

## OPERATION, MANAGEMENT AND LEASE AGREEMENT

This OPERATION, MANAGEMENT AND LEASE AGREEMENT ("Agreement") is made by and between ONTARIO COUNTY, a New York State Municipal Corporation having a principal place of business at 20 Ontario Street, Canandaigua, New York, (the "County"), NEW ENGLAND WASTE SERVICES OF N.Y., INC., a domestic corporation having its principal place of business at 803 Cascadilla Street, Ithaca, New York, ("NEWSNY") and CASELLA WASTE SYSTEMS, INC., a Delaware corporation having its principal place of business at 25 Greens Hill Lane, Rutland, Vermont ("Casella").

**WHEREAS**, the County is the owner and operator of certain facilities located within Ontario County, New York, utilized in the collection, management and disposal of solid waste and

**WHEREAS**, the County did circulate a request for proposal ("RFP") (attached hereto as Exhibit 1) for the operation, management and lease of those facilities, and

**WHEREAS**, the County has considered the proposal submitted by NEWSNY and its responsiveness to the RFP, and

**WHEREAS**, the Board of Supervisors of Ontario County passed Resolution # 464-2003 authorizing the County to enter into an agreement with NEWSNY to implement the services described in the RFP and NEWSNY's proposal, and

**WHEREAS**, in furtherance of Resolution # 464-2003, Ontario County has declared itself as lead agency pursuant to Article 8 of the Environmental Conservation Law of the State of New York, the State Environmental Quality Review Act ("SEQRA"), relative to implementation of this Agreement, and

**NOW, THEREFORE**, in consideration of the representations, warranties, promises, covenants and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### 1. DEFINITIONS

For the purpose of this Agreement the following words and phrases shall have the following meanings:

"Acceptable Waste" shall mean solid waste as defined in 6 NYCRR 360-1.2 whether such materials are from residential, commercial, institutional, or industrial sources, shall include BUD Material subject to the limitations set forth herein, and shall include Special Waste as allowed by NYSDEC Permits, but shall not include Excluded Waste.

"Affiliates" shall mean any entity controlled by NEWSNY or under common control by a third entity with NEWSNY.

"Annual Capacity" shall mean the annual ability of the Landfill to accept no less than 624,000 Tons of Acceptable Waste, or such higher amount as may be permitted by NYSDEC.

"BUD Material" shall mean solid waste that has been approved in advance, in writing by NYSDEC for use at the Landfill for daily cover or other purposes pursuant to 6 NYCRR 360-1.15. Though defined as a type of Acceptable Waste, the amount of BUD Material used at the Landfill shall not count toward any limits with regard to the total amount of waste that may be disposed of at the Landfill, including without limitation the Existing Capacity, Permitted Capacity or Permittable Capacity, so long as NYSDEC does not count the BUD material in its calculation of permitted and annual capacity.

"Closure" shall mean those acts and activities required by any and all applicable federal and state laws and the regulations adopted thereunder which result in a permanent cessation of use of a municipal landfill, as those requirements and regulations may be amended or modified, and which result in a stabilized municipal landfill which is not in active use, excluding those acts and activities which are required for Post-Closure Care including monitoring, reporting and maintenance for the periods set forth in the relevant environmental statutes and regulations, as they may be amended or shortened.

"Closure and Post-Closure Financial Assurance" shall mean that bond or other surety required pursuant to New York State Environmental Conservation Law Article 27, the regulations promulgated thereunder at 6 NYCRR Part 360 and any other bond or surety required by state or federal law for the closure or post-closure of the Facilities.

"County Resident" shall mean any permanent legal resident of Ontario County or any business or entity conducting any part of its operations in Ontario County. Any person claiming County Resident status under the terms of this Agreement may be required by NEWSNY to provide commercially reasonable proof thereof. If the County Resident is a business or entity conducting any part of its operations in Ontario County, only those operations that exist within Ontario County shall be considered to be a County Resident for the purposes of this Agreement.

"CPI" shall mean the "Northeast Urban Region All Items" Consumer Price Index, Series I.D. CUUR0100SA0, as published by the United States Department of Labor Bureau of Labor Statistics, or any successor thereto.

"Effective Date" shall have the meaning as set forth in Section 2.3 of this Agreement.

"Excluded Waste" shall mean flammable, explosive, radioactive, or toxic substances; Hazardous Waste; liquid wastes; certain pathological and biological wastes as NEWSNY and applicable Governmental Authorities may determine in their discretion; Household Hazardous Waste or any other waste excluded by any Permit or applicable federal, state or local environmental law. This term shall also include such other waste material which NEWSNY finds, in its sole discretion, to pose an unreasonable risk or danger to the operation or safety of the Facilities or the environment.

"Existing Capacity" shall mean the capacity of the Landfill described in the existing Landfill operating Permit attached hereto as Exhibit 2.

"Facilities" shall mean the Landfill and the Recycling Facilities presently operated or to be constructed, utilized or owned by the County or NEWSNY in the handling of Acceptable

Waste and Recyclable Materials at the Real Property and the Real Property, and all improvements and fixtures, all as described in this Agreement.

"Financial Security" shall have the meaning set forth in Section 13.

"Force Majeure" shall mean any act, event or condition affecting the Facilities, the County or NEWSNY to the extent that it materially and adversely affects the ability of the County or NEWSNY to perform or comply with any material obligation, duty or agreement required under this Agreement or the Labor Utilization Agreement, if such act, event, or condition is beyond the reasonable control of a party or its agents relying thereon and is not the result of the willful or negligent action, inaction or fault of the party relying thereon, including, without limitation: (a) an act of God, epidemic, landslide, lightening, earthquake, fire, explosion, storm, flood or similar occurrence; (b) an act of public enemy, war, blockage, insurrection, riot, general unrest or restraint of government and people, civil disturbance or disobedience, sabotage, act of terrorism or similar occurrence; (c) a strike, work slowdown, or similar industrial or labor action; (d) an order or judgment (including, without limitation, a temporary restraining order, temporary injunction, preliminary injunction, permanent injunction, or cease and desist order) or other act of any federal, state, county or local court, administrative agency or governmental office or body which prevents operations as contemplated by this Agreement; (e) the denial, loss, suspension, expiration, termination or failure of renewal of any Permit required to operate the Facilities; (f) adoption or change (including a change in interpretation or enforcement) of any law after the Effective Date hereof, preventing performance of or compliance with the obligations hereunder, including, without limitation, such changes which prevent the development, construction, operation or maintenance of the Facilities as contemplated by this Agreement; (g) the final judgment of a legal or administrative action or similar proceeding by any Governmental Authority, person, firm, corporation, other entity, including, without limitation, comments on or challenges to the consideration or issuance of any Permit, that significantly delays or prevents any aspect of the development or operation of the Facilities as contemplated by this Agreement; or (h) if NEWSNY or the County is for any reason (other than any reason resulting from its negligent or willful act or omission) delayed or barred by governmental or judicial action from collecting all or any material part of the fees to be paid under and pursuant to this Agreement, as may be from time to time adjusted, and any other material payments that may become due and owing.

"Future Project(s)" shall mean each of the Wrap Around Expansion, the Eastern Expansion, the Leachate Management System Upgrade, Planned Business Development District, Construction of Single-Stream Recycling Center, Construction of GRT Glass Beneficiating Facility, Cornell Cooperative Extension Hydroponics Greenhouse, and Construction of Commercial/Industrial Facilities, each as set forth in Section 7 and the schedules thereto.

"Governmental Authority(ies)" shall mean all agencies, authorities, boards, bodies, commissions, courts, instrumentalities, legislatures and offices of any municipal, local, state or federal governmental unit or subdivision, having jurisdiction over the Facilities.

"Hazardous Waste" shall mean any pollutant, contaminant, chemical, industrial, toxic or other waste that constitutes hazardous waste as defined pursuant to the Resource Conservation

and Recovery Act, 42 U.S.C. § 9601 *et seq.*, or the New York State Environmental Conservation Law, Article 27, § 27-1301(l), 6 NYCRR Part 371, or any other regulations adopted thereunder.

"Host Agreement" shall mean the agreement executed simultaneously herewith by and between NEWSNY and the Town of Seneca (the "Town") describing the rights, responsibilities and obligations of NEWSNY and the Town relative to NEWSNY's operation of the Facilities, attached hereto as Exhibit 3.

"Household Hazardous Waste" shall have the meaning set forth in 6 NYCRR 360-1.2(b)(85).

"Indemnified Party" shall have the meaning set forth in Section 19.1.

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"In-County Gate Rate Tipping Fee" shall mean the Tipping Fee for Acceptable Waste accepted for disposal at the Landfill generated by the In-County Parties as further set forth in Section 9.1.

"In-County Parties" shall mean the County and any governmental agency or branch thereof, County Residents, and all commercial waste haulers operating in the County delivering Acceptable Waste generated in the County.

"Involved Agency(ies)" shall have the meaning set forth by SEQRA.

"Labor Agreement" shall mean the agreement by and between the County and the Civil Service Employees Association, Inc. ("CSEA"), Local 1000 AFSCME, AFL-CIO, Ontario County Employees Unit, Ontario County Local 835, dated January 1, 2002, which expires at midnight on December 31, 2004, relative to the employees of the County affected by this Agreement, attached hereto as Exhibit 4 and any subsequent such agreements between the County and any union representing the County's employees at the Facilities.

"Labor Utilization Agreement" shall mean the agreement intended to be executed simultaneously herewith by and between NEWSNY and the County relative to the utilization of labor at the Facilities, attached hereto as Exhibit 5.

"Landfill" shall mean that Real Property used or held by the County in connection with the Ontario County Solid Waste Management Facilities, located on NY Route 5 / US Route 20 in the Town of Seneca, encompassing not less than 387.64 acres, together with the full benefit of all utility arrangements, licenses and Permits, and all other rights, assets and interests and any future expansions thereof whether or not currently contemplated.

"Landfill Gas Contract" shall mean that contract between the County and Innovative Energy Systems, Inc. whereby the County assigned its rights in certain amounts of the gas generated by the Landfill, as assigned to Seneca Energy II LLC, attached hereto as Exhibit 6.

"Lead Agency" shall have the meaning set forth by SEQRA.

"Lease Payments" shall have the meaning set forth in Section 2.4.

"Losses" shall have the meaning set forth in Section 19.1.

"Major Business" shall have the meaning set forth in Section 8.5.

"Material Breach" shall have the meaning set forth in Sections 20.2 and 20.3.

"NYSDEC" shall mean the New York State Department of Environmental Conservation or any successor thereof.

"Ontario County Landfill Advisory Committee" shall have the meaning set forth in Section 3.9.

"PBDD" shall have the meaning set forth in Section 7.5.

"Pending Expansion Permit" shall mean the Permit, as identified in Ontario County Resolution No. 178-2003, for construction and operation of Phase III of the Landfill, which will allow the Landfill to accept no less than 624,000 Tons of Acceptable Waste per year, which is currently pending before NYSDEC, as further described in the Permit application submitted to NYSDEC by the County on or about November 21, 2002, attached hereto as Exhibit 7.

