscal year of the Authority, which is currently July 1 to June 30.

2. HOST COMMUNITY PAYMENTS

- a. Payments by the Authority to the Host Communities are intended to compensate the Host Communities for all effects and consequences resulting from having the Landfill located in the Host Communities including but not limited to loss of real estate tax revenue, damage to town roads, negative impact on total town assessment, costs of fire prevention, visual impacts and general quality of life issues.
- b. The Authority currently pays to each Host Community a fee of \$0.50 per ton of MSW. Such fee payments shall continue unless modified by this agreement.
- c. **Initial Payment Rates.** Upon the acceptance of this agreement by both Host Communities and beginning not sooner than the first day of the first month following the date of issuance of a final permit by all regulatory agencies, including but not limited to the NY DEC, for phase 1 of the currently proposed landfill expansion (the “Beginning Date”), the the Authority shall pay to each Host Community which is a signatory to this agreement the following amounts:

| TONS PER YEAR | PAYMENT PER TOWN PER TON |
|---|--------------------------|
| On All Municipal Solid Waste Received and all other Materials Other than Municipal Waste Received for which a tipping fee of \$40 per ton or more is charged (NOT RECYCLING) | |

| | |
|--|--------|
| 0-49,999 | \$0.50 |
| 50,000-74,999 | \$0.75 |
| 75,000-99,999 | \$0.75 |
| ON ALL MATERIALS RECEIVED FOR WHICH A TIPPING FEE IS CHARGED (NOT RECYCLING) REGARDLESS OF TIPPING FEE, AFTER RECEIVING 99,999 TON OF MATERIAL. | |
| 100,000-124,999 | \$1.00 |
| 125,000-149,999 | \$1.25 |
| 150,000-175,000 | \$1.50 |

- d. Such payments shall be based on quarterly tonnage computations and financial records for the preceding three months and shall be paid on or about April 30, July 31, October 31, and January 31, for the preceding quarter, accompanied by the calculation of the Authority regarding the quantities of waste tipped during said quarter and the gross amounts received for such waste.
- e. During the first Year in which this agreement is in operation the tonnages described above shall be measured from the Beginning Date described in paragraph 2 (c) above until the end of the Year. Thereafter such tonnages shall be measured Yearly.
- f. The Host Community to which payment is due shall not be required to submit to the Authority any claim forms or vouchers in connection with such payments.
- g. **Revised Payment Rates.**
 - i. **On the fifth anniversary of the Beginning Date the rate per ton for 75,000 to 99,999 tons shall increase from \$0.75 to \$0.85.**
 - ii. **Beginning on the eighth anniversary of the Beginning Date, the host community benefit for 0 to 99,999 tons shall be periodically adjusted as follows: Every time that there is a change in the Overall In-County Tipping Fee, such host community payment rates shall be adjusted by a fraction equal to the percentage change in the Overall In-County Tipping Fee. For the initial calculation, the percentage change shall be determined from the Beginning Date to the change date. Thereafter the percentage change shall be calculated from the last change date. For purposes of this paragraph the Overall In-County Tipping Fee**

shall mean the gross revenue derived from in-county MSW (not including BUD material or recycling materials) during the period for which payment is due to the host communities, divided by the tons received of such in-county MSW.

- (1) The purpose of this adjustment is to give the Host Communities an appropriate benefit whenever the Authority increases tipping fees (after the eighth anniversary of the Beginning Date).
- (2) For example, if the original Overall In-County Tipping fee is \$100.00 and the Authority increases this to \$120.00 before the eighth anniversary of the Beginning Date, then host community payment rates for 0 to 99,999 tons of MSW would increase by 20% on the eight anniversary.

h. Upon execution of this agreement, the Authority shall also make one-time payment in the sum of \$6,000 to each of the Host Communities.

3. BREACH

a. If any party breaches this Agreement in any material respect, any other party may take such legal action as may be appropriate under the circumstances, including injunctive relief, declaratory judgment, or monetary damages for such breach. No such action or proceeding shall be commenced until the party allegedly in breach has been given written notice thereof and thirty (30) days have elapsed since receipt of such notice and the party allegedly in breach has not proceeded diligently to cure such default.

