

OPERATION, MANAGEMENT AND LEASE AGREEMENT

This **OPERATION, MANAGEMENT AND LEASE AGREEMENT** (“**Agreement**”) is made and entered into this ___ day of _____, 2014, by and between the **TOWN OF SENECA, NEW YORK** (“**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, and **CASELLA WASTE SERVICES OF ONTARIO LLC** (“**Casella of Ontario**”), a New York limited liability corporation with offices at 803 Cascadilla Street, Ithaca, New York 14850 (the Town and Casella of Ontario hereinafter sometimes referred to, individually, as a “**Party**” and, collectively, as the “**Parties**”).

WITNESSETH

WHEREAS, on or about November 25, 2003, New England Waste Services of N.Y., Inc. (“**NEWSNY**”), Casella Waste Systems, Inc. (“**Casella**”) and Ontario County, New York (“**County**”) entered into an Operation, Management and Lease Agreement (“**OMLA**”), pursuant to which, NEWSNY took over operation of the (Ontario County) Landfill (as such term is defined in the Host Agreement, as amended) 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 of Ontario, the Town and Casella entered into a First Amendment to the Host Agreement (“**First Amendment**”); and

WHEREAS, in or about May 2011, Casella of Ontario 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 of 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 (the “**Expansion**”); and

WHEREAS, in connection with the Expansion, Casella of Ontario also proposed to acquire a portion of certain real property from a third party to be used by Casella of Ontario as a soil borrow area for the Landfill (“**Property**”), which is presently identified as a portion of a tract of land now known as Tax Map Parcel No. 117.00-1-27.10 (“**Original Tract**”), and situated adjacent to the southeast of Phase III of the Landfill, as more particularly described in **Exhibit “A,”** attached hereto and incorporated herein by reference; and

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

WHEREAS, on June 18, 2013, the Town Board of the Town adopted certain findings (the “**Town SEQRA Findings**”) pursuant to SEQRA that stated that, due to certain mitigation measures (“**Mitigation Measures**”) described in the Town 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 mitigative measures that were identified as practicable,” and, as a further result, the Town Board determined that the use of the Property by Casella of Ontario as a soil borrow area for the Landfill would be exempt from the Town Zoning Law; and

WHEREAS, on or about the date hereof, Casella of Ontario, the Town and Casella entered into a Second Amendment to the Host Agreement (“**Second Amendment**”) to confirm the Mitigation Measures; and

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

WHEREAS, the Second Amendment provides that, upon issuance of any and all final and binding Permits (as defined below), and all other final and binding consents and approvals of any and all Governmental Authorities (as defined below), necessary to construct, use and operate the Property as a soil borrow area for the Landfill, Casella of Ontario shall exercise the Option, subdivide the Property from the Original Tract, purchase the Property from the third party and, within ten (10) days thereof, convey the same to the Town; and

WHEREAS, the Second Amendment also provides for the execution of this Agreement to establish terms for the use and operation of the Property by Casella of Ontario as a soil borrow area for the Landfill, effective upon the conveyance by Casella of Ontario of the Property to the Town, as more particularly described herein; and

WHEREAS, Casella of Ontario and the Town now deem it necessary and desirable to enter into this Agreement for the purpose of establishing the terms and conditions for the use and operation of the Property, all in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of ONE (\$1.00) US DOLLAR, paid by Casella of Ontario to the Town, the representations, warranties, promises, covenants and agreements of each Party contained herein and in the Second Amendment, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Condition Precedent. The Parties hereby acknowledge and agree that this Agreement, and the performance by the Parties of the terms and conditions hereof, shall be subject to the following conditions precedent:

- a) All final and binding Permits, including any 6 NYCRR Part 360 Permit, and all other final and binding consents and approvals of any and all

Governmental Authorities, necessary to construct, use and operate the Property as a soil borrow area for the Landfill, shall be issued by all applicable Governmental Authorities (“**Borrow Area Permits**”); and

- b) Casella of Ontario shall have purchased the Property and re-conveyed the same to the Town, all in accordance with the Second Amendment.

The date of execution and delivery by Casella of Ontario to the Town of the instrument duly conveying the Property to the Town shall be evidence of the satisfaction of these conditions precedent and shall act as the effective date hereof (“**Effective Date**”).

2. Lease. Effective as of the Effective Date, the Town hereby leases exclusively to Casella of Ontario, and Casella of Ontario hereby leases and accepts from the Town, the Property, subject to the terms and conditions set forth herein.

3. Term. The term of this Agreement shall commence on the Effective Date and shall terminate one hundred twenty (120) days following the later of (a) the termination or expiration of the OMLA or (b) the conclusion of all of Casella of Ontario’s Closure (as defined below) and Post Closure Care (as defined below) obligations under the OMLA or any Permit, but, in no event, later than December 31, 2031 (“**Term**”).