"Permit" shall mean any permit, license, certificate, consent, registration or other approval that must be issued by any applicable Governmental Authority to construct, operate, use, maintain, expand or close the entirety or any portion of the Facilities, including without limitation all renewals and modifications thereof.

"Permittable Capacity" shall mean the anticipated total capacity of the Landfill based upon the practical total build-out of the Landfill as estimated by NEWSNY in its responsive proposal to the RFP, or such greater or lesser amount as may be allowed by Permits issued by NYSDEC.

"Permitted Capacity" shall mean that capacity for disposal of solid waste at the Landfill constructed or to be constructed by NEWSNY during the Term.

"Phase II Closed Landfill" shall mean that portion of the Landfill comprising approximately 26 acres, more or less, which was closed by the County, which is classified by NYSDEC as a Class 3 Inactive Hazardous Waste Site, and which is more particularly described in Exhibit 8 hereto.

"Post Closure Care" shall mean those acts and activities which are required for post-closure care of the Facilities including without limitation monitoring, reporting and maintenance for the time set forth in the relevant environmental statutes and regulations, including without limitation 6 NYCRR Part 360, as they may be amended from time to time, and all Permits and agreements between NEWSNY and NYSDEC.

"Purchased Personal Property" shall mean that personal property that shall be purchased by NEWSNY, more particularly described in Schedule 6.1 annexed hereto.

"Real Property" shall mean any parcels of real property located in the County on which the Facilities are located, currently encompassing approximately 372.64 acres, as more particularly described in Exhibit 9 hereto. The Real Property does not include that real property described in and subject to the lease between the County and Innovative Energy Systems, Inc., as assigned to Seneca Energy II LLC, and any amendment thereto, successor thereto or assignment thereof, attached hereto as Exhibit 13 (the "Innovative Energy Lease").

"Recyclable Materials" shall have the meaning set forth in 6 NYCRR 360-1.2(b)(120).

"Recycling Facilities" shall mean all of the equipment and buildings associated with the County's existing Recycling Program located on the Real Property, described in Exhibit 10 hereto.

"Recycling Program" shall mean the program for recovery of Recyclable Materials at the Recycling Facilities.

"Remaining Capacity" shall mean that portion of the Permitted Capacity constructed but unused at the termination of this Agreement.

"Reserved Capacity" shall mean 100,000 tons of Acceptable Waste per calendar year which shall be reserved by NEWSNY for Acceptable Waste from In-County Parties. The Reserved Capacity shall adjusted annually by NEWSNY based upon the change in the County's population, but in no event shall be less than 100,000 tons per annum.

"SEQRA" shall mean the New York State Environmental Quality Review Act, as contained in the New York State Environmental Conservation Law Article 8, and the regulations promulgated thereunder at 6 NYCRR Part 617.

"Single-Stream Recycling Facility" shall have the meaning set forth in Section 7.6.

"Special Waste" shall mean any discarded waste material other than those which are typically found in household, commercial or municipal refuse, including, without limitation, materials such as industrial waste, institutional waste, animal manure, petroleum-contaminated soil of a nonhazardous nature, residue from incineration, food processing wastes, dredging wastes, tires and asbestos, municipal sludge recyclables or waste which requires special or exceptional handling or approval from NYSDEC, but shall not include Excluded Waste.

"Term" shall have the meaning set forth in Section 2.2.

"Third Party Claim(s)" shall have the meaning set forth in Section 19.3(a).

"Tipping Fee" shall mean the fee to be charged by NEWSNY for the disposal of a single Ton of Acceptable Waste at the Facilities.

"Ton" shall mean 2,000 pounds.

"Transfer Station" shall mean the existing transfer station located in the Town of Seneca, more particularly described in Exhibit 11 hereto.

"TTM" shall mean "trailing twelve months", as set forth in Section 20.6(c).

**2. CLOSING; EFFECTIVE DATE; LEASE TERM; PAYMENTS**

2.1 Closing. The closing shall occur upon (a) completion by all Involved Agencies of all requirements arising pursuant to SEQRA relative to the lease of the Facilities to NEWSNY as contemplated by this Agreement, excluding the completion of SEQRA relative to the Future Projects, which review the parties agree shall be undertaken at the time that each of the Future Projects is proposed; and (b) receipt of all other documents and completion of all of the conditions precedent to the Closing as provided in this Agreement, including without limitation a description of the Real Property as required to be attached hereto as Exhibit 9, and complete listing of all Purchased Personal Property and all capital leases relating thereto as required to be attached hereto as Schedule 6.1 (hereinafter the "Closing"). Upon the Closing, all of the terms and conditions hereunder shall take effect, except for the obligations in Sections 2.4(b)(ii), 2.4(c), 2.6, 3.4(b), 3.5(a), 3.5(b), 3.5(d), 3.7, 3.9, 5.1, 7, 8.4, 8.7 and 13, which shall not become effective until the Effective Date.

2.2 Lease Term. The County hereby leases and demises to NEWSNY and NEWSNY hereby leases and accepts from the County the Facilities (excluding any Purchased Personal Property) on the terms and conditions as more fully set forth herein, commencing at the Closing, for a term of twenty-five (25) years, unless this Agreement is sooner terminated pursuant to the terms herein (the "Term").

2.3 Effective Date. The Effective Date of certain provisions of this Agreement as set forth herein shall be the later of (a) January 1, 2004 or (b) the date that all Permits and approvals set forth on Schedule 2.3 are issued in final form or otherwise completed and are either unappealable or any appeals taken have been favorably resolved. On the Effective Date all rights to operate the Facilities as described in Section 3 not already vested at the Closing or otherwise shall vest in NEWSNY as they relate to the entirety of the Facilities. Should the Effective Date not occur, the County expressly agrees to immediately repay any and all sums it has received pursuant to Section 2.4(b).

2.4 Payments.

a) At the Closing and thereafter upon each 12-month anniversary thereof prior to the Effective Date, to the extent any Permitted Capacity remains as of such anniversary date, NEWSNY will pay Two Million Dollars (\$2,000,000.00) to the County, which shall be a credit against the Lease Payments, in exchange for which payment the rights to operate the Facilities, as described herein in Section 3, shall vest in NEWSNY, limited, however, to the Existing Capacity and to activities relating to the Pending Expansion Permit.

b) NEWSNY will pay to the County a lump sum totaling Fifteen Million Dollars (\$15,000,000) in the following manner: (i) \$7,500,000 shall be paid to the County upon the later of (A) issuance by NYSDEC of the Pending Expansion Permit and (B) conclusion of the SEQRA process for the lease of the Facilities; and (ii) \$7,500,000 shall be paid to the County upon the Effective Date.

c) Commencing on the Effective Date, NEWSNY shall pay to the County over the course of the Term, as lease payments for the Real Property, and in lieu of all County and local taxes, including without limitation property and school taxes, Fifty Million Dollars (\$50,000,000.00), payable in accordance with Schedule 2.4(c) hereto (hereinafter "Lease Payments").

d) NEWSNY shall have the right to set-off against the Lease Payments any and all property taxes assessed against the Facilities that are paid by NEWSNY and collected by the County.

e) NEWSNY shall make all payments required under this Agreement without any offset, defense, claim, counterclaim, reduction or deduction of any kind, except as expressly provided under the terms of this Agreement.

2.5 Revenue-Sharing. Upon and after the Closing (including after the Effective Date) NEWSNY shall pay the County 25% of the revenue (gross revenue minus any taxes or other charges imposed by the Town or County on such waste) received by NEWSNY in excess of \$34.00 per Ton for Acceptable Waste received from entities that are not In-County Parties. The \$34.00 per Ton rate shall be adjusted each year by the CPI.

2.6 Acceleration of Lease Payments. At the request of the County at any time and from time to time following the Effective Date, the County may accelerate a lump sum payment from NEWSNY of up to an aggregate of 50% of the total remaining Lease Payments due the County. The value of the accelerated Lease Payments shall be calculated using the net present value of such accelerated Lease Payments, calculated using a discount rate of 12%.

### 3. CONSTRUCTION, USE AND OPERATION OF THE FACILITIES

3.1 Exclusive Use. As of the Closing, the County hereby grants NEWSNY an exclusive (except as provided in the Innovative Energy Lease) lease, franchise, license and privilege to construct, operate and use the Facilities as described herein including: (i) a solid waste landfill and (ii) recycling facilities, and to take all actions appurtenant thereto, commencing upon the Closing or the Effective Date, as provided herein, and continuing for the Term as governed by the provisions of this Agreement, including without limitation:

a) the exclusive right, franchise, license and privilege to take possession of (as applicable) occupy, and have exclusive use of the Facilities (except as provided in the Innovative Energy Lease), including physical and management control. Nothing herein shall limit the right of NEWSNY to use the Purchased Personal Property or other owned personal property, which right shall be unrestricted. Without limiting the foregoing, the County shall not during the term of this Agreement or any extension thereof grant any other person or entity any right, franchise, license or privilege to operate, occupy, manage or otherwise utilize the Facilities;

b) the exclusive franchise, license and privilege to manage and dispose of Acceptable Waste at the Landfill, with full right to accept such Acceptable Waste from parties other than In-County Parties subject to the Reserved Capacity; and



- c) the exclusive use of the Permits, which shall remain in the County's name.

3.2 Permits. NEWSNY shall use commercially reasonable efforts to obtain and maintain at its sole expense, in phases as determined by NEWSNY, all Permits, including preparing all necessary Permit applications, reports and/or studies. NEWSNY shall obtain, at NEWSNY's sole expense, all new and renewal Permits in the County's name. The County shall, as permitted by law, vest in NEWSNY all operational authority under the Permits held by the County. The County shall cooperate with NEWSNY in obtaining and maintaining compliance with all Permits during the Term. The parties agree to use good faith and due diligence in obtaining Permits and any renewals, modifications and amendments thereto.

3.3 Construction. On and after the Effective Date NEWSNY shall at its expense construct portions of the Landfill to the extent of the Permits then in effect and to the capacity deemed appropriate by NEWSNY, based on market forces and demand, including preparing the subgrade and constructing landfill cells in accordance with such Permits and applicable law, provided however, that after the Closing and prior to the Effective Date, NEWSNY at its option and sole discretion may engage in such construction operations at the Landfill as it deems necessary, consistent with current Permits and applicable law. NEWSNY covenants that the design and construction of the Landfill expansions will meet or exceed any and all state and federal requirements pertaining to municipal solid waste landfills in New York State including without limitation 6 NYCRR Part 360. NEWSNY shall have the right to construct at the Facilities, in NEWSNY's sole discretion, such Landfill expansions, buildings or fixed resources as it deems necessary for the operation of the Facilities including without limitation recycling facilities, garages and other buildings or structures, subject to compliance with all laws and regulations of applicable Governmental Authorities.

