

HOST MUNICIPALITY AGREEMENT

THIS HOST MUNICIPALITY AGREEMENT (the "Agreement") is made this 10th day of March, 2004 by and between THE TOWN OF SARDINIA, a municipal corporation, with offices at 12320 Savage Road, Sardinia, New York 14134-0219 (the "Town") and WASTE MANAGEMENT OF NEW YORK, LLC, a limited liability company, with offices at 10860 Olean Road, Chaffee, New York 14030 ("Waste Management").

RECITALS

WHEREAS, Waste Management owns and operates a properly permitted Landfill located within the Town's limits (the "Landfill"); and

WHEREAS, the parties entered into an Agreement dated November 15, 2002 (the "Interim Agreement"); and

WHEREAS, the parties acknowledge that this is an agreement exclusively between the Town of Sardinia and Waste Management and no other municipal or other entity shall lay claim or bear entitlement to any of the terms and conditions of this Agreement: and

WHEREAS, the parties now wish to replace in its entirety the Interim Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties, intending to be legally bound hereto, agree as follows:

DEFINITIONS

"Alternative Daily Cover" shall mean waste material that may be utilized instead of, or in addition to, daily cover materials (typically clean soils or man made materials) which are utilized at the end of each working day to cover the remaining other waste materials received throughout the working day.

"Cogeneration" shall mean the simultaneous production of heat (usually in the form of hot water and/or steam) and electrical power, utilizing one primary fuel such as coal, natural gas, wood, landfill gas, etc. These "primary" fuels are used to make electricity, a "secondary" fuel.

"DEC" shall mean the Department of Environmental Conservation of the State of New York.

"Host Municipality Agreement" shall mean this Agreement.

"Household Hazard Waste" shall mean household waste which but for its point of generation, would be hazardous waste, including pesticides, as defined by New York State regulations.

"Landfill" shall mean a land or disposal facility or part of one where municipal solid waste or its residue after treatment is intentionally placed and which is not a land application facility, surface

impoundment, injection well or waste pile being operated by Waste Management in the Town of Sardinia (Hamlet of Chaffee), New York.

“Municipal Solid Waste” shall mean combined household, commercial and institutional waste materials generated in a given area.

“NYSDEC Part 360 Permit” shall mean the permit reflecting the official statements of policy that implement or apply the New York State Environmental Conservation Law (ECL). The purpose of this part is to regulate solid waste management facilities other than hazardous waste management facilities.

“Property Protection Plan for the Neighborhood of the Chaffee Landfill” shall mean the document contained at Exhibit “A” attached to the Agreement.

“Transfer Station” shall mean a solid waste management facility other than recyclables handling and recovery facility, used oil facility, or a construction and demolition debris processing facility, where solid waste is received for the purpose of subsequent transfer to another solid waste management facility for further processing, treating, transfer or disposal.

1. INCORPORATION

This Agreement supercedes and replaces the Interim Agreement dated November 15, 2002.

2. TERM

The Term of this Agreement shall commence upon the signing of this Agreement and continue until the date on which solid waste is no longer accepted at the Landfill. In the event there is a suspension in the acceptance of Municipal Solid Waste for longer than a sixty (60) day period due to reasons beyond Waste Management’s control, the terms of this Agreement will also be suspended until such time as the landfill resumes accepting solid waste.

3. ACCEPTANCE OF WASTE

The Town acknowledges and specifically recognizes Waste Management’s ability to accept Acceptable Waste for disposal at the Landfill. For purposes of this Agreement, Acceptable Waste shall be that waste for which the Landfill is permitted to accept for disposal that has been properly inspected at a Transfer Station or waste site under the NYSDEC part 360 regulations before disposal at the Landfill.

4. RESERVE CAPACITY

Waste Management, or its successors, shall reserve capacity at the Landfill to meet the disposal needs of the Town’s residents.

