

**SECOND AMENDMENT TO
HOST COMMUNITY AGREEMENT**

THIS SECOND AMENDMENT TO HOST COMMUNITY AGREEMENT (“**Amendment**”) is made and entered into this ___ day of _____, 2014, by and between the TOWN OF SENECA, NEW YORK (the “**Town**”), a political subdivision organized and existing under the laws of the State of New York with offices at 3675 Flint Road, Stanley, New York 14561, CASELLA WASTE SERVICES OF ONTARIO LLC (“**Casella of Ontario**”), a New York limited liability company having its principal place of business at 803 Cascadilla Street, Ithaca, New York 14850, and the successor-in-interest of NEW ENGLAND WASTE SERVICES OF N.Y., INC. (“**NEWSNY**”), and CASELLA WASTE SYSTEMS, INC., a Delaware corporation having its principal place of business located at 25 Greens Hill Lane, Rutland, Vermont 05701 (“**Casella**”).

WITNESSETH

WHEREAS, on or about November 25, 2003, NEWSNY, Casella, and Ontario County (the “**County**”) entered into an Operation, Management and Lease Agreement (the “**OMLA**”) by which NEWSNY took over operation of the (Ontario County) Landfill (as such term is defined in Section 8 below) located in the Town of Seneca, New York; and

WHEREAS, on or about December 8, 2003, NEWSNY, Casella and the Town entered into a Host Agreement providing for certain payments and benefits to the Town on account of the operation of the Landfill (“**Host Agreement**”); and

WHEREAS, on or about June 30, 2004, NEWSNY, upon notice to the Town, assigned all rights and obligations under the OMLA and the Host Agreement to Casella of Ontario; and

WHEREAS, on or about October 21, 2008, Casella, Casella of Ontario and the Town entered into the First Amendment to the Host Agreement (“**First Amendment**”); and

WHEREAS, Casella of Ontario has proposed to the County an expansion of the Landfill, consisting of the addition of approximately 16 acres to the Landfill footprint around the northern and western boundaries of Phase III of the Landfill, the addition of approximately 27.5 acres to the Landfill footprint adjacent to the eastern boundary of Phase III of the Landfill, a borrow area for soils and an increase in the height of Phase III of the Landfill by approximately 28 feet (“**Expansion**”); and

WHEREAS, as part of the Expansion, Casella of Ontario also proposed to acquire an approximately 40-acre portion (“**Borrow Area**”) of a parcel of land located at the intersection of Rilands Road and County Road 5 in the Town of Seneca, identified as Tax Map Parcel No. 117.00-1-27.10 (“**Property**”), and southeast of Phase III of the Landfill, as more particularly described in **Exhibit “A,”** attached hereto and incorporated herein by reference, and to use about 25 acres of the Borrow Area to mine soil for use as cover for the Landfill; and

WHEREAS, Casella of Ontario holds an option to purchase the Borrow Area (“**Option**”); and

WHEREAS, in or about May, 2011, the County commenced a review of the Expansion under the New York State Environmental Quality Review Act (“**SEQRA**”), and the Town has participated in such review as an involved agency; and

WHEREAS, on June 18, 2013, the Town Board of the Town adopted findings (“**SEQRA Findings**”) pursuant to SEQRA that found that, due to certain mitigation measures (“**Mitigation Measures**”) described in the SEQRA Findings, the Expansion “avoids or minimizes adverse environmental impacts to the maximum extent practicable,” and “that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigation measures that were identified as practicable,” and, as a further result, the Town Board determined that the proposed borrowing operations would be exempt from the Town Zoning Law; and

WHEREAS, the parties desire to enter into this Amendment to confirm that the Mitigation Measures will be provided, and that the Host Agreement is still in effect.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations and warranties contained in this Amendment, and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Borrow Area.

a) Exercise of Option; Subdivision. Casella of Ontario shall, upon satisfaction of the contingencies set forth in subsection 1(d), below, exercise the Option to purchase the Borrow Area, take all actions necessary to obtain all consents and approvals for the subdivision of the Borrow Area from the Property and thereafter purchase the Borrow Area. The Town shall cooperate with Casella of Ontario in obtaining and issuing all necessary consents and approvals for the subdivision of the Borrow Area from the Property.

b) Deed. Casella of Ontario shall, within ten (10) business days of acquiring the Borrow Area, convey the Borrow Area to the Town. The conveyance from Casella of Ontario to the Town will be by bargain and sale deed, in substantially the form set forth herein as **Exhibit “B,”** attached hereto and incorporated herein by reference (“**Deed**”). The Deed shall contain a deed restriction prohibiting the use of the Borrow Area for the disposal of solid waste (“**Deed Restriction**”). The Deed shall also be subject to the rights of the existing owner of the Borrow Area to conduct farming activities on those portions of the Borrow Area not being used for Landfill purposes.