3.4 Landfill Gas Management.

a) At the Closing, the County will deliver to NEWSNY an assignment of all the County's rights associated with landfill gas management, either under the Landfill Gas Contract or otherwise and NEWSNY shall assume and become solely liable for the County's obligations thereunder.

b) Upon the Effective Date, NEWSNY shall obtain the release of the County from the Landfill Gas Contract or any other agreement relating to landfill gas management.

3.5 Closure and Post-Closure: Environmental Protection.

a) Upon the Effective Date, NEWSNY shall be solely responsible to perform and pay the costs of all present and future Closure and Post Closure Care of (i) all portions of the Landfill closed as of the Effective Date; and (ii) each phase of the Landfill to the extent that the capacity of such phase is exhausted during the term of this Agreement, provided that other than on account of a Material Breach by the County, should this Agreement be terminated or expire prior to the exhaustion of the capacity of a particular phase, cell or stage, NEWSNY shall be responsible for a proportionate share of the Closure and Post Closure Care costs based on the percentage of capacity of that phase, cell or stage filled by NEWSNY.

b) Upon the Effective Date, NEWSNY shall provide Closure and Post-Closure Financial Assurance as required by law, which shall substitute for any and all Closure and Post-Closure Financial Assurance as required by law that has been put in place by the County and is existing as of the Closing. Any County monies set aside or otherwise encumbered by such County Closure and Post-Closure Financial Assurance shall immediately, upon NYSDEC's approval of NEWSNY's Closure and Post-Closure Financial Assurance, be released to the County and NEWSNY shall have no claim thereto.

c) Between Closing and the Effective Date, NEWSNY will assume the liability for Closure and Post-Closure Care associated with the pro rata share of the Existing Capacity utilized by NEWSNY. NEWSNY will post all Closure and Post-Closure Financial Assurance for all cells constructed by NEWSNY after the Closing and prior to the Effective Date.

d) Upon the Effective Date NEWSNY shall be responsible for all environmental remediation at the Facilities no matter when caused including without limitation any required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC § 9601 *et seq.*) and the New York State Environmental Conservation Law and the regulations promulgated thereunder. These obligations shall survive the termination or expiration of this Agreement except (i) that in the event this Agreement terminates as the result of a Material Breach by the County, NEWSNY will assume no liability for environmental conditions arising prior to the Closing, and (ii) NEWSNY shall not be liable for any environmental conditions or liability created or exacerbated as a result of any actions by any party after such termination.

### 3.6 Operation.

a) NEWSNY shall have full physical and managerial control of the Facilities, subject only to the Labor Utilization Agreement and the express limitations of this Agreement. NEWSNY acknowledges and agrees that prior to the date hereof it has had the full and complete opportunity to conduct an operational assessment with respect to the Facilities and that NEWSNY agrees to accept the Facilities in their present "as is" condition.;

b) all revenue and income generated by or at the Facilities from and after the Closing shall be collected by NEWSNY and shall be the property of NEWSNY. Accounts Receivable for solid waste and Recyclable Materials delivered to the Facilities prior to the Closing shall be the sole property of the County, which shall have the sole right to collect and retain the proceeds of such accounts receivable;

c) NEWSNY shall be responsible for the performance of all day-to-day operations of the Facilities and the payment of the costs thereof, including without limitation weighing waste, testing waste for nature and consistency and acceptability, preparation of waste for disposal, cell construction, disposal of waste, preparing and applying daily interim and final cover, construction of temporary roads and other temporary access, installation and monitoring of ground water wells, maintenance and operation of a leachate collection and disposal system;

d) NEWSNY shall at its sole cost and expense be responsible for providing and maintaining all necessary services, facilities and equipment, for the receiving and handling of waste and Recyclable Materials to be disposed of or handled at the Facilities. Such responsibilities shall include without limitation (i) employing all necessary personnel to operate the Facilities, subject to the provisions of the Labor Utilization Agreement; and (ii) providing all services incidental to the business of operating the Facilities (including security, accounting, legal, fire prevention and pollution control);

e) NEWSNY shall weigh all vehicles containing waste to be delivered to the Facilities pursuant to this Agreement. NEWSNY shall utilize scales approved by the State of New York to weigh all waste and Recyclable Materials delivered to the Facilities. NEWSNY shall have the right to impose additional charges beyond the Tipping Fee for Special Waste based on unit volume, weight or characteristics. The County or its authorized representative shall have the right at the County's sole expense to test the accuracy of scales located at the Landfill, provided that these tests are conducted at reasonable times and do not unreasonably interfere with the orderly operation of the Facilities;

f) NEWSNY will operate the Facilities in compliance with all applicable laws and regulations of Governmental Authorities and all Permits;

g) NEWSNY shall have the right to operate the Landfill at hours of its choosing from 6:00 A.M. to 6:30 P.M. Monday through Friday; from 6:00 A.M. to 3:00 P.M. Saturday; and from 6:00 A.M. to 6:30 P.M. on Saturdays following holidays; or as permitted by NYSDEC, but shall not operate on Sunday; and

h) Limitations on Waste.

i) Rejection of Excluded Waste. NEWSNY agrees to accept only Acceptable Waste at the Facilities. NEWSNY shall be responsible for the rejection of Excluded Waste delivered to the Facilities after the Closing, which provision shall not limit NEWSNY's right of recourse against the transporter or generator of the Excluded Waste. NEWSNY shall have the right to detain and inspect the contents of all vehicles which are delivering waste to the Facilities to ensure that Excluded Waste is not being delivered to the Facilities. NEWSNY shall have the right to refuse or reject such Excluded Waste in its sole discretion or, if not detected prior to entering the Facilities, NEWSNY shall have the right, at its sole discretion, to remove the Excluded Waste and ensure its proper disposal, all at the hauler's expense. NEWSNY shall have the right to ban haulers from disposing at the Facilities until such time as the expenses for reimbursement for the removal of the Excluded Waste are paid to NEWSNY. NEWSNY shall have the right to ban any and all haulers who deliver or attempt to deliver Excluded Waste.

ii) Priority. NEWSNY shall have the right to recycle or dispose of Acceptable Waste generated outside Ontario County. During the Term NEWSNY shall provide for the Reserved Capacity and shall use best efforts and good faith to give priority to additional Acceptable Waste from In-County Parties, provided however, that to the extent NEWSNY accepts Acceptable Waste originating outside Ontario County to the exclusion of such additional Acceptable Waste from In-County Parties, NEWSNY shall not be liable for any damage or costs sustained by the County as a result of recycling or disposal at a third party site, unless NEWSNY

or an entity which it controls or which is under common control with NEWSNY arranges for disposal at a third-party site. In the event that the County incurs Losses as a result therefrom, NEWSNY shall fully indemnify the County for any such Losses pursuant to Section 19 of this Agreement.

iii) Transportation. NEWSNY shall not be responsible for the transportation or delivery of Acceptable Waste or Recyclable Material to the Facilities by or on behalf of the In-County Parties. NEWSNY shall, however, be responsible for the transportation of Acceptable Waste from the Transfer Station to the Landfill.

iv) Tonnage. The annual tonnage of Acceptable Waste disposed of in the Landfill shall be limited only by the Permits issued by NYSDEC and shall not exceed the limitations in those Permits.

3.7 Household Hazardous Waste Program. Following the Effective Date, NEWSNY will conduct one annual Household Hazardous Waste disposal day of at least 8 hours at the Facilities for County Residents, free of charge. Upon mutual agreement of NEWSNY and the County, NEWSNY shall hold a second Household Hazardous Waste disposal day, and the County shall reimburse NEWSNY for 50% of its expenses relating to the second Household Hazardous Waste day. NEWSNY shall be responsible for properly disposing of all Household Hazardous Waste, and costs shall be allocated in accordance with the terms of this Section 3.7.

3.8 The County (including without limitation all employees, agencies, boards, and commissions thereof) hereby agrees that: (a) NEWSNY may, to the extent permissible by law and without prior legislative, administrative or other authorization by the County (provided that NEWSNY will use good faith efforts to keep the County apprised thereof) conduct all activities relating to the day-to-day operation of the Facilities, including without limitation direct contact with Governmental Authorities; and (b) NEWSNY may, to the extent permissible by law and upon prior legislative or administrative authorization by the County, (i) submit Permit applications (including without limitation applications for modifications and renewals), reports or other formal documents to Governmental Authorities; (ii) appear on the County's behalf before NYSDEC, USEPA or any other Governmental Authority with regard to the Facilities; and (iii) appear on the County's behalf at any public hearings or meetings relative to the obtaining, renewal or modification of the Permits.

3.9 Ontario County Landfill Advisory Committee. Following the Effective Date, NEWSNY and the County shall establish an Ontario County Landfill Advisory Committee, the membership of which will be established collaboratively by NEWSNY and the County. The Ontario County Landfill Advisory Committee will meet at least annually to discuss strategic issues relating to the Facilities and the County's budget for the following fiscal year, and to forecast anticipated growth revenues from operation of the Facilities, and to discuss such other issues as a member deems necessary. The Committee shall consist of five (5) members, two to be chosen by the County, two to be chosen by NEWSNY and one to be chosen by the Town, all of whom will serve at the pleasure of the appointing party.

#### **4. OBLIGATIONS OF THE COUNTY.**

Cumulative with all of the obligations otherwise set forth in this Agreement, the County shall have the following obligations:

4.1 The County shall at all times cooperate with NEWSNY in obtaining, maintaining, renewing, amending and/or modifying all Permits in furtherance of this intent. In addition, the County shall cooperate with the development, permitting, construction and operation of Permittable Capacity as requested by NEWSNY from time to time, including with respect to such additional real property as may be acquired by the County or by NEWSNY for use relating to the Facilities during the course of the Agreement. In no event is the County under any obligation to acquire additional real property other than that described in the Option Agreement.

4.2 In accordance with applicable law the County shall issue to NEWSNY any local Permits necessary from the County for NEWSNY to construct, operate, use, maintain, upgrade, expand and close the Facilities as set forth herein.

4.3 In the event that the County adopts any local law, ordinance, resolution or policy that materially adversely impairs the rights of NEWSNY to construct, operate, use, maintain, upgrade, expand or close the Facilities such that the ability of the Landfill to accept 2,300 Tons per day of Acceptable Waste is materially limited, NEWSNY may in its sole discretion (i) consider such action a Material Breach for purposes of Section 20 of this Agreement, or (ii) opt not to terminate this Agreement for a Material Breach, and to continue to operate the Facilities. In the event NEWSNY declares a Material Breach and terminates this Agreement, in addition to the remedies set forth in Section 20, the County shall immediately repay that portion of the lump sum payment described in Section 2.4(b) that it has received from NEWSNY equal to the amount of that payment multiplied by a fraction, the numerator of which is the number of years remaining in the Term, and the denominator of which is 25. In the event NEWSNY chooses to continue operation of the Facilities, from and after the effective date of the local law, ordinance, resolution or policy so adopted, the annual payment described in Section 2.4(a) or 2.4(c), as applicable, shall be reduced to an amount equal to the amount of that payment multiplied by a fraction, the numerator of which is the tonnage per day of Acceptable Waste that can be accepted at the Landfill as limited by the local law, ordinance, resolution or policy, and the denominator of which is 2,300.