5. FEES

Waste Management shall pay to the Town the following fees:

a. An initial one-time payment in the amount of \$500,000.00 no later than July 31, 2004.

b. For all waste accepted at the Landfill for disposal, regardless of point of origin, Waste Management shall pay to the Town on a monthly basis, a fee of two dollars (\$2.00) per ton (the "Tonnage Fee"). The Tonnage Fee shall not apply to waste materials accepted and approved by the DEC used as Alternate Daily Cover (ADC). For ADC, Waste Management shall pay to the Town on a monthly basis a fee of fifty cents (\$.50) per ton (the "ADC Tonnage Fee"). For waste delivered and accepted at the Landfill that is generated from the geographic area within New York State and located east of the Hudson River and south of the Tapenzee Bridge in excess of four hundred (400) tons (the "Allowed Tonnage") per day, Waste Management shall pay to the Town, calculated on a monthly basis, an additional fee of Two Dollars (\$2.00) per ton for each ton in excess of the Allowed Tonnage.

c. Beginning on the first day of January, 2005 and every year thereafter, so long as the Landfill is being operated by Waste Management for disposal purposes, Waste Management shall make a payment to the Town calculated by multiplying the amount per Schedule "B" times the number of permitted remaining cubic disposal yards available at the Landfill as measured annually by a certified/licensed engineer. Such measurement, taken within the last quarter of the preceding year, shall be adjusted as of the first day of January, 2005 and every year thereafter with payment to the Town no later than thirty (30) days thereafter.

d. The Tonnage Fee and the ADC Tonnage Fee identified in subsection b above shall be adjusted every three years, if applicable, based on the composite percentage change paid by the representative Western New York communities identified in Schedule "C". This information is in the public domain and readily available. However, the Tonnage Fee will not be reduced below the amounts stipulated in subsection b above without the mutual consent of the Town and Waste Management.

6. ADDITIONAL SERVICES

So long as Waste Management is operating the Landfill for disposal purposes, Waste Management shall provide during the term of this Agreement the following services:

a. Curbside collection including optional residential garbage containers and direct Landfill disposal, at no cost to all residents of the Town including one Saturday drop off per month at the Landfill. Containers will be replaced as needed due to normal wear and tear. One time per year, spring clean-up collection service in conjunction with Town Highway personnel shall be provided by Waste Management without cost, on a date(s) mutually agreed upon by the Town and Waste Management.

b. A fifty percent (50%) reduction from Waste Management's standard collection rates to business customers of Waste Management at the commencement of this Agreement. The rates will be determined from time to time utilizing market data drawn from similar communities in Southern Erie County for either curbside collection or container rental and disposal service.

c. Container rental and disposal service at no cost for all Town owned and operated facilities, volunteer fire halls and facilities and all not-for-profit organizations within the Town.

d. Payment for heating costs directly associated with the Town's community pool and lavatory facilities located on Genesee Rd, Sardinia, New York.

e. Development and implementation of a Property Protection Plan pursuant to the terms and conditions of Exhibit "A", attached hereto and made a part hereof.

f. Development and implementation of educational programs for the purpose of sponsoring hazard waste collection days and recycling education to optimize waste reduction.

g. The planting and placement of trees and foliage around the perimeter of the Landfill to optimize visual screening efforts which meet or exceed requirements contained in the NYSDEC Part 360 Construction and Operating Permit for the Landfill. The Town will be notified of any changes in either the regulations and/or technology that could be potentially implemented to improve the visual character of the Landfill site.

i. Sponsorship of a Household Hazardous Waste drop-off day provided at the Waste Management Olean Rd site twice per year for Town residents. In conjunction with the development and implementation of educational programs, it is the goal of both Waste Management and the Town to place Sardinia residents at the forefront of minimizing the discarding of Household Hazardous Waste with normal garbage collection by providing a simple and expeditious alternative.

All Household Hazardous Wastes shall be properly collected and transported by Chemical Waste Management (CWM), and disposed of at CWM's Model City Hazardous Waste Landfill site in compliance with all applicable DEC regulations. Household Hazardous Wastes are materials found in residential wastes that would be regulated as hazardous wastes if they were generated by industry. Their handling requirements are described in 6 NYSDEC Subpart 373-4 --"Facility Standards for the Collection of Household Hazardous Waste and Hazardous Waste from Conditionally Exempt Small Quantity Generators".

j. Potential development of a Cogeneration plant pursuant to applicable Town laws on or near the Landfill site. In the event a cogeneration plant does commence operations, Waste Management will pay to the Town, a fee of five cents (\$.05) per ton paid on a monthly basis for all accepted Acceptable Waste as identified in Section 3 beginning with the date of commencement.

k. Meeting or exceeding all DEC permit requirements for post closure of the Landfill.

