

Committee of the Whole--Solid Waste and Recycling Authority, Code of Ordinance, Section 2-56.18 and Host Community Benefit and Co-Operation Agreement/Winter Bros.  
Danbury City Council  
29-July-2013

Honorable Mayor Mark D. Boughton  
Members of the Common Council

President Cavo called the Committee of the Whole--Solid Waste Management and Recycling Authority and Host Community Benefit Agreement to Order at 7:25pm.

**COUNCIL MEMBERS PRESENT:** Philip Curran, Michael Haddad, Warren Levy, Gregg Seabury, Colleen Stanley, Phillip Colla, Joseph Cavo, Thomas Saadi, Fred Visconti, Andrew Wetmore, Peter Nero, Duane Perkins, Benjamin Chianese, Paul Rotello, Joseph Scozzafava, and Mary Teicholz.

**ABSENT:** Jack Knapp, Donald Taylor, Shay Nagarsheth, Mike Halas, and Elmer Palma.

Councilman Knapp was out of town  
Council Members Taylor, Nagarsheth, Halas, and Palma had work obligations.

**ALSO PRESENT:** Robert J. Yamin, Corporation Counsel; Laszlo Pinter, Deputy Corporation Counsel; and Attorney Daniel Casagrande

**A motion was made by Philip Curran and seconded by Gregg Seabury to recommend the adoption of the amended Danbury Solid Waste and Recycling Authority Ordinance together with the appointment of the proposed members; and recommend the approval of the Host Community Benefit Agreement between and among the City of Danbury Solid Waste Authority and Winters Bros. Waste Systems of CT, LLC.**

Councilman Levy asked Corporation Counsel to address the questions raised by the public during the hearing. Attorney Casagrande commented that most of the questions raised were policy decision and not legal decisions. He stated that he has been working on this agreement for a good deal of time, this is about the 20<sup>th</sup> draft and he believes it to be the best effort. In regard to the term, Winter Bros. has insisted on this length of agreement from the beginning of negotiations. It is directly related to the

\$100 million investment that they are willing to make. He noted that there are many provisions to terminate for cause which protects the City, and state statues regarding Solid Waste Agreement contemplate long terms. Concerning the increase in the fee for inflation, every attempt to add this to the agreement was rejected. However, if it is the will of the Committee he will go back and try to add this to the agreement. A brief discussion ensued.

Council Saadi thanked the Attorneys for work and patience answering questions regarding this agreement leading up to tonight's hearing and Committee Meeting. Mr. Saadi stated that there are many positive aspects to this agreement and is very aware that it is a voluntary agreement. He noted the positive aspects, Winter Bros. have cleaned up the transfer station and trash hauling in Danbury and the Residents Committee is very beneficial. However, he has concerns about the fee with no inflation factor, the release of right of eminent domain and the length of the agreement. Additionally, in section 5.2(2) regarding support for permits with DEEP, Mr. Saadi asked Attorney Casagrande to add clarifying language as to the time frame and specific permits. With the intention of giving a more frequent review of the agreement when issues of the COLA, eminent domain, and length of term could be address Mr. Saadi offered the following friendly amendment.

**Councilman Saadi made a motion to amend the current motion to recommend adoption of the agreement subject to attempts to renegotiation of the term in Section 3.2 of the agreement to 15 to not more than 20 years with a mutual renewal provision. The motion was seconded Councilman Chianese.**

Attorney Casagrande clarified the intent of the motion was to ask Corporation Counsel to go back and attempt to make these changes knowing that the result could be a yes to all, a no to all, or any combination thereof, and the City Council would consider the revised agreement at their next meeting. A discussion of the procedures for presenting the amended agreement occurred. A lengthy discussion on the amendment continued with Council Members Rotello and Cavo speaking in support of the amendment. Councilwoman Stanley questioned the termination provision and effect on shorter term. Councilman Chianese raised questions regarding breach and remedy. Councilman Nero raised concerns about assign ability. Attorney Casagrande and Corporation Counsel Pinter address the questions and issues.

**Councilman Seabury moved the questioned. Council Levy provided a second. President Cavo asked if anyone had any additional comments on the amendment to the motion. There was none. Voting to move the question were Council Members Curran, Haddad, Knapp, Levy, Seabury, Stanley, Colla, Cavo,**

**Saadi, Visconti, Wetmore, Nero, Scozzafava and Teicholz. Voting against ending discussion were Council Members Perkins, Chianese, and Rotello. The motion passed 13 to 3. Discussions on the amendment ended.**

**Vote on the amendment was unanimously approved.**

President Cavo asked for discussion on the main motion as amended. Councilman Seabury asked for clarification on the procedure for bringing the motion and the agreement for consideration before the City Council. Mr. Pinter stated that if the agreement could be renegotiated the agreement would be brought before the City Council at the next meeting. However, the action taken tonight would be on the agenda of the August meeting. The Council can table the item pending further information. Mr. Saadi clarified that the Council would vote on the recommendation and the amendment of the ordinance at the August meeting, but would not necessarily approve the agreement as it may not be ready at that time. Mr. Pinter confirmed.

**The motion before the committee as amended is to recommend the adoption of the amended Danbury Solid Waste and Recycling Authority Ordinance together with the appointment of the proposed members; and recommend the approval of the Host Community Benefit Agreement between and among the City of Danbury Solid Waste Authority and Winters Bros. Waste Systems of CT, LLC., subject to attempts to renegotiation of the term in Section 3.2 of the agreement to 15 to not more than 20 years with a mutual renewal provision. Vote, all in favor, motion unanimously approved.**

The Committee of the Whole--Solid Waste and Recycling Authority, Code of Ordinance, Section 2-56.18 and Host Community Benefit and Co-Operation Agreement/Winter Bros. adjourned at 8:26 pm

Respectfully submitted,

Shani Burke Specht  
Recording Secretary

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**Host Community Benefit and Cooperation Agreement**

**Between the**

**City of Danbury,**

**the Danbury Solid Waste Authority**

**and**

**Winters Bros. Waste Systems of CT, LLC**

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## HOST COMMUNITY BENEFIT AND COOPERATION AGREEMENT

This HOST COMMUNITY BENEFIT AND COOPERATION AGREEMENT, is made as of the \_\_\_th day of March, 2013 (the "Agreement") by and between Winters Bros. Waste Systems of CT, LLC, a limited liability company duly organized and existing under the laws of the State of Delaware and having its offices at 307 White Street, Danbury CT 06810 (the "Company"); the City of Danbury, Connecticut, a municipal corporation duly organized and existing under the laws of the State of Connecticut and having its offices at City Hall, 155 Deer Hill Avenue, Danbury CT 06810 (the "City"); and the Danbury Solid Waste Authority, a municipal agency empowered under the General Statutes of the State of Connecticut to perform the function(s) of a municipal resource recovery authority pursuant to Chapter 103b of the General Statutes and having its offices at 155 Deer Hill Avenue, Danbury, CT 06810 (the "DSWA"). The Company, the City and the DSWA may sometimes be referred to herein individually as a "Party" and collectively as the "Parties".

### RECITALS

The Company has completed the purchase through a series of closings during calendar year 2011 of, among other solid waste collection and transportation assets, the transfer station and recycling center facilities (and related structures, improvements and equipment) situated at 283-285 and 307 White Street, Danbury, Connecticut (alternatively, the "Transfer Station" and/or "the Facility") from the United States Marshals' Service, which Facility and related assets will be owned and operated by the Company, either directly or through its affiliates, as a private facility but with such oversight, supervision, assistance and/or support from and/or by the City and the DSWA as shall be set forth in this Agreement.