4.4 The County shall execute at NEWSNY's request, all documents consistent with the purposes of this Agreement, and will further undertake to the extent not violative of law any steps requiring local legislation or resolution in order to provide to NEWSNY all contemplated and required approvals relative to the Facilities and to NEWSNY's development, construction, use, maintenance, operation and closure of any Permittable Capacity.

4.5 The County agrees to the extent lawful under SEQRA, that the County shall seek Lead Agency status under SEQRA and act as Lead Agency regarding all projects and activities contemplated by this Agreement, including without limitation the Future Projects. All costs relating to the SEQRA process other than the internal administrative costs associated with the County's role as lead agency shall be the responsibility of NEWSNY.

4.6 As a condition of Closing, the County shall repeal County Resolution 232-99 and any other local law or resolution limiting the operation of the Facilities inconsistent with the express terms of this Agreement.

## 5. OBLIGATIONS OF CASELLA

Casella's obligations under this Agreement shall be strictly limited to the following:

5.1 Casella shall be jointly and severally liable with NEWSNY for the following payments: the Lease Payments as provided in Sections 2.4(a) and 2.4(c), the Lump Sum payment as provided in Section 2.4(b), the Revenue Sharing payments as provided in Section 2.5, the payments relating to Additional Benefits as provided in Section 8, the Financial Assurance as provided in Sections 3.5(b) and 3.5(c)(ii), and the payments in lieu of completion of the Future Projects as provided in the second sentence of Section 7.10 of this Agreement.

5.2 Casella shall be jointly and severally liable with NEWSNY with regard to NEWSNY's indemnification obligations pursuant to Section 19 of this Agreement.

## 6. PERSONAL PROPERTY

6.1 Purchased Personal Property. NEWSNY shall purchase from the County the Purchased Personal Property for the amount of \$1,711,329.59, less the debt associated with capital lease obligations as set forth in Schedule 6.1, to be paid at Closing. The County shall maintain ownership of all personal property not specifically described in Schedule 6.1 hereto. Any sales tax relating to the purchase of the Purchased Personal Property shall be the responsibility of NEWSNY.

## 7. FUTURE PROJECTS

7.1 Future Projects. NEWSNY's obligation to pursue the Future Projects shall begin on the Effective Date unless otherwise stated herein. Unless any such Future Project or activity is determined to be a Type II Action under SEQRA, all such projects and activities shall be preceded by a full evaluation under SEQRA by the County, including the preparation of an environmental impact statement, if required. NEWSNY shall apply for and use its best efforts to obtain all applicable Permits required for the Future Projects. The County shall cooperate with NEWSNY in obtaining all approvals and permits related thereto. All work performed by NEWSNY in connection with the Future Projects shall be performed in a good and workmanlike manner and shall comply with all laws, ordinances, orders, rules, regulations and requirements of all applicable Governmental Authorities. Any costs and expenses for Future Projects that exceed the anticipated costs stated herein shall be the sole responsibility of NEWSNY, unless such additional costs exceed the anticipated costs solely as a result of result of expansions or enhancement to the Future Projects made at the request of the County.

7.2 Leachate Management System Upgrade. Following the Effective Date, NEWSNY will modify the existing leachate management system by relocating the leachate storage facility and constructing a sewer connection to either the City of Geneva wastewater treatment plant or the City of Canandaigua wastewater treatment plant as mutually agreed upon by the parties, as set forth in Schedule 7.2.

7.3 Wrap Around Expansion. Construction of a Landfill expansion as more fully described in Schedule 7.3.

7.4 Eastern Expansion. Construction of a Landfill expansion as more fully described in Schedule 7.4.

7.5 Planned Business Development District ("PBDD"). To provide assistance to the County and the Town in the development of a proposed PBDD in accordance with the Master Plan of the County, after the Effective Date, NEWSNY will perform the following activities which are more fully described in Schedule 7.5:

- a) extend a sewer line to the PBDD and provide connections at an anticipated cost of \$1,700,000;
- b) construct distribution mains for potable water within the PBDD at an anticipated cost of \$100,000; and
- c) develop and construct the industrial development zone inside the PBDD, including without limitation site planning, roads, sewers, water, electric improvements and site landscaping, at an anticipated cost of \$2,000,000.

7.6 Construction of Single-Stream Recycling Center. NEWSNY will construct an approximately 45,000 square foot single stream materials recycling facility at an anticipated cost of \$4,400,000, as more fully described in Schedule 7.6.

7.7 Construction of GRT Glass Beneficiating Facility. NEWSNY will construct an approximately 20,000 square foot glass beneficiating facility at an anticipated cost of \$1,800,000, as more fully described in Schedule 7.7.

7.8 Cornell Cooperative Extension Hydroponics Greenhouse. NEWSNY will construct an approximately 20,000 square foot hydroponics greenhouse for agricultural use of growing lettuce, at an anticipated cost of \$750,000, as more fully described in Schedule 7.8.

7.9 Construction of Commercial/Industrial Facilities. NEWSNY will construct an approximately 18,000 square foot office and maintenance facility at an anticipated cost of \$2,500,000, as more fully described in Schedule 7.9, which, at NEWSNY's sole discretion, may be used by NEWSNY or its affiliate Casella Waste Management of N.Y., Inc. as a hauling company..

7.10 Timing. NEWSNY shall complete the Future Projects described in sections 7.5, 7.6, 7.7, 7.8 and 7.9 within the time frames set forth in Schedule 7.10. In the event that such Future Projects are not completed within the time frames set forth in Schedule 7.10, NEWSNY shall pay the County the amounts set forth in Schedule 7.10. The County agrees that it will grant reasonable extensions to NEWSNY to complete such Future Projects so long as the project in question has been commenced prior to the deadline in Schedule 7.10.

## 8. ADDITIONAL BENEFITS TO BE PROVIDED BY NEWSNY

8.1 Reimbursement For Early Closure. Except in the event of a breach of this Agreement by the County, in the event that the Landfill reaches capacity prior to the expiration of the Term, NEWSNY will reimburse the County for costs incurred by In-County Parties in disposing of their Acceptable Waste up to the Reserved Capacity for the difference between the then current market rate tipping fee and the Tipping Fee that would otherwise be applicable under Section 9.1.

8.2 Reimbursement of Annual Engineer Review. Following the Closing, NEWSNY will pay the County an annual amount of Ten Thousand Dollars (\$10,000.00) for a County Oversight Monitor to evaluate the current status of various landfill projects and the remaining capacity available in the Landfill. This payment shall be made by June 30 of each calendar year.

8.3 Permit Success Payment. NEWSNY will pay to the County the following one-time success payments ("Permit Success Payments"):

a) Wrap Around Expansion: Upon issuance of all non-appealable Permits necessary for the construction and operation of the Wrap Around Expansion, NEWSNY will pay to the County the amount of \$1.00 per cubic yard of total capacity approved in said Permits for the Wrap Around Expansion; and

b) Eastern Expansion: Upon issuance of all non-appealable Permits necessary for the construction and operation of the Eastern Expansion, NEWSNY will pay to the County the amount of \$2.00 per cubic yard of total capacity approved in said Permits for the Eastern Expansion.

8.4 Ontario County Scholarship Fund. NEWSNY will invest in the future education of the residents of the County by annually contributing Twenty-two Thousand Dollars (\$22,000.00) on the Effective Date and each anniversary of the Effective Date of this Agreement in each year of the Term.

8.5 Major New Business Discount. In order to attract new business into the County, NEWSNY will provide a 20% discount off the In-County Gate Rate Tipping Fee, for up to 15,000 Tons of Acceptable Waste per year generated by In-County Parties that are new Major Businesses within the County who deliver such waste using roll off compactor type service. The Ontario County Economic Development Office shall determine at its sole discretion which businesses is a new Major Business.

8.6 Reimbursement of Negotiating Costs. NEWSNY will reimburse the County promptly upon demand for actual costs (including internal costs) incurred to coordinate the bid process, review the proposals and negotiate this Agreement and all other ancillary agreements (e.g., the Labor Utilization Agreement) in an amount not to exceed \$100,000.

8.7 NEWSNY will pay the County a total of \$10,000 on December 31 of each year of the Term to defray all or some of the County's costs relating to the Ontario County Landfill Advisory Committee.



## **9. TIPPING FEE**

9.1 Acceptable Waste from In-County Parties. NEWSNY will charge an In-County Gate Rate Tipping Fee for Acceptable Waste disposed by In-County Parties not to exceed \$29.00 per Ton as of the Closing, subject to annual increases based on the CPI, provided however, that the tipping fee for the municipalities that are parties to the existing municipal contracts listed on Schedule 9.1 shall not exceed \$26.00 per Ton increased annually by CPI. The In-County Gate Rate Tipping Fee shall be applied to the Reserved Capacity. NEWSNY will not charge a Tipping Fee to In-County Parties for residential Recyclable Materials delivered to the Recycling Facilities or the Single-Stream Recycling Center. NEWSNY reserves the right to equitably adjust the In-County Gate Rate Tipping Fee in a commercially reasonable manner in the event that additional taxes (other than state and federal income taxes) are imposed by any Governmental Authority upon NEWSNY directly arising out of NEWSNY's operation of the Facilities, or upon the Facilities, or in the event of a change of law resulting in increased costs to NEWSNY, in each case such adjustment amount shall be solely to cover such increased costs.

9.2 Out-of County Acceptable Waste. The Tipping Fee for Acceptable Waste accepted for disposal at the Landfill generated by any parties other than the In-County Parties, shall be set by NEWSNY in NEWSNY's sole discretion, provided however, that the Tipping Fee charged to NEWSNY and its Affiliates shall not be less than the rate charged to non-Affiliates under equivalent circumstances.

## **10. USE AND COMPLIANCE WITH LAW**

The Facilities shall be kept by NEWSNY in good working order and repair outside and inside at its sole cost and expense and NEWSNY shall comply with all orders, regulations, rules and requirements of every kind and nature, now and hereinafter in effect, of all Governmental Authorities having the power to enact, adopt, impose or require the same whether they be usual or unusual, ordinary or extraordinary or whether they or any of them relate to environmental requirements or otherwise and NEWSNY shall pay all costs and expenses incidental to such compliance.

NEWSNY shall have the right, at its own cost and expense, to contest or review by legal proceedings the validity or legality of any law or Permit and during such contest NEWSNY may refrain from complying therewith, provided however, that neither NEWSNY nor the County will be subjected to criminal prosecution thereby and, that if requested to do by the County, NEWSNY shall furnish to the County a bond in form and amount reasonably satisfactory to the County guaranteeing to the County compliance by NEWSNY with such law, order, ordinance, rule or regulation and payment of any penalty assessed against the County for NEWSNY's non-compliance.

## **11. LABOR AGREEMENTS**

11.1 Labor Agreement. NEWSNY and the County acknowledge that the County currently employs certain employees at the Facilities which are subject to the Labor Agreement. The County and NEWSNY acknowledge the County's currently existing obligation to bargain in

good faith with respect to any effect this Agreement might have on its employees pursuant to the Labor Agreement.

