

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made this 16th day of January 2024 by and between:

RESOURCE RECYCLING, LLC, a New Jersey limited liability company, having an address at 34 Randolph Road, Howell, New Jersey 07731 ("Resource"), and the owner of property identified on the Tax Maps of the Township of Howell as Block 5, Lot 4, and commonly known as 34 Randolph Road, Howell, New Jersey (the "Property"); and

THE TOWNSHIP OF HOWELL, a municipal corporation and corporate body politic with an address at 4579 US-9, Howell, New Jersey, (the "Township").

Collectively, Resource and the Township are referred to herein as the "Parties."

RECITALS

WHEREAS, Resource currently owns and operates what the New Jersey Department of Environmental Protection ("NJDEP") designates as a Class B Recycling Facility, on the Property that processes approximately 68,640 tons of brush, trees, tree parts, tree stumps and wood per year ("Class B Operations"), collects topsoil and fill dirt, and sells these products to local landscapers and contractors (the "Facility").

WHEREAS, on or about August 19, 2015, Resource submitted a Request for Inclusion ("RFI") into the Monmouth County Solid Waste Management Plan to the Monmouth County Solid Waste Advisory Council ("SWAC").

WHEREAS, through the RFI, Resource sought to modify the Facility by constructing a new solid waste transfer station ("Transfer Station"), to be designated as a Class C Recycling Facility by NJDEP, on the Property (the "Project").

WHEREAS, the Transfer Station would enable Resource to receive and process Type.13 waste (appliances, furniture, etc.) and Type 13C waste (construction debris), (as those terms are defined in *N.J.A.C. 7:26-2.13(g)*).

WHEREAS, the global market for recycled construction aggregates such as the Type 13C waste is predicted to grow substantially, and many of the ultimate end products in the resource recovery chain, including crushed stone, sand, gravel, cement concrete and others are utilized in a variety of projects such as commercial and residential construction and infrastructure improvement.

WHEREAS, once the Project is completed and the Transfer Station is operational, Class B Operations at the Property would be reduced by approximately 50%, and Resource would cease the collection and processing of topsoil and fill dirt.

WHEREAS, on or about May 18, 2017, SWAC unanimously approved the RFI.

WHEREAS, the Monmouth County Board of Commissioners (the "Board of Commissioners") scheduled the RFI for a hearing on July 27, 2017.

WHEREAS, on July 27, 2017, the Board of Commissioners tabled the RFI.

WHEREAS, on January 25, 2018, SWAC held a public hearing in the Township to create a record of Township residents' comments and concerns about the RFI.

WHEREAS, it has been six (6) years since the Board of Commissioners and SWAC have taken any official action on the RFI.

WHEREAS, on August 20, 2020, Resource instituted the action titled, *Resource Engineering, LLC v. Monmouth County Board of Freeholders, et al.*, Docket No. MON-L-002495-20, seeking, among other things, a writ of mandamus ordering the Board of Commissioners to place Resource's RFI application back onto the agenda for a vote (the "Mandamus Action").

WHEREAS, the Township is a defendant in the Mandamus Action and has objected to the Project as contemplated and designed.

WHEREAS, Resource has agreed to address and resolve the Township's objections to the Project.

WHEREAS, on January 16, 2024, Resource presented to the Township Council revised plans for the Project, the terms of which are set forth in this Agreement.

WHEREAS, on January 16, 2024, the Township Council voted to withdraw its objections to the Project and the RFI, and to settle the Mandamus Action on the terms set forth herein.

WHEREAS, in exchange for the Township's agreement to withdraw its objections to the Project and the RFI, Resource has agreed to dismiss the Mandamus Action with prejudice as to the Township.

WHEREAS, notwithstanding the zoning prohibition on transfer stations in the Township's ordinances, local regulations are superseded by state mandate in this instance.