4. HIGHWAYS

a. In the event that either Host Community exercises its powers to regulate or direct truck traffic on town highways then the Authority shall reasonably cooperate with such town in the dissemination of information or material concerning such regulations to truck operators who use the Landfill facility of the Authority

5. HOURS OF OPERATION

a. Normal hours of operation of the scales at the Landfill will start no earlier than 6:00 am and end no later than 5:00 pm. Occasional variations are permissible. This clause shall not be construed to regulate the hours of work of the Authority's employees or agents except for scale operations.

6. ADDITIONAL OBLIGATIONS OF HOST COMMUNITIES.

a. So long as the Authority owns and operates the landfill and has not breached any term of this Agreement or any agreement entered into pursuant to this Agreement in order to carry out its purpose and intent, no Host Community which has executed this Agreement shall make any claim or institute any suit or voluntarily become party to a suit or proceeding against the Authority, DEC or any other State or Federal Agency to challenge or oppose the issuance of permits for the

expansion, construction or operation of the landfill by the Authority. No such Host Community shall cause or encourage any other party, either directly or indirectly, to bring any suit or proceeding as herein specified.

7. INSURANCE.
 - a. The Authority will continue to obtain and maintain at least two million dollars of pollution liability insurance.

8. BINDING ON SUCCESSORS. This agreement shall be binding on any person or entity which hereafter owns or operates the landfill or any portion thereof. The Authority shall notify any potential purchaser or operator of the landfill of the terms of this agreement.

9. TERM OF AGREEMENT
 - a. The term of this Agreement shall commence upon the execution of this Agreement by the Authority **and the Host Communities**.
 - b. The term of this Agreement shall end on December 31 of the year which contains the 10th anniversary of the commencement date, and thereafter shall be automatically extended for successive three (5) year terms unless any party shall give notice of termination to the others, in writing, at least 60 days prior to the end of the term.
 - c. If it is ever determined that the term of this agreement is in excess of the maximum term permitted or authorized by law then the term of this agreement shall be reduced to the maximum term authorized by law.
 - i. In that event the agreement shall be automatically extended for successive five (5) year terms unless any party shall give notice of termination to the others, in writing, at least 60 days prior to the end of the term.

10. AVAILABILITY OF CERTAIN RECORDS.
 - a. The Authority will post on an Authority designated website summary results for water testing on each test well at the landfill as such results are received by the Authority. Such testing is currently required as a condition of the existing DEC landfill permit and it is anticipated by all parties that such testing requirement will continue.
 - b. When and if the Authority is required by any permitting agency to make any air quality tests then the Authority agrees to post summary results of such testing on an Authority designated website. Currently the Authority is not required to make any such air quality tests.
 - c. Minutes of the Authority shall be posted on a website designated by the Authority.
 - d. The Authority will keep the Supervisors of the Host Communities notified of any incidents, accidents or other emergencies that are reportable by the Authority to the DEC under the terms and conditions of any permit from DEC. Notice shall be by telephone communication followed as soon as practicable by written notice.

11. FIRE PROTECTION PROVISIONS

- a. In the event that Fire Companies in either of the Host Communities use fire fighting foam for the purpose of attempting to extinguish a fire on the property of the Authority then the Authority agrees to make payment to the Host Communities in an amount equal to the value of such foam. The Host Communities will then use the payments to reimburse the appropriate Fire Companies. The Host Communities will request such reimbursement by the normal voucher process.

12. SEVERABILITY

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

13. NOTICES

- a. Notices hereunder shall be given in writing and delivered to the parties by first-class mail, postage prepaid, at the addresses set forth hereinabove. The parties may designate such other addresses as they may from time to time choose, provided that they advise all other parties in writing of such change.

14. WAIVER

- a. The failure of any party to insist on the strict performance of any term or provision hereof shall not be deemed a waiver of the right to insist on strict performance of any other term or provision, nor shall it be deemed a waiver of any subsequent breach.

15. MODIFICATION

- a. This Agreement constitutes the complete understanding of the parties. No modification of any provisions thereof shall be valid unless in writing and signed by both parties.

16. APPLICABLE LAW

- a. The law of the State of New York will govern all questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement.