11.2 Labor Utilization Agreement. As required by the County at its sole discretion, NEWSNY and the County shall enter into a Labor Utilization Agreement, annexed hereto as Exhibit 5, in order to maintain, as practicable, the relationship between the County and its employees, until the expiration of the Labor Agreement.

## 12. GENERAL POWERS

In addition to the other powers granted to the County, it is expressly acknowledged that in the exercise of the dominion and control of the Facilities, NEWSNY will be free, without restriction, to subcontract out those services that it deems appropriate in its sole discretion, including without limitation Closure, Post-Closure Care, or such other services that NEWSNY deems necessary, provided however, that to the extent applicable, NEWSNY shall require that the subcontractors follow the provisions of this Agreement; provided, further, that no such subcontract shall be deemed to relieve NEWSNY of any of its obligations hereunder.

## 13. FINANCIAL SECURITY

Following the Effective Date NEWSNY will provide, in a form consistent with Exhibit 10, until the Agreement is terminated, Financial Security in a form acceptable to the County and NEWSNY in an amount equal to the next two remaining years of Lease Payments as set forth in Schedule 2.4(c). In the event that Section 4.3 applies such Financial Security shall be prorated in the same manner as the Lease Payment.

## 14. RECORDS/AUDITS

The acceptance by the County of payments under this Agreement shall be without prejudice to the County's rights to an examination of NEWSNY's books and records from the operation of the Facilities in order to verify the amount of Acceptable Waste received at the Facilities.

NEWSNY shall, with each payment made hereunder by NEWSNY to the County, deliver to the County a written statement prepared and certified by NEWSNY, showing in detail the calculation of the respective payment.

NEWSNY shall keep accurate and true records, books and data of accounts with respect to all material received under the Recycling Program and all Acceptable Waste received at the Landfill.

The County shall have the right to inspect the Facilities, books and records during reasonable business hours in order to ensure that the provisions of this Agreement are being complied with, that Acceptable Waste is being received at the Landfill, and that the Facilities are being operated in conformity with all applicable laws and regulations of Governmental Authorities. No such inspection or the right to make an inspection shall relieve NEWSNY of its obligations under this Agreement.

The County and its agents shall have the right at all reasonable times, but in no event more than twice each calendar year, and on five (5) days prior written notice to NEWSNY, to inspect and examine the accounts, records, books, contracts and other data concerning the gross volume of business conducted under this Agreement to the extent relevant to the calculation of payments due the County hereunder. In the event that such inspection and examination shall disclose that there is a discrepancy of more than 5% between the payments made by NEWSNY to the County hereunder and the amounts determined to be owed to the County hereunder, the cost of the County's examination (including internal costs) shall be promptly reimbursed by NEWSNY. In all events the amount determined by the County to be unpaid shall be paid promptly upon demand. Any information obtained by the County as a result of such examination shall be treated as confidential.

NEWSNY shall not be obligated to hold the books and records for more than three (3) years, unless a longer period is required by law provided there is no material variation as aforementioned, in which case NEWSNY will hold such books and records relating thereto for five years from the date such material violation was discovered by the County.

**15. NO JOINT VENTURE**

It is further understood and agreed that neither this Agreement nor the method set forth herein for computing payments to the County by NEWSNY, nor any other provision of this Agreement or the Labor Utilization Agreement, are intended nor shall ever be construed as to create a legal partnership by and between the County and NEWSNY or make NEWSNY and the County joint venturers, or make the County in any way responsible for debts and/or losses of NEWSNY. The parties are and shall be independent contractors in their relationship with each other and neither is, nor shall be considered, an agent or legal representative of the other for any purposes whatsoever. Neither party has any express or implied authority to assume or create any obligation or responsibility on behalf of the other or to bind the other in any way.

**16. REPRESENTATIONS AND WARRANTIES OF THE COUNTY**

The County represents and warrants to NEWSNY as follows:

16.1 The County is a county in the State of New York with full legal right, power and authority to enter into and to fully and timely perform its obligations under this Agreement.

16.2 The County is duly authorized to execute and deliver this Agreement and this Agreement constitutes a legal, valid binding obligation of the County and enforceable against the County in accordance with its terms.

16.3 To the best of its knowledge, neither the execution or the delivery by the County of this Agreement nor the performance by the County of its obligations in connection with the transactions contemplated hereby or the fulfillment by it of the terms and conditions hereof conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to it or materially conflicts with, violates or results in a breach or constitutes a default of any term or condition of any order, judgment or decree or any agreement or instrument to which the County is a party or by which the County or by any of its properties or personal property are bound or constitutes a default.

16.4 No approval, authorization, order, consent, declaration, bid, registration or filing with any Governmental Authority or referendum of voters which has not been obtained is required for the valid execution and delivery by the County of this Agreement or the performance by the County of its obligations hereunder.

16.5 Except as set forth on Schedule 16.5, there is no action, suit or proceeding at law or in equity before or by any Governmental Authority pending or threatened against the County in which an unfavorable decision, ruling or finding would materially adversely affect the performance by the County of its obligations hereunder or other transaction contemplated hereby or that in any way would materially adversely affect the validity and enforceability of this Agreement. The County hereby covenants and agrees that all liability resulting from or relating to the matters described in Schedule 16.5 shall remain with the County and the County shall indemnify and hold harmless NEWSNY from any and all Losses related thereto.

16.6 All Permits required for the lawful operation of the Facilities have been validly issued and are in full force and effect and the County knows of no facts which would affect the validity and continued operation of the Facilities subject to these permits.

16.7 Except for Resolution 232-99, none of the Permits have been suspended, revoked or materially affected by any Governmental Authority, regulatory ruling or regulatory advisement, and the County knows of no fact under which the Existing Capacity, Permitted Capacity or Permittable Capacity of the Landfill would be limited or restricted.

16.8 There are no contracts or agreements whereby any person, firm, Governmental Authority or other entity has any right over the Facilities, other than the Labor Agreement, to the extent applicable.

16.9 The Labor Agreement annexed hereto as Exhibit 4 is the sole union contract affecting personnel subject to this Agreement.

16.10 There are no pending or threatened labor disputes, disturbances, litigation, events or conditions involving the County and its employees relative to personnel presently performing functions at the Facilities, there are no pending demands for collective bargaining and no proceedings are pending before the Public Employees Relations Board or any other such body having jurisdiction, and the County has not committed an unfair labor practice and is not a party to any collective bargaining agreement related to the Facilities other than set forth in Exhibit 4.

16.11 None of the Facilities are subject to a security interest, mortgage, deed of trust, lien, encumbrance or similar interest, except as set forth in Schedule 16.11 hereto, and the County owns fee simple good insurable title to the Real Property.

16.12 The County has provided or made available to NEWSNY all material documents, records and other information with regard to the Facilities and the Real Property, including without limitation all such information relating to the Phase II Closed Landfill, and to the County's knowledge, all such documents, records and other information were and are true and accurate.

16.13 All reports and returns regarding the Facilities required to be filed with any Governmental Authority, including without limitation NYSDEC and the United States Environmental Protection Agency, have been filed.

**17. REPRESENTATIONS AND WARRANTIES OF NEWSNY AND CASELLA**

NEWSNY and Casella represent and warrant to the County as follows:

17.1 NEWSNY is a corporation duly incorporated, validly existing and authorized to do business under the laws of the State of New York with full legal right, power and authority to enter into and fully and timely perform its obligations under this Agreement.

17.2 Casella is a corporation duly incorporated under the laws of Delaware, validly existing and authorized to do business under the laws of the State of New York with full legal right, power and authority to enter into and fully and timely perform its obligations under this Agreement.

17.3 NEWSNY and Casella have duly authorized, executed and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation enforceable against NEWSNY and Casella in accordance with its terms.

17.4 Neither the execution or delivery by NEWSNY or Casella of this Agreement nor the performance by NEWSNY or Casella of its obligations in connection with the transactions contemplated hereby or the fulfillment of the terms and conditions hereof conflicts with, violates or results in a breach of any law or governmental regulation applicable to it or materially conflicts with, violates or results in a breach of any term or condition of any order, judgment or decree or any agreement or instrument to which NEWSNY or Casella is a party or which NEWSNY, Casella or any of their properties or personal property are bound or constitutes a default thereunder.

17.5 No approval, authorization, order, consent, declaration, registration or filing with any Governmental Authority is required for the valid execution and delivery by NEWSNY or Casella of this Agreement.

17.6 There are no pending or threatened actions, suits, administrative actions or proceedings at law or in equity before or by any Governmental Authority against NEWSNY or Casella in which an unfavorable decision, ruling or finding would materially and adversely affect the performance of NEWSNY or Casella of its obligations hereunder or any other transaction contemplated hereby or that in any way would materially adversely affect the validity or enforceability of this Agreement.

**18. SURVIVAL OF WARRANTIES, REPRESENTATIONS AND COVENANTS**

All representations, warranties, promises, agreements, covenants and statements made herein or in any Schedule or Exhibit annexed hereto or in any instruments or document delivered by or on behalf of any party pursuant to this Agreement shall survive for the duration of this Agreement, as it may be extended, regardless of what investigations the parties may have made before or after the execution of this Agreement, except (i) those representations and warranties

which are expressly waived in writing by the party benefiting therefrom and (ii) for those promises, agreements and covenants as are intended to survive the expiration or termination of this Agreement. Nothing herein contained shall require that a party waive any representations and warranties.

## 19. INDEMNIFICATION

### 19.1 General Agreement to Indemnify.

a) Each of the County and NEWSNY (each, an "Indemnifying Party"), to the fullest extent allowed by law, shall indemnify, defend and hold harmless the other Party and any director, officer or affiliate of the other Party (each, an "Indemnified Party") from and against any and all claims, actions, suits, judgments, proceedings, liabilities, obligations, losses, and damages, amounts paid in settlement, interest, costs and expenses (including reasonable attorney's fees, court costs and other out-of-pocket expenses incurred in investigating, preparing or defending the foregoing) (collectively, "Losses") incurred or suffered by any Indemnified Party to the extent that the Losses arise by reason of, or result from (i) the failure of any representation or warranty of the Indemnifying Party contained in this Agreement to have been true in all material respects as of the date hereof; (ii) the breach by the Indemnifying Party of any covenant or agreement of such Party contained in this Agreement to the extent not waived by the other Party.

b) The indemnification obligations of each Party under this Section 19 shall inure to the benefit of the directors, officers and affiliates of the other Party or to the elected or appointed officials (including the Board of Supervisors) of the other Party on the same terms.

