

## JOINT SOLID WASTE MANAGEMENT AGREEMENT

THIS AGREEMENT, dated as of June 28, 2016 is hereby entered into by and between the INHABITANTS OF THE TOWN OF CASCO ("CASCO"), a municipal corporation existing under the laws of the State of Maine and located in the County of Cumberland, State of Maine, and the INHABITANTS OF THE TOWN OF NAPLES ("NAPLES"), a municipal corporation existing under the laws of the State of Maine and located in the County of Cumberland, State of Maine.

WHEREAS, CASCO and NAPLES (hereinafter the "Parties") are required by Maine law to provide facilities for the safe and efficient disposal of certain solid wastes generated within the boundaries of the parties; and

WHEREAS, it is the policy of the State of Maine to promote and foster resource conservation and resource recovery from solid waste; and

WHEREAS, CASCO owns a certain lot or parcel of land approximately twenty-five (25) acres in size on the generally northwesterly side of Leach Hill Road in Casco, described in Cumberland County Registry of Deeds Book 8334, Page 79 and Casco Tax Map 7, Lot 6 (hereinafter, the "Site"); and

WHEREAS, the Parties entered into that certain "Solid Waste Transfer Station Joint Utilization Agreement" dated October 7, 1993 (hereinafter, "Transfer Station Agreement"), to specify the terms of the joint use of the solid waste transfer station that is located at the Site; and

WHEREAS, the Parties entered into that certain "Lake Region Bulky Waste Facility Joint Agreement" dated September 13, 1994 (hereinafter, "Bulky Waste Agreement"), in order to build, own and operate a bulky waste facility on a portion of the Site, as shown on Exhibit A attached hereto; and

WHEREAS, pursuant to the Bulky Waste Agreement, CASCO and NAPLES each own a one-half interest in the improvements comprising the Bulky Waste Facility; and

WHEREAS, the Parties entered into that certain "Agreement to Treat Transfer Station Improvements as Personal Property" dated November 1, 1994, and CASCO executed a Bill of Sale conveying a one-half (1/2) interest in the Transfer Station improvements; and

WHEREAS, the Transfer Station Agreement expired by its terms on December 31, 2013, and the Bulky Waste Agreement expired by its terms on September 13, 2014; and

WHEREAS, the Parties desire to enter into one agreement that covers all solid waste management activities currently taking place at the Site; and

WHEREAS, the Parties are willing to continue to grant joint use rights in the Transfer Station and Bulky Waste Facility to other contract municipalities for the management of municipal solid waste and bulky waste generated within the boundaries of such other contract

municipalities pursuant to the terms of this Agreement and the “Contract Municipality Agreement” attached hereto as Exhibit B;

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein, the Parties hereby agree as follows:

### **ARTICLE 1. PURPOSE**

The purpose of this Agreement is to provide for the management of Municipal Solid Waste and Bulky Waste, as those terms are defined herein, generated within the boundaries of the Parties and within the boundaries of the Contract Municipalities.

### **ARTICLE 2. DEFINITIONS**

As used in this Agreement, the following terms shall have the following meanings:

(a) Acceptable Waste means Municipal Solid Waste and Bulky Waste, as those terms are defined herein, but excluding “Other Waste,” as hereafter defined.

Notwithstanding any provisions to the contrary, Unacceptable Waste, including Hazardous Waste, shall not be Acceptable Waste and is explicitly excluded therefrom. Furthermore, any substances which as of the date of this Agreement are included as Acceptable Waste, but which are later determined to be harmful, toxic, dangerous or hazardous by any governmental agency or unit having appropriate jurisdiction, shall not be Acceptable Waste under the terms of this Agreement. However, any substances which as of the date of this Agreement are not included within the definition of Acceptable Waste because they are considered harmful, toxic, dangerous or hazardous and which are later determined not to be harmful, toxic, dangerous or hazardous by any governmental agency or unit having appropriate jurisdiction, shall be considered Acceptable Waste unless a contrary determination has been or is made by any other governmental agency or unit having appropriate jurisdiction or unless such substances are otherwise considered Unacceptable Waste or Hazardous Waste.

