

Amended and Restated Lease

THIS INDENTURE made and dated as of the 8 day of November 2012, by and between the CONNECTICUT RESOURCES RECOVERY AUTHORITY (hereinafter referred to as the "Authority"), a body politic and corporate, constituting a public instrumentality and political subdivision of the State of Connecticut, and the TOWN of ESSEX, in the State, a municipality and political subdivision of the State (hereinafter referred to as the "Town") acting by and through its First Selectman, the municipal authority having legal jurisdiction over the lease of premises within the corporate limits of the Town,

WITNESSETH:

WHEREAS, Authority and Town are parties to a certain Lease dated May 4, 1987, as amended by a certain Amendment to Lease dated March 8, 1994 (as so amended, the "Existing Lease"), which expires October 25, 2015, pursuant to which the Town leases the Demised Premises to the Authority; and

WHEREAS, the Authority and the Town are parties to a Municipal Solid Waste Management Services Agreement, which will end on November 15, 2012, and have now agreed to execute a new agreement (hereinafter referred to as the "Municipal Services Agreement"), to be approved at a Special Town Meeting on the 7 day of November, 2012, (hereinafter referred to as the "Municipal Services Agreement"), for a term of fifteen years, pursuant to which the Authority will operate and

maintain the Connecticut Solid Waste System for the disposal of municipal solid waste generated by the Town and others; and

WHEREAS, the Authority and the Town propose to be parties to a Transfer Station Host Community Agreement with a termination date of June 30, 2027, also to be approved at a Special Town Meeting (hereinafter referred to as "Transfer Station Host Community Agreement"); and

WHEREAS, the parties have now agreed to amend and restate the Existing Lease in its entirety upon the terms and conditions set forth herein; and

WHEREAS, the Town has received such matters and such information as it considers necessary or appropriate for the execution of this Amended and Restated Lease and has taken such actions as are required or necessary as a condition to the execution hereof; subject to approval of this amended and restated Lease, the Transfer Station Host Community Agreement and the Municipal Services Agreement at a Special Town Meeting duly called and held for this purpose.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the Town agree to the amendment and restatement of the Existing Lease in its entirety as follows:

1. Definitions. Capitalized terms used in this Amended and Restated Lease and not otherwise defined herein shall have the meanings assigned to such terms in the Municipal Services Agreement.

2. Lease of the Demised Premises. As of the Effective Date (as hereinafter defined), the Town does hereby lease and demise to the Authority and the Authority does hereby lease and hire from the Town a certain piece or parcel of land located within the corporate boundaries of the Town as more particularly described on Exhibit A attached hereto (the "Demised Premises").
3. Quiet Enjoyment. The Town represents and warrants that the Town is the sole owner in fee simple absolute of the Demised Premises, with full power and authority to execute, deliver and carry out the terms of this Amended and Restated Lease, and covenants with the Authority that the Town will suffer and permit the Authority (it keeping all the covenants on its part as hereinafter contained) to occupy, possess and quietly enjoy the Demised Premises during the term hereof without hindrance or molestation from the Town or any person claiming by, from or under the Town. The Town shall at all times indemnify and hold harmless the Authority from and against any and all claims, damages and costs (including attorneys' fees) incurred by the Authority and arising out of, in connection with or as a result of any claim made against or dispute regarding the Town's right and title to, fee interest in or acquisition of the Demised Premises. The Town's obligations under the foregoing indemnity shall survive the termination of this Amended and Restated Lease.

The Authority acknowledges and agrees that access to the Demised Premises from Middlesex Turnpike is over upon and across an existing small roadway known as Dump Road which is located on land owned by Town of

Essex but is not a Town highway. Said right of access is non-exclusive and is subject to such rights of others as may exist to the use of Dump Road nothing herein contained shall be deemed to authorize the Authority to limit or control access over or the use of Dump Road to the extent Dump Road is located beyond the boundary lines of the Demised Premises.

4. Term. (a) This Amended and Restated Lease shall become effective upon the date of execution of the last to be executed of this Amended and Restated Lease Agreement, the Municipal Services Agreement, and the Transfer Station Host Community Agreement (the "Effective Date) and, except as otherwise set forth herein, shall continue until June 30, 2027. The Existing Lease shall remain in full force and effect until superseded by this Amended and Restated Lease on the Effective Date.

(b) The Authority shall have the right to terminate this Amended and Restated Lease for any reason by written notice to the Town, delivered in accordance with the requirements of Section 15 below, such termination to be effective twelve (12) months from the date of such notice. See Paragraph 5 for the terms and conditions relating to the delivery to the Town of possession of the Demised Premises, including the buildings and improvements on the Demised Premises, and the condition of the buildings, improvements and the condition of the Demised Premises at the time of delivery on the termination of the Lease.