The City and the Company and the DSWA acknowledge and agree that it is in the best interest of the parties that the Company's ownership and operation of the Transfer Station be conducted in an open, transparent manner to ensure fair and equal treatment of all stakeholders in the process, such stakeholders including the Company, as owner and operator; the haulers who collect solid waste and/or recyclables in the greater Danbury region for delivery to the Transfer Station; the residents who utilize the services of the Transfer Station to dispose of their solid waste and/or recyclables; the owners and occupants of properties abutting or close to the Transfer Station; and the residents and taxpayers of the City who bear certain tangible burdens of hosting a solid waste transfer and/or recycling facility within their community.

The City and the Company further acknowledge and agree that a contractual relationship that reimburses the City and/or the DSWA for certain reasonable expenses and/or burdens associated with the City's role as the host community of the Transfer Station; creates a system for monitoring the Transfer Station's treatment of haulers and its compliance with applicable solid waste management and environmental laws; and which establishes a system that actively markets and educates the public respecting the Facility's resources (including, but not limited to, its recycling capabilities) will be not only in the economic interest of the Company but will assist the City and the Housatonic Resources Recovery Authority ("HRRRA") in their efforts to assist the State in achieving its goal of diverting 58% of the waste stream to recyclables by 2024.

In order to secure the benefits of the Transfer Station for the Company, the City and its residents, and to memorialize both the Company's and the City's commitments respecting the Company's ownership and operation of the Transfer Station as a private facility, the parties believe that their mutual best interests will be served by the execution of this Agreement which specifies their respective rights, interests and obligations regarding operation of the Transfer Station, subject to the terms and/or conditions of any approvals and/or permits that may be issued by any agency and/or instrumentality of the United States of America, the State of Connecticut and/or the City respecting the Transfer Station.

In consideration of the mutual promises hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I**

**DEFINITIONS**

The terms of this Agreement shall have the meanings ascribed to them for all purposes of this Agreement unless the context clearly indicates some other meaning. Words in singular shall include the plural and words in the plural shall include the singular where the context so requires.

"Agreement" means this Host Community Benefit and Cooperation Agreement and any and all amendments or exhibits attached hereto.

"Change in Law" means any of the following events or conditions occurring after the date hereof which is demonstrated to have, or which may upon showing of reasonable basis be expected to have, a material adverse effect on any Party, or on the ability of any Party to perform pursuant to this Agreement, or on the Transfer Station or the Transfer Station's site, if such event or condition is beyond the reasonable control of the Party relying thereon as justification for not performing (the "Non-Performing Party") any obligation or complying with any condition required of such Party under this Agreement: (i) the adoption, promulgation, issuance, modification or official change in interpretation after the date hereof of any federal, state or local law, regulation, rule, requirement, ruling or ordinance, in each case in final form, to become effective without any further action by any federal, state or local governmental body, administrative agency or governmental official having jurisdiction; (ii) the order and/or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action of the Non-Performing Party, provided that the contesting in good faith of any such order and/or judgment shall not constitute or be constructed as a willful or negligent action of such Non-Performing Party; (iii) the suspension, termination, interruption or failure of renewal of any permit, license, consent, authorization or approval essential to the operation, ownership or possession of the Transfer Station, the Facility or the Facility's sites, as provided for herein or required with respect hereto, if it is not also the result of willful or negligent action of the Non-Performing Party, provided that the contesting in good faith of any such suspension,

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termination, interruption or failure of renewal shall not be construed as willful or negligent action of such Non-Performing Party; or (iv) any action by any Participating Municipality(ies) evidencing its intention to terminate and/or withdraw from the WSDA or the underlying HRRRA contract(s) of such Participating Municipality(ies) (providing that any such action is not the result of intentional action by the Company to cause such action), or the repealing of any local ordinance(s) currently in place respecting any such Participating Municipality(ies) participating in the WSDA or any underlying HRRRA Contract(s) and/or enforcing compliance with the MSW delivery and disposal requirements in any such contracts; and/or (v) the failure of any Participating Municipality(ies) strictly to enforce compliance with the rules and regulations applicable to and incorporated within any HRRRA Permit (Hauler/Collector) issued to any hauler/collector authorized to collect and transport MSW in any Participating Municipality (each a "Permittee") specifically including the Permittee covenants set forth in Subsections v, w and x of HRRRA Permit & Municipal Registration Form A executed and attested to by any and all such Permittees.

"City" shall mean the City of Danbury, Connecticut.

"City Permit" means any permit, approval or legislative action issued by the City, or any constituent body or agency of the City, to the Company which is necessary to construct, modify, alter, expand or operate the Facility.

"Company" shall mean Winters Bros. Waste Systems of CT, LLC, a limited liability company duly organized and existing under the laws of the State of Delaware.

"CTDEEP" shall mean the Connecticut Department of Energy and Environmental Protection.

"DSWA" shall mean the Danbury Solid Waste Authority.

"Effective Date" shall have the meaning set forth in Section 3.1.

"Expiration Date" shall have the meaning set forth in Section 3.2.

"Facility" shall have the meaning set forth in the Recitals.

"Force Majeure Event" means any event or condition having, or which may be reasonably expected to have, a material adverse effect on any Party(ies), or such Party's ability to perform pursuant to this Agreement, or on the Transfer Station, the Facility, or on the site of the Transfer Station, or the Facility, or the operation, ownership or possession of any or all of them, if such event or condition is beyond the reasonable control of the Party relying thereon as justification for not performing (the Non-Performing Party") any obligation or complying with any condition required of such Party under this Agreement. The foregoing provisions shall not be construed to require that the Non-Performing Party observe a higher standard of conduct than that required by the usual and customary standards of the industry or other field of activity in question, as a condition to claiming the existence of a Force Majeure Event. Such events or conditions may include, but shall not be limited to, circumstances of the following kind:

(i) an act of God, epidemic, landslide, lightning, earthquake, hurricane, fire, explosion, storm, flood or similar occurrence, an act of war, blockage, insurrection, riot, civil disturbance or similar occurrences; (ii) a strike, lockout, work slowdown, or similar industrial or labor action which affects, impacts or impedes any Party or operation of the Transfer Station; (iii) Change in Law; and (iv) the failure of any subcontractor or supplier selected with reasonable care and in good faith to furnish labor, services, materials, or equipment in connection with, the equipping, operation or maintenance of the Transfer Station or the Facility as a result of a Force Majeure Event affecting such subcontractor or supplier, provided that the Non-Performing Party is not reasonably able to obtain timely substitute labor, services, materials or equipment on substantially equivalent terms.

"Host Community Fee" shall have the meaning set forth in Section 4.1.

"HRRA" shall mean the Housatonic Resources Recovery Authority.

"Losses" shall have the meaning set forth in Section 9.2.

"Notice of Breach" shall have the meaning set forth in Section 12.1.

"Open Market", when used in the context of construction and demolition debris or municipal solid waste, shall mean solid waste which is not subject to any "flow control", "mandatory tipping fee" or "mandatory disposal destination" requirements or restrictions of any nature imposed by any governmental body or (any instrumentality or subdivision thereof) having jurisdiction over the handling of such solid waste commodities (including, without limitation, the HRRA contracts).