WHEREAS, in recognition of the impact of Transfer Facilities on localities, state law, embodied in *N.J.S.A. 13:1E-28.1*, requires the owners or operators of transfer stations that are part of an adopted and approved district solid waste management plan to pay, on a quarterly basis, a host community benefit ("HCB") in an amount agreed upon by the community and the owner/operator, but not less than fifty cents (\$.50) per ton. The owner operator may also provide additional benefits in the form of a waiver of all or some the fees and charges for the acceptance of waste at its facility.

WHEREAS, the payment of the HCB is in addition to any real property taxes on the parcel.

NOW, THEREFORE, in consideration of the promises and mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties hereto, each binding itself, its successors and assigns, covenant and agree, each with the other, as follows:

1. **Incorporation of Recitals.** The Parties incorporate the foregoing recitals as if fully set forth at length herein and made a part hereof.

2. **Purpose of Agreement.** The purpose and intent of this Agreement is to memorialize: (i) the terms upon which the Township has agreed to withdraw its objections to the

Project and the RFI; and (ii) Resource's agreement to dismiss the Mandamus Action with prejudice as to the Township only.

3. **Revised Project Terms.** Resource agrees to the following terms with respect to the design and execution of the Project:

a) The Transfer Station building will be approximately 36,000 square feet and fully enclosed. Resource will also construct approximately 8,000 square feet of office space on the site. The office space will be used solely for Resource's operations, and will not be let, sublet, or otherwise be made available to any business other than Resource.

b) The Project is anticipated to generate an average of 80 truck trips per day, which is an increase of 30 from the current average of 50.

c) All trucks carrying Type 13 and Type 13C solid waste will load and unload inside the building.

d) There will be no outside loading or unloading of trucks, except for the wood recycling portion of the Facility.

e) The wood recycling portion of the Facility will only handle the following Type 23 materials (as that term is defined in *N.J.A.C. 7:26-2.13(g)*): stumps, branches and brush.

f) Resource will reduce the processing of stumps, branches and brush to 50% of its current level; yardages will be reported annually by Resource to the Township.

g) The Project will only handle Type 13 and 13C waste as those terms are defined in *N.J.A.C. 7:26-2.13(g)* and shall include concrete, building products, and wood.

h) The Project shall not process any other type of solid waste, including food stuffs, normal household trash, any putrescible material, asbestos, and the like.

i) The Project will be open Monday through Friday, from 7:00 a.m. to 3 p.m., and for a half-day on Saturday.

j) Resource shall install an appropriate underground filtration system to handle stormwater and other liquid generated by the Project.

k) As Resource's RFI proceeds through the approvals process before SWAC, the Board of Commissioners and NJDEP, Resource agrees to consider the Township's requests for modifications to Project landscaping and buffering, but only if such requests are reasonable and economically feasible. Resource's stormwater management must comply with applicable law.

l) Resource acknowledges that the Facility is a pre-existing nonconforming use of the Property and, therefore, will make good faith efforts to minimize the Project's impacts on neighboring properties.

m) Resource will construct a new traffic signal at the corner of Squankum Road and Randolph Road, at its sole expense, and subject to a Developer's Agreement between Resource and Monmouth County. The traffic signal will be completed prior to the Project accepting any Class C Recyclables.

n) Resource shall pay the Township an HCB fee of \$5.00 per ton of material processed at the Project. The \$5.00 HCB fee shall increase 2% per year (adjusted on January 1) for as long as the Project is in operation. The HCB shall be paid quarterly. Resource shall submit tonnage reports to the Township with each quarterly payment and shall also send to the Township all materials required by DEP as part of its reporting requirements. The Township shall have the right to conduct an audit of Resource's tonnage reports upon 10 day's written notice to Resource. Resource anticipates an average of 680 tons per day, which equates to an anticipated tonnage of approximately 196,000 tons per year.

o) From the date that Resource commences construction of the Project until the Township issues a certificate of occupancy for the Project, Resource shall accept brush waste from the Township at a 50% discount off of Resource's current, published rates as a benefit to the host community under *N.J.S.A. 13:1E-28.1(2)(a)(2)*. This shall be in addition to the \$5.00 HCB Fee.

