

**SETTLEMENT AGREEMENT AND
MUTUAL RELEASE OF ALL CLAIMS**

This Settlement Agreement and Mutual Release of All Claims ("Agreement"), dated as of November 9th, 2018, is made between the Town of Bethlehem, by and through its duly elected Board of Selectmen (the "Town"), and North Country Environmental Services, Inc. ("NCES") (together with the Town, the "Parties").

Recitals

- A. NCES owns and operates a municipal solid waste landfill on Trudeau Road within the Town's boundaries (the "Landfill").
- B. NCES filed an application for the abatement of its property taxes with the Town on February 27, 2018 (the "Abatement Application").
- C. The Town denied the Abatement Application on June 25, 2018.
- D. On June 26, 2018, the Town initiated a lawsuit (the "2018 Action") seeking declaratory relief with respect to some of the terms of the Parties' November 22, 2011, settlement agreement (the "2011 Settlement Agreement"). By the Parties' agreement, the Town filed a motion for voluntary nonsuit of the 2018 Action, which the court granted on July 27, 2018.
- E. NCES then filed an appeal of the Town's denial of the Abatement Application with the New Hampshire Board of Tax and Land Appeals ("BTLA") on August 31, 2018 (Docket No. 29055-17PT), (the "BTLA Appeal").
- F. The Parties have negotiated the proposed terms of a settlement of the BTLA Appeal, the issues raised in the 2018 Action, and other disputes between the Parties.
- G. This Agreement contains the terms negotiated by the Parties.

Terms and Conditions

NOW, THEREFORE, in consideration of the mutual covenants set forth below and of other consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1. **NCES Abatement Application.** The Town shall immediately grant the abatement sought by the Abatement Application. NCES waives its right to collect any interest that would have otherwise been due to it under RSA 76:17-a.

2. **Landfill Expansion Within District V.**

- 2.1 The Town shall state publicly and in writing that it does not oppose the expansion of the Landfill in District V (as defined by the Town's 2018 zoning ordinance) known as "Stage VI," which is reflected on the plan attached to this Agreement as Attachment B. The limit of waste of Stage VI shall be confined within the boundary of District V as depicted in Attachment B, just as the limit of waste in Stage V is presently confined within the northern boundary of District V. The Town acknowledges and agrees that the placement of waste up to the boundary of District V as depicted in Attachment B will necessitate the alteration of the terrain immediately outside the District V boundary to provide physical and utility access and adequate support and stability to the perimeter of Stage VI. NCES's alteration of this terrain shall be in accordance with permits granted by the New Hampshire Department of Environmental Services ("NHDES").
- 2.2 NCES acknowledges and affirms (a) the restrictions on development set forth in Paragraph 5 of the 2011 Settlement Agreement and (2) that any expansion of the Landfill beyond Stage VI, as described in this Section 2, would require an amendment to the 2011 Settlement Agreement and to the Town zoning ordinance, both of which would require Town Meeting approval.

3. **Future Property Tax Determination.** In accordance with paragraph 8 of the 2011 Settlement Agreement, the Parties shall continue to employ the methodology (the "BTLA Formula") prescribed by the New Hampshire Board of Tax and Land Appeals in Docket Nos. 19709-02PT / 20384-03PT / 21064-04PT (the "BTLA Order") to determine the value of the parcels of real property owned by NCES and on which the Landfill and any Landfill infrastructure are sited (collectively, the "Property") for purposes of assessing ad valorem real property taxes. The Parties agree to the following terms for the application of the BTLA methodology for each tax year after the 2017 tax year (each of which, a "Tax Year").

3.1 Average Tipping Fees. The Town shall use as the "Tip Fee" in the BTLA Formula (as illustrated in the calculations on pages 13, 14, 19, and 20 of the BTLA Order) for each Tax Year the average tipping fee NCES received for each ton of waste deposited in the Landfill over the preceding calendar year (the "Tax Year Average Tip Fee").