"Participating Municipalities" means those member towns of the HRRA who, by separate agreements with the HRRA, are required to direct MSW to WES for disposal through 2019.

"Permits" shall mean the approvals and/or permits issued by the CTDEEP relating to operation of the Transfer Station and/or recycling facility(ies) situated at the Facility and identified on Exhibit "A" attached hereto.

"Renewal Term" shall have the meaning set forth in Section 3.2.

"State" means the State of Connecticut.

"Successor" shall have the meaning set forth in Section 15.10.

"Term" shall have the meaning set forth in Section 3.2.

"USMS" shall mean the United States Marshals' Service.

"WES" means Wheelabrator Environmental Systems, Inc.

"WSDA" means that certain Waste Supply and Disposal Agreement, dated October 23, 1991 between the HRRRA and WES and any amendments thereto, pursuant to which WES has agreed to provide certain solid waste transfer and disposal services to HRRRA for HRRRA acceptable waste.

**ARTICLE II**

**REPRESENTATIONS AND WARRANTIES**

**SECTION 2.1. CITY REPRESENTATIONS AND WARRANTIES.** The City represents, warrants and agrees as follows:

a. Existence and Good Standing. The City is a validly existing municipal corporation of the State of Connecticut.

b. Approval and Authorization. The City has full power and authority to enter into this Agreement and to fully perform all of its duties and obligations hereunder. The City Council of the City of Danbury has duly authorized the execution and delivery of this Agreement and the City's performance of all of its duties and obligations contained herein, and this Agreement constitutes a valid and legally binding obligation of the City, enforceable in accordance with its terms. A copy of the Council's resolution approving this Agreement and authorizing its execution by the Mayor of the City of Danbury is attached hereto as Exhibit "B".

c. Signatory. The City represents and warrants that the Mayor has executed this Agreement pursuant to a resolution adopted by the City Council at a meeting and that the Mayor is authorized to execute and enter into this Agreement on behalf of the City.

d. All Statements True. No statement, information, representation or warranty of the City contained in this Agreement or furnished by or on behalf of the City in connection with the transactions contemplated herein contains any untrue statement(s) of a material fact or omits to state a material fact(s) necessary in order to make a statement contained herein not misleading.

**SECTION 2.2. DSWA REPRESENTATIONS AND WARRANTIES.** The DSWA represents, warrants and agrees as follows:

a. The DSWA is a municipal resource recovery authority created pursuant to Sections 7-273aa through 7-273oo of the Connecticut General Statutes. The DSWA is a political subdivision of the State of Connecticut established and created for the performance of the essential public and governmental function of furthering the health, safety and welfare of the residents of Danbury by exercising supervision and control over the operation and administration of the solid waste and recycling operations at the Facility. The DSWA has all the powers set forth in Chapters 103b, 446d and 446e of the Connecticut General Statutes.

b. The DSWA has full power and authority to enter into this Agreement and to fully perform its obligations and duties hereunder. The DSWA has duly authorized the execution and delivery of the Agreement and the DSWA's performance of all of its duties and obligations contained herein, and this Agreement constitutes a valid and legally binding obligation of the DSWA, enforceable in accordance with its terms.

c. The DSWA represents that the Chair of its Board of Directors has executed this Agreement pursuant to a resolution adopted by the DSWA at a meeting and that the Chair is authorized to execute this Agreement on behalf of the DSWA.

d. All Statements True. No statement, information, representation or warranty of the DSWA contained in this Agreement or furnished by or on behalf of the DSWA in connection with the transactions contemplated herein contains any untrue statement(s) of a material fact or omits to state a material fact(s) necessary in order to make a statement contained herein not misleading.

**SECTION 2.3. COMPANY REPRESENTATIONS AND WARRANTIES.** The Company represents, warrants, and agrees as follows:

a. Existence and Good Standing. The Company is, and will continue to be throughout the Term, validly existing as a limited liability company duly organized and existing under the laws of the State of Delaware and authorized to do business in the State of Connecticut.

b. Approval, Authorization and Enforcement. The Company has full power and authority to enter into this Agreement and to fully perform all of its duties and obligations hereunder. The Company is duly authorized to execute and deliver this Agreement and perform all of its duties and obligations contained herein.

c. Signatory. The Company represents and warrants that its signatory, whose signature appears hereafter, is authorized to execute and enter into this Agreement on behalf of the Company.

d. All Statements True. No statement, information, representation or warranty of the Company contained in this Agreement or furnished by or on behalf of the Company in connection with the transactions contemplated herein contains any untrue statements of a material fact(s) or omits to state a material fact necessary in order to make a statement contained herein not misleading.

**ARTICLE III**

**TERM**

**SECTION 3.1. EFFECTIVE DATE.** This Agreement will become effective (the "Effective Date") upon its execution by the Company, the City and the DSWA.

SECTION 3.2. TERM. The term of this Agreement shall commence on the Effective Date and expire on December 31, 2019 (the "Term"). Notwithstanding the foregoing, the Company will have the option to renew this Agreement at its sole discretion for eight (8) sequential renewal terms (each a "Renewal Term") of ten (10) years each provided that notification of the Company's election to exercise its right(s) to any such Renewal Term(s) shall be communicated to the City and the DSWA in writing not less than ninety (90) days prior to the expiration of the Term or any Renewal Term, as the case may be, and further provided that the Agreement has not been terminated during any given term in accordance with Article XI.

**ARTICLE IV**

**HOST COMMUNITY PAYMENTS**

SECTION 4.1. HOST COMMUNITY FEE. The parties recognize that the City bears and will continue to bear a material burden as the host community for the Transfer Station due, among other factors, to the use of its roadways by heavy trucks transporting waste to and from the Transfer Station. The Parties also recognize that these impacts may well increase in the future due to the Parties' agreement to devote diligent efforts in good faith to support the efforts of the Company to secure, on an expedited basis under the authority of the CTDEEP, modification of the existing Permits to allow for upgrade(s) and improvement(s) to the existing facilities, equipment and/or improvements at the Transfer Station to allow for more efficient and environmentally sound handling of recyclables and solid waste delivered to the Transfer Station. Accordingly, the Parties agree that the following host community fees shall be paid to the City commencing on the Effective Date:

1. One (\$1.00) Dollar per ton for each ton of Open Market construction and demolition debris ("C&D") delivered to the Transfer Station.

2. One (\$1.00) Dollar per ton for each ton of Open Market non-HRRA municipal solid waste ("MSW") delivered to the Transfer Station.

3. In addition to the two (2) host community fee formulas set forth immediately above, the Parties acknowledge their agreement that the Company shall remit the following conditional host community fees to the City upon occurrence of the conditions identified below:

a. One (\$1.00) Dollar per ton for each ton of HRRA MSW delivered to the Transfer Station which, pursuant to the agreements between HRRA, WES, and the participating municipalities, is determined to be (i) in excess of any annual minimum tonnage delivery requirements imposed upon the HRRA Participating Municipalities and/or the City pursuant to any agreement in effect between the HRRA, WES and/or such Participating Municipalities; (ii) not subject to any "tipping fee" or "mandatory disposal destination" requirement imposed by either HRRA, WES or any other party; and (iii) able to be transferred and disposed of by the Company at a destination determined by the Company, at its sole discretion, as Open Market MSW. No later than January 31 of each year, the Company shall provide a written report to DSWA setting forth the excess

tonnage as described in this Section 4.1.3, if any, for the preceding calendar year and shall remit the required payment to DSWA for such tonnage.

b. A specific dollar amount per ton for each ton of HRRR MSW delivered to the Transfer Station that is not Open Market MSW and not in excess of any annual minimum tonnage delivery requirements, expressly conditioned upon memorialization of the agreement of the HRRR and WES to modify the existing tipping fee for HRRR MSW to include in such tipping fee such a specific amount per ton host community fee for the benefit of the City and/or the DSWA on all non-Open Market HRRR MSW delivered to the Transfer Station. The Parties agree to devote diligent efforts in good faith to attempt to secure the agreement of both the HRRR and WES to authorize the appropriate administrative and/or corporate action to so modify the existing tipping fee and to secure modifications to the HRRR and WES agreements, as necessary, to establish this additional fee for the City.

