

## ATTACHMENT 1

## MEMORANDUM OF UNDERSTANDING

North Country Environmental Services, Inc. ("NCES") and the Town of Bethlehem, New Hampshire ("Town"), enter into this memorandum to memorialize the terms upon which they have agreed to settle the pending litigation between them in the Grafton Superior Court (i.e., Docket Nos. #215-2001-EQ-00177 and #215-2009-EQ-00025) (the "Litigation"). The parties contemplate preparing and executing a written agreement setting out the detailed provisions of the settlement (the "Settlement Agreement") and until the Settlement Agreement is executed by both parties neither party shall be bound. Notwithstanding the foregoing, the parties agree to cooperate and negotiate in good faith in the drafting of the Settlement Agreement based on the terms in this memorandum.

The essential terms of the parties' agreement are:

1. NCES will provide weekly curbside pickup and disposal of municipal solid waste and curbside pickup of commingled recyclables to all Bethlehem residences, including those residences within the Bethlehem Village District, at no charge. This obligation shall commence upon final approval by the Town's voters of the Settlement Agreement and any amendments to the Town's ordinances contemplated by the Settlement Agreement and will continue until NCES's permitted disposal capacity expires (the "Post-Settlement Agreement Life of the Facility"). To the extent that the Bethlehem Village District has independent authority over management of solid waste generated within its boundaries, the District may elect whether to accept the services to be provided by NCES under this Memorandum of Understanding.

2. During the Post-Settlement Agreement Life of the Facility, NCES will accept and dispose of all wastes, including those bulky items such as white goods and consumer electronics that cannot be picked up curbside, that it is permitted to accept at its transfer station at Trudeau Road. This service shall be free of charge to all Town residents but not to commercial enterprises. NCES will not accept construction and demolition debris at the transfer station, nor may residents bring those wastes that may be picked up curbside to the transfer station. Commercial enterprises may not use the transfer station.

3. During the Post-Settlement Agreement Life of the Facility, NCES will pay the Town a host community fee of \$0.25 (twenty-five cents) per ton of waste NCES accepts for disposal through December 31, 2017, and \$0.75 (seventy-five cents) per ton of waste commencing on January 1, 2018, and continuing until facility closure. The parties will agree on a method to monitor wastes so disposed of.

4. NCES and the Town will agree on the description of the boundaries of a ten-acre expansion of District V as defined in the Town's zoning ordinance, such expansion to be to the North of the current District V. NCES and the Town will also agree on a proposed amendment to the Town's zoning ordinance to effectuate the ten-acre expansion of District V. NCES will confine the future expansion of the landfill and all future landfill infrastructure within the reconfigured District V, the total area of which will be sixty-one acres. NCES will not expand the landfill into the 7.29-acre area abutting Trudeau Road. NCES will not expand the landfill

into the approximately 5 acres in the northeast corner of the current 51 acres. As to the 7.29 and 5 acre areas, NCES will not expand the waste footprint into these areas but may use these areas for landfill-related operations such as weigh scales, offices, landfill gas flares and stormwater management.

5. The parties agree that the currently permitted maximum height of the landfill is 1,473 feet above a standard datum used to measure elevation in the State of New Hampshire. NCES agrees that the landfill area will be closed to a final capped height of 1483 feet above the same standard datum, and once the final cap is placed shall not be reopened for further solid waste placement that may be afforded by subsidence. NCES will not substantially discontinue ongoing landfilling operations for the purpose of allowing subsidence to take place but it may landfill in areas of the site where subsidence has taken place during ongoing landfilling activities on the site.

6. Except to the extent permitted by NHDES for Stage IV capacity, NCES will not use mechanically stabilized earthen ("MSE") berms or any similar structure to enable it to increase the grade of the sideslopes of any landfill cell within District V from the grades NHDES approves for the construction of that cell. The intent of this provision is (a) to allow NCES to use conventional berming methods, such as compacted earthen materials, riprap, and erosion matting, in the construction of any such landfill cell as are reasonably necessary and included in the design of the cell and (b) to prevent NCES from constructing an MSE berm or any similar structure along the perimeter of the cell so as to allow the disposal of additional waste on established sideslopes once the currently permitted Stage IV capacity has been exhausted.

7. During the Post-Settlement Agreement Life of the Facility the Town will continue to use the methodology prescribed by the New Hampshire Board of Tax and Land Appeals ("BTLA") in Docket Nos. 19709-02PT / 20384-03PT / 21064-04PT to determine the value of NCES's property for purposes of assessing ad valorem property taxes. For the 2011 tax year, NCES will pay the Town property taxes in an amount of the greater of \$200,000 or the tax payable under the BTLA methodology described in this paragraph.

8. NCES will grant to the Town or its designee a conservation easement on all land within the 47-acre parcel that lies outside of the ten-acre expansion of District V.

9. NCES, its parent, affiliates, successors or assigns agree not to purchase, lease, rent, develop, or otherwise acquire or seek permits to use any other property in the Town of Bethlehem (other than the expanded District V) for the purpose of a landfill. This includes any entity over which NCES, its parent, affiliates, successors or assigns has any control, or in which it has any ownership interest.

10. The Town will convene a special town meeting as promptly as reasonably possible to seek voter approval of the Settlement Agreement and of any amendments to the Town's zoning ordinance contemplated by the Settlement Agreement.

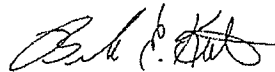
11. The Town's board of selectmen agrees to support publicly the approval of the Settlement Agreement and any amendments to the Town's zoning ordinance contemplated by the Settlement Agreement.

12. Upon Town voters' approval of the Settlement Agreement and any amendments to the Town's zoning ordinance contemplated by the Settlement Agreement, the Litigation will be dismissed with prejudice as to all parties.

13. NCES, its affiliates, successors, or assigns, will not in the future seek judicial relief claiming that any condition herein is an unlawful exaction.

14. The Settlement Agreement will be enforceable through petition by either party filed in the Grafton County Superior Court.