(b) Bulky Waste means that portion of Solid Waste generated within the boundaries of a Party or a Contract Municipality consisting of: (i) Construction or Demolition Debris; (ii) Inert Fill; (iii) Land Clearing Debris; and (iv) Wood Wastes, all as defined in Chapter 400 of the Maine Department of Environmental Protection regulations, but excluding “Other Waste,” as hereafter defined.

(c) Bulky Waste Facility means that facility located on a portion of the Site that is designed to accept and handle Bulky Waste.

(d) Capital Expense means the expenditure of \$10,000 or more for any item with a life expectancy of five (5) years or more.

(e) Contract Municipality means an additional municipality that will contract with the Parties to use the Transfer Station and/or Bulky Waste Facility pursuant to the Contract Municipality Agreement attached hereto as Exhibit B.

(f) Delivery Hours means the period of hours on each business day set by the Transfer Station Council during which Acceptable Waste may be delivered to the Facility.

(g) ECOMAINE means that non-capital stock, non-profit corporation created pursuant to Title 13-B and Title 30-A, Chapter 115, and Title 38, Section 1304-B(5) of the Maine Revised Statutes, or any successor thereto or assignee thereof, which owns and operates a waste-to-energy facility located on Blueberry Road in the City of Portland, Maine.

(h) Facility means, collectively, the Transfer Station and the Bulky Waste Facility.

(i) Hazardous Waste means waste which by reason of its composition, characteristics or other inherent properties is dangerous to handle by ordinary means, or which may present a substantial endangerment to health or safety, or which presents a reasonable possibility of adversely affecting the operation of the Facility or the System. Hazardous Waste shall also mean waste that is defined as harmful, toxic, dangerous or hazardous at any time during the term of this Agreement pursuant to (i) the Solid Waste Disposal Act, 42 U.S.C. §§ 6901 *et seq.*, as amended; and/or (ii) the Maine Hazardous Waste, Septage and Solid Waste Act, 38 M.R.S.A. §§ 1301 *et seq.*, as amended; and (iii) any other federal, State, or local codes, statutes or laws; and (iv) any regulations, orders or other actions promulgated or taken with respect to the items listed in (i) through (iii) above; provided, however, that any such materials which are later determined not to be harmful, toxic, dangerous or hazardous by any governmental agency or unit having appropriate jurisdiction shall not be considered Hazardous Waste unless a contrary determination has been or is made by any other governmental agency or unit having appropriate jurisdiction.

(j) Municipal Solid Waste means Solid Waste emanating from household and normal commercial sources, and which is defined as “Acceptable Waste” in each Party’s Waste Handling Agreement, and any amendments thereto, with ECOMAINE, but excluding “Other Waste,” as hereafter defined.

(k) Other Waste means Solid Waste other than Hazardous Waste consisting of: (i) any Solid Waste that would otherwise be Acceptable Waste, except that with respect to such Solid Waste, the Party or Contract Municipality is already contractually committed as of the date of execution of this agreement to the extent described in Exhibit C hereto to a third party to deliver such Solid Waste to another facility or site, and such Solid Waste shall continue to be Other Waste only as long as such existing contractual commitment remains in effect; and/or (ii) any other Solid Waste other than Hazardous Waste to the extent and as long as the Parties have in effect any resolution or regulation permitting handling thereof pursuant to the terms of this Agreement.

(l) Participating Municipalities means the original Parties (CASCO and NAPLES) and the various Contract Municipalities including, without limitation, any additional Contract Municipalities added during the term of this Agreement.

(m) Site means that certain lot or parcel of land approximately 25 acres in size on the generally northwesterly side of Leach Hill Road in Casco, described in Cumberland County Registry of Deeds Book 8334, Page 79 and Casco Tax Map 7, Lot 6, as shown on Exhibit A hereto.

