

Memorandum
Department of Environmental Facilities

67761

February 7, 2019

To: Honorable Board of Acquisition and Contract

From: Vincent F. Kopicki, P.E.
Commissioner of Environmental Facilities

Re: Authority for the County of Westchester, on behalf of Refuse Disposal District No. 1, to amend an agreement with Wheelabrator Westchester, L.P. for the disposal of municipally collected solid waste in order exercise two (2) five (5) year renewal options for a ten (10) year term commencing on October 22, 2019.

On October 22, 2009, your Honorable Board approved a Resolution authorizing the County of Westchester (the "County"), on behalf of Refuse Disposal District No. 1 (the "District"), to enter into a solid waste disposal agreement ("SWDA") with Wheelabrator Westchester, L.P., ("RESCO") for the disposal of the District's municipally collected solid waste. The initial term of the SWDA was for a ten (10) year period commencing October 22, 2009. The County, at its sole option, could elect to extend the term for one five (5) year renewal period upon the same terms and conditions. If the County elected to exercise the first renewal option, the parties could, upon mutual written agreement, further extend the term up to two (2) additional five (5) year periods.

Pursuant to the SWDA, RESCO provides solid waste disposal services at the resource recovery facility located in Peekskill, New York (the "Resource Recovery Facility"). The County, through a series of intermunicipal agreements with District members, collects and delivers to the Resource Recovery Facility the District's municipally collected solid waste. However, the County may, in its sole and absolute discretion, deliver or cause to be delivered up to 50,000 tons per contract year in quantities not to exceed 5,000 tons in any one month, of municipal solid waste, to a third party in connection with any program relating to the exploration of new waste disposal technology. Under the SWDA, the County pays RESCO a tipping fee which is adjusted upward or downward on October 22 of each year based on 75% of the Consumer Price Index for all Urban Consumers for New York – Northern New Jersey ("CPI").

Authority of your Honorable Board is requested to amend the SWDA in order to exercise two (2) five (5) year renewal options for a total of ten (10) years commencing on October 22, 2019. In consideration of the County exercising these options, RESCO has agreed to amend certain provisions of the SWDA, which are anticipated to save the County an estimated \$17,205,972.00 over the course of the ten (10) year contract term, and which will include but not limited to the following:

1. A modification to the SWDA that would take effect immediately and would allow the County to divert up to 50,000 tons of waste per contract year for any reason. Currently, waste may be diverted only to test new waste disposal technology.
2. A waiver of the annual adjustment rate due to RESCO on October 22, 2018. The contract provides for an annual adjustment of the disposal rate (tipping fee) based on 75% of the CPI. RESCO has agreed to freeze the disposal rate for one year (October 22, 2018 – October 21, 2019).
3. The annual adjustment on the disposal rate (75% of the CPI) will be capped at 3.1%.
4. In 2018, the City of Peekskill received a Payment in Lieu of Taxes (“PILOT”) of \$10,587,569.48 from the County. RESCO reimbursed the County a subsidy of \$3,293,157.14. Under the amendment, RESCO will increase its subsidy by \$900,000/year beginning October 22, 2019. The RESCO subsidy will increase an additional \$600,000/year beginning October 22, 2024. (Cumulative value of \$12,000,000 over the 10-year extension.)

The County will support RESCO’s split stream ash treatment proposal to the New York State Department of Environmental Conservation. RESCO has developed a process which allows it to extract a greater amount of ferrous and non-ferrous metals from the ash stream generated at its waste-to-energy facilities thereby increasing recycling. Greater metals extraction also provides an opportunity to beneficially reuse bottom ash (the waste-to-energy process produces two streams of ash, fly ash and bottom ash.)

6. From October 22, 2019 through October 21, 2024, RESCO will waive Change in Law protection except for (i) a Change in Law enacted by the County or the City of Peekskill, or (ii) a Change in Law related to the NYISO carbon adder proposal.

Beginning October 22, 2024, the following deductibles will apply to all Change in Law costs (except those related to a Change in Law enacted by the County or the City of Peekskill):

- APPROVED FOR ACCOUNTING & CONTRACT DEPARTMENT - LISA MARJAJ, SECRETARY
- a. \$200,000 (subject to escalation) deductible for operating Changes in Law (approx. \$110,000 in current contract; was originally \$100,000 but after escalation is now approx. \$110,000);
 - b. \$1,000,000 (subject to escalation) for capital Changes in Law (\$750,000 in current contract).

In the current contract the County pays 100% of the County percentage for an operating Change in Law and 95% of the County percentage for a capital Change in Law. The County percentage is calculated by taking the total tons delivered by the County in the year prior to the Change in Law divided by average of total tons delivered to the facility in the 5 prior years. Currently the County's percentage is approx. 360,000/714,000 or 50.4%. Under the amendment, the County will pay 90% of the County percentage for operating and capital Changes in Law. (90% of 50.4% is 45.3%, therefore, assuming the tonnage delivered to RESCO remains unchanged, the County's share of Change in Law costs would decrease to approximately 45.3% based on the proposed change.)