17. ENTIRE AGREEMENT

- a. This Agreement constitutes the entire agreement among the parties hereto regarding the subject matter hereof and supersedes all prior agreement (written or oral) which may have related in any way to the subject matter hereof.

18. HEADINGS

- a. The article and section headings in this Agreement are inserted for convenience of reference only and are not intended to limit or define the scope of any provision of this Agreement.

19. AUTHORITY FOR EXECUTION ON BEHALF OF THE HOST COMMUNITIES AND AUTHORITY

- a. The Supervisor of Constable has executed this Agreement pursuant to a resolution adopted by the Town Board of the Town of Constable, at a meeting thereof held on 03-12-2009. The Constable Town Supervisor whose signature appears hereafter is duly authorized and empowered to execute this instrument and enter into such an agreement on behalf of the Town of Constable.
- b. The Supervisor of Westville has executed this Agreement pursuant to a resolution adopted by the Town Board of the Town of Westville, at a meeting thereof held on 3-23-09. The Westville Town Supervisor whose signature appears hereafter is duly authorized and empowered to execute this instrument and enter into such an agreement on behalf of the Town of Westville.
- c. The Chair of the County of Franklin Solid Waste Management Authority has executed this Agreement pursuant to a resolution adopted by the Board of the CFSWMA at a meeting thereof held on 3-26-09. The Chair whose signature appears hereafter is duly authorized and empowered to execute this instrument and enter into such an agreement on behalf of the said Authority.

20. COPIES

- a. This Agreement shall be executed in at least one original for each signing party. At least one copy shall be permanently filed, after execution thereof, in the office of the Clerk of the Authority Legislature and in the offices of the Town Clerk of the Host Communities.

IN WITNESS WHEREOF, the Town of Constable has caused its corporate seal to be affixed hereto and these presents to be signed by its Supervisor, duly authorized to do so, and to be attested to by the Constable Town Clerk, and

The Town of Westville has caused its corporate seal to be affixed hereto and these presents to be signed by its Supervisor, duly authorized to do so, and to be attested to by the Westville Town Clerk, and

The Authority has caused its corporate seal to be affixed hereto and these presents to be signed by the Chair of its Board, duly authorized to do so, the day and year first above written.

TOWN OF CONSTABLE SIGNATURE PAGE

Town of Constable

By: Harold Phillips
Harold Phillips, Supervisor

Seal of Town of Constable

Attest: Susan Prue
Susan Prue, Constable Town Clerk

State of NEW YORK)
County of FRANKLIN) ss:

On the 20th day of MARCH in the year 2009 before me, the undersigned, a notary public in and for said state, personally appeared **Harold Phillips** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Paul M. Cantwell, Jr.
Notary Public

PAUL M. CANTWELL, JR.
Notary Public, State of New York
State #0556300
Franklin County
My Commission Expires Feb. 28, 2010

TOWN OF WESTVILLE SIGNATURE PAGE

Town of Westville

By: Rodrigue J. Lauzon
Rodrigue Lauzon, Supervisor

Seal of Town of Westville

Attest: Linda M. Jackson
Linda Jackson, Westville Town Clerk

State of NEW YORK)
County of FRANKLIN) ss:

On the 23rd day of March in the year 2009 before me, the undersigned, a notary public in and for said state, personally appeared **Rodrigue Lauzon** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Ann F. Brady
Notary Public

ANN F. BRADY
Notary Public, State of New York
No. 01BR5025747
Qualified in Franklin County
Commission Expires April 4, 2010

COUNTY OF FRANKLIN SOLID WASTE MANAGEMENT AUTHORITY SIGNATURE PAGE

County of Franklin Solid Waste Management Authority

By: Henry Travers
Henry Travers Chair, Board of Directors

Seal of County of Franklin Solid Waste Management Authority

Attest: Jill Wood
Jill Wood CFWSMA Secretary

State of NEW YORK)
County of FRANKLIN) ss:

On the 26th day of March in the year 2009 before me, the undersigned, a notary public in and for said state, personally appeared **Henry Travers** personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Jill Wood
Notary Public

JILL A. WOOD
Notary Public, State of New York
No. 01SH6024326
Qualified in Franklin County
Commission Expires May 10, 20 11