

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is made as of the 24th day of January, 2018, by and between MID-AMERICAN SALT, LLC ("MID-AMERICAN"), 4528 Hillegas Road, Fort Wayne, Indiana 46818, and Town of Newton ("Newton"), a municipal corporation of the State of New Jersey, 39 Trinity Street, Newton, New Jersey 07860 (collectively, the "Parties"), as follows:

WHEREAS, in a Bid Package issued by the Morris County Cooperative Pricing Council ("MCCPC") on or about July 13, 2016 on behalf of its members, NEWTON submitted a request for bids under Contract #3 to supply an estimated 800 tons of rock salt (the "Estimate");

WHEREAS, on September 15, 2016, the Township of Randolph, 502 Millbrook Avenue, Randolph, New Jersey, a municipal corporation in New Jersey designated to perform administrative functions on behalf of the MCCPC, entered into an Agreement for the period October 15, 2016 to October 14, 2017 (the "Agreement") with MID-AMERICAN as the Contract #3 successful bidder to supply rock salt to requesting MCCPC members within Sussex County at the price of \$69.40 per ton;

WHEREAS, MID-AMERICAN took all steps necessary to fulfil its obligations to deliver rock salt pursuant to the terms of the Agreement;

WHEREAS, NEWTON ordered no rock salt from MID-AMERICAN since October 15, 2016;

WHEREAS, on June 13, 2017 MID-AMERICAN filed a complaint against NEWTON and other New Jersey municipalities and entities – which was subsequently amended on June 23, 2017 and corrected on July 26, 2017 – in the matter captioned *MID-AMERICAN Salt, LLC v. Morris County Cooperative Pricing Council, et al.*, No. 2:17-cv-04262 (SDW/LDW) (the "Action"), pending in the United States District Court for the District of New Jersey;

WHEREAS, the Parties wish to resolve MID-AMERICAN's claims in the Action on a voluntary basis, without the need for further proceedings;

NOW THEREFORE, in consideration of the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Payment.

a. In lieu of purchasing rock salt from MID-AMERICAN pursuant to the Agreement, NEWTON agrees to pay MID-AMERICAN \$11/ton on 70% of the Estimate (*i.e.*, 560 tons), for a total price of \$6,160, within 45 days of the date of this Settlement Agreement.

2. **Releases.** By their signatures to this Settlement Agreement, the Parties hereby release each other as follows:

a. Upon MID-AMERICAN's compliance with all obligations under this Settlement Agreement, NEWTON releases, discharges, gives up, and covenants not to sue or bring any and all claims, actions, complaints, and causes of actions for any and all debts, sums, interest, costs, and expenses, including but not limited to attorneys' fees, whether at law or in equity, known or unknown, fixed or contingent, of any nature whatsoever which NEWTON may have, from the beginning of the World to the date hereof, against MID-AMERICAN, including but not limited to those arising from or relating to (i) the Agreement; and/or (ii) any counterclaims or defenses that could have been raised by NEWTON in the Action

b. Upon NEWTON's compliance with all obligations under this Settlement Agreement and payment by NEWTON to MID-AMERICAN of the total amount due under paragraph 1 above, MID-AMERICAN releases, discharges, gives up, and covenants not to sue or bring any and all claims, actions, complaints, and causes of actions for any and all debts, sums, interest, costs, and expenses, including but not limited to attorneys' fees, whether at law or in equity, known or unknown, fixed or contingent, of any nature whatsoever which MID-AMERICAN may have, from the beginning of the World to the date hereof, against NEWTON, including but not limited to those arising from or relating to the Agreement, and/or the Action.

3. **Dismissal of the Action.** Within five (5) business days of NEWTON's compliance with all obligations under this Settlement Agreement, payment by NEWTON to MID-AMERICAN of the total amount due under paragraph 1 above, and execution by counsel for NEWTON of a Stipulation and Order of Dismissal substantially in the form annexed as **Exhibit A**, MID-AMERICAN will file a Stipulation and Order of Dismissal substantially in the form annexed as **Exhibit A**, dismissing the Action against NEWTON with prejudice and without costs.

4. **No Admission of Wrongdoing.** This Settlement Agreement is entered into for the sole purpose of resolving contested claims and avoiding the substantial costs, expenses, and uncertainties associated with the Action. This Settlement Agreement shall not be offered or received in evidence in any action or proceeding, except as may be necessary to enforce the terms of this Settlement Agreement. Neither this Settlement Agreement, the performance of any of its terms, nor any of its contents, shall constitute or be construed or offered as evidence in any proceeding as an admission of any liability or any indication that any of the claims, defenses, or allegations made in the Action has or had any merit.

5. **Representations and Warranties.** Each Party represents to the others that (i) it has the requisite power, authority, and legal capacity to make, execute, enter into, and deliver this Settlement Agreement and to fully perform its duties and obligations under this Settlement Agreement, and that neither this Settlement Agreement nor the performance by it of any duty or obligation hereunder will violate any other contract, agreement, covenant, or restriction by which it is bound; (ii) the execution and

delivery by it of this Settlement Agreement, and the performance by it of its obligations hereunder, have been duly authorized by all necessary action and no other proceedings on its part which have not been taken are necessary to authorize this Settlement Agreement or the agreements contained herein; and (iii) this Settlement Agreement has been duly and voluntarily executed and delivered by it and constitutes its legal, valid, and binding obligation, enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights or remedies generally.

6. **Other Provisions.**

a. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

b. This Settlement Agreement constitutes the entire and complete understanding and agreement between the Parties in regard to the subject matter of the Action described above and the terms hereof, and supersedes and replaces all prior negotiations, agreements, or understandings between the Parties, whether written or oral, concerning the subject matter of this Settlement Agreement.

c. This Settlement Agreement may not be amended except through an instrument in writing signed by the Parties. No provision of or rights under this Settlement Agreement may be waived or modified unless in writing and signed by the Party whose rights are thereby waived or modified.

d. The terms, provisions, and language of this Settlement Agreement have been jointly negotiated and drafted by the Parties and their respective legal counsel. Nothing in this Settlement Agreement shall be construed or interpreted against any Party as the drafting party, or for any other reason by operation of similar rules of construction.

e. New Jersey law shall govern this Settlement Agreement, and all claims or issues related hereto or arising hereunder, without reference to the conflicts of law principles thereof.

f. All notices under this Settlement Agreement shall be effective upon actual receipt or one business day after delivery by FedEx or e-mail (with receipt confirmed) to the addresses stated above.

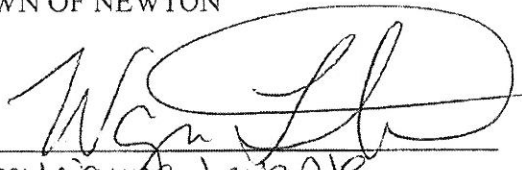
g. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Original signatures transmitted by electronic mail, PDF, or facsimile shall be deemed to be original signatures.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed and delivered by their duly authorized representatives as of the date first set forth above.

MID-AMERICAN SALT, LLC

Date:

TOWN OF NEWTON

By: 

Name: Wayne Levante

Title: Mayor

Date: 2/12/18