p) After the Township issues a Certificate of Occupancy for the Project, Resource will accept 1,000 tons of Type 13 and 13C waste, and 5,000 tons of brush, each year (as those terms are defined in *N.J.A.C. 7:26-2.13(g)*) from the Township, free of charge, as a benefit to the host community under *N.J.S.A. 13:1E-28.1(2)(a)(2)*. This shall be in addition to the \$5.00 HCB Fee. Resource shall not be required to pay an HCB fee to the Township for the 1,000 tons of Type 13 and 13C and 5,000 tons of Type 23 waste received from the Township pursuant to this subparagraph.

q) Resource will be bound by the terms of the October 26, 2002, letter from Ocean County Counsel John C. Sahradiuk to Michelle M. Smith, Clerk of the Superior Court, Monmouth County, relating to Ocean County solid waste. Copies of those documents are attached to this Agreement as Exhibit A.

r) Resource will contribute \$50,000.00 to the Township's Open Space Fund, which the Township may use in a manner consistent with the fund's purpose. The \$50,000.00 shall be paid in five payments over a five-month period (equally) after the Certificate of Occupancy for the transfer station is issued.

s) Resource agrees to discuss with the Township the status of the vacant lot identified as Block 5, Lot 5 on the Township's tax map.

t) Resource shall provide the Township with the following information regarding the Project, within ninety (90) business days of the date this Agreement is executed:

- i) A list of recyclable materials: (1) to be separated from waste streams, by type and amount; (2) designated as mandatory recyclable materials by Monmouth County, along with a verification that each generator of said recyclable materials has a waiver from the municipality not to source separate.
- ii) For each material identified in (i), identify markets by listing material buyers (to be approved by the Township's Office of Recycling) and provide contracts or letters of intent.

- iii) For each material identified in (i), provide a detailed description of storage activities:
 - (a) Identify storage space on drawings;
 - (b) Describe type of storage unit (e.g., pile, bin, roll-off);
 - (c) Identify storage capacity in volume and weight (expressed in tons);
 - (d) Identify rate of storage (e.g., tons per day) and capacity expressed as "normal days";
 - (e) Identify planned storage time; and
 - (f) Describe special storage requirements (fire monitoring/suppression, etc.).

u) Resource acknowledges that, according to New Jersey statute, NJDEP is the ultimate approving authority for the RFI.

v) Subject to NJDEP rules and regulations, Resource acknowledges that the Township intends to be present at proceedings relating to the Project convened by SWAC, the Board of Commissioners and/or the NJDEP. The Township agrees that it will not take any public position during those proceedings, in favor or against the Project, provided that the presentation of the Project to SWAC and NJDEP is in conformity with the terms of this Agreement. The Project, as envisioned in this Agreement, is acceptable to the Township because it greatly enhances the financial benefits to the community, signalizes a busy intersection, minimizes negative impact by processing only non-putrescible waste, does not substantially add to vehicle transits, assists in recycling Type 13 and 13C waste, is sited in a non-residential area, and represents an overall more beneficial endeavor to the Township than the prior project.

w) Resource agrees that access to and from the Project will be achieved primarily through the Use of State Route 9, County Road 547 and Interstate 195. Resource further agrees that truck traffic will be required to exit left out of the Project so that trucks reach County Road 547 quickly, and can then proceed out of Howell expeditiously and with as little burden to local roads as possible.

4. Dismissal of the Mandamus Action. In exchange for the promises and representations made by the Township in this Agreement, including withdrawing its opposition to the Project, Resource agrees to dismiss the Mandamus Action with prejudice by filing the Stipulation of Dismissal with Prejudice attached as Exhibit B hereto within five (5) business days after the Effective Date (defined below) of this Agreement.