Under the amendment, a cap on County's liability will be set at \$14 (subject to escalation) per ton (\$15.60 in current contract; was originally \$14 but after escalation is now \$15.60) except that the cap shall not apply to Changes in Law enacted by Westchester County or the City of Peekskill.

The County is also a party to a Reimbursement Agreement with the Westchester Industrial Development Agency ("WIDA") whereby the County reimburses WIDA for certain payments made by WIDA to the City of Peekskill and the Peekskill Industrial Development Agency. The Westchester Industrial Development Agency ("WIDA") has title to the Resource Recovery Facility itself but leases the real property upon which the Resource Recovery Facility is located from the Peekskill Industrial Development Agency ("PIDA") pursuant to a lease agreement (the "Lease Agreement"). Pursuant to the Lease Agreement, WIDA is required to make a number of payments to PIDA and the City of Peekskill, including payments in lieu of taxes ("PILOT"), energy credit, sewer tax and special assessments. As the party that benefits from the operation of the Resource Recovery Facility, the County, on behalf of the District, negotiated the amounts with the City of Peekskill and reimburses WIDA for these payments. The 2020 PILOT payment for the first full year of the new term agreement will be \$11,341,669.12 and there will be an annual increase of 3.5% thereafter. The total annual amount payable for the energy credit shall be at a minimum \$1,550,000 or a maximum of \$1,885,000 depending upon an agreed upon formula. The sewer tax payment shall be equal to the portion of the ad valorem portion of the tax warrant relating to Westchester County's Peekskill Sewer District tax attributable solely to the Resource Recovery Facility on an annual basis. The amount paid in 2018 was \$877,960. Payments for out of county waste in annual amounts not to exceed \$110,000 will be paid to WIDA along with an additional annual payment of \$250,000.

Finally, the SWDA requires RESCO to provide the County with a Guaranty. The Guaranty Agreement will be amended to replace Waste Management, Inc. with Granite

Acquisition Inc. as the new Guarantor. The term of both the Reimbursement Agreement and the Guaranty Agreement will be coterminous with the SWDA.

The public purpose of the amendment to the SWDA is to provide for the disposal of the District's municipally collected solid waste. The objective is to ensure that this is accomplished in a cost effective and environmentally sound manner in compliance with all applicable laws. This objective will be monitored by County staff through a series of reports that will be provided pursuant to the SWDA. Failure to renew the SWDA would leave the County with no facility to dispose of the District's municipally collected solid waste.

VFK/dlv

APPROVED BOARD OF ACQUISITION & CONTRACT - 02/21/2019 - 15:00 - MR. RIJAL SECRETARY

RESOLUTION

Upon a communication from the Commissioner of Environmental Facilities,

RESOLVED, that the County, on behalf of Refuse Disposal District No. 1, is authorized to amend an agreement with Wheelabrator Westchester, L.P. ("RESCO") for the disposal of municipally collected solid waste in order to exercise two (2) five (5) year renewal options for a ten (10) year term commencing on October 22, 2019; and be it further

RESOLVED, that in consideration of the County exercising these options, the parties have agreed to amend certain provisions of the SWDA, which are anticipated to save the County an estimated \$17,205,972.00 over the course of the ten (10) year contract term, including but not limited to the following:

1. A modification to the SWDA that would take effect immediately and would allow the County to divert up to 50,000 tons of waste per contract year for any reason. Currently, waste may be diverted only to test new waste disposal technology.
2. A waiver of the annual adjustment rate due to RESCO on October 22, 2018. The contract provides for an annual adjustment of the disposal rate (tipping fee) based on 75% of the CPI. RESCO has agreed to freeze the disposal rate for one year (October 22, 2018 – October 21, 2019).
3. The annual adjustment on the disposal rate (75% of the Consumer Price Index for all Urban Consumers for New York – Northern New Jersey) ("CPI") will be capped at 3.1%.
4. In 2018, the City of Peekskill received a Payment in Lieu of Taxes ("PILOT") of \$10,587,569.48 from Westchester County. RESCO reimbursed the County a subsidy of 3,293,157.14. Under the amendment, RESCO will increase its subsidy by \$900,000/year beginning October 22, 2019. The subsidy will increase an additional \$600,000/year beginning October 22, 2024. (Cumulative value of \$12,000,000 over the 10-year extension.)
5. The County will support RESCO's split stream ash treatment proposal to the New York State Department of Environmental Conservation. RESCO has developed a process which allows it to extract a greater amount of ferrous and non-ferrous metals from the ash stream generated at its waste-to-energy facilities thereby increasing recycling. Greater metals extraction also provides an opportunity to beneficially reuse bottom ash (the waste-to-energy process produces two streams of ash, fly ash and bottom ash.)