**SECTION 4.2. ADMINISTRATIVE OVERSIGHT FEE.** The Company shall pay to the DSWA an annual fee in an amount not to exceed Five Thousand (\$ 5,000.00) Dollars, such annual fee having been determined by agreement of the Parties to be reimbursement to the DSWA for the reasonable administrative, personnel and other costs incurred by the DSWA in performing the monitoring and oversight functions provided for in this Agreement.

**SECTION 4.3. PUBLIC EXPENDITURE FEE.** In partial consideration for the City's and the DSWA's decision, in accordance with the forbearance covenant included among the City's and DSWA's obligations and commitments enumerated in Article V below, not to condemn any of the real properties upon which the Transfer Station is located and not to enter into the business of owning and/or operating a transfer station, the Company shall pay to the City the amount of One Hundred Thousand (\$100,000.00) Dollars in order to reimburse the City, in part, for the legal fees and other public expenditures incurred by the City in connection with its efforts to acquire the Transfer Station and/or other assets seized by the USMS in criminal proceedings initiated against certain prior owners of the Transfer Station. Fifty Thousand (\$50,000.00) Dollars of such amount shall be paid by the Company on the Effective Date, with the remaining Fifty Thousand (\$50,000.00) Dollars to be paid on the one (1) year anniversary of the Effective Date.

**ARTICLE V**

**COMMITMENTS AND OBLIGATIONS OF THE PARTIES**

**SECTION 5.1. OBLIGATIONS OF THE COMPANY.**

**1. Public Services.**

a. "Mom and Pop Recycling Center". The Company shall continue to operate the "Mom and Pop Recycling Center" situated at the Facility at rates to be agreed upon by the Parties and adjusted, as appropriate, annually, which rates shall be competitive with other drop-off centers in the Danbury region and with

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the further understanding and agreement that source separated recyclables shall be accepted free of charge. The DSWA shall periodically survey Mom and Pop facility users to determine what, if any, additional services may be required and the Company shall undertake to provide such additional services, if permissible under the Permits and any ground leases for the property(ies) underlying the Transfer Station and the Facility, at reasonable market rates to be agreed upon by the Parties.

b. Electronics Recycling. To the extent permissible under the Permits and any ground leases for the property(ies) underlying the Transfer Station and the Facility, the Mom and Pop Recycling Center will be the designated location for residents to recycle household computers, monitors, televisions and printers pursuant to the State's Electronics Recycling Law (PA 07-109), subject to the Company imposing such fees and/or charges as may be agreed to by the Company and the DSWA.

c. Clean City Danbury Days. The Company shall work cooperatively with the DSWA to continue the one (1) day per annum Clean City Danbury Day program in which Danbury residents are encouraged to collect litter from the streets and playgrounds of the City and to dispose of large household items (i.e. mattresses, sofas, televisions, lawn furniture and other non-hazardous household bulky waste) at no cost to City residents and upon the same terms and conditions as such program is conducted by the City and the Transfer Station as of the Effective Date.

d. Single Stream Recycling. The Company, with the full support and cooperation of the City and the DSWA, shall take all necessary and reasonable steps (including but not limited to application for requisite CTDEEP permits), to implement single-stream recycling, either through creation of a single-stream processing center at the Transfer Station or a recyclables transfer station for single-stream collections that are then transferred to off-site processing facilities, for both HRRA and non-HRRA recyclables delivered to the Transfer Station.

e. Recycling Education Venue. In cooperation with the DSWA, the Company shall use the Transfer Station facilities to implement recycling education programs to foster and improve the public's understanding of the need to reduce, reuse and recycle waste. These programs shall include, in such manner and to the extent permissible under the Permits and the Company's liability insurance policies, setting aside a public education area at the Transfer Station site large enough to accommodate school classes and adult groups, as well as opportunities to view the operation of the recycling processes and facilities.

2. Employment Policy. Subject to the provisions of any collective bargaining agreement(s) to which the Company is a Party, the Company shall not knowingly hire or retain any employee who has any felony conviction for a crime involving theft, fraud, racketeering and/or antitrust violation(s).

3. Certain Business Affiliations. The Company shall maintain "good standing" within the State of Connecticut as a business entity and shall not knowingly have any financial connections with James Galante or Thomas Milo, and/or any of their known business affiliates, excepting certain ground leases for real property existing as of the Effective Date and utilized by the Company or by any entity affiliated with the Company in the conduct of their solid waste business operations.

4. Disclosure. No less frequently than once per year, the Company and its principals will disclose to the City and the DSWA all companies in the solid waste industry respecting which it or they maintain any ownership interest in excess of five (5%) percent.

5. Business Identity. The Company agrees that all solid waste collection, hauling and/or transfer operations owned, conducted and/or operated by the Company in the HRRRA service area will be operated under one company name (or a variant of that company name within which the name "Winters" is included) or, if such operations are acquired subsequent to the Effective Date, the name of such operations shall promptly be converted to operation under the Company's name, and in no event later than twelve (12) months after the date of any such acquisition.

6. Facility Improvements, Expansion and/or Upgrade. The Company agrees that it will fund all capital improvements it deems, in its sole discretion, commercially advisable and necessary for operation, repair, maintenance, upgrade and/or expansion of the Transfer Station including, but not limited to, equipment, site improvements and rail infrastructure, in accordance with plans and/or specifications that may be submitted to the CTDEEP ( and provided to the City and the DSWA) for modification of any Permit(s).

7. Administrative, Accounting and Billing Practices. The Company shall provide the necessary administrative and accounting functions and services relating to operation of the Transfer Station in accordance with standards and practices common in the industry. The Company shall bill and collect for all solid waste received and processed, and for all services performed, at the Transfer Station.

8. Recordkeeping and Access. The Company shall maintain all records required as a condition of any Permit(s) and/or as required by applicable federal and State law(s). Such records shall be maintained at the Transfer Station and the Company shall provide reasonable access to any such records to the upon advance request delivered in writing. The Company shall also provide access to the Facility by DSWA and/or its designee upon reasonable advance written request.

