



HOST COMMUNITY AGREEMENT

This Agreement, dated as of 9/20, 2022, by and between the Town of Ware, Massachusetts (the "Town") with offices at 126 Main Street, Ware, Massachusetts 01082, and ReSource Waste Services of Ware LLC ("ReSource"), a Delaware limited liability company with offices at 198 East Street, Ware, Massachusetts 01082

WITNESSETH:

WHEREAS, ReSource owns and operates a rail-served solid waste transfer station located at 198 East Street, Ware, Massachusetts (the "Facility") at which ReSource accepts construction and demolition waste ("C&D") pursuant to that certain Site Assignment issued by the Ware Board of Health for the Facility dated June 18, 2004 (as modified to date, the "Existing Site Assignment"); and

WHEREAS, ReSource is seeking to increase the amount of C&D it can accept at the Facility from 750 tons per day to 1,400 tons per day and has applied for a modification to the Existing Site Assignment to allow for this increase (the "Site Assignment Modification", and collectively with the Existing Site Assignment, the "Site Assignment"); and

WHEREAS, the parties desire to outline certain of the host community benefits that ReSource will provide to the Town from the Facility if the Site Assignment Modification is issued; and

WHEREAS, the parties intend this Agreement to be binding on ReSource and any subsequent person or entity that owns or operates the Facility under the Site Assignment (whether directly as a successor or assign of ReSource or by any other means);

NOW, THEREFORE, for good, lawful and valuable consideration, ReSource and the Town agree as follows:

1. Host Community Compensation. ReSource agrees to pay the Town One Dollar (\$1.00) per ton (the "Host Community Compensation") for each ton of solid waste accepted by ReSource at the Facility, excluding any solid waste delivered by or on behalf of the Town or the Town residents as described in Sections 2 through 4 below. As used herein "solid waste" shall include C&D and any other "solid waste" or "waste", as defined in the solid waste regulations 310 CMR 19.006 promulgated by the Massachusetts Department of Environmental Protection in effect at the time (the "DEP Regulations"). ReSource shall make such payment within thirty (30) days after the end of each calendar quarter (i.e., every three months). Commencing on January 1, 2024, and on each January 1 thereafter, the Host Community Compensation shall be increased by an amount equal to 3% of the Host Community Compensation for the preceding calendar year.

2. Acceptance of the Town's C&D. Provided that the Facility is operating, ReSource will accept from the Town for disposal, free of charge, Acceptable C&D generated at the Town's facilities and delivered to the Facility in commercial or Town hauling vehicles in an amount up to 250 tons in each calendar year. "Acceptable C&D" as used in this Agreement shall be limited to such construction and demolition wastes that Resource is permitted to accept under its permits and approvals, as well as all applicable laws, regulations and orders.

3. Bulky Waste Days; Street Sweeping and Catch-basin Residues. Provided that the Facility is operating and ReSource is permitted to accept at the Facility Bulky Waste (as defined in the DEP Regulations) and residues generated from street sweeping and catch-basin cleanings, ReSource agrees to (a) conduct two Bulky Waste disposal days at the Facility each calendar year during which Town residents can deliver to the Facility, free of charge, Bulky Waste which they have generated, and (b) accept at the Facility, free of charge, the residues collected by the Town from time to time from its street sweeping and catch-basin cleaning activities; provided, however, that in the event the aggregate disposal costs for said Bulky Waste and street sweeping and catch-basin cleaning residues exceeds \$20,000 in any year, the excess disposal costs above \$20,000 shall be paid by the Town.

4. Household Hazardous Waste Days. Provided that the Facility is operating, ReSource will coordinate and operate a household hazardous waste ("HHW") disposal event each calendar year for HHW generated by Town residents and fund the HHW disposal event up to \$15,000 in each year. Any overage in expenses above \$15,000 for the HHW disposal event shall be paid by the Town. The Town will cooperate with ReSource in selecting a location for the HHW disposal event and, if requested by ReSource, will provide a site for the HHW disposal event.

5. Support for Community Groups. Provided that the Facility is operating, ReSource will pay \$15,000 in each calendar year during the term of this Agreement to community organizations designated by the Town.

6. Term. Provided that on or before March 31, 2023 the Site Assignment Modification is issued with conditions reasonably acceptable to ReSource and all applicable appeal periods relating thereto have expired without any appeals being filed (collectively, the "Site Assignment Approval"), this Agreement shall commence on January 1, 2023, and shall

remain in effect until December 31, 2042. If the Site Assignment Approval does not occur on or before March 31, 2023, the term of this Agreement shall commence on the first day of the calendar month next succeeding the date the Site Assignment Approval occurs and shall remain in effect until December 31, 2042, with the condition that either party will have the right to terminate this Agreement with no further obligations hereunder in the event the Site Assignment Approval does not occur by December 31, 2023.

7. Records. ReSource shall maintain reasonable books and records relevant to the provisions of Sections 1 through 5 above for a period of seven years, and the Town shall have the right to audit the books and records of ReSource that contain the data or information relevant to the provisions of said Sections. The Town shall also have the right to request appropriate testing to confirm that any scale used by ReSource is accurate if ReSource's scale has not been certified by a qualified independent third-party within the past 12 months.

8. Modifications. This Agreement may be modified only by an agreement in writing and shall be interpreted as an integrated agreement containing all obligations and understandings of the parties.