3.1.1 In calculating the Tax Year Average Tip Fee, all tipping fees and tonnages of waste received from Casella Waste Systems, Inc. ("Casella") or any entity having Casella as its ultimate parent company or with the same ownership or management as Casella (each of which, an "Affiliate") shall be excluded.

3.1.2 For the period commencing on the date this Agreement is executed by NCES and all of the Town's selectmen and continuing until December 31, 2018 (the "2018 Floor Period"), NCES shall calculate the average tipping fee it receives for each ton of waste deposited in the Landfill, excluding tipping fees

and tonnages of waste received from any Affiliate. If the calculated average tipping fee for the 2018 Floor Period is less than \$67 per ton, then in the calculation of the 2019 Tax Year Average Tip Fee the tonnage NCES received during the 2018 Floor Period will be deemed to have yielded an average tipping fee of \$67 per ton (the "\$67 Floor").

3.1.3 Except as provided in Section 3.1.5, in any Tax Year after 2019, the Tax Year Average Tip Fee shall not be less than the \$67 Floor.

3.1.4 Subject to Sections 3.1.4.1 and 3.1.4.2, if at any time NCES receives a final standard permit or a permit modification from NHDES approving the design and construction of Stage VI and any and all appeal periods have expired without an appeal of such approvals (a "Stage VI Approval"), the Tax Year Average Tip Fee for the Tax Year in which such appeal periods expire, and for each Tax Year thereafter, shall not be less than \$85 per ton (the "\$85 Floor").

3.1.4.1 If NCES, in its sole, unreviewable discretion, determines that conditions or restrictions set forth in a Stage VI Approval make development of Stage VI infeasible or uneconomic, then it may elect not to proceed with the development of Stage VI and the \$67 Floor shall remain in effect.

3.1.4.2 In the alternative, NCES, in its sole, unreviewable discretion, may elect to pursue modification of such conditions or restrictions through NHDES or through an appeal or other legal challenge, and if NCES receives an order or approval granting modifications that, in its sole, unreviewable discretion, make development of Stage VI feasible and economic, and all appeal periods have expired without an appeal of such order or approval, then the Tax Year Average Tip Fee for the Tax Year in which such appeal periods expire, and for each Tax Year thereafter, shall not be less than the \$85 Floor.

3.1.5 If NHDES denies NCES's application for a Stage VI Approval or there is a successful appeal or other legal challenge to a Stage VI Approval, the \$67 Floor shall not be applied in the calculation of the Tax Year Average Tip Fee from the time of such denial or of the order in such appeal or legal challenge.

3.2 Affiliate Tonnage Depletion Rate. The tonnage of solid waste received by NCES from any Affiliate shall be included in the "Depletion Rate (Tons)" as that term is used in the BTLA Formula.

3.3 3.5% Escalator. The Town shall apply the assumed 3.5% increase in tipping fees adopted on page 10 of the BTLA Order to the Tax Year Average Tip Fee for each Tax Year to determine the present value of the Property (as illustrated in the calculations on pages 13, 14, 19, and 20 of the BTLA Order) for that Tax Year.

4. **Host Community Payment.** The Parties acknowledge and affirm that the host community payment paid by NCES to the Town is \$.75 (seventy-five cents) per ton, as described in Paragraph 3 of the 2011 Settlement Agreement.
5. **Dismissal.** Within seven days after the Parties sign this Agreement, counsel for the Town and for NCES shall execute and file with the BTLA such documents as are necessary to dismiss the BTLA Appeal with prejudice.
6. **Mutual Releases.** Each of the Parties (on behalf of themselves and their respective agents, representatives, parents, affiliates, subsidiaries, shareholders, directors, officers, employees, agents, representatives, successors, and assigns, as the case may be) (each, a "Releasing Party") releases and forever discharges the other Party (and their respective agents, representatives, parents, affiliates, subsidiaries, shareholders, directors, officers, employees, agents, representatives, successors, and assigns, as the case may be) (each, a "Released Party") of all claims that the Releasing Party made or could have made in the BTLA Appeal or the 2018 Action, including, without limitation, all manner of action or actions, cause or causes of action, suits, debts, damages, claims, demands, judgments, or executions whatsoever, whether known or unknown, whether under statute or in contract, tort, or otherwise, and whether in law or in equity, that the Releasing Party ever had or has now against any Released Party arising from the subject matter of the BTLA Appeal or the 2018 Action.
7. **Miscellaneous.**
 - 7.1 **No Admission.** This Agreement is not to be construed as an admission of liability on the part of any Party, and each Party expressly denies such liability.
 - 7.2 **Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect unless such invalidity or unenforceability frustrates the purpose of the Agreement. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and full effect to the extent not held invalid or unenforceable, unless such invalidity or unenforceability frustrates the purpose of the Agreement.