5. Use and Occupancy. The Authority covenants with Town that it will commit no waste on the Demised Premises, nor suffer the same to be committed

thereon, nor injure nor misuse the same but will deliver up the same at the expiration or sooner termination of its tenancy in as good condition as they shall be upon the date of commencement of the term hereof, ordinary wear and tear, and damage from fire and other casualties excepted. In the event that on the date of termination and delivery of possession of the Demised Premises, including the buildings and improvements thereon, to the Town there shall have been a casualty loss that has not been repaired, the Authority in lieu of such repair shall pay over or assign to the Town the recovery or the rights thereto for said casualty loss. Upon such termination the buildings, fixtures and improvements thereon, exclusive of personal property not permanently affixed to the realty, shall become the real property of the Town, free and clear of any claim of the Authority or any one claiming under the Authority.

6. Alterations, Improvements and Purpose. The Authority operates upon the Demised Premises a transfer station (hereinafter, the "Transfer Station") for the purpose of receiving Acceptable Solid Waste and Acceptable Recyclables delivered by or on behalf of the Town and by or on behalf of other customers of the Connecticut Solid Waste System as defined in the Municipal Services Agreement ("the System") so long as the Transfer Station has the capacity to handle such other Acceptable Solid Waste and Acceptable Recyclables in accordance with its Connecticut Department of Energy & Environmental Protection ("DEEP") Permit and any modifications or renewals thereof. Such waste and recyclables will be delivered in appropriate vehicles to the System

for processing and disposal. The Town understands that such Transfer Station will remain the property of the Authority during the Term of this Amended and Restated Lease and will not be designed to receive and will not receive solid waste from casual deliveries by private citizens.

The Authority agrees that it will not receive or process in excess of the following amounts of the specified materials as defined by the Authority's Operation and Maintenance Plan filed with the DEEP **per day** :

<u>Material</u>	<u>Tons/day</u>
Processible Municipal Solid Waste (MSW)	570
Non-processible MSW	10
Single Stream and Dual Stream Recyclables	<u>65</u>
Total	645

The Authority agrees that it will not receive or process in excess of the following amounts of the specified materials as defined by the Authority's Operation and Maintenance Plan filed with the DEEP **per calendar quarter** :

<u>Material</u>	<u>Tons/quarter</u>	<u>Equivalent Tons/Year</u>
Processible Municipal Solid Waste (MSW)	22,500	90,000
Non-processible MSW	included in Processible MSW	
Single Stream and Dual Stream Recyclables	<u>2,500</u>	<u>10,000</u>
Total	25,000	100,000

The Authority agrees to maintain the portion of Town Dump Road and the railroad crossing shown on the map referenced in Exhibit A hereto for the term of this Amended and Restated Lease and to install appropriate signal

devices that may be required during such term by an authorized governmental entity.

The Authority agrees to operate the Transfer Station in accordance with the Operation and Maintenance Plan approved by the DEEP, all of the terms and conditions of the pending DEEP Permit modification and any renewal thereof (including the Operations & Maintenance Plan associated with the pending DEEP solid waste permit), and the terms and conditions of the Special Exception approval of the Essex Zoning Commission.

7. Holding Over by Authority. In the event that Authority shall at any time hold over the Demised Premises beyond the expiration of the term of this Amended and Restated Lease, then the Authority shall hold the Demised Premises on the same terms and conditions as are herein contained except that (a) such hold over shall be deemed a month-to-month tenancy and no such holding over by the Authority shall operate to renew this Amended and Restated Lease, but all other terms of this Amended and Restated Lease shall remain in full force and effect, , and (b) rental payments shall be made monthly, and the rental for each monthly period shall be \$1,250 payable on the first day of each holdover month in advance, without proration for any portion of a holdover month.
8. Governmental Orders. During the term the Authority shall comply with all applicable requirements of municipal or other governmental authorities relating to the operation of the Transfer Station and the continued maintenance of the Demised Premises, including the obligations relating to

the Dump Road access under Paragraph 6 above, (with the right, however, to contest by appropriate legal proceedings at its sole cost, expense and risk any requirements which the Authority may regard as unlawful) and the Town agrees, but at the Authority's expense, to cooperate with the Authority, including, without limitation, the execution of proper documents in any applications to be made to appropriate governmental authorities.

9. Payment of Utilities. The Authority shall pay all costs of water, electricity and other utilities servicing the Demised Premises during the term hereof.
10. Real Estate Taxes. The Authority was created by the Act, which provides that the Authority shall not be required to pay any taxes or assessments on its property. Section 22a-270 of the Act provides that the Authority may enter into agreements to make payments in lieu of taxes with respect to property acquired by it. The Authority and the Town have agreed to enter into a Transfer Station Host Community Agreement, to be executed on even date herewith, pursuant to which the Authority will make such a payment.
11. Lease Payment; Termination of Existing Lease Rights and Obligations.
 - (a) Upon execution of this Amended and Restated Lease Agreement, the Authority will make a one-time payment to the Town of \$31,765.49. The Town agrees that such payment will constitute full and final payment in complete satisfaction of the Authority's obligations under Section 9 of the Existing Lease throughout the term thereof, and upon payment by the Authority in accordance with the terms hereof, neither party shall have any further rights or obligations thereunder.