Town of Bethlehem,  
By Its Counsel,  
Boutin & Altieri, PLLC

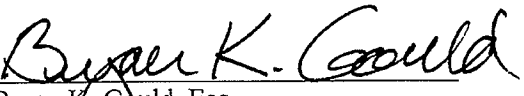


Date: October 21, 2011

By: \_\_\_\_\_  
Brenda E. Keith, Esq.

North Country Environmental Services, Inc.,  
By Its Counsel,  
Olson & Gould, P.C.

Date: 10-21-11

By:   
Bryan K. Gould, Esq.

## **ATTACHMENT 2**

## Finding and statement of purpose

The Selectboard of the Town of Bethlehem has negotiated a settlement agreement with North Country Environmental Services, Inc. The agreement is conditioned upon adoption of zoning amendments to expand zoning District V to include approximately an additional 10 acres as shown on a plan that will be available at the public hearing on the matter, and in the Planning Board's Office at the Town Hall. Landfilling would be a permitted use within the additional 10 acres if the amendments pass. Because the Selectboard negotiated a restriction on landfilling in approximately a 4.33-acre area of NCES' land, however, the net result of the amendments would be to allow an expansion of District V by a net approximately 5.67 acres within which landfilling can take place, not a net 10 acres. The Selectboard, therefore, pursuant to RSA 675:3, proposes the amendments set out below for vote at a Special Town Meeting to be held as soon as is practicable.

### **PROPOSED AMENDMENTS TO TOWN OF BETHLEHEM'S ZONING ORDINANCE**

Article 1: Are you in favor of the adoption of amendment #1, as proposed by the Bethlehem Board of Selectmen, to amend the Town Zoning Ordinances to enlarge District V (the "Landfill District") by ten acres by substituting the language below for the part of Article V entitled "District V: (Landfill District)" [existing language of Article V is displayed in regular type; additional language being proposed is highlighted in bold type:

A building or structure may be erected, altered, or used and a lot may be used or occupied only for the following purposes and in accordance with the following provisions after site plan review by the Planning Board and a building permit is issued by the Board of Selectmen. **For purposes of this provision, "building or structure" does not include a landfill cell (including its footprint, content and final grade slope) or infrastructure for landfill gas management, leachate management, groundwater monitoring, or storm water management which is approved by the New Hampshire Department of Environmental Services.**

This District shall include the land lying within the **area described as follows:**

**Zoning District V (61.00 Acres) as shown on attached map entitled "Zoning District V 61 Acres" and more particularly described as follows:**

**Beginning at a granite bound at the southeast corner of land now or formerly of George Tucker, III, and Daniel Tucker; thence N04°26'35"E a distance of 18.86 ft; thence running N05°15'03"W along a woven wire fence a distance of 471.51 ft to a rebar**

monument; thence turning and running N72°43'41"E a distance of 138.39 ft to a point; thence turning and running N10°59'38"E a distance of 542.21 ft to a point; thence turning and running N72°52'20"E a distance of 919.09 ft to a point; thence turning and running N46°30'07"E a distance of 100.68 ft to a point; thence running N34°41'55"E a distance of 53.49 ft to a point; thence turning and running N54°34'09"W a distance of 54.41 ft to a point; thence turning and running N35°31'46"E a distance of 32.50 ft to a point; thence turning and running S54°34'12"E a distance of 53.80 ft to a point; thence turning and running N34°08'42"E a distance of 118.12 ft to a point; thence turning and running N84°43'11"E a distance of 79.88 ft to a point; thence turning and running N34°41'13"E a distance of 230.56 ft to a point on the westerly sideline of Muchmore Road; thence turning and running S52°20'29"E by said westerly sideline a distance of 51.92 ft to a concrete bound.

Thence S07°12'05"E a distance of 14.29 ft along land now or formerly of George Tucker, III, Daniel Tucker, and Anna Miner to a rebar monument; thence continuing S07°12'05"E a distance of 206.05 ft to a point; thence S06°39'59"E a distance of 234.27 ft to a point; thence S10°25'00"E a distance of 51.26 ft to a point; thence S06°48'25"E a distance of 122.97 ft to a point; thence S09°28'57"E a distance of 54.89 ft to a point; thence S03°53'01"E a distance of 36.19 ft to a point; thence S08°53'30"E a distance of 57.17 ft to a point; thence S06°32'45"E a distance of 95.45 ft to a point; thence S02°27'02"E a distance of 63.06 ft to a point; thence S05°04'13"E a distance of 39.06 ft to a point; thence S06°55'26"E a distance of 126.99 ft to a point; thence S09°30'57"E a distance of 33.79 ft to a point; thence S06°28'52"E a distance of 69.64 ft to a point; thence S06°31'13"E a distance of 122.41 ft to a concrete bound; thence S06°08'34"E a distance of 330.38 ft to a point; thence S06°59'45"E a distance of 71.29 ft to a point; thence S04°14'39"E a distance of 37.45 ft to a point; thence S06°34'09"E a distance of 144.33 ft to a point; thence S07°02'02"E a distance of 140.93 ft to a concrete bound.

Thence S87°40'56"W a distance of 82.31 ft along land now or formerly of George Tucker, III, Daniel Tucker, and Anna Miner to a point; thence S82°51'40"W a distance of 53.63 ft to a point; thence S86°51'10"W a distance of 211.78 ft to a point; thence S87°35'22"W a distance of 447.91 ft to a point; thence S86°09'20"W a distance of 154.37 ft to a point; thence S88°10'57"W a distance of 256.90 ft to a point; thence S86°15'28"W a distance of 190.76 ft to a point; thence N89°34'45"W a distance of 79.18 ft to a point; thence S83°36'21"W a distance of 60.98 ft to a point; thence S88°47'16"W a distance of 182.23 ft to a rebar monument; thence turning and running N05°03'32"W a distance of 384.86 ft to the point of beginning.

District V Permitted uses are as follows:

1. Landfilling shall be a permitted use in this District.
2. Any accessory building or structure erected, altered or used in the normal course of landfilling are permitted provided such use is not injurious, noxious or offensive to the neighborhood, and provided however that an incinerator within the definition of RSA 149-M:4(X)(a) (Supp. 2004) for the purposes of generating power and or solid waste combustion is not a permitted use and is expressly prohibited.