7. CONDITION OF OPERATION

During the Term of this Agreement, Waste Management shall:

- a. Operate the Landfill in all respects in compliance with all applicable local, state and federal laws and regulations in effect at the date of this Agreement and all future local, state and federal laws and regulations that pertain to the operation of the Landfill, including without limitation, all conditions and terms of any and all permits issued by the Department of Environmental Conservation of the State of New York.
- b. Agree not to construct any railroad track connection from any existing or future railroad within or into the Town.
- c. Not allow any disposal trucks to queue on state highway known as Route 16 while awaiting entry into the Landfill.
- d. Agree to endeavor to maintain landfill and collection operations at the 10860 Olean Rd location at employment levels that approximate those existing at the commencement of this agreement (+/-80 employees). Fluctuations in employment levels for both landfill and collection operations may be anticipated by both parties given the highly competitive nature of the industry and the municipal and industrial bidding process. Additionally, from time to time, administrative functions may be centralized or otherwise altered at a national or regional level resulting in impacts on employment levels and/or job duties in Chaffee as well as across the organization. Recognizing these uncertainties, Waste Management will notify the Town Clerk, in writing, of any material workforce reductions (greater than 20% at the time of the occurrence) that impact the Chaffee location, identifying both the anticipated timing and the cause of the reduction. Conversely, the Town shall not limit without cause, the number of employees and vehicles based in Chaffee in the event Waste Management is successful in the bidding process or acquisition of additional contracts for disposal service that may trigger increases in headcount in the Landfill. The intent of this section is to maximize employment at the Chaffee location prospectively, while insuring that Waste Management has the flexibility to remain competitive in the Western New York marketplace.
- e. Waste Management shall provide to all Town Board Members at all times, the names of at least two management individuals with responsibilities for landfill matters who may be contacted by phone or other means to respond to any concern that may arise regarding landfill operations. Additionally, notwithstanding the requirement to follow all site health and safety rules and regulations, Town Board members shall be given reasonable access to the site at all times in the presence of a Waste Management employee or his or her designee.
- f. The Town of Sardinia from time to time, may engage a licensed certified public accountant to verify the values utilized by Waste Management in the calculation of payments to the Town of Sardinia as outlined in subsections 5(b) 5(c) and 5(d).

8. INDEMNIFICATION

Waste Management agrees to indemnify, defend, and hold the Town harmless from and against any and all claims and actions, including reasonable attorneys' fees and costs of defense, based upon or arising out of damage or injury to person (including, but not limited to Waste Management's employees, agents, or subcontractors) or property, arising out of the operation of the Landfill by Waste Management, its agents, employees, contractors and subcontractors, except for any and all losses or damages arising out of the negligence or willful acts of the Town, its agents, employees, contractors or subcontractors. Notwithstanding any other provision to the contrary, the indemnification provisions of this paragraph shall survive the termination of this Agreement.

9. MISCELLANEOUS PROVISIONS

- a. This Agreement shall be binding upon the parties' successors and assigns.
- b. This Agreement cannot be modified or amended unless in a written document executed by all the parties.
- c. This Agreement shall be interpreted and subject to the laws of the State of New York.

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IN WITNESS WHEREOF, the parties hereto have signed this Agreement the day and year first written above.

WASTE MANAGEMENT OF NEW YORK,
INC.

ATTEST:

By: Betsy A. Marsh

BETSY A. MARSH
Notary Public, State of New York
No. 01MA5012402
Commission Expires June 15, 2007

By: J.L.C.

Title: District Manager

ATTEST:

By: Betsy A. Marsh

BETSY A. MARSH
Notary Public, State of New York
No. 01MA5012402
Commission Expires June 15, 2007

TOWN OF SARDINIA

By: William F. Akers

Title: Supervisor