5. Notices. Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the Parties relating to this Agreement (herein "Notice[s]") shall be written and shall be served upon the respective Parties and their counsel by email and by certified mail, return receipt requested, or recognized overnight or personal carrier such as, for example, Federal Express, with certified proof of receipt. All Notices shall be deemed received upon the date of delivery set forth in such certified proof, and all times for performance

based upon notice shall be from the date set forth therein. Delivery shall be effectuated as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days' notice as provided herein:

TO THE TOWNSHIP OF HOWELL:

HOWELL TOWNSHIP
c/o Township Manager
4567 Rt 9 North
Howell, NJ 07731-3382
(732) 938-4500; Ext. 2102
iclark@twp.howell.nj.us

WITH COPIES TO:

Jerry J. Dasti, Esq.
620 West Lacey Road, Suite 1
Toms River, NJ 08731
(609) 971-1010
Jdasti@dmmlawfirm.com

TO RESOURCE ENGINEERING

Bernie Gutherz
Resource Recycling
34 Randolph Road
Howell, NJ 07731
(732) 740-9241
bgutherz@resourcerecyclingnj.com

WITH COPIES TO:

Frank J. Vitolo, Esq.
c/o Sills, Cummis & Gross, P.C.
One Riverfront Plaza,
1037 Raymond Blvd., 11th Floor
Newark, NJ 07102
(973) 643-5081
fvitolo@sillscummis.com

6. **Howell Township Release.** In consideration of the mutual promises contained herein, and upon execution of this Agreement, the Township, and all of its past, present and future elected officials, directors, officers (whether acting in such capacity or individually), shareholders, owners, servants, partners, joint venturers, principals, trustees, creditors, attorneys, insurers, representatives, employees, managers, parents, subsidiarics, divisions, subdivisions, departments, affiliates, predecessors, successors, assigns and assignees, transferors, transferees, investors, nominees and any agent acting or purporting to act for them or on their behalf (collectively, the "Howell Releasing Parties"), do hereby release, waive, remit, acquit, satisfy and forever discharge Resource Recycling, and all of its past, present and future directors, officers (whether acting in such capacity or individually), shareholders, owners, servants, partners, joint venturers, principals, trustees, creditors, attorneys, insurers, representatives, employees, managers, parents,

subsidiaries, divisions, subdivisions, departments, affiliates, predecessors, successors, assigns and assignees, transferors, transferees, investors, nominees and any agent acting or purporting to act for them or on their behalf (collectively, the "Resource Recycling Released Parties"), from any and all claims, demands, damages, debts, liabilities, obligations, contracts, agreements, causes of action, suits and costs, of whatever nature, character or description, whether known or unknown, suspected or unsuspected, anticipated or unanticipated, which the Township has, may have or may hereafter have or claim to have against Resource, arising out of or relating to the subject matter of this Agreement.

7. **Resource Recycling Release.** In consideration of the mutual promises contained herein, and upon execution of this Agreement, Resource, and all of its past, present and future directors, officers (whether acting in such capacity or individually), shareholders, owners, servants, partners, joint venturers, principals, trustees, creditors, attorneys, insurers, representatives, employees, managers, parents, subsidiaries, divisions, subdivisions, departments, affiliates, predecessors, successors, assigns and assignees, transferors, transferees, investors, nominees and any agent acting or purporting to act for them or on their behalf (collectively, the "Resource Recycling Releasing Parties"), do hereby release, waive, remit, acquit, satisfy and forever discharge the Township, and all of its past, present and future elected officials, directors, officers (whether acting in such capacity or individually), shareholders, owners, servants, partners, joint venturers, principals, trustees, creditors, attorneys, insurers, representatives, employees, managers, parents, subsidiaries, divisions, subdivisions, departments, affiliates, predecessors, successors, assigns and assignees, transferors, transferees, investors, nominees and any agent acting or purporting to act for them or on their behalf (collectively, the "Howell Township Released Parties"), from any and all claims, demands, damages, debts, liabilities, obligations, contracts, agreements, causes of action, suits and costs, of whatever nature, character or description, whether known or unknown, suspected or unsuspected, anticipated or unanticipated, which Resource has, may have or may hereafter have or claim to have against the Howell Township Released Parties, arising out of or relating to the subject matter of this Agreement.