9. Minimum Waste Tonnage Guarantee. In accordance with the WSDA, all HRRRA Participating Municipalities are required to direct MSW to WES for disposal through 2019 and have entered into separate and aggregate minimum "put-or-pay" commitments for MSW tonnage delivered to WES. The Company shall conditionally guarantee that the City and other Participating Municipalities served by the Transfer Station meet their annual minimum MSW tonnage requirements pursuant to the Participating Municipalities' current contracts with HRRRA and the WSDA, such conditional guarantee being expressly subject to (i) the Force Majeure provisions set forth in the definitions

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section of this Agreement; (ii) any Change(s) of Law, as such term is defined in this Agreement; and (iii) the requirement that the City undertake on its own behalf, and encourage (in its capacity as a HRRRA Participating Municipality) all other Participating Municipalities to undertake, reasonable efforts to enforce HRRRA contract compliance requirements. Without limiting the generality of the foregoing, it is understood that this conditional guarantee shall not apply if any Participating Municipality(ies) terminates or withdraws from the applicable HRRRA contract(s) or the WSDA, or repeals any local ordinance(s) currently in place relating to such Participating Municipality's participation in and requiring compliance with any applicable HRRRA contract(s) or the WSDA, or fails, after reasonable written notice to such Participating Municipality, strictly to enforce compliance by any and all MSW Hauler/Collector Permittees with the rules and regulations governing any HRRRA Permit (Hauler/Collector) issued to any such Permittee(s) by HRRRA or any Participating Municipality(ies).

**10. Staffing Requirements.** The Company shall designate a Project Manager throughout the Term, which Project Manager, shall (i) be the principal contact person for the City and the DSWA; (ii) have the authority to direct activities and/or responses as required by this Agreement; and (iii) be required to attend all regular meetings of the DSWA.

## **SECTION 5.2. OBLIGATIONS OF THE CITY AND/OR THE DSWA.**

**1. Forebearance From Certain Activities.** The City and the DSWA agree, for as long as this Agreement is in effect, to cease all current efforts and to forebear from any future efforts to acquire the Transfer Station, and/or any assets, properties or improvements pertinent to or used in connection with operation of the Transfer Station, whether for the City, the DSWA and/or for any other party or entity. Without limiting the generality of the foregoing, the City agrees that for as long as the Agreement is in effect, the City shall not exercise its powers of eminent domain to acquire the real property(ies) on which the Transfer Station is situated and not to own, operate or attempt to secure requisite permits or authorizations for any transfer station to be operated by the City or on behalf of the City.

**2. Facility Upgrade, Improvement and/or Expansion.** Both the City and the DSWA agree to use best efforts to support, through both City and CTDEEP approval and/or permitting processes, the expansion, upgrade and improvement of the Transfer Station as it has been proposed by the Company, and to devote best efforts to expedite the issuance of all necessary State, CTDEEP and/or City approvals, permits and/or Permit modifications necessary to support such expansion, upgrade and/or improvements. The City and DSWA further agree to devote best efforts to identify, apply for and pursue any applicable grants to help defray the cost of such contemplated expansion, upgrade and/or improvements, as well as any necessary and appropriate public and private infrastructure improvements to be implemented in connection with such expansion, upgrade and/or improvements.

**SECTION 5.3. MODIFICATION OF PERMITS.** Each of the City and the DSWA will support, and the Company will devote best efforts to obtain, modification, upgrade and expansion of the existing Permits and/or improvements at the Transfer Station in

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order to assure compliance with such Permits and performance of the WSDA in a manner that is consistent with the recycling objectives of the State Solid Waste Management Plan.

**ARTICLE VI**

**COMPLIANCE WITH LAW**

**SECTION 6.1. COMPLIANCE WITH LAWS.** The Company agrees that the Transfer Station shall be operated (i) in material compliance with the applicable CTDEEP Permit requirements and governing Operations & Maintenance Manual ("O&M") standards and (ii) in material compliance with all federal, State and local laws, regulations and ordinances applicable to the Transfer Station and/or the Facility.

**ARTICLE VII**

**COMPLAINT RESOLUTION PROCESS**

**SECTION 7.1. COMPLAINT RESOLUTION PROCESS.** The Company and the DSWA shall work cooperatively to implement, and each of the Company, the City and the DSWA shall undertake in good faith to adhere to, a complaint resolution process. It is the intention of the Parties that the complaint resolution process delineate the dispute resolution procedures to be relied upon to resolve any complaints by haulers regarding alleged unequal or unfair treatment at the Transfer Station; complaints of customers or residents regarding the operation of the Transfer Station; and/or respecting alleged nuisances or other problems created by odor, noise, runoff, traffic, times of operation and/or similar impacts.

**ARTICLE VIII**

**MONITORING, REPORTING AND INSPECTION REQUIREMENTS**

**SECTION 8.1. MONITORING OF TRANSFER STATION OPERATIONS.** The Company and the DSWA shall cooperate in good faith to develop reasonable protocols and/or procedures, consistent with site access, safety and other requirements of the Permits, the O&M Manual and the Company's liability insurance policies, to afford to the DSWA, or its designee(s), the right to make reasonable periodic inspections of the Transfer Station.

**SECTION 8.2 OPERATION AND MAINTENANCE OVERSIGHT.** The Company shall maintain, service and repair, as necessary and appropriate, the Transfer Station buildings, and facilities, site and equipment. No later than ninety (90) days from the Effective Date, an O&M Manual shall be prepared by the Company and submitted to the DSWA, which manual shall be in accordance with the regulations and requirements of the CTDEEP, and which shall, among other things, contain provisions regarding the Company's responsibilities to minimize dust, litter, vectors, noise and odors, and to monitor and reject hazardous or other unacceptable waste. The O&M Manual shall set forth hours of operation, site access, qualified personnel, types and maintenance of scales,

recordkeeping, periodic reporting requirements, provisions for on-site storage of waste, waste inspection methods, fire protection and safety provisions that satisfy and/or fall within the requirements and parameters of the existing CTDEEP Permits for the Transfer Station, as such Permits may be modified and/or amended from time to time during the Term. Any amendments to the O&M Manual shall be submitted to the DSWA for reference purposes only at the same time they are submitted to the DEEP for approval.

SECTION 8.3. ACCESS TO RECORDS. The Company shall provide the DSWA with access to all records relating to tonnages and types of waste or recyclables delivered to the Transfer Station as are required to be maintained by the Company pursuant to the Permits and/or the Company's existing contracts with either HRRR and/or WES, within five (5) business days of any written request by DSWA to inspect such records. Such access to records shall include, without limitation, access to periodic reports (not less than quarterly) prepared by an outside engineering firm retained by the Company in accordance with applicable CTDEEP Permit requirements and relating to compliance of the Transfer Station with applicable environmental laws, CTDEEP Permits and any application(s) for permit expansions and/or modifications.

**ARTICLE IX**

**LIABILITY COVERAGE AND INDEMNIFICATION**

SECTION 9.1. INSURANCE. The Company will maintain workers compensation, business automobile, public liability and such other insurance as the Company deems necessary and advisable in form and with limits as those identified on Exhibit "C" attached hereto. Where appropriate and to the extent obtainable by the Company from its carriers, such policies shall name the City and the DSWA as additional named insureds. The Company will provide proof of such insurance in the form of a certificate of insurance, or proof of self-insurance, no less frequently than July 1 annually and also upon written request by either the City or the DSWA.

SECTION 9.2. INDEMNIFICATION.

(a) The Company shall indemnify, defend (upon request by the City) and hold harmless the City and the DSWA and their shareholders, partners, officers, directors, divisions, subdivisions, affiliates, agents, employees, successors and assigns (the "City Indemnified Parties") from and against any and all liabilities, losses, assessments, fines, penalties, forfeitures, damages, costs, expenses and disbursements, including reasonable legal fees, expert witness fees, litigation related expenses, and court costs in any litigation, investigation or proceeding (collectively, "Losses"), whether arising out of a claim for loss of or damage to property or injury to or death of any person, including any City Indemnified Party, or otherwise caused by or arising out of (a) the Company's breach of this Agreement, (b) the Company's negligence or willful misconduct, or (c) acts or omissions arising out of or related to the use or operation of the Transfer Station except to the extent attributable to the acts or omissions of the City and the DSWA.