c) Operations Agreement. The Town and Casella of Ontario shall, simultaneously with the execution of this Amendment, enter into an operation, management and lease agreement to provide for the lease of the Borrow Area from the Town to Casella of Ontario, effective upon the conveyance of the Borrow Area from Casella of Ontario to the Town, for the purpose of using the Borrow Area as a soil borrow area for the Landfill, in substantially

the form set forth in **Exhibit “C,”** attached hereto and incorporated herein by reference (“**Operations Agreement**”). The Operations Agreement shall provide Casella of Ontario with exclusive use and full operational control of the Borrow Area, subject to the Deed Restriction, for a term concurrent to the OMLA, plus any additional period of time necessary to permit Casella of Ontario to satisfy all of its obligations associated with the Landfill or the Borrow Area under all applicable Permits and to reclaim the Borrow Area.

d) Contingencies. The obligations of Casella of Ontario to exercise the Option, subdivide the Borrow Area from the Property, and purchase the Borrow Area and convey the same to the Town shall be contingent on the issuance of all final and binding Permits, and all other final and binding consents and approvals of any and all Governmental Authorities, necessary to construct, use and operate the Borrow Area, as contemplated herein.

2. Representations by the Town. The Town hereby represents and warrants to Casella of Ontario that there are no zoning or other approvals required from the Town in relation to the construction, operation and use by Casella of Ontario of the Expansion and the Borrow Area, as contemplated and presently described herein, and that such operation and use shall be an existing, current vested use that will not be affected by any current or future law, rule or regulation of the Town or changes in any said law, rule or regulation of the Town.

3. Noise Easement. The Town shall execute, simultaneously herewith, an environmental easement in favor of Casella of Ontario for a certain parcel of property, bearing tax identification number 102.00-1-28.000 (“**Noise Easement Property**”), in substantially the form set forth in **Exhibit “D,”** attached hereto and incorporated herein by reference (“**Noise Easement**”). The Noise Easement shall provide, among other things, a right of Casella of Ontario to treat the Noise Easement Property as part of the Landfill for the purpose of compliance with the noise standard set forth in 6 NYCRR § 360-1.14(p). The Noise Easement shall: (1) be given to Casella of Ontario at no additional cost and otherwise be considered part of the consideration for this Amendment, (2) grant to Casella of Ontario the right to create noise on the Landfill and to impact the Noise Easement Property with said noise, (3) grant to Casella of Ontario all reasonable rights of ingress and egress to and over the Noise Easement Property in furtherance of the purposes of the Noise Easement, and (4) have a term continuing as long as the solid waste management facility on the Landfill continues to accept waste for disposal.

4. Conservation Easements. Casella of Ontario shall, or shall cause its affiliate, GroundCo LLC to, execute conservation easements for the benefit of the Town on twelve (12) parcels (“**Parcels**”) that Casella of Ontario owns in the vicinity of the Landfill in the Town, in substantially the form set forth in **Exhibit “E,”** attached hereto and incorporated herein by reference (“**Conservation Easements**”). These Parcels shall be restricted to agricultural and residential uses and/or similar purposes consistent with agricultural and/or residential uses, and commercial and industrial uses shall be prohibited. The tax identification numbers of the Parcels are as follows:

102.00-1-52.00
117.00-1-5.00
102.00-1-53.100

117.00-1-28.000
102.00-1-59.110
102.00-1-27.000
102.00-1-42.121
102.00-1-51.100
102.00-1-53.320
117.00-1-32.110
114.00-1-35.000
101.20-1-4.000

Notwithstanding anything contained herein to the contrary, the Conservation Easements shall except from the prohibitions set forth therein any existing commercial use by third parties on said Parcels, including, without limitation, the commercial businesses presently operated on tax identification numbers 101.20-1-4.000 and 102.00-1-42.121. The obligations of Casella of Ontario under this Section to execute the Conservation Easements shall be contingent on the Town's execution of the Operations Agreements and the Noise Easement, as contemplated herein.

5. Cooperation. The Town shall at all times during the term of the Host Agreement, as amended, the term of the Operations Agreement, and any extensions to the term of the Host Agreement, as amended, or the Operations Agreement, and in addition to any other obligation of the Town to cooperate with Casella of Ontario, as set forth in the Host Agreement, as amended, or the Operations Agreement, cooperate with Casella of Ontario in obtaining, maintaining, renewing, amending and/or modifying all Permits and all consents and approvals of any and all Governmental Authorities required for, or issued in relation to, the Expansion or the use of Borrow Area, as contemplated herein. The Town shall, at Casella of Ontario's request, execute all documents, and do all things, consistent with the purposes of this Amendment, and shall, to the extent permitted by law, undertake any steps requiring local legislation or resolution to provide to Casella of Ontario all contemplated and required approvals for the construction, operation and use of the Expansion and the Borrow Area, as contemplated herein. The Town agrees that, to the extent lawful under SEQRA, the County may seek and/or maintain lead agency status under SEQRA regarding all activities related to the Expansion or use of the Borrow Area, as contemplated herein.

