

## LITIGATION SETTLEMENT AGREEMENT

This LITIGATION SETTLEMENT AGREEMENT (“Agreement”) is made as of this \_\_\_ day of August, 2011 (the “Effective Date”), by and between THE TOWN OF SENECA, (“Town”); THE COUNTY OF ONTARIO; (“County”) and CASELLA WASTE SYSTEMS, INC. (“Casella”), NEW ENGLAND WASTE SERVICES OF N.Y., INC. (“NEWSNY”), and CASELLA WASTE SERVICES OF ONTARIO, LLC (“Casella of Ontario”) (Casella, NEWSNY, and Casella Ontario collectively, the “Casella Parties”).

**WHEREAS**, on or about November 25, 2003 the County, Casella and NEWSNY entered into an Operation, Management and Lease Agreement (the “OMLA”) whereby NEWSNY assumed responsibility for the operation of the Ontario County Landfill and other aspects of the County’s solid waste management system; and

**WHEREAS**, on or about November 8, 2003, the Town, NEWSNY and Casella entered into a Host Agreement describing benefits to the Town related to the operation of the Landfill, as amended on or about October 16, 2008 (the “Host Agreement”); and

**WHEREAS**, by Complaint dated May 6, 2011, the Town commenced a lawsuit against the County and the Casella Parties in the Supreme Court of the State of New York, County of Ontario, bearing Index No. 103655, alleging various causes of action arising from the OMLA and the Host Agreement (the “Lawsuit”); and

**WHEREAS**, the Town, County and Casella Parties desire to fully and finally settle the Litigation.

**NOW THEREFORE** for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### **1. Sewer Line Improvements by County.**

(a) The County shall pay to the Town \$25,000.00 (Twenty-five thousand dollars) for the Town to use for legal, planning, administrative and any other assistance necessary to establish the Town’s new sewer district.

(b) Upon final approval of the Town’s sewer district, including final approval by the New York State Comptroller’s Office, if required, the County shall pay for the installation of a metering pit on the existing sewer line at the boundary of the town of Seneca and the Town of Geneva at a cost not to exceed One Hundred Thousand Dollars and No/100 US (\$100,000.00). If Town of Seneca voter approval of a sewer district fails upon the first vote therefore, or if final approval of the Town’s sewer district is not obtained within 5 years of the date of final execution of this Agreement, the County’s obligation to pay for the metering pit is extinguished.

### **2. Transfer of Sewer Line-Related Materials and Equipment; Engineering.**

(a) Casella of Ontario shall transfer ownership of the sewer line-related equipment and materials more particularly described in Exhibit A hereto (“Materials and Equipment”) to the Town of Seneca for the consideration of One Dollar and No/100 US (\$1.00).

(b) Casella of Ontario shall provide all engineering studies, completed to date for the project, to the Town of Seneca to facilitate the Town's installation of the Materials and Equipment.

### **3. Septic System Protection.**

(a) Attached hereto as Exhibit B is a list of the individuals (the "Participants") that are eligible for financial assistance in repairing or replacing septic systems located at the properties indicated in Exhibit C (the "Eligible Properties"). The Town may recommend to Casella of Ontario the addition or deletion of Eligible Properties. Addition or deletion shall be in Casella of Ontario's sole discretion. The financial assistance to be provided pursuant to this Section 3 is non-transferable, and does not run with the land.

(b) The financial assistance available to the Participants from Casella of Ontario shall be performed and conditioned as follows:

- (i) Upon a determination by the Town of Seneca Code Enforcement Officer that the septic system installed at a Participant's "Eligible Property" has "failed," pursuant to Town Code, the Participant shall within sixty (60) days provide the Code Enforcement Office and Casella of Ontario a *bona fide* written estimate from a licensed contractor of the cost to repair or replace the system in accordance with all applicable laws. Promptly upon receipt, Casella of Ontario shall provide to the Participant an amount not to exceed Four Thousand Dollars and No/100 US (\$4,000.00), for properties in residential use or zoned residential as of May 1, 2009, and Six Thousand Dollars and No/100 US (\$6,000) for properties in commercial use as of May 1, 2009 (the "Septic Protection Payment"). Such assistance shall be limited to one (1) Participant per Eligible Property, and shall not apply to any construction commenced after the Effective Date hereof. The Casella Parties' total payment under this program shall not exceed Seventy Five Thousand and No/100 US (\$75,000.00).
- (ii) Upon payment of the Septic Protection Payment to any Participant, the Casella Parties shall have no further liability whatsoever to pay for costs or expenses arising from or relating to the installation, repair, improvement, operation, maintenance of any septic system or sewer hookup belonging to or relating to the Participant or the Eligible Property to which or for which the Septic Protection Payment was made. At no time shall any Casella Party have or incur any liability arising from or relating to the installation, repair, improvement, operation, maintenance of any septic system or sewer hookup belonging to or relating to any Participant or any Eligible Property.