(n) Solid Waste means useless, unwanted or discarded solid material with insufficient liquid content to be free flowing, including, but not limited to, Acceptable Waste and Other Waste. Solid Waste shall in no case include sludges from air or water pollution control facilities, septic tank sludge or agricultural wastes.

(o) Transfer Station means the solid waste transfer station located on a portion of the Site.

(p) Unacceptable Waste means that portion of Solid Waste which is not either Acceptable Waste or Other Waste.

### **ARTICLE 3. CONDITIONS OF THE AGREEMENT**

3.1 CASCO agrees to seek any necessary Maine Department of Environmental Protection approvals or amendments to its existing permit(s) in order to facilitate this Agreement. The expense of such approval process will be shared equally by the Parties.

3.2 CASCO shall retain sole ownership of the 25-acre parcel of land, as shown in Exhibit A, throughout the term of the Agreement.

3.3 The Parties' joint use and ownership rights of the Facility shall be limited to those improvements located on the Site, and NAPLES shall have a right of joint use in the access way to the Site.

3.4 CASCO expressly reserves all other rights in the remaining portion of the 25-acre overall parcel of land except as Naples has acquired rights pursuant to any other joint agreement between the Parties.

3.5 The Parties agree that neither will interfere with nor deny the other Party or any Contract Municipality its intended or allowed lawful use of the Transfer Station and/or Bulky Waste Facility as defined in this Agreement.

3.6 The Parties agree that the Facility shall be operated in compliance with all applicable federal, State and local statues, regulations and ordinances.

## ARTICLE 4. ADMINISTRATION.

4.1 Transfer Station Council. Operation of the Facility shall be under the direction of the Transfer Station Council (previously formally known as the Casco-Naples Solid Waste Transfer Station Advisory Board), as created by the Transfer Station Agreement dated October 7, 1993, and which shall include the duties of the former Lakes Region Bulky Waste Advisory Committee. The Transfer Station Council shall have the authority to make such rules for the safe and efficient operation of the Facility as are reasonably necessary, including, but not limited to, the setting of appropriate tipping fees, as provided under Section 5.2 of this Agreement, use regulations, and personnel matters except as otherwise expressly provided for herein. The Transfer Station Council shall also prepare a proposed budget for each upcoming fiscal year in time for full consideration by the legislative body of each Party and each Contract Municipality as provided in Section 5.3. The Transfer Station Council shall be composed of the following individuals:

- a) A member of the Select Board of Casco, or designated representative, appointed annually by the Select Board;
- b) A member of the Select Board of Naples, or designated representative, appointed annually by the Select Board;
- c) The Town Manager of Casco (advisory only; no vote);
- d) The Town Manager of Naples (advisory only; no vote);
- e) Two popularly elected citizens from each municipality who shall serve staggered three (3) year terms;
- f) The facility's chief employee.

4.2 Contract Municipalities. The Parties anticipate that additional municipalities may desire to contract with them to use the Transfer Station and/or the Bulky Waste Facility on a Contract Municipality basis. Contract Municipalities shall make such capital contributions and operating and maintenance payments as required under Article 5, and shall pay any tipping fees incurred for the delivery of Acceptable Waste to either facility. Each Contract Municipality shall execute a standard agreement with the Parties setting forth the terms of their use of the Transfer Station and/or Bulky Waste Facility. A copy of that standard agreement is attached as Exhibit B.

## ARTICLE 5. FINANCE

5.1 Initial Capitalization. The purpose of this section is to memorialize the initial capitalization of the Transfer Station and the Bulky Waste Facility.

(a) Transfer Station. For the initial capitalization, NAPLES paid CASCO the sum of \$340,432 on January 1, 1994. This amount represented one-half of the expense incurred by CASCO to construct the Transfer Station (\$261,871) plus 15% of the expense incurred by

CASCO to construct the Transfer Station (\$73,561). Upon payment of this amount, CASCO issued a bill of sale whereby NAPLES acquired a one-half interest in the Transfer Station improvements and the right to jointly use the Transfer Station pursuant to the terms of the Transfer Station Agreement.

