

November 18 AD 2008
at 3 O'clock 25 minutes P M
and recorded in Book TP 13 Pages 499-506
Attest Deborah A. Beckett Town Clerk
33 888

HOST TOWN AGREEMENT

THIS HOST TOWN AGREEMENT is made as of this 16th day of September, 2008 by and between the Town of Williston, a municipality situated in Chittenden County, Vermont (the "Town"), and BURLINGTON TRANSFER STATION, INC., (the "BTS"), a Delaware corporation with a principal place of business situated at 1496 Redmond Road, Williston Vermont.

WITNESSETH:

WHEREAS, the Town and BTS recognize that a Transfer Station creates certain impacts or result in costs which are not typical of other types of development; and

WHEREAS, the parties acknowledge that, by this agreement, such impacts are appropriately mitigated and such costs are appropriately compensated.

NOW, THEREFORE, the Town and BTS, in consideration of the covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, covenant and agree as follows:

1. **TERM**

The term of this Agreement will commence as of the date hereof and shall terminate at the close of business on June 30, 2011. Notwithstanding the foregoing, the Town shall have the right to extend this Agreement for up to two successive five year terms by providing BTS with written notice of such election on or before 180 days from the end of the current term.

2. **FEES**

BTS shall pay the Town a monthly host town fee which shall be adjusted each year by the percentage increase (if any) occurring during the preceding twelve months in the Consumer Price Index ("CPI") (Seasonally Adjusted U.S. City Average For All Items For All Urban Consumers) For the first year of this agreement July 1, 2008 through June 30, 2011) the base fee, before the CPI adjustment is applied, shall be \$2.11 per ton of Transported Waste (as defined below) of \$2.11 per ton of Transported Waste (as defined below) For the purposes of this Agreement, "Transported Waste" shall mean any discarded material which is transported from the Transfer Station for permanent disposal in a landfill, incinerator or other similar disposal facility. Recyclable materials, for example, would not be Transported Waste. Payment of the monthly host town fee for a given month shall be automatically due, without notice from the Town, by the end of the following month. For example, the monthly fee for Transported Waste during September of any given year shall be due by October 31st of that year. Monthly detail reports of Transported Waste and the fee calculation will be due on the same schedule as that of the fee payments.

3. **TAXES AND ASSESSMENTS**

During the term of this Agreement, BTS shall pay the Town all taxes, assessments, impact fees, and other governmental impositions and charges of every kind or nature levied and imposed by the Town with respect to the Transfer Station. Nothing contained in this paragraph shall be deemed to impair BTS's rights to contest any tax, assessment, fee, imposition charge or similar right asserted by the Town.

4. **LATE PAYMENT FEE**

For any monthly fee not timely paid there shall be imposed an automatic late payment fee of one and one-half percent of the amount due, for each month, or fraction thereof, the fee remains unpaid.

5. **GOVERNMENTAL PERMITS**

BTS shall be responsible for obtaining all necessary governmental permits and approvals, including those required by Town by-laws, ordinances and regulations to operate the Transfer Station. BTS agrees to comply with all conditions and requirements of any permit or certification issued by the State of Vermont. The Town shall promptly consider and act upon any applications filed by BTS for permits and approvals necessary for BTS's operation of the Transfer Station.

6. **DISTRICT**

BTS agrees to comply with the ordinances and regulations of the District.

7. **WEIGHING**

BTS shall maintain a state licensed scale at the Transfer Station and cause all vehicles hauling Transported Waste from the Transfer Station to be weighed both before and after the Transported Waste is loaded into the vehicles. BTS shall each year give the Town a copy of the license it is required to obtain from the Vermont Department of Agriculture, Food and Markets Commissioner to operate the scale. BTS shall install its scale so that all readings from the scale are input directly into a software program that complies with the requirements of the District.