Article 2: Are you in favor of the adoption of amendment #2, as proposed by the Bethlehem Board of Selectmen, to amend the Town Zoning Ordinances by adding the language below to Article XVI, Part XI ("EXEMPTIONS"):

- J. The development and operation of a solid waste landfill within District V is exempt from all provisions of this Article XVI (Aquifer Protection Ordinance).



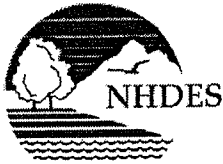


## ATTACHMENT 3



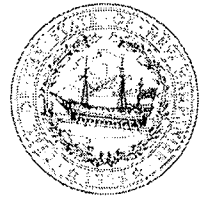


## ATTACHMENT 4



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**

Thomas S. Burack, Commissioner



August 27, 2010

Larry Lackey, VP Permits, Compliance and Engineering  
North Country Environmental Services, Inc.  
408 East Montpelier Road  
Montpelier, VT 05602

**SUBJECT: BETHLEHEM- NCES Stage IV Landfill, 581 Trudeau Road**  
**Permit #DES-SW-SP-03-002**  
**Type 1B Permit Modification, prepared by CMA Engineers, Inc., Application**  
**received April 29, 2010, WMD Doc Log #s 2010568, 2010591, 2010601, 2010606,**  
**2010616, and 2010622**

Dear Mr. Lackey:

The New Hampshire Department of Environmental Services, Waste Management Division (Department) has completed its review of the above-cited application to modify the Stage IV Landfill permit #DES-SW-SP-03-002 by redesigning Phase II in a manner that provides 1,020,000 cubic yards of permitted capacity to be developed over the top of Stages I, II, and III of the existing landfill. The requested modification is herewith granted, per the enclosed, pursuant to RSA Chapter 149-M:9 and Section Env-Sw 315 of the New Hampshire Solid Waste Rules (Rules).

Please attach a copy of the enclosed modification to the subject permit to establish a clear and permanent record of this action.

In addition, the Department's response to public comment and hearing testimony is enclosed with this letter.

Sincerely,

Waste  
Management  
Division

Digitally signed by Waste  
Management Division  
DN: cn=Waste Management Division,  
o=NH DES, ou=ORCB, email=Michele.  
Regan@des.nh.gov, c=US  
Date: 2010.08.27 11:24:10 -04'00'

Paul Gildersleeve, P.E.  
Solid Waste Management Bureau  
Tel: (603) 271-2935  
Fax: (603) 271-2456  
E-mail: paul.gildersleeve@des.nh.gov

Enclosure

Ec: Town of Bethlehem  
John Gay, NCES  
Robert Grillo, P.E., CMA Engineers  
Wayne Wheeler, PE, NHDES- SWB  
Karlee Kenison, PG, NHDES- HWRB  
John Regan, PG, NHDES- HWRB  
Michael Guilfooy, PE, NHDES-SWB  
Michael Wimsatt, PG, NHDES-WMD  
Pamela Hoyt-Denison, PE, NHDES- SWB





## RECORD OF MODIFICATION TO SOLID WASTE MANAGEMENT FACILITY PERMIT

as authorized by the  
NH Department of Environmental Services, Waste Management Division (Department)  
pursuant to RSA 149-M and Section Env-Sw 315 of the New Hampshire Solid Waste Rules (Rules)

**I. PERMIT/FACILITY IDENTIFICATION:**

Permit No.: DES-SW-SP-03-002

Permittee: North Country Environmental Services, Inc.

Facility Name: North Country Environmental Services, Inc. Stage IV Landfill

Facility Location: 581 Trudeau Road, Bethlehem, New Hampshire

Facility Type: Lined Landfill

Permit Modification Type: Type I-B for Facility Design Modifications

**II. FILE REFERENCE/RECORD OF APPLICATION:**

Date(s) Received: April 29, 2010; June 29, 2010; July 16, 2010; July 23, 2010; August 10, 2010; August 18, 2010

WMD Log #(s): 2010568; 2010591; 2010601; 2010606; 2010616; 2010622, respectively.

**III. MODIFICATION:** The approved design change provides for 1,020,000 cubic yards of the Stage IV Landfill permitted capacity to be developed over the top of the Stages I, II and III Landfills, as shown in the permit application documents listed above in Section II. As part of the redesign, the sumps in Phases I – IV in the existing Stage I Landfill will be reconstructed, an overlay liner will be placed on top of portions of existing Stage I Landfill, and existing leachate, gas, and groundwater infrastructure will be modified. The operating and closure plans have been revised to incorporate these site changes.

**IV. TERMS AND CONDITIONS:** 4 Terms and Conditions are attached.

**V. EFFECTIVE DATE:** Date of signature below.

**VI. AUTHORIZING SIGNATURE:** The permit identified in Section I above is hereby modified as specified in Section III above. This authorization is based on information and representations provided to the Department by the permittee, in documents referenced in Section II above. If the information is false, misleading or incomplete, the modification may be revoked or suspended in accordance with Section Env-Sw 306 of the Rules.

**BY EXERCISING ANY RIGHTS UNDER THIS AUTHORIZATION, THE PERMITTEE HAS AGREED TO ALL TERMS AND CONDITIONS OF THE PERMIT, AS MODIFIED.** Failure to comply with the terms and conditions of the permit could result in civil or criminal penalties, suspension or revocation of the permit, or administrative fine. No liability is incurred by the State of New Hampshire by reason of any approval of this solid waste facility. No warranty/guarantee is intended or implied by reason of any advice given by the Department or its staff.

This permit shall not eliminate the permittee's obligation to obtain all requisite federal, state or local permits, licenses or approvals, or to comply with all other applicable federal, state, district and local permits, ordinances, laws, approvals or conditions relating to the facility.