6. From October 22, 2019 through October 21, 2024, RESCO will waive Change in Law protection except for (i) a Change in Law enacted by the County or the City of Peekskill, or (ii) a Change in Law related to the NYISO carbon adder proposal.

Beginning October 22, 2024, the following deductibles will apply to all Change in Law costs (except those related to a Change in Law enacted by the County or the City of Peekskill):

- a. \$200,000 (subject to escalation) deductible for operating Changes in Law (approx. \$110,000 in current contract; was originally \$100,000 but after escalation is now approx. \$110,000);
- b. \$1,000,000 (subject to escalation) for capital Changes in Law (\$750,000 in current contract).

In the current contract the County pays 100% of the County percentage for an operating Change in Law and 95% of the County percentage for a capital Change in Law. The County percentage is calculated by taking the total tons delivered by the County in the year prior to the Change in Law divided by average of total tons delivered to the facility in the 5 prior years. Currently the County's percentage is approx. 360,000/714,000 or 50.4%. Under the amendment, the County will pay 90% of the County percentage for operating and capital Changes in Law. (90% of 50.4% is 45.3%, therefore, assuming the tonnage delivered to RESCO remains unchanged, the County's share of Change in Law costs would decrease to approximately 45.3% based on the proposed change.)

Under the SWDA amendment, a cap on County's liability will be set at \$14 (subject to escalation) per ton (\$15.60 in current contract; was originally \$14 but after escalation is now \$15.60) except that the cap shall not apply to Changes in Law enacted by Westchester County or the City of Peekskill.

RESOLVED, that the County shall pay RESCO a tipping fee of \$78.50 per ton adjusted based on 75% of the CPI for the first year of the extended term of the SWDA. The tipping fee shall be adjusted upward or downward on October 22 of each year thereafter based on the percent change (as a positive or negative number) in the CPI; and be it further

RESOLVED, that the County is authorized to continue an agreement (the "Reimbursement Agreement") with the Westchester Industrial Development Agency ("WIDA") and RESCO whereby the County shall reimburse WIDA for certain payments made to the City of Peekskill and the Peekskill Industrial Development Agency for a term coterminous with the SWDA. The 2020 PILOT payment for the first full year of the new term agreement shall be \$11,341,669.12 and there shall be an annual increase of 3.5% thereafter. The total annual amount payable for the energy credit shall be at a minimum \$1,550,000 or a maximum of \$1,885,000 depending upon an agreed upon formula. The sewer tax payment shall be equal to the portion of the ad valorem portion of the tax warrant relating to Westchester County's Peekskill Sewer

District tax attributable solely to the Resource Recovery Facility on an annual basis. The amount paid in 2018 was \$877,960. Payments for out of county waste in annual amounts not to exceed \$110,000 shall be paid to WIDA along with an additional annual payment of \$250,000, and be it further

RESOLVED, that the Guaranty Agreement will be amended to replace Waste Management, Inc. with Granite Acquisition Inc. as the new Guarantor; and be it further

RESOLVED that the term of both the Reimbursement Agreement and the Guaranty Agreement will be coterminous with the SWDA; and be it further

RESOLVED, that the SWDA and the Reimbursement Agreement are subject to County appropriations; and be it further

RESOLVED, that the SWDA and the Reimbursement Agreement are also subject to further financial analysis of the impact of any New York State Budget (the "State Budget") proposed and adopted during the term of the SWDA. The County shall retain the right, upon the occurrence of any release by the Governor of a proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoption(s), to conduct an analysis of the impacts of any such State Budget on County finances. After such analysis, the County shall retain the right to either terminate the SWDA and the Reimbursement Agreement or to renegotiate the amounts and rates approved therein; and be it further

RESOLVED that the County Executive or his authorized designee is hereby authorized to execute all instruments and take all actions reasonably necessary to implement this Resolution.

Account to be Charged/Credited	Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
Year 1 (Peekskill)	251	60	7600	4320		\$12,559,408
Year 1 (Peekskill)	251	60	7600	5125		\$1,995,000
Year 1 (RESCO) (Peekskill)	251	60	7600	4380		\$78.50 (adjusted based on CPI * 0.75) * MSW Tons
Estimated 2019-2029	251	60	7600	4380		Total Estimated Tipping Fees \$307,676,607.52 Estimated Total Credit from Wheelabrator (\$44,931,571.40) Net Estimated Cost \$262,754,036.12

Budget Funding Year(s) 2019-2029 Start Date 10/22/2019 End Date 10/21/2029
(must match resolution)

Funding Source Tax Dollars 100%
State Aid _____
\$ _____ Federal Aid _____
(must match resolution)
Other _____