8. **Default.** In the event that any of the Parties shall fail to perform any material obligation on its part to be performed pursuant to the terms and conditions of this Agreement, unless such obligation is waived by all of the other Parties for whose benefit such obligation is intended, such failure to perform shall constitute a default under this Agreement. Upon the occurrence of any default, the non-defaulting Party shall provide notice of the default and the defaulting Party shall have a reasonable opportunity to cure the default within seven (7) days. In the event the defaulting Party fails to cure within seven (7) days or such reasonable period of time as may be appropriate, the Party(ies) for whose benefit such obligation is intended shall be entitled to exercise any and all rights and remedies that may be available in equity or under the laws of the State of New Jersey.

9. **Binding on Successors.** This Agreement and the covenants and conditions contained herein shall apply to, and be binding upon or inure to the administrators, executors, legal representatives, heirs, assignees, successors, agents and assigns of the Parties hereto.

10. **Severability.** Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provisions of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions

hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

11. **Governing Law Jurisdiction and Venue.** This Agreement has been entered into and shall be construed, governed and enforced in accordance with the laws of the State of New Jersey without giving effect to provisions relating to the conflicts of law. Jurisdiction of any litigation ensuing with regard to this Agreement exclusively shall be in the Superior Court of New Jersey, with venue in Monmouth County.

12. **No Modification.** This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.

13. **Counterparts.** This Agreement may be executed simultaneously in one (1) or more facsimile or e-mail counterparts, each of which shall be deemed an original. Any facsimile or e-mail counterpart forthwith shall be supplemented by the delivery of an original counterpart pursuant to the terms for notice set forth herein.

14. **Voluntary Agreement.** The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each Party is the proper person and possesses the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

15. **Preparation of Agreement.** Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties, and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (a) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (b) it has conferred due authority for execution of this Agreement upon the person(s) executing it.

16. **Legal Advice.** Each Party represents that prior to executing this Agreement, it has made such investigation as it deems necessary or desirable of all matters contained in or relating to this Agreement, and that it has obtained or had the opportunity to obtain the advice of legal counsel of its choice, that the Parties have read and fully understand and accept the terms of this Agreement, and that they have signed this Agreement knowingly and voluntarily after receiving such legal advice, and without duress, coercion, or undue influence.

17. **Entire Agreement.** This Agreement constitutes the entire Agreement between the Parties and supersedes all prior oral and written agreements between the parties with respect to the subject matter hereof except as otherwise provided herein.

18. **Captions and Titles.** The captions and titles to this Agreement and the several sections and subsections are inserted for purposes of convenience of reference only and are in no way to be construed as limiting or modifying the scope and intent of the various provisions of this Agreement;

19. **Exhibits and Schedules.** Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of all Parties.

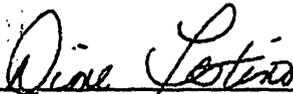
20. **Notice of Actions.** The Parties and their respective counsel agree immediately to provide each other with notice of any lawsuits, actions or governmental declarations threatened or pending by third parties of which they are actually aware which may affect the provisions of this Agreement.

21. **Effective Date.** This Agreement shall be effective upon the execution of this Agreement by the last Party to sign the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

ATTEST:

TOWNSHIP OF HOWELL



Diane Festino, Clerk

By: 

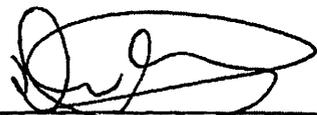
Theresa Berger, Mayor

Dated: January 16, 2024

ATTEST:

RESOURCE RECYCLING, LLC



By: 

David Gellwachs, Authorized Signatory

Dated: January 17, 2024