Michael J. Wimsatt, P.G., Director  
Waste Management Division

8/27/10  
Date

Permit No.: DES-SW-SP-03-002  
Permittee: North Country Environmental Services, Inc.  
Facility Name: North Country Environmental Services, Inc. Stage IV Landfill  
Facility Location: 581 Trudeau Road, Bethlehem, New Hampshire  
August 27, 2010  
Page 2 of 2



### **TERMS AND CONDITIONS**

1. **Pre-Construction Requirements.** Prior to commencing construction of the facility, the permittee shall satisfy the requirements for obtaining construction approval as specified in Env-Sw 1104.01, including but not limited to:
  - (a) The permittee shall obtain construction approval by submitting a Type II Permit Modification Application in accordance with Env-Sw 315 with final design plans and specifications prepared in accordance with Env-Sw 1103.05;
  - (b) The permittee shall submit an Alteration of Terrain Permit Application per Env-Wq 1500 prior to or concurrently with the Type II Permit Modification Application; and
  - (c) The permittee shall submit an odor control plan with the Type II Permit Modification Application.
2. **Facility Operating Requirements.** The facility shall operate in compliance with the following requirements as in effect on the issue date of this permit modification and as may be subsequently amended:
  - (a) RSA 149-M;
  - (b) The terms and conditions of this permit; and
  - (c) The approved Operating Plan found in section IV of Type IB Permit Modification Application (WMD Document Log# 2010622), subject to future modifications as may be approved by the Department.
3. **Facility Closure Requirements:** Closure of this facility shall comply with the following requirements, as in effect on the issue date of this permit and as may be amended subsequent to the issue date of this permit:
  - (a) RSA 149-M;
  - (b) The Rules;
  - (c) All conditions of this permit; and
  - (d) The provisions of the approved Closure Plan found in section V of Type IB Permit Modification Application (WMD Document Log# 2010622), subject to future modifications as may be approved by the Department.
4. **Financial Assurance:** Prior to obtaining authorization to operate this facility, the permittee shall satisfy the financial assurance requirements specified in Env-Sw 1400.

## ATTACHMENT 5





## ATTACHMENT 6

## **Infrastructure Only Areas**

### *Tract 1 – Offices and Scale (7.16 Acres)*

Beginning at a rebar monument on the easterly sideline of Trudeau Road and at the southwest corner of land now or formerly of George Tucker, III, and Daniel Tucker; thence N88°10'54"E a distance of 652.94 ft to a concrete bound; thence turning and running S05°03'32"E a distance of 384.86 ft to a concrete bound; thence S01°10'45"E a distance of 58.67 ft to a concrete bound; thence turning and running S87°36'29"W along land now or formerly of George Tucker, III, Daniel Tucker, and Anna Miner a distance of 740.25 ft to a granite bound at the easterly sideline of Trudeau Road; thence turning and running N06°32'27"E along easterly sideline 455.16 ft to the point of beginning.

### *Tract 2 – Landfill Gas and Leachate Management Area (4.33 Acres)*

Beginning at a concrete bound on the westerly sideline of Muchmore Road running S07°12'05"E along land now or formerly of George Tucker, III, Daniel Tucker, and Anna Miner a distance of 14.29 ft to a rebar monument; thence continuing S07°12'05"E a distance of 206.05 ft to a point; thence S06°39'59"E a distance of 234.27 ft to a point; thence S10°25'00"E a distance of 51.26 ft to a point; thence S06°48'25"E a distance of 122.97 ft to a point; thence S09°28'57"E a distance of 54.89 ft to a point; thence S03°53'01"E a distance of 36.19 ft to a point; thence turning and running S51°28'23"W a distance of 111.19 ft to a point; thence turning and running N44°57'09"W a distance of 508.52 ft to a point; thence turning and running N34°41'13"E a distance of 322.96 ft to a point; thence continuing N 34°41'13 E a distance of 230.56 ft to a point on the westerly sideline of Muchmore Road; thence turning and running S52°20'29"E by said westerly sideline a distance of 51.92 ft to point of beginning.

## ATTACHMENT 7

For recorder's use:  
Tax Stamps: Exempt  
Recording Fee: \$ \_\_\_\_\_  
Return to: Olson & Gould, P.C.  
5 Chenell Drive, Box 6  
Concord, NH 03301

### CONSERVATION EASEMENT DEED

THIS GRANT OF A CONSERVATION EASEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2012, by **North Country Environmental Services, Inc.**, a Virginia corporation with a principal place of business at 25 Greens Hill Lane, Rutland, Vermont 05701 (hereinafter referred to as the "Grantor," which term shall, unless the context clearly indicates otherwise, include the Grantor's successors and assigns), for consideration paid and with warranty covenants, in favor of the **[Town of Bethlehem or another party designated by the Town]**, situated in the County of Grafton, State of New Hampshire, a "qualified organization" within the meaning of Section 170(b)(1) of the United States Internal Revenue Service Code of 1986, as amended (the "Code"), contributions to which are deductible for federal income tax purposes pursuant to the Code, and a governmental body or other entity eligible to hold a "conservation easement" within the meaning of New Hampshire RSA 477:45-47 (hereinafter referred to as the "Grantee", which term shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns), with a mailing address of P.O. Box 189, Bethlehem, New Hampshire 03574.

### WITNESSETH:

WHEREAS, the Grantor is the sole owner in fee simple of a certain tract or parcel of real property located in the Town of Bethlehem, County of Grafton, State of New Hampshire, conveyed to the Grantor by Second Corrective Deed of Sanco, Inc. dated June 5, 1992, and recorded in the Grafton County Registry of Deeds at Book 1971, Page 460 (the "Property"), which Property includes land more particularly shown as the "Easement Property" on a plan prepared by \_\_\_\_\_, dated \_\_\_\_\_, 2011 entitled "PLAN OF CONSERVATION EASEMENT – NORTH COUNTRY ENVIRONMENTAL SERVICES, INC." (the "Easement Plan"), to be recorded herewith at the Grafton County Registry of Deeds, as the Easement Property is more particularly described in Exhibit A attached to this Conservation Easement Deed; and

WHEREAS, the Easement Property is adjacent to portions of the Property upon which the Grantor plans to develop, construct and operate a state-permitted landfill for the disposal of solid waste and other property of the Grantor upon which the Grantor currently owns and operates a state-permitted landfill for the disposal of solid waste; and

WHEREAS, the Easement Property possesses certain natural, open space, conservation, habitat, water quality and wetland values (hereinafter referred to as "Conservation Values"); and