8. **RECORD KEEPING**

BTS shall keep accurate daily record so that the Town may determine the sums due under this Agreement. Such records shall include, without limitation, the date, time and place a vehicle is weighed and the gross and tare weights measured at each such weighing. Each monthly payment made by BTS pursuant to paragraph 2 of this Agreement shall be accompanied by a summary for the month for which the payment is being made. BTS hereby grants agents designated by the Town reasonable access to its ticket house receipts and records, and the Town may inspect and copy such receipts and records at BTS's place of business during normal business hours. BTS will provide the Town with copies

of all Quarterly Reports filed by BTS with the Vermont Agency of Natural Resources.

9. **ENFORCEMENT**

BTS shall pay the Town costs of collection, including reasonable attorney's fees, incurred by the Town in pursuing the collection of any delinquent host town fees, or incurred in the enforcement of any other provision of the Agreement. Host town fees shall be deemed delinquent when not paid within forty-five days of the last day of the month for which the payment is due.

10. **COMPLIANCE WITH APPROVALS; ADDITIONAL OPERATING GUIDELINES**

BTS will comply with all laws, rules, regulations, permits, approvals and the like ("Approvals") governing the operation and maintenance of the Transfer Station. BTS also agrees to comply with the following operational guidelines to the extent they are stricter than, and not inconsistent with the Approvals.

- a. Personnel - BTS shall maintain such personnel each with suitable training as may be reasonably necessary to operate the Transfer Station. BTS shall designate at least one contact person to be available on days the Transfer Station is open to receive and respond to communications for the Town.
- b. Fencing, Gates and Security - BTS shall maintain the existing fence around the perimeter of the active area of the Transfer Station. Gates shall be installed at all access points and shall be kept locked at all times, except when the active areas are open for use.
- c. Rodent and Insect Control - BTS shall control rodents, insects, and other vermin at the end of each day the Transfer Station is open. BTS shall grade the Transfer Station site so as to eliminate unnecessary standing water that could act as insect breeding grounds. If, and only as, reasonable necessary to control rodents and insects, BTS shall employ professional exterminators.
- d. Buffer Landscape Design, Weed and Grass Control, Leachate Collection, Erosion Control - BTS shall maintain the existing Transfer Station landscaping, leachate collection system (if any), and erosion control devices (if any), and control weeds and grass in accordance with generally acceptable practices and all legal and permit requirements.
- e. Windblown Material - BTS will take reasonable measures to ensure that all windblown litter is contained on-site. BTS shall at reasonable regular intervals (1) pick up in the active area, and in the areas downwind, debris having a potential to be windblown off site; and (2) collect the debris, if any, from the site fencing. On request of the Town or any resident thereof or landowner therein, BTS shall promptly retrieve and pick up debris, if

any, that blows from the Transfer Station. On a weekly basis, BTS will provide the Town, by facsimile, email or other electronic means, a log of the dates and times that BTS has policed and picked up Redmond Road for litter. BTS will pay the Town, at a rate of \$30 per hour not to exceed \$450.00 per month, to assist the Town in defraying the cost of having a Williston Police Officer patrol Redmond for litter and vehicles traveling in excess of posted speeds. BTS will be invoiced monthly those actual hours logged.