9. Construction. Each party has participated in the drafting of this Agreement. For purposes of interpreting this Agreement, each provision will be deemed to have been jointly drafted by the parties. The parties intend for this Agreement to be construed and interpreted neutrally, in accordance with the plain meaning of its language, and not presumptively construed against any actual or purported drafter of any specific language contained in it.

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

11. Governing Law; Jurisdiction. This Agreement and the parties' respective rights hereunder shall be governed by the laws of the Commonwealth of Massachusetts and the parties hereto consent to the jurisdiction of the state courts of the Commonwealth of Massachusetts for the purpose of resolving any disputes relating to this Agreement.

12. Indemnification. ReSource agrees to indemnify, and hold the Town harmless from and against any liability, cause of action, or claim for bodily injury, including death, or property damage asserted by any third party against the Town to the extent arising from, relating to, or connected with:

- a. ReSource's operation of the Facility in violation of the Site Assignment conditions, applicable law or regulations;
- b. ReSource's negligent operation or maintenance of the Facility;
- c. any unlawful or unauthorized release to the environment caused by ReSource; or

d. any breach by ReSource of this Agreement excluding that portion of the liability, claim or cause of action attributable to the negligence of the Town.

ReSource shall not have any liability hereunder unless the Town provides ReSource written notice of the claim, liability or cause of action within ninety (90) days of the first assertion of the same against the Town. ReSource shall have the right, but not the obligation, to defend with counsel of its selection, as approved by the Town in its reasonable judgment (except no approval will be required if ReSource's counsel has been selected by ReSource's insurance carrier), and to settle any such claim, liability or cause of action. ReSource's obligation to indemnify the Town shall not in any way act as a waiver of the Town's defenses under the Tort Claims Act and ReSource's obligations hereunder are conditioned upon the Town taking all required steps in response to a claim pursuant to the Tort Claims Act.

13. Insurance. ReSource shall carry comprehensive general liability in the amount of \$1,000,000 per occurrence/\$2,000,000 aggregate and automobile liability insurance with combined single limits of liability of at least \$1,000,000, and worker's compensation insurance with statutory limits of liability. ReSource shall annually provide the Town with certificates of such insurance naming the Town as an additional insured on the comprehensive general and automobile liability insurance.

14. Representations. The parties respectively each represent and warrant that:

a. Each is duly organized and existing and in good standing, has the full power, authority and legal right to enter into and perform this Agreement, and the execution, delivery and performance of this Agreement (i) will not violate any judgment, order, law, bylaw, ordinance or regulation, and (ii) do not conflict with, or constitute a default under, any agreement or instrument to which either is a party or by which either party may be bound or affected; and

b. This Agreement has been duly authorized, executed and delivered; this Agreement is supported by adequate consideration; this Agreement constitutes legal, valid and binding obligations of each party, enforceable in accordance with its terms; there is no action, suit or proceeding pending or, to the knowledge of either party, threatened against or affecting either wherein an unfavorable decision, ruling or finding would materially adversely affect the performance of any obligations hereunder.

15. Binding Effect. The terms and conditions of this Agreement shall inure to and be binding upon the parties hereto, and their respective successors and assigns, including, but not limited to, whether by sale of stock, merger, consolidation or sale of assets.

16. Parties. Nothing herein shall be construed as creating a partnership or joint venture between ReSource and the Town. No persons performing any of the work or services described in this Agreement for ReSource shall be considered an officer, agent, servant or employee of the Town, and the Town shall not be considered an operator of the Facility.

17. Compliance with Site Assignment. ReSource acknowledges that it is subject to the conditions of the Site Assignment issued by the Ware Board of Health for violations of which the Ware Board of Health may have remedies provided in M.G.L. c. 111, § 150A and its

implementing regulations, as the same may be amended from time to time.

18. Taxes. This Agreement is not intended to supplant any taxes of any nature owed by ReSource.

19. Transfer. ReSource agrees that this Agreement shall be binding upon and inure to the benefit of successor owners and operators of the Facility under the Site Assignment. ReSource further agrees that it shall not sell, lease, transfer or otherwise dispose of the Facility and its rights under the Site Assignment to any person or entity, without (i) first obtaining the written agreement of any such person or entity to be bound by this Agreement, and (ii) giving written notice to the Town within 30 days after the date of any such sale, lease, transfer or other disposition, which notice shall include the written agreement of such person or entity to be bound by this Agreement.

20. Notices. All notices required or contemplated by this Agreement shall be in writing, and shall be deemed given when received if sent by personal delivery, by certified mail, return receipt requested, or by nationally recognized overnight delivery service that provides evidence of receipt (such as Federal Express or UPS), properly addressed as follows:

- a. To the Town: Town of Ware
126 Main Street
Ware, Massachusetts 01082
Attn: Sturt Beckley
- b. To ReSource: ReSource Waste of Ware LLC
159 Wolf Road, Suite 301
Albany, New York 12205
Attn: Chief Risk Officer
- c. Or to such other address as either party may designate in writing.

21. Entire Agreement. It is understood and agreed that all understandings and agreements heretofore had between and parties thereto are merged in this Agreement, which alone fully and completely expresses their agreement and contains all of the terms agreed upon between the parties with respect to the subject matter of this Agreement, and that this Agreement is entered into after full investigation, neither party relying upon any statement or representation, not embodied in this Agreement, made by the other.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Town of Ware, Massachusetts

BY: 
Name: John Morrin
Title: Chairman

ReSource Waste Services of Ware LLC

BY: 
Name: Gregory M. Fealy
Title: COO Resource Waste Servs