- 7.3 **Multiple Counterparts.** This Agreement may be executed in identical counterparts, which shall constitute one agreement when signed by all of the Parties' representatives.
- 7.4 **Additional Documents and Acts.** Each Party agrees to execute and deliver, from time to time, such additional documents and instruments and to perform such additional acts as may be reasonably necessary or appropriate to effectuate, carry out, and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby.
- 7.5 **Governing Law.** This Agreement shall be governed, construed, and interpreted by, and in accordance with, New Hampshire law without regard to its conflicts of law rules or rulings.
- 7.6 **Representations.** Each Party to this Agreement represents that the Party is duly authorized to execute this Agreement and to enter into the settlement described herein. The Parties agree that one of the purposes of this Agreement is to "buy peace" and that this paragraph 7.6 is a substantial inducement for each of the Parties' entering into this Agreement.
- 7.7 **Fully Integrated Agreement.** The Parties agree that this Agreement sets forth their entire agreement, superseding all prior negotiations and agreements regarding the subject matter of this Agreement, whether written or oral with the exception of the 2011 Settlement Agreement. There are no collateral or outside agreements of any kind between the Parties other than those expressly reflected herein.
8. **Understanding of Agreement.** THE PARTIES WARRANT THAT THEY HAVE READ THIS SETTLEMENT AGREEMENT WITH MUTUAL RELEASES, HAVE DISCUSSED IT WITH THEIR RESPECTIVE COUNSEL, UNDERSTAND ITS TERMS, AND ARE EXECUTING IT VOLUNTARILY AND OF THEIR OWN FREE WILL.

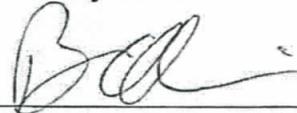
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above.

North Country Environmental Services, Inc.,

Date:

11/7/18

By:



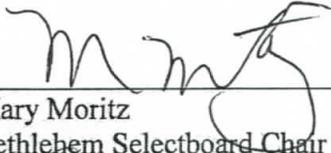
Its Authorized Representative

Brian Oliver

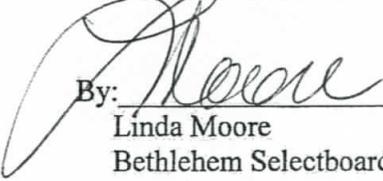
Signatures Continue on Next Page

Town of Bethlehem,

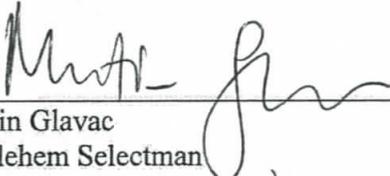
Date: 11/9/2018

By: 
Mary Moritz
Bethlehem Selectboard Chair

Date: 11/9/2018

By: 
Linda Moore
Bethlehem Selectboard Vice-Chair

Date: 11/9/2018

By: 
Martin Glavac
Bethlehem Selectman

Date: 11/9/2018

By: 
Gabe Boisseau
Bethlehem Selectman

Date: 11/9/2018

By: 
Richard Ubaldo
Bethlehem Selectman