**4. Settlement of Litigation and Releases.** Concurrent with the execution of this Agreement, Town, County and the Casella Parties shall execute a Stipulation of Discontinuance with Prejudice of the Lawsuit in the form attached hereto as Exhibit C hereto. The Town hereby

releases any and all claims, which were raised or could have been raised, in the Lawsuit, including, but not limited to, claims regarding the validity of the OMLA and the Host Agreement, and the parties' rights, obligation, and performance thereunder, including the Town's claim to the status of third-party beneficiary under the OMLA.

**5. Assignment.** This Agreement may not be assigned by any party without the prior written consent of all parties hereto, such consent to not be unreasonably withheld, conditioned or delayed.

**6. Notices.** All notices required or permitted to be given hereunder shall be in writing and delivered by hand or mailed postage prepaid, by facsimile, or by registered or certified mail, at the addresses specified below, or in the case of any party to such other address as shall be designated by written notice given to the other parties. Any such notice shall be deemed given when so delivered by hand or, or if mailed, when deposited with the U.S. Postal Service.

**7. Construction of Agreement.** This agreement, executed in multiple counterparts, is to be construed as a New York contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be cancelled, modified or amended only by a written instrument executed by the parties. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this agreement or to be used in determining the intent of the parties.

**8. Non-Waiver.** No waiver by any party to this Agreement of any failure or refusal by the other party to comply with its obligations shall be deemed a waiver of any other or subsequent failure or refusal to so comply. No waiver by any Party of any right or remedy hereunder shall be valid unless the same shall be in writing and signed by the Party giving such waiver. No waiver by any Party with respect to any default, misrepresentation, or breach of warranty or covenant hereunder shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

**9. Further Acts.** Each party agrees to perform any further acts and to execute, acknowledge, and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.

\* \* \* SIGNATURES APPEAR ON THE FOLLOWING PAGE \* \* \*

IN WITNESS WHEREOF:

**TOWN OF SENECA**

**COUNTY OF ONTARIO**

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**CASELLA WASTE SYSTEMS, INC.**

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

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**CASELLA WASTE SERVICES OF  
ONTARIO, LLC**

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

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

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

Date: \_\_\_\_\_

**EXHIBIT A**  
**Materials and Equipment**

- Approximately 10,080 feet of 15” Sewer pipe valued at approximately \$99,000.00
- Preliminary Engineers Report for Sewer Line (BME Associates)
- Flint Creek Sewer District Plan, Map & Report (Clark Patterson Lee Design Professionals)
- Preliminary drawings of pump station design, capacities and necessary easements
- Draft NYSEG elevated pressure commitment letter
- Subsurface soil boring correspondence and reports (SJB Services, Inc.)
- Highway road permit application for utility work
- Full EAF documentation
- Article 24 Joint application documentation
- Phase 1 archaeological investigation (Butterbaugh Archaeological Consulting, Inc.)
- Office of Parks, Recreation, and Historic Preservation (OPRHP) response to Phase 1