WHEREAS, it is of great importance to the Grantor, the people of the Town of Bethlehem and the people of the State of New Hampshire that these Conservation Values be protected, both to preserve them for their intrinsic worth and as mitigation for potential impacts on other areas of the Property; and

WHEREAS, the Grantor intends that Conservation Values of the Easement Property be maintained including, without limitation, those relating to wildlife habitat, wetland functions, water quality and conservation of native plant and animal species and natural communities; and

WHEREAS, the Grantor intends, as owner of the Easement Property, to convey to the Grantee the right to preserve and protect such Conservation Values of the Easement Property in perpetuity; and

WHEREAS, the Grantee agrees by accepting this grant to be bound by and to observe and enforce the provisions hereof and to assume the rights and responsibilities herein granted to and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this easement is conveyed, for the benefit of this generation and the generations to come; and

WHEREAS, these purposes are consistent with New Hampshire RSA 79-A, which states that it is "in the public interest to encourage the preservation of open spaces, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, by maintaining the character of the state's landscape, and by conserving the land, water, forest, agricultural and wildlife resources;"

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of New Hampshire and in particular New Hampshire RSA 477:45-47, the Grantor hereby voluntarily grants and conveys to the Grantee a conservation easement in perpetuity in and over the Easement Property of the nature and character and to the extent hereinafter set forth (the "Easement"):

1. **CONSERVATION PURPOSES**

- A. The Easement hereby granted is granted pursuant to RSA 477:45-47, exclusively for the following conservation purposes:
  - i. To protect the natural ecosystem of the Easement Property.
  - ii. To protect wildlife habitat and watersheds.

- iii. To ensure the preservation and conservation of open spaces.

## 2. USE LIMITATIONS FOR EASEMENT PROPERTY

Subject to the other provisions of this Conservation Easement Deed, including, without limitation, the reserved rights specified in Section 3 hereof, the following use limitations are imposed within the Easement Property:

- A. The Easement Property shall be maintained in perpetuity as open space land, free from industrial or commercial activities. "Open space land" is defined in accordance with RSA 79-B:2, VII as farm land, forest land, or unproductive land (including wetlands), as those terms are further defined in RSA 79-A:2 ("Open Space Land").
- B. The Easement Property shall not be subdivided into separate parcels.
- C. No structure, improvement or alteration of any kind (including, without limitation, any building, dwelling, mobile home, any portion of a subsurface wastewater treatment and disposal system, utility tower or wireless communication facility) shall be installed or maintained on or within the Easement Property unless otherwise expressly allowed by this Conservation Easement Deed.
- D. No removal, filling or other disturbances of soils surface, nor any changes in topography, surface or subsurface water systems, wetlands or natural habitat shall be permitted on or within the Easement Property, except as is consistent with the conservation purposes of the Easement, provided that any and all required federal, state and local permit approvals are obtained and maintained therefor.
- E. There shall be no mining, excavation, quarrying or removal of rocks, minerals, gravel, sand, topsoil or other similar materials on or from the Easement Property.
- F. There shall be no dumping, injection, burning, storage or burial of soil, loam, gravel, ashes, trash, garbage, waste or other man-made materials, or any materials known to be environmentally hazardous, on or within the Easement Property.
- G. There shall be no outdoor advertising structures such as signs and billboards displayed on the Easement Property, except as desirable or necessary in the furtherance of the conservation or other Open Space Land uses of the Easement Property and subject to Grantee's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed.
- H. There shall be no motorized vehicle use on the Easement Property, except for access for emergency vehicles.
- I. There shall be no removal, cutting or destruction of trees, shrubs or plants, and no introduction of non-native plants or animals on or within the Easement Property, unless agreed in writing by both the Grantor and the Grantee.
- J. There shall be no use of fertilizers, pesticides, insecticides, fungicides, herbicides or other biocides, on or within the Easement Property, unless agreed in writing by both the Grantor and the Grantee as an appropriate method for the removal of pest

species, and then the same shall be used only to the extent consistent with the conservation purposes of the Easement and in full compliance with any and all federal, state and local laws, regulations and ordinances and shall be applied only by licensed applicators.

### 3. **GRANTOR'S ADDITIONAL RESERVED RIGHTS**

- A. In addition to the rights reserved in Section 2 hereof, the Grantor hereby reserves the following rights on or within the Easement Property:
  - i. To install and maintain groundwater monitoring wells and storm water runoff pathways as required in connection with the Grantor's development, construction, operation and maintenance of a landfill on portions of the Property adjacent to the Easement Property.
  - ii. To establish, access, maintain, repair or replace mitigation areas and measures in accordance with state and federal permits and approvals, with reasonable prior written notice to the Grantee.
  - iii. To post against trespassing, including trespassing with vehicles, motorized or otherwise, and to prohibit hunting and other recreational uses.
  - iv. To erect barriers to deter trespassers upon the Easement Property with the consent of the Grantee, which consent shall not be unreasonably withheld, conditioned or delayed.
  - v. To install and maintain power lines to the extent reasonably necessary for the transmission of electric power to or from any location on the Property outside the Easement Property.
- B. Notwithstanding anything to the contrary in this Conservation Easement Deed, the Easement confers no rights upon the Grantee or any other person with respect to activity conducted on, or the condition of, all or any portion of the remainder of the Property outside the Easement Property or any other property of the Grantor adjacent to the Easement Property, including, without limitation, any such lawful activities or conditions that affect the Easement Property directly or indirectly.

### 4. **GRANTOR RESPONSIBILITIES**

- A. The Grantor hereby agrees to submit written notice to the Grantee at least five (5) days prior to its exercise of any of the aforesaid reserved rights, unless the Grantor believes a condition exists requiring emergency action.
- B. If the Grantor believes that a condition exists requiring emergency action with respect to any of the above reserved rights, then the Grantor may request verbal approval from the Grantee to conduct the emergency action in lieu of providing the prior written notice required by the preceding subsection. The Grantee shall not unreasonably withhold, condition or delay such approval. The Grantor shall



memorialize the emergency action request, and the Grantee shall confirm its approval of such action, in writing in a timely manner.