19.2 NEWSNY's Obligation to Indemnify County. NEWSNY agrees to defend, indemnify, hold harmless and discharge the County from and against (i) any and all Losses arising prior to the Effective Date from the County's ownership, operation, maintenance, use and condition of the Real Property, including without limitation maintenance and use of the property as solid waste management facilities, such indemnification expressly including environmental contamination relating to the Phase II Closed Landfill (NYSDEC Inactive Hazardous Waste Site # 835004); (ii) any and all Losses arising after the Effective Date from NEWSNY's or its Affiliates' ownership, operation, maintenance, use and condition of the Real Property, including without limitation maintenance and use of the Real Property as a solid waste management facility, the construction and operation of improvements, new Landfill phases, the Future Projects and/or the Additional Benefits; and (iii) any and all Losses from any environmental contamination at the Facilities whether or not such environmental contamination arose prior to or after the Effective Date; (iv) any and all Losses arising from any notices, orders, violations or penalties filed against or imposed upon the Facilities or against the County as owner thereof, by any Governmental Authority with jurisdiction over the Facilities, because of the failure of NEWSNY to comply with the covenant contained in Section 10.

### 19.3 General Procedures for Indemnification; Survival.

a) The Indemnified Party seeking indemnification under this Agreement shall promptly notify the Party against whom indemnification is sought of the assertion of any claim,

or the commencement of any action, suit or proceeding by any third party, in respect of which indemnity may be sought hereunder and will give the Indemnifying Party such information with respect thereto as the Indemnifying Party may reasonably request, but failure to give such notice shall not relieve the Indemnifying Party of any liability hereunder (except to the extent the Indemnifying Party has suffered material prejudice by such failure). The Indemnifying Party shall have the right, but not the obligation, exercisable by written notice to the Indemnified Party within thirty (30) days of receipt of notice from the Indemnified Party of the commencement of or assertion of any claim, action, suit or proceeding by a third party in respect of which indemnity may be sought hereunder (a "Third-Party Claim"), to assume the defense and control the settlement of such Third-Party Claim.

b) The Indemnifying Party or the Indemnified Party, as the case may be, shall have the right to participate in (but not control), at its own expense, the defense of any Third-Party Claim that the other is defending, as provided in this Agreement.

c) The Indemnifying Party, if it has assumed the defense of any Third-Party Claim as provided in this Agreement, shall not consent to a settlement of, or the entry of any judgment arising from, any such Third-Party Claim without the Indemnified Party's prior written consent (which consent shall not be unreasonably withheld) unless such settlement or judgment relates solely to monetary damages. The Indemnifying Party shall not, without the Indemnified Party's prior written consent, enter into any compromise or settlement that (i) commits the Indemnified Party to take, or to forbear to take, any action, or (ii) does not provide for a complete release by such third party of the Indemnified Party.

d) Survival. The indemnification obligations under Sections 19.1 and 19.2, with regard to claims arising in contract, shall expire six years from the date of termination or expiration, and with regard to claims arising in tort or otherwise, shall expire three years from the date of termination or expiration, except for claims to recover damages for personal injury or injury to property caused by the latent effects of exposure occurring during the Term hereof to substances which shall be three years from the date of discovery, provided however, in the event that the Agreement is terminated due to a Material Breach as provided herein, no indemnification obligations of the non-breaching party shall survive termination.

## **20. TERMINATION; BREACH;**

This Agreement may be terminated at any time upon 90 days written notice to all parties:

20.1 by mutual written agreement of the County and NEWSNY; or

20.2 by NEWSNY if (each being a "Material Breach"):

a) any legal proceeding or government investigation that results in an unfavorable judgment, order, decree, stipulation or injunction which materially interferes with NEWSNY's ability to successfully engage in the operation and expansion of the Facilities as contemplated by this Agreement and such investigation or legal proceeding makes no finding of culpability, illegality, or wrongdoing on the part of NEWSNY;

b) any material portion of the Facilities is condemned, destroyed or damaged by fire or otherwise, which materially interferes with NEWSNY's ability to successfully engage in the operation and expansion of the Facilities as contemplated by this Agreement;

c) any of the County's representations or warranties were not materially true and accurate when made; or

d) the County fails to perform its obligations in Sections 3.1 and 4 of this Agreement; or

20.3 by the County upon NEWSNY's failure to perform the following obligations and failure to cure such breaches (each being a "Material Breach") as provided herein:

a) make Lease Payments within twenty (20) days of when due or other payments, including without limitation those payments required by Section 8, within twenty (20) days after written notification that the same is overdue;

b) fulfill its Closure responsibilities;

c) provide required Closure and Post-Closure Financial Assurance;

d) provide the Financial Security required under Section 13; or

e) any of NEWSNY's representations or warranties prove to have been false when made.

f) any of NEWSNY's obligations under Sections 23 or 24.

20.4 Cure by Non-Breaching Party. In the event of a breach of this Agreement, unless a notice has been issued in accordance with Section 20.3, in which case the notice issued thereunder shall satisfy this Section 20.4 regarding right to cure, the non-breaching party shall, upon ten (10) days prior written notice to the breaching party, have the right, but not the obligation or duty, to cure such breach as set forth in Section 20.5, including the right to charge the breaching party with the costs of curing the breach and to offset the costs of curing the breach against any sums due or which become due to the breaching party under this Agreement. The non-breaching party shall use commercially reasonable efforts to employ an economically reasonable method of curing such breach.

If any Material Breach occurs, is not cured in the manner allowed hereunder, and the non-breaching party does not exercise its right to terminate pursuant to this Agreement, then this Agreement shall continue in force and the non-breaching party shall, notwithstanding anything to the contrary herein, have the right to take whatever action it deems necessary or desirable pursuant to Section 28 to collect any amounts then due or thereafter to become due under this Agreement or to enforce performance of any covenant or obligation of the breaching party under this Agreement.



## 20.5 Cure by Breaching Party.

a) Material Breach. A Material Breach by the County or NEWSNY shall be subject to a 30-day cure period, unless notice as required by Section 20.2 or Section 20.3 has been given, in which case such notice shall trigger the cure period stated in those sections.

b) Non-Material Breach. Upon a breach by the County or NEWSNY that is not a Material Breach such party shall (i) cure the breach within ninety (90) days of receipt of written notice from the non-breaching party; or (ii) continuously demonstrate within such cure period that it is actively and continuously pursuing a course of action which can reasonably be expected to lead to a curing of the breach (in which case the ninety (90) day period will be extended for so long as the breaching party is actively and continuously pursuing such a course); provided, however, that in the event of the failure of any party to this Agreement to pay the other party or parties any sum or due amount required to be paid when due hereunder, cure shall consist of payment which will be made within ten (10) days of written demand from the non-breaching party.

All breaches of this Agreement that do not explicitly give rise to a right of termination pursuant to this Section 20 may be enforced pursuant to Section 28 of this Agreement, but shall not give rights to either party to terminate this Agreement.

## 20.6 Effects of Termination.

a) Upon termination of this Agreement by either NEWSNY or the County prior to the Effective Date for any reason, NEWSNY shall, upon receipt from the County of payment for the Purchased Personal property in an amount equal to the fair market value of the Purchased Personal Property upon the date of termination, transfer to the County the Purchased Personal Property free and clear of all liens and encumbrances. In addition, neither the County nor a third party shall operate the Facilities unless a new Closure and Post-Closure Financial Assurance mechanism is posted and NEWSNY's Closure and Post-Closure Financial Assurance is released to the extent it relates to any capacity to be used or filled after the termination date by the County or any other party.

b) Upon termination of this Agreement by the County pursuant to this Section 20, resulting from a Material Breach as described in Section 20.3, unless otherwise mutually agreed by the parties in writing, NEWSNY's rights and interests in the Real Property, the Facilities and the Permits shall cease and NEWSNY shall quit the premises. In addition to the County's right to terminate this Agreement upon such Material Breach after all applicable periods to cure have expired, the County may, at its sole option, require that NEWSNY turn over to the County all completed Landfill facility and improvement designs in its possession and to forfeit all constructed buildings, improvements and facilities on the Real Property without recourse. In addition, neither the County nor a third party shall operate the Facilities unless a new Closure and Post-Closure Financial Assurance mechanism is posted and NEWSNY's Closure and Post-Closure Financial Assurance is released to the extent it relates to any capacity to be used or filled after the termination date by the County or any other party.

c) Upon termination of this Agreement by NEWSNY pursuant to this Section 20, resulting from a Material Breach as described in Section 20.2 (i) unless otherwise mutually agreed by the parties in writing, NEWSNY shall not be required to make any payments described in this Agreement, the County's right to which had not accrued prior to the event that results in termination; (ii) the County shall pay at the time of termination to NEWSNY the trailing 12 months' ("TTM") average revenue per ton, minus the average TTM cost per ton times the number of tons remaining in the unused Permitted Capacity. Once the Permitted Capacity is exhausted the County and NEWSNY will together determine the revenue actually received for the Remaining Capacity tonnage minus the TTM cost adjusted by the CPI. In the event such amount is greater than the termination payment made pursuant to this section at the time of termination, the County will pay to NEWSNY the difference; and (iii) neither the County nor a third party shall operate the Facilities unless a new Closure and Post-closure Financial Assurance mechanism is posted and NEWSNY's Closure and Post-Closure Financial Assurance is released to the extent it relates to any capacity to be used or filled after the termination date by the County or any other party.

d) Upon the expiration of the Term, if no further or additional agreement is reached between NEWSNY and the County for NEWSNY's continued operation of the Facilities, the County shall reimburse NEWSNY for NEWSNY's costs and expenses for permitting, design and construction of any Remaining Capacity existing as of the expiration of the Term. In addition, neither the County nor a third party shall operate the Facilities unless a new Closure and Post-Closure Financial Assurance mechanism is posted and NEWSNY's Closure and Post-Closure Financial Assurance is released to the extent it relates to any capacity to be used or filled after the termination date by the County or any other party.

## **21. STRICT PERFORMANCE**

The failure or delay of either party to insist on the strict performance of any of the terms, covenants and provisions of this Agreement or to exercise any option herein contained shall not be construed as a waiver, abandonment or relinquishment for the future of such term, covenant, condition, provision or option nor prevent any election under or enforcement or exercise of any right, privilege or option hereunder.

## **22. EMINENT DOMAIN**

To the extent permissible by law the County agrees not to exercise any rights that it might have to acquire the leasehold, or title as the case might be, to all, or any portion of, the Facilities. If, during the term of this Agreement, proceedings by any Governmental Authority against the Real Property or the Facilities result in a full or partial taking of the Real Property or the Facilities, which proceedings do not materially interfere with NEWSNY's ability to successfully engage in the operation and expansion of the Facilities, the County shall be entitled to receive the condemnation award or payment for such portion taken, and NEWSNY shall continue to operate the Facilities. NEWSNY may set off any expenses incurred as a result of such taking against any of its payment obligations under this Agreement in an amount equivalent to those expenses, upon notice to the County of the amount of the expenses and the reasons why the partial taking causes them to become necessary. In no event shall NEWSNY be entitled to an offset that exceeds the total amount of payments due to the County under this Agreement.