**EXHIBIT B**  
**Participants and Eligible Properties**

Parcel Number	Eligible	Street Number	Street	Owner	Use	Property information
1		1002	Rte 5&20	Auto Solutions	Auto Dealer	Out of district Town of Geneva sewer connection
2		1026	Rte 5&20	Mobil Chemical	Vacant Commercial	No buildings on site
3	Yes	1032	Rte 5&20	John & Sarah Wilson	Retail Business	Existing septic > 10yrs old
4	Yes	1050 &1058	Rte 5&20	Dorothy Vogt	Single Family Residence	Existing septic > 10yrs old
5	Yes	1080	Rte 5&20	DPH Group - 84 Lumber	Retail Business	Existing septic > 10yrs old
6		1116	Rte 5&20	Paul Hansen	Agricultural	Ag buildings only no sanitary facilities New Build 2007
7	Yes	1150	Rte 5&20	Richland Properties - Heartcare	Commercial Business	(new raised bed septic 2007)
8		1206	Rte 5&20	Yaegel Road Properties	Vacant Commercial	No buildings on site
9	Yes	1316	Rte 5&20	Time Warner Cable	Retail Business	Existing septic > 10yrs old
10	Yes	1330	Rte 5&20	Douglas Macneil	Single Family Residence	Existing septic > 10yrs old
11	Yes	3515	Gates	Samuel Malcuria	Commercial Business	New Septic system installed 2007
12	Yes	1438 & 1444	Rte 5&20	Douglas Smith	Single Family Residence	Existing septic > 10yrs old
13	Yes	1506	Rte 5&20	Jason Martin	Commercial Business	New build 2008, new septic 2008
14	Yes	1510	Rte 5&20	Jason Martin	Single Family Residence	Existing septic > 10yrs old New build 2004
15	Yes	1516	Rte 5&20	Carl Sensenig	Commercial Business	(new raised bed septic 2004)
16			Rte 5&20	Richard Lawson	Agricultural	No buildings on site
17	Yes	1584	Rte 5&20	Bert Harper	Single Family Residence	Existing septic > 10yrs old
18	Yes	1600	Rte 5&20	Scott Hunt	Single Family Residence	Existing septic > 10yrs old
19			Rte 5&20	John Karszes	Agricultural	No buildings on site
20	Yes	1660	Rte 5&20	Stanley Senack	Single Family Residence	Existing septic > 10yrs old
21	Yes	3518	Whitney	Dan Schrerer	Vacant Residential	New build to commence 2011 Existing septic > 10yrs old
22	Yes	1744	Rte 5&20	Tony Roberts	Single Family Residence	(system d-box repaired 2009)
23			Rte 5&20	Dale Hemminger	Agricultural	No buildings on site
24	Yes	1862 &1872	Rte 5&20	Ground Company LLC. (Casella)	Single Family Residence	New septic system installed 2006
25	Yes	1890	Rte 5&20	Ground Company LLC. (Casella)	Single Family Residence	Existing septic > 10yrs old
26	Yes	1900	Rte 5&20	Thompson Scoon	Single Family Residence	Existing septic > 10yrs old

Parcel Number	Eligible	Street Number	Street	Owner	Use	Property information
27			Rte 5&20	Thompson Scoon Ground Company LLC.	Vacant Residential	No buildings on site
28	Yes	1910	Rte 5&20	(Casella)	Single Family Residence	Existing septic > 10yrs old
29			Rte 5&20	Jim Minns	Agricultural	No buildings on site
30		1992	Rte 5&20	Robyn Lynn	Vacant Commercial	Vacant building no sanitary system on site
31	Yes	2028	Rte 5&20	Albert Mitchell	Commercial Business	Existing septic > 10yrs old
32	Yes	2032	Rte 5&20	Jeff Russell	Residential Multi-family	New septic installed 2010
33			Rte 5&20	Albert Mitchell	Vacant Commercial	No buildings on site
34	Yes	2092	Rte 5&20	Ann's Properties	Commercial Business	New septic installed 2007
35	Yes	2106	Rte 5&20	Sheila Blair	Single Family Residence	Existing septic > 10yrs old
36			Rte 5&20	Ground Company LLC. (Casella)	Vacant Commercial	No buildings on site
37	Yes	2140	Rte 5&20	Ground Company LLC. (Casella)	Commercial Business	Existing septic > 10yrs old
38	Yes	2148	Rte 5&20	Sue Davenport	Commercial Business	New septic installed ~ 2004 New Build 2009
39	Yes	2160	Rte 5&20	Sue Davenport	Single Family Residence	(new septic installed 2009)
40			Rte 5&20	Eric Amberg	Agricultural	No buildings on site
41	Yes	2200	Rte 5&20	Mark Amberg	Commercial Business	Existing septic > 10yrs old
42	Yes	2276	Rte 5&20	Bob Deleo	Single Family Residence	Existing septic > 10yrs old
43	Yes	2286	Rte 5&20	Mary Butler	Single Family Residence	Existing septic > 10yrs old
44	Yes	2288	Rte 5&20	Bonnie Lawson	Single Family Residence	Existing septic > 10yrs old
45	Yes	2290	Rte 5&20	Innrry Kunes	Single Family Residence	Existing septic > 10yrs old
46	Yes	2292	Rte 5&20	Karl Vansickle	Single Family Residence	Existing septic > 10yrs old
47	Yes	2300	Rte 5&20	Karl Vansickle	Residential Multi-family	Existing septic > 10yrs old
48		2310	Rte 5&20	Karl Vansickle	Vacant Residential	No buildings on site
49			Rte 5&20	Ontario Pathways	Miscellaneous Vacant	No buildings on site
50			Rte 5&20	Karl Vansickle	Vacant Residential	No buildings on site
51			Rte 5&20	Flint Creek Watershed	Miscellaneous Vacant	No buildings on site
52	Yes	2340	Rte 5&20	Joe Peterson	Single Family Residence	Existing septic > 10yrs old
53	Yes	2344 & 2348	Rte 5&20	Don Havens	Commercial Business	Existing septic > 10yrs old