(b) Bulky Waste Facility. The initial capitalization of the Bulky Waste Facility, in the amount of \$335,000, which was paid through capital contributions by CASCO and NAPLES in the amount of \$120,100 each, and a grant from the Maine Waste Management Agency in the amount of \$94,800. As a result, CASCO and NAPLES each own a one-half interest in the improvements comprising the Bulky Waste Facility. For the first four years of operation of the Bulky Waste Facility, each Contract Municipality was required to contribute \$10,000 per year toward the capitalization of the Bulky Waste Facility and, when in the judgment of the Transfer Station Council the Bulky Waste Facility was sufficiently capitalized, the capital contributions made by the Contract Municipalities were returned to CASCO and NAPLES on terms set by the Transfer Station Council; provided, however, it is understood and agreed to by all Participating Municipalities that although CASCO and NAPLES were reimbursed in full for their initial capital contributions, such reimbursement in no way diminishes the legal and financial status of CASCO and NAPLES under this Agreement and, in particular, CASCO and NAPLES shall continue to enjoy all rights, benefits and privileges under this Agreement, including without limitation, the right to additional capital reimbursement under Section 7.3, in consideration of the financial risks and efforts that they undertook to start up the Facility.

5.2 Apportionment. Cost of acquisitions, improvements and operations, and items incidental thereto, shall be paid for by tipping fees collected from users, grants, donations and charges from the Participating Municipalities. There will be a user charge for waste processed at the Facility on behalf of the Participating Municipalities. This user charge or "tipping fee" shall be set and adjusted by the Transfer Station Council and shall be based upon (i) operating and maintenance expenses; (ii) administration expenses; (iii) waste processing costs; (iv) waste removal costs; (v) shutdown or closure costs; (vi) operating reserves; and (vii) such other costs and expenses as are reasonably necessary for the proper operation of the Facility; provided, however, subject to sound management and financial practices, in setting the tipping fee the Transfer Station Council shall recognize that the Facility has been established as, and shall remain, a non-profit operation. The Transfer Station Council shall have the exclusive authority to set the tipping fee as well as the manner for charging and collecting the same. Each party shall be jointly and severally responsible for any tipping fees charged by ECOMAINE for the delivery of Municipal Solid Waste from the Transfer Station.

### 5.3 Financial Procedures.

(a) Budget. On or before April 1 of each year and in sufficient time for consideration by each Participating Municipality's legislative body, the Transfer Station Council shall prepare and submit to the municipal officers of the Participating Municipalities an itemized estimate of the expenditures and the anticipated revenue for the Facility for the following fiscal year. Such estimates shall include the following:

- (i) Anticipated revenues. An itemized estimate of anticipated revenues during the ensuing fiscal year from each source;
- (ii) Estimate of expenditures. An itemized estimate of expenditures for each classification for such ensuing fiscal year;
- (iii) Actual receipts. After the first year of operation, an itemized statement of all actual receipts from all sources of the previous fiscal year, with estimated receipts of such year;
- (iv) Actual expenditures. After the first year of operation, an itemized statement of all actual expenditures of the previous fiscal year, with estimated expenditures shown for the balance of such year; and
- (v) The estimated uniform cost, on a tipping fee basis, of Acceptable Waste to be charged for the ensuing fiscal year.

On or before July 1st of each year, the Transfer Station Council shall adopt a final budget for the Facility for the ensuing fiscal year which shall be itemized in the same manner as the estimate of expenditures and revenues. The budget shall include the amount of any deficit or anticipated deficit for the current year's operation. Such budget shall be submitted forthwith to the municipal officers of the Participating Municipalities and shall include an allocation of the annual costs of operation. Each Participating Municipality shall pay the annual appropriation, as determined by the Transfer Station Council, not later than the 15th day of the following month.

The Transfer Station Council, as the financial administrator for the Facility, shall maintain for the Participating Municipalities all payrolls, fund balances, invoices and related financial matters. The Transfer Station Council shall establish a separate account for the Facility at a recognized and insured financial institution. All interest earned in such account shall accrue to the Facility. The Transfer Station Council may withdraw weekly from such account sufficient funds to pay the Facility costs. No later the 5th of each month, each Participating Municipality shall pay into such account such amount as the Transfer Station Council shall prescribe until it has satisfied its financial obligation for the year as determined by the Transfer Station Council.