**23. INSURANCE**

NEWSNY covenants and agrees to procure and keep in force and effect at all times with the premiums paid, third party pollution liability, workers' compensation for NEWSNY employees, general liability, auto liability, professional liability, and "umbrella" insurance insuring both the County and NEWSNY for the Facilities in the amounts set forth in Schedule 23 hereto and to maintain such insurance at all times during the term of this Agreement. A certificate of each insurance policy shall be provided to the County upon commencement of the Term and at least thirty (30) days prior to the expiration of each policy. NEWSNY agrees to ensure that its insurers (i) waive any subrogation claims against the County, or (ii) waive any rights to recover from the County for any loss or damage suffered by NEWSNY due to NEWSNY's operation of the Facilities.

All amounts that shall be received under any insurance policy protecting buildings and improvements of the Facilities shall be first applied to the payment of the cost of repair, reconstruction or replacement of any buildings or improvements, or furniture, fixtures, equipment and machinery, that is damaged or destroyed. Any amount remaining from the proceeds of any such insurance fund, after the repairing, reconstructing and replacing of any buildings or improvements, or furniture, fixtures, equipment and machinery, as herein required, shall immediately be paid to and be the sole property of NEWSNY. If said insurance proceeds shall be insufficient in amount to cover the costs of repairing, reconstructing or replacing any buildings or improvements, or furniture, fixtures, equipment and machinery, as herein required, then NEWSNY shall promptly pay any deficiency, unless such damage or destruction was caused by the County.

**24. MECHANICS' AND OTHER LIENS**

NEWSNY hereby covenants to keep the Real Property free and clear of any and all mechanics', materialmen's and other liens for work or labor done, services performed or materials used in or about the Facilities for or in connection with any operations of NEWSNY, any construction, development, alterations, improvements, repairs or additions which NEWSNY may make or permit or cause to be made, or any work or construction by, for or permitted by NEWSNY on or about the Facilities. If, despite such covenant, any such lien or claim shall be filed against the Real Property, NEWSNY shall cause such lien to be discharged or to be fully bonded, so that a discharge of said lien may be obtained. The failure by NEWSNY to discharge or bond said lien shall constitute default in the same manner as if NEWSNY failed to make any lease payment due hereunder. The County and NEWSNY shall each promptly notify the other in the event of the filing or service of any lien or claim or claims against the Real Property.

**25. COVENANT OF QUIET ENJOYMENT**

The County covenants and agrees that NEWSNY, on paying the Lease Payments and other payments envisioned by this Agreement and observing and keeping the covenants, agreements and stipulations of this lease on its part to be kept, shall lawfully, peacefully and quietly hold, occupy and enjoy (or operate, as the case might be) said Facilities, during the Term and any extensions thereto without hindrance, objection or molestation.

26. ASSIGNMENT

This Agreement may be assigned, upon notice to the County, by NEWSNY, to any entity controlling, controlled by, or under common control with NEWSNY. No such assignment shall release NEWSNY from liability hereunder without the County's express written consent. No other assignments shall be permitted without prior written consent from the County.

27. CUMULATIVE REMEDIES

The specified remedies to which the County may resort under the terms of this Agreement are not exclusive of any other remedies or means of redress to which the County may be lawfully entitled at law or in equity in case of any breach or threatened breach by NEWSNY of any provision or provisions of this Agreement and the exercise of any one remedy will not preclude the exercise of any other available remedy.

28. NON-BINDING ARBITRATION

28.1 Agreement to Arbitrate. The parties agree that in the event any disputes may arise between them (including without limitation to any controversies or claims arising out of or relating to this Agreement or any alleged breach thereof, and any dispute over the interpretation or scope of this arbitration clause) the parties shall endeavor to settle in the first instance by non-binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules except as otherwise described in this Section.

28.2 Judgment. Judgment on the award rendered by the arbitrator(s) shall be non-binding, provided that upon written agreement of the parties, such judgment may be entered in any court having jurisdiction thereof.

28.3 Limitation on Damages. No party shall be entitled to punitive or treble damages as part of the non-binding arbitration award.

28.4 Settlement. The parties agree that before resorting to non-binding arbitration pursuant to this provision, they shall attempt to come to a reasonable settlement of any dispute (i) by having their authorized representatives attempt to negotiate a resolution of the dispute for a period of 30 days, and, if not resolved by the authorized representatives, (ii) by having other more senior members of each party's management, who have no previous involvement in the dispute, but who have the authority to resolve the dispute, attempt to negotiate a resolution of the dispute for an additional 15 days.

28.5 Selection of Panel. In the event non-binding arbitration is necessary, a panel of three arbitrators will hear and decide the dispute. Each party will select an arbitrator and the arbitrators selected by the parties will, within 14 days of their appointment, select the third, neutral arbitrator. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, the American Arbitration Association shall select the third arbitrator. The panel of three arbitrators shall consist of individuals who shall not have then or previously any significant relationship with any of the parties.

28.6 Choice of Law. The non-binding arbitration panel shall have the right only to interpret and apply the terms and conditions of this Agreement in question in accordance with the laws of the State of New York and may not alter or modify any such term or condition.

28.7 Venue. The non-binding arbitration proceedings shall be conducted in Canandaigua, New York, or in such other location as the parties may agree upon in writing.

28.8 Litigation. In the event the dispute is forwarded to litigation at the conclusion of the non-binding arbitration, the parties agree that (a) they will not object to the submission of the non-binding arbitration record into evidence to the extent allowable by law, (b) such litigation will be decided without a jury; and (c) the exclusive venue of such litigation will be the Commercial Part of the Monroe County Supreme Court, New York.

ACKNOWLEDGMENT OF NON-BINDING ARBITRATION. THE PARTIES HERETO ACKNOWLEDGE THAT THIS DOCUMENT CONTAINS AN AGREEMENT TO ENGAGE IN NON-BINDING ARBITRATION. AFTER SIGNING THIS DOCUMENT EACH PARTY UNDERSTANDS THAT HE/SHE/IT WILL NOT IN THE FIRST INSTANCE BE ABLE TO BRING A LAWSUIT CONCERNING ANY DISPUTE THAT MAY ARISE WHICH IS COVERED BY THIS NON-BINDING ARBITRATION AGREEMENT EXCEPT AS PROVIDED IN THIS SECTION OR UNLESS IT INVOLVES A QUESTION OF CONSTITUTIONAL LAW OR CIVIL RIGHTS. INSTEAD, EACH PARTY HAS AGREED TO SUBMIT ANY SUCH DISPUTE TO A PANEL OF ARBITRATORS AS DESCRIBED HEREIN.

## 29. CAPTIONS AND HEADINGS

Captions and headings throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision or of the scope or intent of this lease nor in any way affect this lease.

## 30. MODIFICATIONS

This Agreement cannot be changed orally, but only by agreement in writing signed by the party against whom enforcement of the change, modification or discharge is sought or by its duly authorized agent.

## 31. NOTICES

All notices or other communications to be given hereunder shall be in writing and may be given by personal delivery, by Federal Express or by registered or certified United States mail, return receipt requested, properly addressed to the addresses below: Notice shall be deemed given upon delivery, if personally delivered, or, if mailed, three (3) days after deposit in an official receptacle.

To the County: Administrator  
County of Ontario  
20 Ontario Street  
Canandaigua, NY 14424

With a copy to: Ontario County Attorney  
27 North Main Street  
Canandaigua, New York 14424

To NEWSNY: Tim Cretney, Vice President, Western Region  
New England Waste Services of N.Y., Inc.  
803 Cascadilla Street  
Ithaca, NY 14850

With a copy to: Michael Brennan, Esq.  
Casella Waste Systems, Inc.  
25 Greens Hill Lane  
Rutland, VT 05701

To CASELLA: James Bohlig, President, Chief Operating Officer  
Casella Waste Systems, Inc.  
25 Greens Hill Lane  
Rutland, VT 05701

With a copy to: Michael Brennan, Esq.  
Casella Waste Systems, Inc.  
25 Greens Hill Lane  
Rutland, VT 05701

**32. FORCE MAJEURE**

In the event that the County or NEWSNY is rendered unable, wholly or in part, by an event of Force Majeure to carry out any of the obligations under this Agreement, then, in addition to the other remedies provided in this Agreement, the obligations of the respective party which are prevented may be suspended during the continuation of the event of Force Majeure, but for no longer a period. At any time that either party intends to rely upon an event of Force Majeure to suspend obligations as provided in this section, the party shall notify the other party to this Agreement as soon as reasonably practical describing in reasonable detail the circumstances of the event of Force Majeure. Notice shall again be given when the effect of the event of Force Majeure has ceased.

**33. SEVERABILITY**

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such illegality or unenforceability shall not affect any other provisions of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained

herein. Provided, however, that it is the intention of the parties that in lieu of such term, clause or provision that is held to be invalid, illegal or unenforceable, there should be added by mutual agreement as a part of this Agreement a term, clause or provision as similar in terms to such illegal, invalid or unenforceable term, clause or provision as may be possible, valid, legal and enforceable. Notwithstanding the above, if the Term of this Agreement is held to be invalid, illegal or unenforceable in any respect, then the Term of this Agreement shall automatically be the maximum valid and legal Term allowed by applicable common or statutory law. In the event that the Term held to be invalid, illegal or unenforceable prevents the operation by NEWSNY of any material portion of the Facilities and the Term may not be amended to allow such operation, NEWSNY may, at its option, terminate this Agreement.

**34. SUSPENSION AND EXTENSION**

In the event the disposal of Acceptable Waste in the Landfill is delayed by judicial or legal action taken by parties other than the County or NEWSNY, or that the effectuation of the material terms of this Agreement is delayed by such action, this Agreement shall, as permitted by law, be extended by the period of such delay, whether such delay was caused by court order or by the litigation process. Nothing in this Agreement is intended to suspend, replace or abrogate any necessary approvals, licenses, permits or decisions of any Governmental Authority and the County's or NEWSNY's obligation to comply therewith.

**35. ENTIRE AGREEMENT**

This Agreement constitutes the entire Agreement between the County and NEWSNY, and cancels and supersedes all prior negotiations, representations, understandings and agreements, either written or oral, between such parties with respect to the subject matter hereof including without limitation the RFP and NEWSNY's response thereto. The parties acknowledge and agree that this Agreement is entered into in contemplation of the contemporaneous execution of the Host Agreement, and the Labor Utilization Agreement, and these agreements shall be read and interpreted together. No changes, amendments, alterations, or modifications to this Agreement shall be effective unless in writing and signed by the parties hereto.

**36. COUNTERPARTS**

This Agreement may be executed in two or more counterparts, each of which will be considered an original.

**37. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

**38. BINDING EFFECT**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and/or assigns.

**39. AUTHORITY OF PARTIES**

The individuals who have executed this Agreement on behalf of the respective parties expressly represent and warrant that they are authorized to sign on behalf of such entities for the purpose of duly binding such entities to this Agreement.

IN WITNESS WHEREOF, the parties have placed their signatures and seals.

\* \* \* SIGNATURES ON NEXT PAGE \* \* \*



ONTARIO COUNTY, NEW YORK

By: \_\_\_\_\_

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

Attest: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

Title: \_\_\_\_\_ (County Seal)

NEW ENGLAND WASTE SERVICES OF NEW YORK, INC.