(b) The City and the DSWA, jointly and severally, shall indemnify, defend (upon request by the Company) and hold harmless the Company and its

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shareholders, partners, officers, directors, divisions, subdivisions, affiliates, agents, employees, successors and assigns (the "Company Indemnified Parties") from and against any and all Losses, whether arising out of a claim for loss of or damage to property or injury to or death of any person, including any Company Indemnified Party, or otherwise caused by or arising out of (a) the City's or the DSWA's breach of this Agreement, (b) the City's or the DSWA's negligence or willful misconduct (except to the extent attributable to any Company Indemnified Party).

(c) If any of the City Indemnified Parties or the Company Indemnified Parties (each an "Indemnified Party") who may make a claim for indemnification under this Agreement becomes aware of any matter that may give rise to such a claim or wishes to make such a claim, then such Indemnified Party shall promptly notify the City, the DSWA or the Company, as the case may be (the "Indemnifying Party"), thereof in writing; provided, however, that no delay on the part of the Indemnified Party in notifying the Indemnifying Party shall relieve the Indemnifying Party from any obligation under this Agreement unless (and then solely to the extent) the Indemnifying Party is actually prejudiced thereby. This paragraph shall survive termination of the Agreement.

## ARTICLE X

### DISPUTE RESOLUTION

SECTION 10.1. DISPUTE RESOLUTION. In the event of any dispute, disagreement, or claim arising under or in connection with this Agreement, then the Parties hereto shall, upon written notice from either Party, meet as soon as reasonably possible in order to resolve said dispute.

In the event that informal discussions are not effective in resolving any disputes or differences of opinion arising between the Parties which concern or touch upon the validity, construction, meaning, performance or effect of this Agreement, then said dispute shall first be mediated within a sixty (60) day time period prior to any dispute proceeding to arbitration. The Parties shall determine a mutually agreeable location for the mediation to occur. The Parties shall make all reasonable efforts to resolve their disputes by amicable negotiations and agree to provide, without prejudice, frank, candid, and timely disclosure of relevant facts, information and documents to facilitate these negotiations. Any resolution of the dispute in mediation shall be kept confidential by all Parties, except as otherwise required by law.

In the event that mediation or informal discussion is not successful, the parties agree that the Courts of the State of Connecticut shall have jurisdiction to resolve any and all disputes hereunder, including claims for damages and equitable relief. Informal discussions and mediation shall not toll applicable statutes of limitation. In any litigation the party found to be in default shall be liable to the non-defaulting party for the latter's costs and expenses of litigation, including reasonable attorney's fees.

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**ARTICLE XI**

**TERMINATION AND DEFAULT**

**SECTION 11.1. GENERAL.** The Contract shall remain in effect until terminated by any of the following:

- a. Expiration of the initial Term, or subsequent extension term(s), unless agreed to in writing no later than 90 days prior to the applicable expiration dates; or
- b. Events of default as described in Section 11.2 and 11.3 below, after notice and failure to cure as set forth in Sections 12.1 and 12.2 below.

**SECTION 11.2. EVENTS OF DEFAULT BY WINTERS.** The City and/or the DSWA shall have the right to terminate the Contract, after reasonable notice and opportunity to cure as set forth below, upon the occurrence of the following events of default:

- a. Failure by Winters to allow fair and non-discriminatory access to the Transfer Station to all appropriately licensed solid waste collection companies delivering materials to the Transfer Station.
- b. Failure or refusal of Winters to perform timely any material obligation(s) under the Contract (after reasonable notice and opportunity to cure) including but not limited to failure to make any host community payment as set forth in ARTICLE IV hereof, and failure to comply with any of its obligations pursuant to SECTION 5.1 hereof.
- c. (i) Winters becoming insolvent or bankrupt, or ceasing to pay its debts as and when due, or (ii) a bankruptcy, winding up, reorganization, insolvency or other similar arrangement or proceeding instituted by or against Winters and/or (iii) Winters or a Winters principal's felony conviction, after exhaustion of all available appeals, for racketeering or antitrust violation(s) or other crime(s) arising out of the operation of the Transfer Station.

**SECTION 11.3. EVENTS OF DEFAULT BY THE CITY AND/OR THE DSWA.** Winters shall have the right to terminate the Contract (after reasonable notice and opportunity to cure as set forth below), upon the City's or the DSWA's failure or refusal to perform timely any of their respective obligations under this Agreement including, without limitation, the failure to comply with any of their respective obligations pursuant to SECTION 5.2 hereof.

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## ARTICLE XII

### BREACH AND REMEDIES

**SECTION 12.1. NOTICE OF BREACH.** In any case where any Party breaches this Agreement, the non-breaching party ("Non-Breaching Party") shall provide written notice to the breaching party ("Breaching Party") within ten (10) days of such breach ("Notice of Breach").

**SECTION 12.2. RIGHT TO CURE.** The Breaching Party shall have the right to cure any breach and must cure such breach within sixty (60) days of its receipt of a Notice of Breach. If the Breaching Party is unable to cure a breach within sixty (60) days, the Breaching Party may request an extension of the sixty (60) day period which the Non-Breaching Party shall grant provided the Breaching Party has commenced a cure and proceeded diligently to effect such cure. In the event the breach continues to remain uncured, the time may be enlarged to a time period established by the Non-Breaching Party, at the discretion of the Non-Breaching Party.

**SECTION 12.3. REMEDIES.** The parties acknowledge that neither party has an adequate remedy by way of damages in the event that the other party materially breaches or threatens to materially breach the obligations and restrictions contained within this Agreement, and therefore each party agrees that, in the event of a breach of this Agreement, and in addition to any rights of termination, the aggrieved party may apply to a court of competent jurisdiction for equitable relief directing the other party to comply with this Agreement and/or enjoining or restraining the other party from any material breach hereof.

**SECTION 12.4. REMEDIES CUMULATIVE.** No remedy herein conferred upon or reserved to the any Non-Breaching Party is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any breach shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

## ARTICLE XIII

### SEVERABILITY

**SECTION 13.1. SEVERABILITY.** If any clause, provision, section or article of this Agreement, or a portion thereof, is held invalid, inoperative or unenforceable by any court or regulatory authority of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

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SECTION 13.2. REFORMATION. Notwithstanding the foregoing, if any clause, provision, section or article of this Agreement, or a portion thereof, is held invalid, inoperative or unenforceable by any court or regulatory authority of competent jurisdiction, the parties shall:

a. Promptly meet and negotiate a substitute for such clause, provision, section or article, which will to the greatest extent legally permissible, effect the original intent of the parties therein.

b. 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 Section 13.1 (a) hereof to effect the original intent of the parties in the clause, provision, section or article declared invalid.