- (b) Fiscal Year. The fiscal year shall be from July 1 to June 30.
- (c) Audit. The Transfer Station Council shall engage a qualified public accountant to conduct an annual audit of the Facility's accounts. The audit shall be conducted on the basis of auditing standards and procedures prescribed by the State Auditor for municipalities.
- (d) Future Capitalization Requirements. If additional Capital Expense requirements arise for expansion of the Transfer Station and/or Bulky Waste Facility, or for the replacement of equipment at either facility, the Transfer Station Council shall meet to determine by majority vote whether additional capital contributions are necessary and, if so, on what terms such contributions shall be made by the Participating Municipalities.

5.4 Operating and Maintenance Expenses. The Parties shall share in the payment of all operating and maintenance fees, including expenses relating to the employment of Facility workers, in accordance with a cost sharing formula as determined by the Transfer Station Council, which may be amended from time to time. Either Party may request the Transfer Station Council to re-negotiate the operational and maintenance cost sharing formula at any time.

## **ARTICLE 6. WASTE HANDLING, MEASUREMENT AND DELIVERY PROCEDURES**

### 6.1. Delivery of Waste.

(a) All deliveries of Acceptable Waste to the Facility by or on behalf of a Participating Municipality shall be made during Delivery Hours, and the Transfer Station Council or its designee may reject any Acceptable Waste delivered at hours other than Delivery Hours. The Transfer Station Council or its designee may also reject delivery of Unacceptable Waste.

(b) The Transfer Station Council shall set forth rules to regulate (i) the type of vehicles that will or will not be accepted for use in delivering Acceptable Waste to the Facility; (ii) the form of identification that each vehicle must display in order to enter and use the Facility; (iii) a system for controlling the disposal of Bulky Waste at the Facility, whether by coupons or otherwise; and (iv) any other rules deemed necessary by the Transfer Station Council in order to regulate the handling of Acceptable Waste at the Facility. Each Participating Municipality shall cause all equipment and vehicles delivering Waste to the Facility to display proper identification, as supplied by the Participating Municipality, on the exterior of the vehicle in a location designated by the Transfer Station Council and reasonably visible to personnel at the scale house at the Facility.

(c) Due to the Transfer Station's inability to accept compacted loads of solid waste, all compactor trucks and/or compacted loads must be hauled directly to ECOMAINE's waste-to-energy facility in accordance with each Party's Waste Handling Agreement, and any amendments thereto, with ECOMAINE.

### 6.2. Waste Measurement.

(a) The Transfer Station Council or its designee shall maintain weighing facilities at the Bulky Waste Facility for the purpose of determining the total weight of Acceptable Waste delivered to the Bulky Waste Facility by or on behalf of a Participating Municipality. Each vehicle delivering Acceptable Waste to the Bulky Waste Facility shall be checked in and checked out. The Transfer Station Council or its designee shall maintain a record containing the weight, date, time and vehicle identification of each vehicle entering and exiting the Bulky Waste Facility. The Transfer Station Council or its designee shall maintain copies of all such records for a period of at least two (2) years. Each Participating Municipality shall have the right to inspect such records upon reasonable advance notice. The Transfer Station Council shall determine the weight of Solid Waste delivered in accordance with procedures that it may



adopt from time to time, for the purpose of allocating shared operation and maintenance expenses as set forth in Section 5.4 herein.

(b) The Transfer Station Council or its designee shall estimate the amount of Acceptable Waste delivered to the Bulky Waste Facility during any time that all measurement facilities are incapacitated, being tested or are otherwise not available for use, on the basis of vehicle volumes and estimated data obtained from historical information pertinent to each Participating Municipality, provided, however, a Participating Municipality, at its expense, may have its Acceptable Waste measured at an alternative facility if adequate assurances of accuracy are provided in advance to the Transfer Station Council and approved. These estimates shall take the place of actual records during such times.