6. Events of Default.

a) Curing Remedies. The parties agree that, upon an event of default by the Town under this Amendment that substantially limits, restricts or prohibits the rights of Casella of Ontario to use the Borrow Area, as contemplated herein, the Town shall be liable for, and shall indemnify and hold Casella of Ontario harmless from and against, any and all claims, liabilities, damages, costs and expenses (including reasonable attorney fees, court costs and other out-of-pocket expenses) related to or arising out of said default, including, without limitation, all costs and expenses of acquiring and transporting replacement soil to be used as cover for the Landfill and any penalties, fees or fines of any Governmental Authority. The Town further agrees that, in such event, the Town shall, within ninety (90) days of the arbitrator's declaration of said default (in accordance with Section 18 of the Host Agreement, as amended), lease, or

otherwise convey, to Casella of Ontario replacement property of similar size, condition and soils to the Borrow Area located within the Town boundaries to be used by Casella of Ontario as a soil borrow area for the Landfill. The replacement property shall be subject to the approval of Casella of Ontario, which approval may not be unreasonably withheld, and any applicable Governmental Authority. The lease, or conveyance, shall be, to the extent applicable, on the same or similar terms and conditions as set forth herein as if the replacement property was defined as the Borrow Area hereunder. The Town shall also be liable for, and shall indemnify and hold Casella of Ontario harmless from and against, any and all costs and expenses (including reasonable attorney fees, court costs and other out-of-pocket expenses) incurred, related to or arising out of said transaction (i.e., replacement lease or conveyance) and of obtaining any and all permits, licenses, certificates, consents, registrations or other approvals required to be issued by any Governmental Authority to use the replacement property as a soil borrow area for the Landfill. The Town's full implementation of this remedy shall cure any Host Agreement default that substantially limits, restricts or prohibits the rights of Casella of Ontario to use the Borrow Area, as contemplated herein.

b) Cumulative Remedies. Except as set forth herein, the specified remedies to which the parties may resort under the terms of this Amendment are not exclusive of each other or of any other remedies or means of redress to which the Parties may lawfully be entitled at law, in equity or otherwise in case of any breach or threatened breach of any term or condition of this Amendment and the exercise of any one remedy will not preclude the exercise of any other available remedy.

7. Landfill Regulations. The parties hereby acknowledge and agree that Casella of Ontario may, at its option, designate the Borrow Area, subject to the use restrictions set forth herein, as part of the Landfill facility under any applicable Permits, including the 6 NYCRR Part 360 Permit for the Landfill or the Expansion, and therefore subject the Borrow Area to all laws, rules and regulations applicable to the Landfill and the Expansion, including, without limitation, regulations promulgated by the New York State Department of Environmental Conservation ("**Department**") and the right of the Department to access and inspect the Borrow Area as part of the Landfill, but always subject to said use restrictions.

8. Definitions. All capitalized terms used herein, but not otherwise defined, shall have the meaning assigned to such terms in the Host Agreement, as amended. The term "**Landfill**," for all purposes under the Host Agreement, as amended, and for the purposes of this Amendment, shall be deemed to include the Borrow Area. The following other terms shall have the meanings set forth below for the purposes hereof:

- a) "**Governmental Authority(ies)**" shall mean any and 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 Landfill, the Expansion or the Property.
- b) "**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 Landfill or the Expansion, or to use the Borrow Area, as contemplated herein, including, without limitation, all renewals and modifications thereof. The term Permit expressly includes any 6 NYCRR Part 360 Permit, or modification thereof, issued to the County for the Landfill. The term Permit, when stated as “final and binding,” shall mean a Permit lawfully issued, with all time periods to challenge the Permit expired, and any appeals or challenges to the Permit resolved in favor of the operation of the Landfill, the construction of the Expansion and/or the use of the Borrow Area, as contemplated herein, as applicable.

9. Host Agreement. The Host Agreement, as amended by the First Amendment, and the terms and condition thereof, shall remain in full force and effect, unless expressly amended by this Amendment, or the term and conditions hereof.

10. Construction. No rule of construction shall be applied to construe any ambiguities in this Amendment against the draftsman.

11. Severability. If any provision of this Amendment, or portion thereof, is determined to be invalid or unenforceable, that shall not affect the validity or enforceability of the remaining portions of this Amendment, or portions thereof.

12. Counterparts. This Amendment may be executed in multiple counterparts, and the counterparts, when combined, shall form and constitute a complete Amendment. The parties further agree that facsimile signatures shall be acceptable to bind the parties.

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IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

TOWN OF SENECA, NEW YORK

By: _____
John Sheppard, Supervisor

CASELLA WASTE SERVICES OF ONTARIO, LLC

By: _____

Name: _____

Title: _____

CASELLA WASTE SYSTEMS, INC.

By: _____

Name: _____

Title: _____

EXHIBIT A

DESCRIPTION OF PROPERTY

EXHIBIT B

FORM BARGAIN AND SALE DEED

EXHIBIT C

FORM OPERATING AGREEMENT

EXHIBIT D

FORM NOISE EASEMENT

EXHIBIT E

FORM CONSERVATION EASEMENTS