- C. The Grantor agrees to obtain all required federal, state and local permits and approvals for any plans related to its reserved rights prior to construction or implementation, and agrees to provide, when necessary, an appropriate restoration plan to redress any collateral impacts to the Easement Property caused by such construction or implementation to the extent possible using reasonable measures.
- D. The Grantor shall notify the Grantee in writing at least five (5) days before transfer of title to the Property or of any portion thereof or interest therein. Grantee agrees to keep any such notification confidential unless the Grantor consents in writing to the Grantee's disclosure of the notification to any third party. The Grantor agrees to incorporate the terms of the Easement in any deed or other legal instrument by which such a transfer of title is effected. The Grantor's failure to so incorporate the Easement in any such instrument shall not affect the validity of the Easement or limit the enforcement thereof in any respect. The Grantor shall include the following notice in all deeds, mortgages, leases, easements, plats or other legal instruments used to convey any interest in the Property (provided that failure to comply with this paragraph shall not impair the validity or enforceability of the Easement): "NOTICE: This Property is Subject to a Conservation Easement Deed recorded in the Grafton County Registry of Deeds at [Book and Page references of recorded Conservation Easement Deed]."

## 5. **BENEFITS AND BURDENS**

- A. Consistent with RSA 477:45-47, the burden of the Easement shall run with the Easement Property and shall be enforceable against all future owners, lessees and tenants of the Easement Property in perpetuity.
- B. Consistent with RSA 477:45-47, the benefits of this Easement shall not be appurtenant to any land in particular, but shall be in gross and, subject to the Grantor's prior approval, assignable or transferable, but only to a governmental unit within the meaning of Section 170(c)(1) of the Code, or to any "qualified organization" within the meaning of Section 170(h)(3) of the Code, which organization has among its purposes the conservation and preservation of land and water areas and which agrees to and is capable of enforcing the conservation purposes of the Easement. Any such assignee or transferee shall be bound by the terms, conditions and restrictions of this Conservation Easement Deed.

## 6. **AFFIRMATIVE RIGHTS OF GRANTEE**

- A. The Grantee, with prior written notice to the Grantor, shall have reasonable access to the Easement Property and any portion thereof for inspections as necessary to determine compliance, to enforce the Easement, to exercise the affirmative rights conveyed by this Section 6, and to perform the obligations and fulfill the responsibilities assumed by the Grantee's acceptance of the Easement.

- B. The Grantee shall have the right to post signs on the Easement Property identifying it as property protected for Open Space Land conservation, provided that any such sign is posted with the prior written consent of the Grantor and in accordance with any and all applicable federal, state and local laws, regulations, ordinances, permits and approvals.

## **7. INDEMNIFICATION, MAINTENANCE, TAXES**

- A. The Grantor hereby indemnifies the Grantee and holds the Grantee harmless from and against any and all loss, cost, damage, or expense of every kind and nature including, without limitation, court costs, expenses and reasonable attorney's fees arising out of there being found on the Easement Property, whether originating on or off the Easement Property, any hazardous materials or petroleum products (collectively, "Contamination"), whether past, present or future, except to the extent caused by the negligent acts or omissions or intentional misconduct of the Grantee, its employees, officers, contractors, agents or representatives, and provided that the Grantee provides to the Grantor not less than ten (10) days prior written notice of (i) the discovery of any such Contamination, or (ii) the receipt of any claim, complaint, writ, petition or bill in equity or other document or communication commencing or threatening the commencement of a legal or equitable proceeding arising from or related to any Contamination, in order to permit the Grantor to mitigate the loss, damage, cost or expense arising from any such Contamination and to assume the defense of any such legal or equitable proceeding.
- B. The Grantee shall be under no obligation to maintain the Easement Property or to pay any taxes or assessments thereon.

## **8. BREACH OF EASEMENT**

- A. If the Grantee determines that any of the terms, conditions or restrictions of the Easement has been breached by the Grantor, then the Grantee shall notify the Grantor of the breach in writing, delivered in hand or by certified mail, return receipt requested.
- B. The Grantor shall have a reasonable period of time after receipt of the said notice to undertake any actions, including, without limitation, restoration, termination of conduct, repair of any damage or other such activities, reasonably calculated to cure the conditions constituting the breach. The Grantor shall promptly notify the Grantee of the corrective actions it proposes to implement, by written notice delivered in hand or by certified mail, return receipt requested.
- C. If the Grantor fails to undertake such corrective actions under the preceding subsection, then the Grantee may, at its discretion, undertake any actions that are reasonably necessary to cure the breach. If the Grantee elects to undertake to cure the breach, and it is determined that the Grantor is directly responsible for the breach, then the reasonable costs of the Grantee's curative actions, including,

without limitation, the Grantee's reasonable attorney's fees, expenses and court costs, shall be paid by the Grantor upon request therefor together with reasonably detailed documentation verifying the nature and amount of all such reasonably incurred costs. If the Grantee elects not to undertake to cure the breach, any such forbearance by the Grantee to exercise its rights to cure the breach shall not be deemed or construed to be a waiver by the Grantee of such breach or any subsequent breach of the same or any other term of this Conservation Easement Deed or of any of the Grantee's rights under this Conservation Easement Deed.

- D. Nothing contained in this Conservation Easement Deed shall entitle the Grantee to bring any action against the Grantor for any damage to or change in the Easement Property resulting from causes beyond the Grantor's control, including, without limitation, actions by non-affiliated third parties and natural disasters such as fire, floods, storms, earthquakes, landslides and earth movement.
- E. The Grantee and the Grantor reserve the right, separately or collectively, to pursue any and all legal and equitable remedies against any third party responsible for actions detrimental to the conservation purposes of the Easement.