By: [Signature]  
Title: President

Attest: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

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



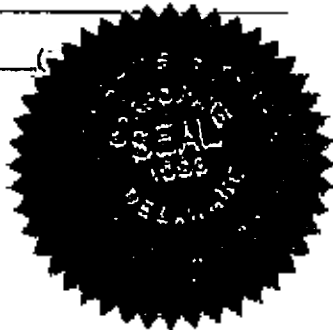
CASELLA WASTE SYSTEMS, INC

By: [Signature]  
Title: President

Attest: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

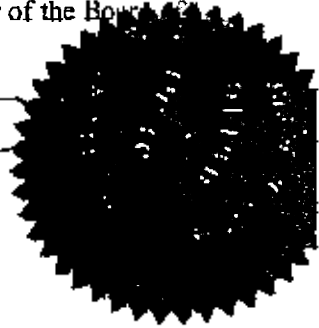
Title: \_\_\_\_\_



STATE OF ~~NEW YORK~~ <sup>Vermont</sup> )  
 ) ss.: Rutland )  
 COUNTY OF ONTARIO )

On this ~~25th~~ day of ~~November~~ 2003, before me came James W. Bonig to me personally known, who, being by me duly sworn, did depose and say that he resides in ~~New York~~ Vermont, that he is the President of New England Waste Services Of New York, Inc. ("NEWSNY"), described in, and which executed, the within Instrument; that he knows the seal of said NEWSNY; that the seal affixed to said Instrument is such NEWSNY seal; that it was so affixed by order of the Board of Directors of said NEWSNY; and that he signed his name thereto by like order.

Melina Swann  
 NOTARY PUBLIC



STATE OF NEW YORK )  
 ) ss.: )  
 COUNTY OF ONTARIO )

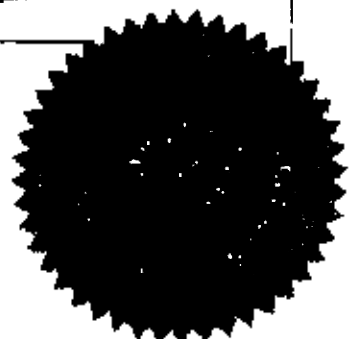
On this [ ] day of [ ], 2003, before me came \_\_\_\_\_, to me personally known, who, being by me duly sworn, did depose and say that he resides in [ ], NY, that he is the Chairman of the Board of Supervisors of Ontario County, described in, and which executed, the within Instrument; that he knows the seal of said County; that the seal affixed to said Instrument is such County seal; that it was so affixed by order of the County Board of Supervisors; and that he signed his name thereto by like order.

NOTARY PUBLIC

STATE OF ~~NEW YORK~~ <sup>Vermont</sup> )  
 ) ss.: )  
 COUNTY OF ONTARIO <sup>Rutland</sup> )

On this ~~25th~~ day of ~~November~~ 2003, before me came James W. Bonig to me personally known, who, being by me duly sworn, did depose and say that he resides in ~~New York~~ Vermont, that he is the President of Casella Waste Systems, Inc. ("Casella"), described in, and which executed, the within Instrument; that he knows the seal of said Casella; that the seal affixed to said Instrument is such Casella seal; that it was so affixed by order of the Board of Directors of said Casella; and that he signed his name thereto by like order.

Melina Swann  
 NOTARY PUBLIC



ONTARIO COUNTY, NEW YORK

By: Donald C. Nivestine

Title: Chairman, Board of Supervisors

Attest: Heoffey C. Astles

Date of Execution: 11/25/03

Title: County Administrator (County Seal)

NEW ENGLAND WASTE SERVICES OF N.Y., INC.

By: \_\_\_\_\_

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

Attest: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

Title: \_\_\_\_\_ (Corporate Seal)

CASELLA WASTE SYSTEMS, INC.

By: \_\_\_\_\_

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

Attest: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

Title: \_\_\_\_\_ (Corporate Seal)

OML

STATE OF NEW YORK )  
 )ss.:  
COUNTY OF ONTARIO )

On this 25 day of [Nov], 2003, before me came \_\_\_\_\_, to me personally known, who, being by me duly sworn, did depose and say that he resides in [\_\_\_\_], that he is the President of New England Waste Services Of New York, Inc. ("NEWSNY"), described in, and which executed, the within Instrument; that he knows the seal of said NEWSNY; that the seal affixed to said Instrument is such NEWSNY seal; that it was so affixed by order of the Board of Directors of said NEWSNY; and that he signed his name thereto by like order.

NOTARY PUBLIC

STATE OF NEW YORK )  
 )ss.:  
COUNTY OF ONTARIO )

On this 25 day of [Nov], 2003, before me came Donald Nixestine, to me personally known, who, being by me duly sworn, did depose and say that he resides in Casella, NY, that he is the Chairman of the Board of Supervisors of Ontario County, described in, and which executed, the within Instrument; that he knows the seal of said County; that the seal affixed to said Instrument is such County seal; that it was so affixed by order of the County Board of Supervisors; and that he signed his name thereto by like order.

NOTARY PUBLIC

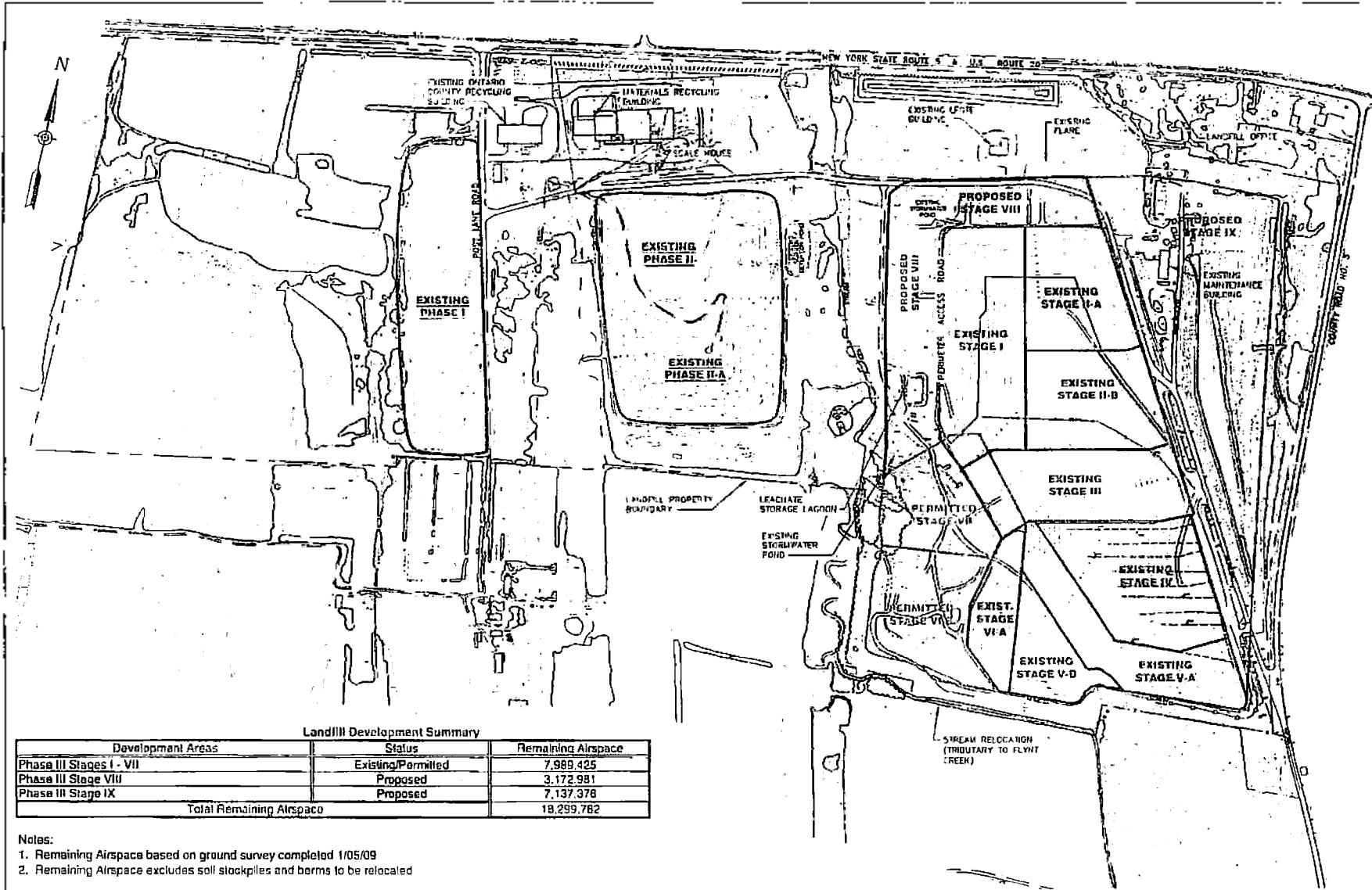
STATE OF NEW YORK )  
 )ss.:  
COUNTY OF ONTARIO )

CHARLES R. PETERS  
Notary Public, State of New York  
Qualified in Ontario Co. No. 604727137  
Commission Expires 12/31/06

On this [ ] day of [ ], 2003, before me came \_\_\_\_\_, to me personally known, who, being by me duly sworn, did depose and say that he resides in [\_\_\_\_], that he is the President of Casella Waste Systems, Inc. ("Casella"), described in, and which executed, the within Instrument; that he knows the seal of said Casella; that the seal affixed to said Instrument is such Casella seal; that it was so affixed by order of the Board of Directors of said Casella; and that he signed his name thereto by like order.

NOTARY PUBLIC

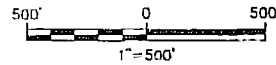
Plotted: Apr 26, 2000 - 11:51AM SVR BY: ml  
 I:\Bored\500\574\_ONTARIO\2009 DEVELOPMENT SUMMARY DWG\574059\_DWG\_EXP2003.dwg



Landfill Development Summary

Development Areas	Status	Remaining Airspace
Phase III Stages I - VII	Existing/Permitted	7,989,425
Phase III Stage VIII	Proposed	3,172,981
Phase III Stage IX	Proposed	7,137,378
Total Remaining Airspace		18,299,782

- Notes:
1. Remaining Airspace based on ground survey completed 1/05/09
  2. Remaining Airspace excludes soil stockpiles and berms to be relocated



**GENERAL NOTES:**  
 TOPOGRAPHY HAS BEEN COMPILED FROM AERIAL PHOTOGRAPHY BY SAHBCRN NOVEMBER 23, 2003, AND GROUND SURVEY BY LANDTECH COMPLETED ON JANUARY 5, 2009.

**LEGEND:**  
 ———— PROPERTY LINE  
 ———— 1800 EXISTING ELEVATION CONTOUR LINE

CALLA WASTE SERVICES OF ONTARIO, LLC  
 ONTARIO COUNTY LANDFILL  
 OVERALL SITE PLAN



Date  
 APRIL, 2009

Scale  
 AS SHOWN

Figure Number  
 1

Project Number  
 574.059