(c) Solid Waste that is delivered to the Facility and is not rejected by the Transfer Station Council or its designee shall be deposited in such location as identified by Transfer Station Council or its designee. Title to all Acceptable Waste shall pass to the Parties when such Acceptable Waste is delivered to the Facility.

### 6.3. Waste Handling.

(a) Neither the Transfer Station Council nor any Participating Municipality shall knowingly permit deliveries of Hazardous Waste to the Facility.

(b) Each Participating Municipality shall pay all costs related to handling of Unacceptable Waste delivered to the Facility by such Participating Municipality, its employees, agents, or contractors, provided that the such Participating Municipality shall not be obligated to pay costs related to the handling of Unacceptable Waste generated within the municipality but delivered to the Facility by someone other than the Participating Municipality, its employees, agents or contractors.

## **ARTICLE 7. PROPERTY**

7.1 Title. Throughout the term of the Agreement, CASCO shall hold title to the 25-acre parcel of land shown on Exhibit A, including that portion of the 25-acre parcel on which the Bulky Waste Facility is located as shown on Exhibit A. CASCO and NAPLES shall retain joint use and ownership in the Transfer Station improvements and the Bulky Waste Facility improvements (exclusive of the underlying land).

7.2 Improvements. CASCO and NAPLES shall develop and construct all necessary improvements for the Transfer Station or Bulky Waste Facility, keep the same in good repair, and shall insure all properties acquired by or leased to them.

## **ARTICLE 8. PERSONNEL**

8.1 Employment Status.

(a) Any employees of the Facility shall be employees of CASCO and subject to the personnel policies of CASCO, except as otherwise expressly provided herein. Such employees shall be subject to the control and direction of the Transfer Station Council only by and through a designated administrator, who shall be appointed by and report to the Transfer Station Council.

(b) Subject to the prior approval of the Transfer Station Council or its designated administrator, staff time may be contributed to the Facility by the Participating Municipalities. Persons performing work under such contribution arrangements shall be under the supervision of CASCO or its designated supervisory personnel, but shall otherwise retain the status of an employee of the Participating Municipality.

8.2 Salaries and Benefits. Subject to the rules adopted pursuant to Section 8.3 below, each Participating Municipality shall be solely liable for its own employees' liability for workers' compensation or indemnity for work-related injury or sickness arising out of or in the course of their employment provided the other Participating Municipalities shall share equitably in the cost of the same.

8.3 Rules. The Transfer Station Council shall adopt written procedures to govern hiring, firing, and performance review of such employees, including a designated administrator, and a mechanism for attributing credit to Participating Municipalities for the contribution of employees to CASCO.

## **ARTICLE 9. REMEDIES.**

9.1 Breach. All provisions contained in this Article 9 shall apply equally to all Participating Municipalities. A Participating Municipality shall be deemed to be in breach of this Agreement if it fails to appropriate or make timely payment of its share of costs, or if it fails to perform or comply with any of the terms, provisions, or conditions of this Agreement. The Transfer Station Council shall give a Party written notice of specific acts or omissions that constitute a breach. The Party so notified shall have thirty (30) days to conform. If the Party fails to conform within the above-mentioned time period, or if the Party waives the time period, then the Party or the Transfer Station Council shall have the power to submit the question of breach to the arbitration procedure established in Section 9.2.

9.2 Arbitration. In the event the Transfer Station Council or a Party under notice of breach elects to submit a question of breach to arbitration, the following provisions shall govern:

(a) At the commencement of each fiscal year, the Transfer Station Council shall select a neutral third person to serve as the arbitrator for the ensuing fiscal year. If the Transfer Station Council does not select an arbitrator or if the arbitrator is unable to serve, either Party may request the American Arbitration Association to utilize its procedures for making such selection.

(b) The arbitrator's jurisdiction shall be limited to the interpretation or application of the terms of this Agreement.