#### 9. **CONDEMNATION AND VALUATION OF EASEMENT**

- A. The Easement constitutes a real property interest immediately vested in the Grantee, which the parties stipulate to have a fair market value determined at any given time by multiplying the fair market value of the Easement Property unencumbered by the Easement by a fraction (the "Ratio"), the numerator of which is the value of the Easement at the time of this grant and the denominator of which is the value of the Easement Property without deduction for the value of the Easement at the time of this grant. The values used to establish the Ratio at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant pursuant to Section 170(h) of the Code. If an appraisal of the Easement Property has been prepared for federal income tax purposes by a qualified appraiser within one year prior to the date of this Conservation Easement Deed, then such appraisal shall be submitted to the Grantee and the value of the Grantee's interest shall be determined in accordance with such appraisal.
- B. Whenever all or any part of the Easement Property is taken in the lawful exercise of eminent domain so as to abrogate the Easement in whole or in part, the Grantor and the Grantee shall thereupon take reasonable measures to recover the full damages resulting from such taking, and all direct or incidental costs and expenses incurred by the parties in connection with such action shall be paid out of the damages recovered.
- C. The balance of the damages recovered (the "Balance") shall be apportioned between the Grantor and the Grantee such that (i) the amount payable to the Grantee shall be the product of the Balance and the Ratio, and (ii) the remainder of the Balance shall be payable to the Grantor. The Grantee shall use its share of

the proceeds of the taking in a manner consistent with the conservation of land and natural resources within the Town of Bethlehem.

10. **ALTERNATIVE DISPUTE RESOLUTION**

- A. The Grantor and the Grantee desire that issues or disputes arising from time to time with respect to actual or prospective uses or activities on or within the Easement Property and the interpretation and effect of the Easement shall first be addressed through informal communication and negotiation between the parties rather than formal or adversarial action. Therefore, the Grantor and the Grantee agree that, if either party identifies a potential issue or dispute regarding the consistency of any actual or proposed use or activity with the conservation purposes of the Easement, then, whenever reasonably possible, such party shall notify the other party of the issue or dispute identified and shall discuss the possibility of reaching a mutually acceptable resolution of such issue or dispute.
- B. If any such issue or dispute is not resolved through informal communication and negotiation, and the Grantor agrees not to proceed with the proposed use or activity pending resolution of the ongoing issue or dispute, then either party may refer the issue or dispute to mediation by request made in writing to the other party. Within ten (10) days of the receipt of such request, the parties shall agree on a single impartial mediator who shall be either an attorney licensed to practice law in New Hampshire or an experienced land use or land conservation professional having experience with conservation easements and training in mediation. Each party shall pay its own attorneys', experts' and consultants' fees and expenses and one-half of the costs of the mediation.
- C. If the issue or dispute has not been resolved by mediation within sixty (60) days after delivery of the mediation request, or if the parties are unable to agree on a mediator within thirty (30) days after delivery of the mediation request, then either party may request that the other party agree to submit the issue or dispute to binding arbitration. If both parties do not agree to submit the issue or dispute to binding arbitration, then either party may commence an action in any court of competent jurisdiction to interpret and enforce the terms of this Conservation Easement Deed.
- D. Nothing in this Section 10 shall prevent either party from commencing an action in any court of competent jurisdiction for an injunction or other equitable relief to prevent imminent irreparable harm or damage to the Easement Property or to the rights of such party under this Conservation Easement Deed.

11. **GENERAL PROVISIONS**

- A. **Governing Law.** The construction, interpretation, performance and enforcement of this Conservation Easement Deed shall be governed by the laws of the State of New Hampshire, without regard to the conflicts of law principles of any jurisdiction.
- B. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Conservation Easement Deed shall be construed liberally in

favor of the grant to effect the conservation purposes of the Easement. If any term or provision of this Conservation Easement Deed is held to be ambiguous, an interpretation consistent with the conservation purposes of the Easement that would render the term or provision valid shall be favored over any interpretation that would render such term or provision invalid.

- C. **Severability.** If any term or provision of this Conservation Easement Deed or the application thereof to any person or circumstance is held to be invalid by a court of competent jurisdiction, then the remainder of the terms and provisions hereof or the application of such term or provision to persons or circumstances other than those to which it is held to be invalid, as the case may be, shall not be affected thereby unless the invalidity of the term or provision frustrates the conservation purposes of the Easement.
- D. **Termination of Rights and Obligations.** A party's rights and obligations under this Conservation Easement Deed terminate upon transfer of such party's interest in the Easement or the Easement Property, except that liability for acts or omissions occurring prior to such transfer shall survive the transfer.
- E. **No Merger of Interests.** The Grantor and the Grantee expressly agree that the provisions set forth in this Conservation Easement Deed are intended to last in perpetuity, and to that end no purchase or transfer of the underlying fee interest in the Easement Property by or to the Grantee or any successor or assignee of the Grantee shall be deemed to eliminate the terms, conditions or restrictions set forth herein under the doctrine of "merger" or under any other legal or equitable doctrine.
- F. **Captions.** The captions and headings in this Conservation Easement Deed have been inserted for convenience of reference only and are not a part of this instrument and shall have no effect upon its construction, interpretation, performance or enforcement.
- G. **Authority.** The Grantor hereby affirms that it is the sole owner of the Property in fee simple and has the right to enter into this Conservation Easement Deed and to grant and convey the Easement to the Grantee. The Easement Property is free and clear of all liens and encumbrances of any kind or nature, including, without limitation, any mortgage or deed of trust not subordinated to the Easement.
- H. **Exemption from Real Estate Transfer Tax.** The grant of the Easement pursuant to this Conservation Easement Deed is a non-contractual donative transfer, and as such it is entitled to exemption from the real estate transfer tax pursuant to RSA 78-B:2.

WHEREFORE, the Grantee, by accepting and recording this Conservation Easement Deed, for itself, its successors and assigns, agrees to be bound by, to observe and enforce the provisions hereof, and to assume the rights and responsibilities granted to and incumbent upon the Grantee hereunder, all in furtherance of the conservation purposes for which this Conservation Easement Deed is executed and delivered.

IN WITNESS WHEREOF, the Grantor and the Grantee have set their hands hereto on this \_\_\_\_ day of \_\_\_\_\_, 2012.

NORTH COUNTRY ENVIRONMENTAL SERVICES,  
INC. (the "Grantor")

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, ss.

On this the \_\_\_\_ day of \_\_\_\_\_, 2012, before me, the undersigned officer, personally appeared \_\_\_\_\_, the duly authorized \_\_\_\_\_ of North Country Environmental Services, Inc., a Virginia corporation, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes therein contained, on behalf of said corporation and as the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_  
Notary Seal:

[TOWN OF BETHLEHEM, NEW HAMPSHIRE  
OR OTHER DESIGNATED PARTY]  
(the "Grantee")

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NEW HAMPSHIRE  
COUNTY OF GRAFTON, ss.