## ARTICLE XIV

### NOTICES

SECTION 14.1. NOTICES. All notices or other communications required or permitted hereunder shall be in writing and may be given by depositing the same in the United States mail addressed to the Party to be notified, postage prepaid and registered and certified with return receipt request; by overnight courier; or by delivering in person to such Party.

a. Notices to the City:

City of Danbury  
Attn: Offices of the Mayor and the Corporation Counsel  
City Hall  
155 Deer Hill Avenue  
Danbury, CT 06810

With a copy to:

Daniel Casagrande, Esq.  
Cramer & Anderson, LLP  
30 Main Street, Suite 303  
Danbury, CT 06810

b. Notices to the DSWA:

Attn: Director of Public Works  
155 Deer Hill Avenue  
Danbury, CT 06810

c. Notices to the Company:

Winters Bros. Waste Systems of CT, LLC  
Attn: Joseph Winters, Managing Member  
307 White Street  
Danbury, CT 06810

With copies to:

Kenneth J. Hollenbeck, Esq.  
Scarinci Hollenbeck  
1100 Valley Brook Avenue  
Lyndhurst, NJ 07071

Any party may change its notice address by notifying the other party in accordance with this Section.

## ARTICLE XV

### MISCELLANEOUS

**SECTION 15.1. NO WAIVER.** The failure of any party to insist on the strict performance of any term or provision hereof will not be deemed a waiver of the right to insist on strict performance of any other term or provision, nor will it be deemed a waiver of any subsequent breach. Unless specifically stated, the selection of any specific remedy hereunder by either party shall not be deemed an election of remedies limiting either party's right to seek any other remedy otherwise allowed by this Agreement, or under local, State or federal law.

**SECTION 15.2. APPLICABLE LAW AND VENUE.** This Agreement will be governed by the laws of the State of Connecticut. Venue for any dispute arising under this Agreement and not required to be resolved by mediation as provided herein, shall be solely in the State and/or federal Courts of the State of Connecticut. The Company agrees that it is subject to personal jurisdiction in the courts of the State of Connecticut.

**SECTION 15.3. NO RECOURSE.** All obligations of the Parties contained in this Agreement shall be deemed to be the corporate obligations of the respective parties and not obligations of any member, officer, official, agent, servant, employee, or affiliate of the parties. No recourse upon any obligation contained in this Agreement, or otherwise based on or in respect of this Agreement, shall be had against any past, present, or future member, officer, official, agent, servant, employee, or affiliate of the Parties.

**SECTION 15.4. QUIET ENJOYMENT.** Provided that the Company is in compliance with the terms of the Permits issued by the CTDEEP and this Agreement, the City and the DSWA agree that neither party will take any action which would curtail, modify or otherwise interfere with the operation, upgrade or improvement of the Transfer Station.

SECTION 15.5. ENTIRE AGREEMENT. This Agreement constitutes the Parties' entire agreement with respect to the subject matter set forth herein, and no other agreements, written or unwritten, implied or express, will be deemed effective.

SECTION 15.6. AMENDMENT. No amendment, modification or alteration of the terms or provisions of this Agreement shall be binding unless the same shall be in a writing that specifically references this Agreement and that is duly executed by the Parties.

SECTION 15.7. BINDING EFFECT. This Agreement shall inure to the benefit of and shall be binding upon each of the Parties and, as permitted by this Agreement, of their respective successors and permitted assigns.

SECTION 15.8. HEADINGS. The headings of sections and paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement or to affect the construction hereof.

SECTION 15.9. ASSIGNMENT BY THE CITY AND THE DSWA. Neither the City nor the DSWA may transfer or assign any of its rights or obligations under this Agreement without the prior written consent of the Company, to be granted or withheld at its sole and absolute discretion, and any such transfer or assignment shall be null and void and of no force and effect.

SECTION 15.10. ASSIGNMENT BY THE COMPANY. The Company may, without the consent of the City and/or the DSWA, assign this Agreement to any purchaser of all or substantially all of the assets or membership interest(s) of or in the Company; any affiliate (as such term is defined in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934) of the Company that is controlled by, controlling or under common control with the Company; or persons or entities, including a collateral agent acting on behalf of lenders providing financing for the Transfer Station (collectively, the "Financing Parties") (such purchaser, affiliate and Financing Parties are collectively defined as a "Successor"), provided such Successor assumes and agrees to be bound by this Agreement by executing and submitting to the City a notice of assignment and assumption of this Agreement, and provided further that any assignee qualifies and has been approved to own and operate the Facility by any federal or state agency with jurisdiction under applicable federal and state laws and regulations. Nothing herein shall limit in any way the right of the owners of the Company to sell or otherwise transfer (including by merger or consolidation with any other entity) all or a portion of their ownership interests in the Company.

SECTION 15.11. HRRRA RIGHTS UNAFECTED. Nothing in this Agreement is intended to alter or limit the rights of any parties to the WSDA or any other existing Contract entered into by any of the Participating Municipalities with the HRRRA.

SECTION 15.12. COUNTERPARTS. This Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

SECTION 15.13. FILING WITH TOWN CLERK. The City shall file and maintain a copy of this Agreement in the office of the Town Clerk.

SECTION 15.14. NO LIMITATION ON DSWA AUTHORITY. Nothing in this Agreement shall be construed as a limitation on the lawful powers of the DSWA as created and authorized in its enabling ordinance to adopt, amend and enforce regulations or other measures pursuant to its powers as set forth in Connecticut General Statutes §§ 7-273aa through 7-273oo, as amended and in any other solid waste provisions of the Code of Ordinances of the City of Danbury, as amended, except as such powers are limited by the provisions of this Agreement.

**[SIGNATURE PAGE FOLLOWS]**

1629



# RESOLUTION

CITY OF DANBURY, STATE OF CONNECTICUT

\_\_\_\_\_ A.D. 2013

**RESOLVED BY THE CITY COUNCIL OF THE CITY OF DANBURY**

**WHEREAS**, The City of Danbury and the Danbury Solid Waste and Recycling Authority and Winters Bros. Waste Systems of CT, LLC desire to enter into a Host Community Benefit and Cooperation Agreement for the furtherance of public and private benefit of solid waste management and recycling at the 307 White Street facility; and

**WHEREAS**, said Host Community Benefit and Cooperation Agreement sets forth the relevant terms and conditions of this mutual endeavor and secures the interests of all parties.

**NOW, THEREFORE BE IT RESOLVED THAT** Mayor Mark D. Boughton and the Chairman of the Danbury Solid Waste and Recycling Authority be and hereby are authorized to enter into the Host Community Benefit and Cooperation Agreement with Winters Bros. Waste Systems of CT, LLC and to take such further actions as are necessary to the accomplishment thereof.



# ORDINANCE

1625

CITY OF DANBURY, STATE OF CONNECTICUT

CITY COUNCIL

\_\_\_\_\_ A.D. 2013

**Be it ordained by the City Council of the City of Danbury:**

THAT Section 2-56.18 of the Code of Ordinances of Danbury, Connecticut is hereby amended to read as follows:

Sec. 2-56.18. - Solid waste and recycling authority.

(a) *Statement of purpose.* The Danbury Solid Waste and Recycling Authority (the "authority") is hereby created as a municipal resource recovery authority pursuant to CGS Sections 7-273aa to 7-273oo, inclusive. The authority is a public body politic and corporate of the State of Connecticut (the "state"), and is a political subdivision of the state established and created for the performance of the essential public and governmental function of furthering the health, safety and welfare of the residents of the City of Danbury, Connecticut (the "city") by exercising supervision and control over the operation and administration of the solid waste and recycling operations at the transfer station located at White Street and Beaver Brook Road, Danbury, Connecticut (the "transfer station").