(c) As soon as possible after the dispute has been submitted to the arbitrator, the arbitrator shall meet with the Parties, either jointly or separately, make inquiries and investigations, hold hearings, or take such other steps as s/he deems appropriate. Hearings shall be informal, and rules of evidence prevailing in judicial proceedings shall not be binding. All such proceedings shall be conducted without lawyers.

(d) The arbitrator shall make written findings and shall render a decision. For disputes involving amounts of \$10,000 or less, the award of such arbitrator shall be accepted as final and binding upon the Parties. For disputes involving amounts of more than \$10,000, only questions of law may be appealed to Superior Court.

(e) The cost of arbitration proceedings shall be shared equally by the Transfer Station Council and the Party under notice of breach.

9.3 Withdrawal. Any Contract Municipality may withdraw from use of the Transfer Station and/or Bulky Waste Facility subject to the following conditions:

(a) The withdrawing municipality shall give written notice of its intent to withdraw to the Transfer Station Council on or before June 30 of any calendar year. The effective date of such withdrawal shall be July 1 of the following calendar year. The withdrawing municipality shall make any payments as due during such period; provided, however, that during the one-year notice period hereunder, the withdrawing municipality shall not become liable for any capital expenditures or borrowings first incurred on behalf of the Facility during such notice period.

(b) In the event the withdrawing municipality fails to comply with subsection (a) above, it shall pay to the Transfer Station Council an amount equal to its share of costs due through the following June 30.

(c) The withdrawing municipality shall pay to the Transfer Station Council the entire amount of its share of any outstanding debts of the Facility and shall forfeit any of its capital contributions, if any, and shall forego any distribution of assets pursuant to Section 7.3 of this Agreement.

(d) Except as otherwise expressly provided in subsection (a) above, the withdrawal of any Contract Municipality from this Agreement pursuant to this Section 9.3 shall not relieve the withdrawing municipality of liabilities arising out of this Agreement or incurred by the Participating Municipalities during the withdrawing municipality's membership.

9.4 Indemnification: Insurance. The Participating Municipalities shall jointly indemnify, defend and hold harmless one another, their agents, officers and employees from any and all liability, loss, damage or expense any Participating Municipality may suffer as a result of claims, demands, costs or judgments arising out of this Agreement. Each Participating Municipality agrees that it shall contribute promptly on notification by the Transfer Station

Council of its proportionate share toward the payment of any such claims, demands, costs or judgments arising out of this Agreement.

The Transfer Station Council shall ensure that there is adequate general liability insurance, worker's compensation insurance, and other coverage to insure against claims and expenses arising in any fashion out of their ownership, maintenance or operation of the Facility. Such insurance shall name each the other Party and each Contract Municipality as additional insureds and shall share the costs of such insurance as an operational and maintenance expense.

In addition, the Transfer Station Council shall establish and fund through tipping fees a reserve account for catastrophic loss and for after-care of the Facility, or for any other purpose which represents a contingent obligation on the part of Participating Municipalities to either perform or pay damages in the future.

#### **ARTICLE 10. ADOPTION, AMENDMENT**

10.1 Duration. This Agreement shall continue in force for a term of twenty (20) years from its effective date.

10.2 Adoption. This Agreement shall not take effect with respect to Parties signatory unless the following occurs:

- (a) it has been approved by the legislative body of each Party and a majority of the municipal officers thereof have affixed their signatures below;
- (b) it has been approved by the Department of Environmental Protection; and
- (c) it has been filed with the clerk of each of the Parties and with the Secretary of State.

Each Party shall be responsible for obtaining all necessary legislative body approvals and by their execution of this Agreement represent that they have each secured the necessary authority to enter this agreement.

10.3 Amendment. No amendment of this Agreement shall be made unless, after obtaining all necessary legislative approvals, it is in writing and signed by both Parties; provided, however, that additional municipalities may be admitted as Contract Municipalities without additional votes of the Parties' legislative bodies if two thirds (2/3) of the Transfer Station Council votes to admit such additional municipality as a Contract Municipality, the legislative body of the additional municipality accepts by appropriate action the terms and conditions placed upon such entry by the Transfer Station Council, and thirty (30) days' prior notice is given to all Contract Municipalities.