- f. Hours of Operation - Without the prior written consent of the Town for additional hours BTS, shall only open the Transfer Station for the acceptance of waste on Mondays through Fridays for a maximum of ten continuous hours, between 6 a.m. and 4 p.m., and on Saturdays for a maximum of seven continuous hours, between 6 a.m. and 1 p.m.
- g. Covered Load Policy - BTS shall enact and enforced a covered load policy which shall require all loads transporting or disposing of waste at the Transfer Station to be covered and secured.
- h. Public and Access Roads - BTS shall maintain its access from the public roads including checking the access and picking up debris as often as reasonably necessary to control litter from vehicles hauling waste to the Transfer Station. Such litter control shall be limited to Redmond Road and the portion of Mountain View Road between (a) the intersection of Mountain View Road and Redmond Road, and (b) the intersection of Mountain View Road and Route 2A. BTS will require that tractor-trailers accessing the Transfer Station travel only on Vermont Route 2A, Mountain View Road and Redmond Road; provided, however, that BTS will not prohibit tractor-trailers from deviating from such routes for the purpose of re-fueling or gaining access to other necessary services.
- i. Service Area
 - A. BTS may accept for disposal in the Transfer Station, waste that is generated within or from municipalities in Chittenden County and from municipalities outside of Chittenden County as long as the aggregate annual amount of waste disposed of at the Transfer Station does not exceed 120,000 tons.
 - B. BTS will provide a 2 cubic yard container at the Williston Fire Department for free once a week pick-up and disposal of refuse.
 - C. BTS will make annually available to the Town up to 800 cubic yards of shot rock, for Town pick-up at the Moretown Landfill, 187 Palisades Park, Moretown, Vermont. This availability is

contingent on Moretown Landfill receiving all necessary permits to remove rock ledge as part of its southern expansion, commonly referred to as "Cell 4".

- j. Traffic - BTS shall use reasonable efforts either by itself or in cooperation with the Town to control the routes followed and speeds traveled by traffic to the Transfer Station. If requested to do so by the Town, BTS shall refuse access to the Transfer Station to any trucks that Town personnel know are accessing the Transfer Station on routes other than those approved by the Town.
- k. Control - BTS shall occupy and control the use of the Transfer Station during the term hereof. If BTS ceases to be in control without the prior written consent of the Town, and fails to resume control or to obtain such consent within twenty (20) days, the Town may terminate this Agreement.

11. AMENDMENTS TO BTS LEASE

No amendment, modification, extension (except as presently set forth in the Lease) or other alternation in the terms, conditions, or provisions for the lease between BTS and the District affecting the Town or the health, safety or welfare of its residents shall be effective without the express advance written consent of the Town, which consent shall not be unreasonably withheld.

12. SEVERABILITY

The invalidity of any provision of this agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof and in the event of such invalidity the same shall be construed as narrowly as possible and this Agreement shall be construed to give effect to the intent of the parties to the maximum extent possible.

13. AMENDMENT

This Agreement may not be amended or modified except in a writing signed by all parties.

14. REPRESENTATIONS

The parties respectively represent and warrant that:

- a. BTS is a corporation duly organized and existing and in good standing under the laws of Delaware and is authorized to do business in the State of Vermont. The Town is a duly constituted municipal corporation existing under the laws of Vermont.
- b. Each party has the full power, authority and legal right to enter into and perform this agreement, and the execution, delivery and performance hereof and thereof by a party (i) will not violate any judgment, order, law,

ordinance or regulation applicable to such party or any provisions of such party's articles of organization, bylaws other governing instruments, and (ii) do not (A) conflict with, (B) constitute a default under, or (C) result in the creation of any lien, charge, encumbrance or security interest upon any assets of such party under any agreement or instrument or which such party is a party or by which such party or its assets may be bound or affected.

- c. This agreement has been duly authorized, executed and delivered by WVP and the Town; this Agreement constitutes legal, valid and binding obligations of BTS and the Town, enforceable in accordance with its terms, except as enforcement of such obligations may be limited by bankruptcy, insolvency, reorganization or similar laws affecting the enforcement of creditors' rights generally, or by general equitable principals concerning remedies, whether enforceability is sought in a proceeding at law or in equity.
- d. There is no action, suite or proceeding, at law or in equity, before or by any court or governmental authority pending or, to the knowledge of either party, threatened against or affecting such party wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by such party of its obligations hereunder or in connection with the transactions contemplated hereby or which, in any way, would adversely affect the validity or enforceability of this Agreement.
- e. Other than the representations and warranties set forth herein, neither party is relying upon any representations or warranties of the other party in entering into this Agreement.