(b) Upon execution of this Amended and Restated Lease Agreement, the Authority will make an annual lease payment to the Town for the fiscal year which began July 1, 2012, in the amount of \$15,000. Commencing upon July 1, 2013, and for each year during the term thereafter, the Authority shall make an annual lease payment of \$15,000, in advance, to the Town.

12. Condemnation. If the whole of the Demised Premises or such part thereof as is necessary for the efficient conduct of the Authority's business of operating the Transfer station shall be taken by eminent domain, then this Amended and Restated Lease shall terminate as of the date when the Town shall be divested of title thereto and all rents and other charges shall be adjusted to the date of termination. In any condemnation proceedings, it is agreed that Town's interest in any damages or award payable with respect to such condemnation shall extend only to the value of that portion of the Demised Premises so taken and Authority's interest in any damages or award payable with respect to such condemnation shall extend only to the value of the buildings and other improvements on the Demised Premises so taken. In the event that a part of the Demised Premises not necessary for the efficient conduct of the Authority's business on the Demised Premises is so taken, then this Lease shall continue in effect with respect to the remaining portion of the Demised Premises on the same terms and conditions as are herein contained.

13. Indemnification. To the extent permitted by law, the Authority will indemnify and hold harmless the Town from and against any liability by reason of

personal injury or death to any person or persons or for loss or damage to property arising out of the activities of the Authority on or about the Demised Premises.

14. Insurance.

(a) The Authority shall procure and maintain, at its own cost and expense, throughout the term of this Agreement, the following insurance, including any required endorsements thereto and amendments thereof:

1. Commercial General Liability as specified by the most recent version of ISO Form Number CG 001 (occurrence).

(b) Minimum Limits

The Authority shall maintain the following limits of liability for the insurance described above:

1. Commercial General Liability:
 - a. \$1,000,000 Each Occurrence for Bodily Injury & Property Damage
 - b. \$2,000,000 General Aggregate
 - c. \$2,000,000 Products & Completed Operations Aggregate
 - d. \$1,000,000 Personal & Advertising Injury

(c) The Authority shall submit an executed original certificate or certificates for above required insurance certifying that such insurance is in full force and effect and setting forth the requisite information referenced below. .

(d) All policies for insurance required above shall contain the following provisions:

1. Town of Essex, its subsidiaries, officials and employees are to be covered as additional insured on a primary and non-contributing basis on the following insurance policies purchased by the Authority:
 - a. Commercial General Liability
2. The Authority shall waive (and require their insurers to waive) subrogation rights against the Town of Essex for losses and damages incurred under the insurance policies required by this Agreement.
3. The Authority's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(e) Authority's insurance is to be placed with insurers with current A.M. Best ratings of not less than A- VIII, and be lawfully authorized to conduct business in the state(s) or jurisdiction(s) where the work is being performed.

15. Environmental. The Authority warrants and represents to the best of its knowledge and belief it has operated the Demised Premises in compliance in all material respects with the provisions of the Environmental Protection Act, the Clean Water Act and the Resource Conservation and Recovery Act ("RCRA") and all rules and regulations thereunder and all similar state and local laws, rules and regulations; and there are no outstanding citations, notices or orders of violation or non-compliance issued to the Authority as of the Effective Date hereof relating to its operation of the Demised Premises.
16. Assignment. Authority shall have the right to assign this Lease or any of its rights and obligations hereunder for the benefit of any holders of its Bonds,

and the Town specifically agrees to the assignment thereof to the trustee of any such Bonds. In the event the Connecticut Legislature shall enact a law which dissolves the Authority or creates a successor public or quasi-public entity which succeeds to the assets and responsibilities CRRA, the Town specifically agrees to the assignment of this Lease to such an entity. Except as specifically set forth herein, neither party may assign any interest herein to any person without the consent of the other party.

17. Notice. All notices required by either party to be given hereunder shall be in writing and shall be sent by certified or registered mail, or recognized overnight carrier, to the Municipality at: Essex Town Hall, 29 west Avenue, Essex CT 06426 (Attention: First Selectman and to the Authority at: 100 Constitution Plaza, Sixth Floor, Hartford, Connecticut 06103 (Attention: President).
18. Notice of Lease. The parties agree to execute a notice of lease in proper form for recordation within thirty (30) days of the Effective Date of this Amended and Restated Lease.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the day and year first above written.