(b) *Definitions.* For purposes of this ordinance, each of the following terms shall have the meaning set forth below:

*Authority* shall mean the Danbury Solid Waste and Recycling Authority established pursuant to this ordinance.

*Board* means the board of directors of the authority.

*Bylaws* shall mean the rules and regulations that, subject to statutory law and the articles of incorporation, govern the business and conduct of the affairs of the authority.

*CGS* shall mean the General Statutes of Connecticut, Revision of 1958, as amended.

*City* shall mean the City of Danbury, Connecticut.

*Effective date* shall mean the date upon which this ordinance becomes effective.

*Mayor* shall mean the mayor of the City of Danbury.

*Solid waste assets* shall mean such real and personal property utilized for the reduction and transfer of solid waste and recycling at the transfer station.

(c) *Creation and powers.* The city hereby adopts the provisions of CGS Chapter 103b and creates the board of directors of the authority as its municipal resource recovery authority. The authority shall have all the powers set forth in CGS Chapter 103b and the powers and duties of a municipal authority pursuant to CGS Chapters 446d and 446e.

(d) *Articles of incorporation of the authority.*

(1) *Name, address, authority for creation.* The authority is created as a municipal resource recovery authority pursuant to CGS Sections 7-273aa to 7-273oo, inclusive, and shall be known as the "Danbury Solid Waste and Recycling Authority" with its principal office at 155 Deer Hill Avenue, Danbury, Connecticut 06810.

(2) *Initial directors—Names, addresses, terms of office.* The names, addresses and terms of office of the initial directors of the authority are set forth on Exhibit A attached hereto.

(e) *Board of directors.* The business of the authority shall be managed by or under the direction of the board of directors which may exercise all such powers of the authority and do all such lawful acts and things as are allowed by the CGS and the bylaws.

(1) *Number of directors.* The authority shall have a board of directors consisting of five (5) directors. All directors shall be residents or electors of the city.

(2) *Compensation.* The directors shall serve without compensation.

(3) *Method of appointment and removal.* The Mayor of the city, with the approval of the majority of the City council, shall select and appoint the directors of the board, and the Mayor may remove a director.

The board of directors may not remove a director of the board.

The terms of directors shall be so arranged such that less than one-half ( $\frac{1}{2}$ ) of such terms of directors shall expire within any one (1) calendar year.

(4) *Term of office.* Except for the initial terms of the initial directors, the term of office of directors shall be for three (3) years, commencing on January 1 of the first year of the term and expiring on December 31 of the third year of the term.

The initial term of office of each of the initial directors of the authority shall commence on the effective date and shall expire on either December 31, 2013, December 31, 2014 or December 31, 2015, as set forth on Exhibit A attached hereto. Upon the expiration of each initial term of office for each of the initial directors, a new term of office of three (3) years shall commence for each subsequent director appointed.

(5) The formation of the board of directors shall comply with all other applicable state and local laws, as may be applicable. All relevant federal, state and local laws pertaining to conflicts of interest by board membership shall be strictly observed and enforced.

(6) *Executive Director.* For the purposes of operational management of authority directed action, the Danbury Director of Public Works or his designee shall be deemed the authority executive director, serving without compensation, unless determined otherwise by the authority and the city council, by amendment to this ordinance.

(f) *Other ordinances, provisions and repealer.*

Operation with existing law.

(1) Article V, Municipal Solid Waste Management, of the Code of Ordinances of the City of Danbury in Section 16A-90 et seq as may be amended (the "Code") and any other ordinances in the Code that pertain to solid waste and recycling shall, for the purposes of this subsection, be referred to as the "solid waste ordinances". The authority is hereby expressly empowered and authorized to administer and/or enforce the solid waste ordinances to the extent necessary to effectuate this ordinance and to the extent of the authority's powers as set forth in this ordinance, and provided that there shall at all relevant times be a furtherance of the purpose for which the authority has been created. Nothing herein gives the authority sole and exclusive control over the administration and/or enforcement of all of the solid waste assets and ordinances. To the extent that the authority adopts regulations or rules that conflict with the solid waste ordinances, the solid waste ordinances shall govern.

(2) This ordinance shall supersede and replace ordinances of the city in existence to the extent that they are inconsistent with this ordinance.

(g) *Flow control.* The city hereby agrees to maintain an ordinance, to the extent lawful pursuant to the CGS and all other applicable law, for the purpose of designating an area or areas where all solid waste and recyclables, as designated in such ordinance, generated within the boundaries of the city shall be disposed.

(h) *Dissolution.* The city retains the right to dissolve the authority. Upon dissolution, the city agrees to assume, or satisfy, the liabilities and outstanding obligations of the authority, including without limitation, and bonds or notes issued by the authority, and all of the authority's interest in all assets of the authority shall be transferred to and vest in the city.

(i) *Meetings.* The authority shall meet at least once annually for the conduct of its business.

Daniel E. Casagrande, Esq.  
\*Also Admitted in New York  
[dcasagrande@crameranderson.com](mailto:dcasagrande@crameranderson.com)

## MEMORANDUM

To: City Council

Cc: Laszlo Pinter, Esq., Hon. Mark D. Boughton, Robert J. Yamin, Esq.

From: Daniel E. Casagrande, Esq.

Date: August 5, 2013

Re: **Host Community Benefit and Cooperation Agreement  
Bullet Point Summary of Key Provisions**

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1. **Purpose:**

- Provide City with certain benefits for acting as host municipality to White Street Transfer Station recently purchased from U.S. by Winters.

2. **Benefits to City:**

- Host tonnage fees for non-HRRA waste, certain HRRA waste, and construction and demolition debris (§ 4.1); also annual administrative fees and one-time payment of \$100,000. (§§ 4.2, 4.3)
- Transparency and accountability in operation of transfer station:
  - Winters contractually bound to submit to oversight by DSWA; provides forum for haulers to report to DSWA unfair treatment, and for residents to report noise, litter, traffic, odors, etc. Winters' failure to comply with DSWA orders is a breach of the contract.

- Winters required to open its books on tonnages to City, allow reasonable inspections.
- Public services to be provided by Winters:
  - Mom and Pop Recycling Center (§5.1.a)
  - Electronics Recycling (§ 5.1.b)
  - Clean City Danbury Days (§ 5.1.c)
  - Simple Stream Recycling (§ 5.1.d)
  - Recycling Education Venue (§ 5.1.e)
- Accountability in business operations and affiliations. (§ 5.2 through 5.8, 5.10)
- Winters conditionally guarantees to cover all annual “put-or-pay” shortfall payments that may be required by each HRRRA municipality under HRRRA contract. (§ 5.9).
- DSWA oversight of Transfer Station maintenance, operations (Article 8).

3. **City Obligations:**

- While contract is in effect, City forebears from condemning the Transfer Station property or from operating its own transfer station. (§ 5.2.1)
- City agrees to support current Winters applications to DEEP for modifications to existing permits (§§ 5.2, 5.3) [Note-clarifying language under negotiation].

4. **Contract Term:**

- Committee of the Whole has recommended term be limited to 15-20 years with extensions only by mutual assent of City and Winters.

5. **Termination for Cause:**

- Each party has right to terminate (after notice and opportunity to cure) for other party’s breach of its obligations. (§§ 11.2, 11.3)
- Remedies for breach are termination and court action for specific enforcement (not damages).
- Upon termination, City has same rights to condemn and/or operate a transfer station as it had prior to contract.