15. **WAIVERS**

Failure of any party to complain of any act or omission on the part of another party shall not be deemed to be a waiver by the non-breaching party of any of its rights hereunder.

16. **INTERPRETATIONS**

This Agreement and the performance thereof shall be governed, interpreted and regulated by the laws of the State of Vermont.

17. **PARTIES/ASSIGNMENT**

The terms and conditions of this Agreement shall inure to and be binding upon the parties hereto, and their respective successors and assigns. This Agreement may be assigned by either party hereto upon prior written consent of the other party, said consent not to be unreasonably withheld. The Town consents to BTS's assignment of its rights and obligations under this Agreement at any time to BTS's wholly owned subsidiary, Burlington Area Transfer Station, Inc., a

Delaware corporation with principal place of business at Williston, Vermont. Notwithstanding such assignment, BTS shall remain liable for BATS' performance of its obligations hereunder.

18. **NOTICES**

Notices required under this Agreement shall be in writing and sent by certified mail, return receipt requested, postage prepaid. Notices to the Town shall be deemed received upon mailing to (i) Town Manager, 7900 Williston Road, Williston, Vermont, and (ii) Mr. Paul Gillies, Tarrant Marks and Gillies, 44 East State Street, Montpelier, Vermont, 05602. Notices to BTS shall be deemed received upon mailing to (i) Burlington Transfer Station, Inc., 19 Kaiser Drive, Waterbury, Vermont 05676, (ii) North East Waste Services, Inc., 354 Alexander Spring Road, Suite 3, Carlisle, Pennsylvania 17015, and (iii) North East Waste Services, Inc., 195 Main Street, Suite 7, Franklin, Massachusetts 02038. Either party adding or changing a person designated to receive Notices or changing an address shall be responsible for providing Notice of such additions and changes in accordance with the terms of this Paragraph.

19. **INTEGRATION/NO MERGER**

This Agreement contains all agreements of the parties with respect to the subject matter hereof and shall wholly supersede any and all other agreements, contracts and understanding with respect to the same.

20. **COUNTERPARTS**

This Agreement may be signed in counterparts, each of which, when executed and delivered, will constitute an original.

21. **GUARANTY OF BTS'S OBLIGATIONS**

BioSafe International, Inc., BioSafe, Inc. and BioSafe Landfill Technology, Inc. ("Guarantors") unconditionally guarantee the payment and performance of the obligations of BTS hereunder. Nothing contained in this paragraph shall be deemed to prevent or impair the Guarantors from asserting their own rights against the Town or from availing themselves of the rights assertable by BTS against the Town.

22. **SURVIVAL OF PAYMENT OBLIGATIONS**

Notwithstanding any other provision of this Agreement, BTS shall remain liable after termination of this Agreement for any obligation (i) accrued but unpaid as of the termination hereof, and (ii) accrued after termination under the provisions of paragraph 9.

23. **MEDIATION OF DISPUTES**

In the event that a dispute arises between the parties under the Agreement, the parties will meet, within 30 days after either party makes written request to have such a meeting, in a good faith attempt to resolve such dispute. If the parties'

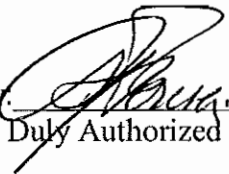
meeting does not resolve the dispute, the parties will, within 30 days after the conclusion of such meeting, engage the services of a mutually acceptable mediator to facilitate the parties' negotiations. No mediator will have the authority to resolve the dispute or to impose a resolution of the dispute on any party. If the parties' non-binding mediation does not result in a resolution of the dispute, the parties shall have the right to pursue resolution and appropriate remedies in any court having jurisdiction.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

TOWN OF WILLISTON

By: 
Its: Town Manager

BURLINGTON TRANSFER STATION, INC.

By: 
Its Duly Authorized Agent

END OF
DOCUMENT