Parcel Number	Eligible	Street Number	Street	Owner	Use	Property information
54	Yes	2358	Rte 5&20	Francis Eldrege	Single Family Residence	Existing septic > 10yrs old
55	Yes	3501	County Rd 20	Wayne Finger Lakes BOCES	Educational	Existing septic > 10yrs old
56	Yes	3478	County Rd 20	Walt Baker	Single Family Residence	Existing septic > 10yrs old
57	Yes	3486	County Rd 20	Edward Hayton	Single Family Residence	Existing septic > 10yrs old
58	Yes	3498	County Rd 20	George Marasi	Single Family Residence	Existing septic > 10yrs old
59	Yes	3506	County Rd 20	Tara Alegre	Single Family Residence	System repaired 2005 (4 leach lines added)
60	Yes	3510	County Rd 20	William Haas	Single Family Residence	Existing septic > 10yrs old
61	Yes	3514	County Rd 20	Martin Thibault	Single Family Residence	Existing septic > 10yrs old
62			Rte 5&20	Flint Creek Church of God	Vacant Commercial	No buildings on site
63	Yes	3562	County Rd 20	Dianne Hilton	Single Family Residence	Existing septic > 10yrs old
64	Yes	3544	Old Mill Rd	Dennis Charlebois	Single Family Residence	Existing septic > 10yrs old
65	Yes	3545	Old Mill Rd	Paul Bogart	Single Family Residence	Existing septic > 10yrs old
66	Yes	2363	Rte 5&20	Chris Hilton	Single Family Residence	Existing septic > 10yrs old
67	Yes	2355	Rte 5&20	Francis Bradley	Single Family Residence	Existing septic > 10yrs old
68	Yes	2345	Rte 5&20	Ursico O'Campo	Single Family Residence	New System installed 2003
69	Yes	2313	Rte 5&20	Kenneth Holley	Single Family Residence	Existing septic > 10yrs old
70	Yes	2303	Rte 5&20	Bruce Roat	Single Family Residence	Existing septic > 10yrs old
71	Yes	2293	Rte 5&20	Charles Zimmerman	Single Family Residence	Existing septic > 10yrs old
72	Yes	3572	Flint Rd	Ina Campbell	Single Family Residence	Existing septic > 10yrs old
73	Yes	3569	Flint Rd	Ruth Brizee	Single Family Residence	New D-box and leach installed 2010
74	Yes	2267	Rte 5&20	Steve Seely	Commercial Business	Existing septic > 10yrs old
75	Yes	2255	Rte 5&20	Steve Seely	Commercial Business	Existing septic > 10yrs old
76		2205	Rte 5&20	Andrew Wickham	Commercial Business	No sanitary system on site
77			Rte 5&20	Ontario County Landfill Ground Company LLC.	Industrial	N/A
78	Yes	1879	Rte 5&20	(Casella)	Commercial Business	Existing septic > 10yrs old
79	Yes	1863	Rte 5&20	Warner Davis Jr.	Single Family Residence	Existing septic > 10yrs old
80	Yes	3512	County Rd 5	Warner Davis Jr.	Commercial Business	Existing septic > 10yrs old