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me, the undersigned officer,  
personally appeared \_\_\_\_\_, the duly authorized \_\_\_\_\_ of  
\_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is  
subscribed to the foregoing instrument, and acknowledged that he or she executed the same for  
the purposes therein contained, as \_\_\_\_\_ of the said \_\_\_\_\_ and as the free act  
and deed of the said \_\_\_\_\_.

\_\_\_\_\_  
Notary Public/Justice of the Peace  
My Commission Expires: \_\_\_\_\_  
Notary Seal:

## **Exhibit A**

### **DESCRIPTION OF EASEMENT PROPERTY**

Beginning at a rebar monument on land now or formerly of George Tucker, III, and Daniel Tucker; thence N05°41'50"W a distance of 482.21 ft along a woven wire fence line to a point; thence N04°21'12"W a distance of 107.30 ft to a point; thence N05°35'43"W a distance of 94.58 ft to a point; thence N05°11'50"W a distance of 130.59 ft to a point; thence N05°27'18"W a distance of 90.36 ft to a point; thence N06°08'26"W a distance of 130.74 ft to a point; thence N06°18'10"W a distance of 76.50 ft to a point; thence N06°13'38"W a distance of 155.79 ft to a point; thence N03°41'38"W a distance of 181.19 ft to a point; thence N11°59'05"W a distance of 63.81 ft to a point; thence N04°22'20"W a distance of 199.45 ft to a point; thence N07°54'58"W a distance of 100.47 ft to a point; thence N05°50'25"W a distance of 291.33 ft to a rebar monument.

Thence N85°20'03"E a distance of 765.85 ft to a rebar monument; thence continuing N85°20'04"E a distance of 50.47 ft to a rebar monument at the westerly sideline of Muchmore Road; thence turning and running S17°06'04"E a distance of 274.15 ft along westerly sideline to a point; thence by said westerly sideline along a curved line with a chord bearing of S22°07'05"E a radius of 925.36 ft and an arc length of 162.05 ft to a point; thence by said westerly sideline along a curved line with a chord bearing of S16°59'46"E, a radius of 285.86 ft and an arc length of 101.17 ft to a point; thence S06°51'21"E by said westerly sideline a distance of 51.80 ft to a rebar monument; thence turning and running S79°15'44"W a distance of 142.41 ft to a rebar monument; thence turning and running S20°04'32"W a distance of 297.34 ft to a rebar monument; thence turning and running S66°04'12"E a distance of 182.10 ft to a rebar monument on the westerly sideline of Laurel Lane; thence S02°30'02"E distance of 57.81 ft along westerly sideline to a point; thence turning and running S59°34'25"E a distance of 106.41 ft along westerly sideline to a point; thence turning and running N86°06'25"E a distance of 231.29 ft along southerly sideline of Laurel Lane to a rebar monument; thence turning and running N26°25'50"E a distance of 57.92 ft to a rebar monument at easterly sideline of Laurel Lane; thence continuing N26°25'50"E a distance of 6.06 ft to a metal fence post; thence continuing N26°25'50"E a distance of 280.79 ft to a metal fence post; thence continuing N26°25'50"E a distance of 6.46 ft to a rebar monument on the westerly sideline of Muchmore Road;

Thence by said westerly sideline along a curved line with a chord bearing of S70°44'52"E a radius of 599.98 ft and an arc length of 79.60 ft to a point; thence along



the westerly sideline along a curved line with a chord bearing of S62°07'31"E a radius of 640.51 ft and an arc length of 277.75 ft to a point; thence by said westerly sideline S50°00'35"E a distance of 7.89 ft to a point; thence turning and running S34°41'13"W a distance of 230.56 ft to a point; thence turning and running S84°43'11"W a distance of 79.88 ft to a point; thence turning and running S34°08'42"W a distance of 118.12 ft to a point; thence turning and running N54°34'12"W a distance of 53.80 ft to a point; thence turning and running S35°31'46"W a distance of 32.50 ft to a point; thence turning and running S54°34'09"E a distance of 54.41 ft to a point; thence running S34°41'55"W a distance of 53.49 ft to a point; thence turning and running S46°30'07"W a distance of 100.68 ft to a point; thence turning and running S72°52'20"W a distance of 919.09 ft to a point; thence turning and running S10°59'38"W a distance of 542.21 ft to a point; thence turning and running S72°43'41"W a distance of 138.39 ft to the point of beginning.

## ATTACHMENT 8

THE STATE OF NEW HAMPSHIRE

GRAFTON, SS.

SUPERIOR COURT

North Country Environmental Services, Inc.

v.

Town of Bethlehem, Bethlehem Planning Board,  
and Bethlehem Zoning Board of Adjustment

Consolidated Docket  
#215-2001-EQ-00177  
and #215-2009-EQ-00025

Town of Bethlehem

v.

North Country Environmental Services, Inc.

STIPULATION FOR DOCKET MARKING

North Country Environmental Services, Inc., Town of Bethlehem, Bethlehem Planning Board, and Bethlehem Zoning Board of Adjustment, through their respective counsel, hereby stipulate that each of the dockets in this consolidated proceeding may be marked as follows:

“No party; no costs; no interest; no further action for the same cause.”

Respectfully submitted,

NORTH COUNTRY ENVIRONMENTAL  
SERVICES, INC.,

By Its Attorneys,  
OLSON & GOULD, P.C.

Date:

By: \_\_\_\_\_  
Bryan K. Gould, Esq. (NH Bar #8165)  
Philip R. Braley, Esq. (NH Bar #9276)  
Olson & Gould, P.C.  
5 Chenell Drive, Box 6  
Concord, NH 03301  
(603) 225-9716

TOWN OF BETHLEHEM,  
By Its Attorneys,  
BOUTIN & ALTIERI, P.L.L.C.

Date:

By: \_\_\_\_\_  
Brenda E. Keith, Esq. (NH Bar #12883)  
Boutin & Altieri, P.L.L.C.  
One Buttrick Road, P.O. Box 1107  
Londonderry, NH 03053  
(603) 432-9566