Witnesses

Frances D. Nolin
Frances D. Nolin

Maria Lucarelli
Maria Lucarelli

(Seal)

Ch. Nolin

Thomas D. Kirk

(Seal)

STATE OF CONNECTICUT

COUNTY OF MIDDLESEX

: ss. 11/08 - 2012
: ~~Essex~~

Personally appeared Norman M. Needleman, Chief Executive Officer, signer and sealer of the foregoing instrument and acknowledged the same to be his free act and deed as such Chief Executive Officer, before me.

TOWN OF ESSEX
By Norman M. Needleman

Norman M. Needleman
Chief Executive Officer

Frances D. Nolin
Frances D. Nolin
Keeper of the Seal

Connecticut Resources Recovery Authority

By Thomas D. Kirk

Thomas D. Kirk
Its President

Frances D. Nolin
Frances D. Nolin
Notary Public

Commissioner of the Superior Court

MY COMMISSION EXPIRES
DECEMBER 31, 2013

STATE OF CONNECTICUT : ss.

2012

COUNTY OF MIDDLESEX :

Personally appeared Frances DiStoli, Keeper of the Seal, signer and sealer of the foregoing instrument and acknowledged the same to be (his / her) free act and deed as such Keeper of the Seal, before me.



Notary Public

Commissioner of the Superior Court

STATE OF CONNECTICUT : ss. Hartford

2012

COUNTY OF HARTFORD :

Personally appeared Thomas D. Kirk, President of the Connecticut Resources Recovery Authority, signer and sealer of the foregoing instrument and acknowledged the same to be his free act and deed as such President, before me.



ROBERT W. BENNEY
NOTARY PUBLIC
MY COMMISSION EXPIRES DEC. 31, 2012

Notary Public

Commissioner of the Superior Court

EXHIBIT A

Legal Description

A certain piece or parcel of land together with all appurtenances thereto situated in the Town of Essex, County of Middlesex and State of Connecticut and being shown and designated on a certain map or plan entitled "CONNECTICUT RESOURCES RECOVERY AUTHORITY ESSEX RECYCLING TRANSFER STATION ESSEX, CONN. Date 3-3-93 SITE LAYOUT PLAN SCALE 1" = 40'-0" Project NO. 93-0004-05 REV 1 DATE 3-18-93 Leach Field Removal Holding Tank Inclusion REV 2 DATE 4-1-93 Issued for Bid REV 3 10-15-93 Issued for Construct. (Wall Coordinate) REV 4 DATE 12-13-93 Property Line Meets & Bounds SHEET NO. C-1" (the "Map"), which Map will be recorded on the Land Records of the Town of Essex, Connecticut. Said piece or parcel of land is more particularly bounded and described as follows:

Commencing at a point in the northerly street line of Dump Road, as shown on the Map, which point marks the southern most point of the premises herein described; thence running N 23° 48' 33" E, a distance of 222.00 feet to a point; thence running N 11° 11' 27" W, a distance of 175.00 feet to a point; thence running N 48° 42' 41" W, a distance of 258.69 feet to a point; thence running N 73° 48' 37" W, a distance of 145.03 feet to a point, which point marks the northern most point of the premises herein described; thence running S 48° 45' 01" W, a distance of 56.95 feet to a point; thence running S 10° 41' 22" W, a distance of 135.62 feet to a point marked by an iron pin, as shown on the Map; thence running S 73° 48' 37" E, a distance of 92.23 feet to a point; thence running S 26° 11' 23" W, a distance of 245.00 feet to a point; thence running S 08° 48' 37" E, a distance of 35.00 feet to a point; thence running S 65° 18' 37" E, a distance of 235.55 feet to a point; thence running southeasterly along the arc of a curve to the left having a radius of 360.00 feet and a central angle of 15° 52' 50", a distance of 99.78 feet to a point in the northerly street line of Dump Road, as shown on the Map; thence running S 81° 11' 27" E along the northerly street line of Dump Road, as shown on the Map, a distance of 51.52 feet to the point and place of beginning.

TOGETHER WITH any and all rights of way and easements as of record appear, including a certain right of way being shown and designated as "Right-of-Way To Be Acquired From The Town Of Essex" on a certain map or plan entitled "LAND TO BE ACQUIRED BY Connecticut Resources Recovery Authority From The Town of Essex DATE 10-8-86 FLD. BK. 463 PROJECT 85-253A SCALE: HOR. 1 IN. = 40 FT. FUSS & O'NEILL inc. consulting engineers, MANCHESTER, CONNECTICUT SHEET NO. 1 OF 1", which map or plan is recorded on the Land Records of the Town of Essex, Connecticut.

RECEIVED FOR RECORD

4-22 1994 at 12:45 pm

Betty J. Gaudenzi

ESSEX CT. TOWN CLERK