## **ARTICLE 11. TERMINATION**

Either Party may terminate this Agreement prior to the expiration of the term set forth in Section 10.1 of this Agreement, subject to the following conditions:

(a) The terminating Party shall give written notice of its intent to terminate to the Transfer Station Council on or before June 30 of any calendar year. The effective date of such termination shall be July 1 of the following calendar year. The terminating Party shall make any payments as due during such period; provided, however, that during the one-year notice period hereunder, the terminating Party shall not become liable for any capital expenditures or borrowings first incurred on behalf of the Facility during such notice period.

(b) In the event the terminating Party fails to comply with subsection (a) above, it shall pay to the Transfer Station Council an amount equal to its share of costs due through the June 30 following the effective date of termination.

(c) The terminating party shall pay to the Transfer Station Council the entire amount of its share of any outstanding debts of the Facility.

(d) Except as otherwise expressly provided in subsection (a) above, the termination of this Agreement by either Party pursuant to this Article shall not relieve the terminating Party of liabilities arising out of this Agreement or incurred by the Participating Municipalities prior to the effective date of such termination.

(e) Upon receiving notice of termination of the Agreement by either Party, the Transfer Station Council shall meet and either (i) determine an equitable division the assets of the Facility remaining as of the effective date of termination of this Agreement; or (ii) determine the depreciated value of all assets of the Facility (exclusive of the underlying land) remaining as of the effective date of termination of this Agreement and disburse a payment equal to one-half (1/2) of the depreciated value of assets to the terminating Party within sixty (60) days of the effective date of termination of this Agreement.

## **ARTICLE 11. NON-ASSIGNABILITY**

The Agreement shall not be assigned or delegated by any Participating Municipality without the prior written approval of CASCO and NAPLES.

## **ARTICLE 12. SEVERABILITY**

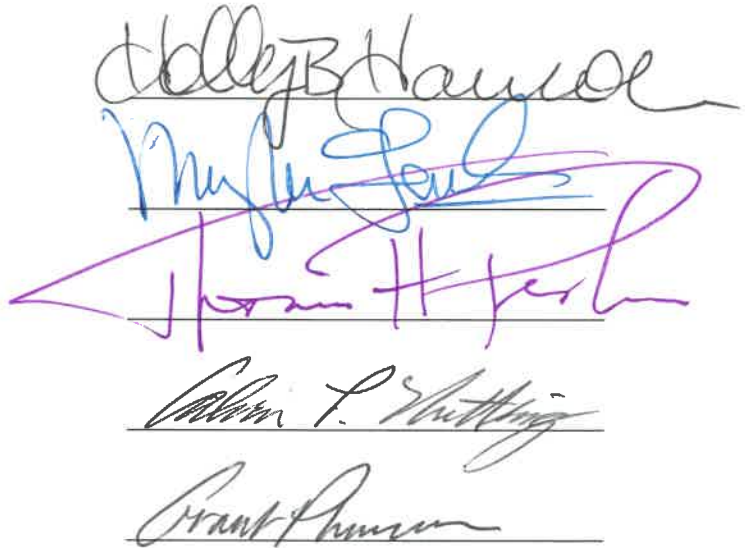
In the event any covenant, condition or provision of this Agreement is held to be invalid or unenforceable by a final judgment of a court of competent jurisdiction, or by any other tribunal, board, or other entity, the decision of which is binding upon the Parties and which becomes final, the invalidity or unenforceability shall in no way affect any of the other covenants, conditions or provisions of this Agreement, provided that any such remaining covenants, conditions and provisions can thereafter be applicable and effective without materially changing the obligations of either party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by a majority of their respective municipal officers, duly authorized by their respective Town Meetings.

WITNESSES:

INHABITANTS OF THE TOWN OF  
CASCO

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WITNESSES:

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INHABITANTS OF THE TOWN OF  
NAPLES


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