Parcel Number	Eligible	Street Number	Street	Owner	Use	Property information
81			Rte 5&20	Ground Company LLC. (Casella)	Miscellaneous Vacant	No buildings on site
82			Rte 5&20	Don Kean	Miscellaneous Vacant	No buildings on site
83	Yes	1752	Sand Hill Rd	Don Kean	Single Family Residence	Existing septic > 10yrs old
84	Yes	3530	Number 9 Rd	Bert Harper	Single Family Residence	Existing septic > 10yrs old
85	Yes	3535	Number 9 Rd	Seventh Day Adventist Church	Religious	Existing septic > 10yrs old
86			Rte 5&20	Richard Lawson	Agricultural	No buildings on site
87	Yes	1591	Rte 5&20	Paul Vassello	Single Family Residence	Existing septic > 10yrs old
88	Yes	1573	Rte 5&20	Joe Bruno	Single Family Residence	Existing septic > 10yrs old
89			Rte 5&20	Linda Patrick	Agricultural	No buildings on site
90	Yes	1507	Rte 5&20	Lenora Lewis	Single Family Residence	Existing septic > 10yrs old
91			Rte 5&20	Mark Playford	Miscellaneous Vacant	No buildings on site
92	Yes	1441	Rte 5&20	Kanadasega Properties	Commercial Business	Existing septic > 10yrs old
93	Yes	1437	Rte 5&20	Kurt Shuttleworth	Single Family Residence	Existing septic > 10yrs old
94	Yes	1431	Rte 5&20	Kurt Shuttleworth	Commercial Business	New build 2005. New septic 2005
95		1423	Rte 5&20	Joyce Williams	Vacant Residential	No sanitary system on site
96	Yes	1421	Rte 5&20	Russ Carlson	Single Family Residence	Existing septic > 10yrs old
97	Yes	1401	Rte 5&20	Local 840 IBEW	Commercial Business	Existing septic > 10yrs old
98	Yes	1387	Rte 5&20	Jeffery Iddings	Single Family Residence	New build 1999. New septic 1999
99	Yes	1375	Rte 5&20	David Burkhart Nancy Woodworth-	Commercial Business	New build 1999. New septic 1999
100	Yes	1293	Rte 5&20	Vervoordeldonk	Single Family Residence	Existing septic > 10yrs old
101			Rte 5&20	Yaegel Road Properties	Vacant Commercial	No buildings on site
102			Rte 5&20	Yaegel Road Properties	Vacant Commercial	No buildings on site
103		1145	Rte 5&20	Seneca Ontario group	Vacant Commercial	No buildings on site
104	Yes	1123	Rte 5&20	Dorothy Bridgeman	Residential Multi-family	Existing septic > 10yrs old New build 2004
105	Yes	1103	Rte 5&20	John Malyj - Geneva Harley	Commercial Business	(new raised bed septic 2004)
106			Rte 5&20	John Malyj	Agricultural	No buildings on site
107	Yes	1051	Rte 5&20	D'Amico Dodge	Auto Dealer	Existing septic > 10yrs old

Parcel Number	Eligible	Street Number	Street	Owner	Use	Property information
108			Rte 5&20	Joe Nicholson	Agricultural	No buildings on site
12A			Rte 5&20	Adrian Grammar	Agricultural	No buildings on site
7A	Yes	1160	Rte 5&20	Scortichini - house	Single Family Residence	New septic system installed 2002

**EXHIBIT C**  
**Stipulation of Discontinuance**

**STATE OF NEW YORK**  
**SUPREME COURT**                      **COUNTY OF ONTARIO**

TOWN OF SENECA,

Plaintiff,

-against-

**STIPULATION**  
**DISCONTINUING ACTION**

THE COUNTY OF ONTARIO, NEW ENGLAND  
WASTE SERVICES OF N.Y., INC., CASELLA  
WASTE SYSTEMS, INC. and CASELLA WASTE  
SERVICES OF ONTARIO, LLC,

Index No. 103655

Defendants.

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IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys of record for all the parties to the above entitled action, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action, the above entitled action be, and the same hereby is discontinued, with prejudice and without costs to either party as against the other. The stipulation may be filed without further notice with the Clerk of Court.

Dated: June \_\_, 2011  
Albany, New York

ERNSTROM & DRESTE, LLP

By: \_\_\_\_\_  
Theodore M. Baum, Esq.  
Matthew D. Brown  
*Attorneys for Plaintiff Town of Seneca*  
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(585) 473-3100  
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[mbrown@ed-llp.com](mailto:mbrown@ed-llp.com)

Dated: June \_\_, 2011  
Albany, New York

COUNTY OF ONTARIO

By: \_\_\_\_\_  
Ronald G. Hull, Esq.  
*Attorney for Defendant County of Ontario*  
Underberg & Kessler LLP  
300 Bauch & Lomb Place  
Rochester, New York 14604  
(585) 258-2838  
[RHull@underbergkessler.com](mailto:RHull@underbergkessler.com)

Dated: June \_\_, 2011  
Albany, New York

THE WEST FIRM, PLLC

By: \_\_\_\_\_  
Yvonne E. Hennessey, Esq.  
*Attorneys for Defendants*  
*New England Waste Services of N.Y., Inc.,*  
*Casella Waste Systems, Inc. and Casella*  
*Waste Services of Ontario, L.L.C.*  
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