4. Consideration. The Town and Casella of Ontario hereby acknowledge and agree that this Agreement is part and parcel of a transaction consisting of several counterparts, one of which is this Agreement, and that the Town has in said transaction received good, valuable and adequate consideration from Casella of Ontario for this Agreement, including, without limitation, the conveyance of the Property from Casella of Ontario to the Town and the agreement of Casella of Ontario to the terms and conditions hereof. No further lease payments shall be due and owing from Casella of Ontario hereunder for the Term hereof.

5. Use of the Property. Casella of Ontario shall use the Property (a) as a soil borrow area for the Landfill, including necessary stormwater management and other soil borrow area support facilities, as more particularly described herein and in any Borrow Area Permit, including, without limitation, any Mined Land Use Plan (“**Mined Land Use Plan**”) for the Property incorporated therein, and (b) to the extent not required for such soil borrow operations, for agricultural or farming purposes. There shall be no other uses permitted on the Property without the Town’s prior written consent, which may be withheld in the Town’s sole discretion. Notwithstanding the foregoing, there shall, in no event, be any disposal of solid waste permitted on the Property. The Parties hereby acknowledge and agree that, in the event of a breach by Casella of Ontario of the covenants contained in this Section restricting the use of the Property, said breach shall be subject to the alternate dispute resolution provisions set forth in Section 16 hereof, and the Town shall be entitled to seek temporary injunctive relief until said breach is either cured or a final decision in relation to said breach is issued by an arbitrator in accordance with Section 16 hereof.

6. Exclusivity. The right of Casella of Ontario to use the Property, as contemplated herein, shall be exclusive. The Town shall not, during the Term hereof, or any extensions

thereto, grant to any other person or entity any right, lease, franchise, license or privilege to operate, occupy, manage or otherwise use the Property.

7. Operation of the Property.

a) Compliance with Laws and Permits. Casella of Ontario shall operate the Property in compliance with all applicable laws, rules and regulations of Governmental Authorities having jurisdiction over the Property, and all Permits to the extent related to the Property, including all renewals and modifications thereof. Notwithstanding the foregoing, Casella of Ontario shall have the right, at its own cost and expense, to contest or review by legal proceedings the validity or legality of any such law, rule, regulation or Permit and, during such contest, Casella of Ontario may refrain from complying therewith; provided, however, that neither Casella of Ontario nor the Town will be subjected to criminal prosecution thereby and, that, if requested to do so by the Town, Casella of Ontario shall furnish to the Town a bond in form and amount reasonably satisfactory to the Town guaranteeing to the Town compliance by Casella of Ontario with such law, rule, regulation or Permit and the payment of any penalty assessed against the Town for Casella of Ontario's non-compliance.

b) Operational Matters. Casella of Ontario shall, to the extent permitted by applicable law, rule, regulation or Permit, operate the Property in accordance with the following:

i. Topsoil; Existing Vegetation. All topsoil stripped from the Property shall be stockpiled on the Property to be used in the Landfill or for reclamation purposes on the Property.

ii. Roadways; Access. There shall be no direct access to the Property from public roads, unless required by applicable law (i.e., emergency service). All soil borrow area related traffic, including the transportation of materials mined from the Property to the Landfill, shall be through the Landfill using interior access roads.

iii. Mining Activities. There shall be no excavation within 100 feet of roadways or 25 feet of property lines, and a minimum screening berm height of 10 feet shall be maintained along Post Road and Rilands Road to serve as a visual and noise buffer.

iv. Reclamation. The final land use objective for the Property after mining and reclamation of the Property is to establish vegetative cover on the site and maintain the Property for future uses. The soil borrow area of the Property will effectively be a stormwater basin. Areas of reclamation will receive six (6) inches of topsoil or compost amended soil. Said areas shall receive a hydroseed mixture of Creeping Red Fescue, New Zealand White Clover, Perennial Ryegrass, Kentucky 31 Tall Fescue and commercial fertilizer, or similar substitutes of any of the foregoing. No hydroseeding will be performed until the soil pH is between 6.0 and 7.0. Lime can be added to the soils to adjust the pH, as necessary. One (1) interior access road shall remain on the Property to provide access into the reclaimed area from the Landfill for maintenance of possible future use.

v. Hours of Operation. Casella of Ontario shall have the right to operate the Property at hours of its choosing that are in compliance with all Borrow Area Permits.

vi. Environmental Matters. Casella of Ontario shall be responsible for all environmental remediation at the Property caused by Casella of Ontario's use of the Property. This obligation shall survive the termination or expiration hereof for a period of five (5) years. Casella of Ontario shall, in no event, be liable for any environmental condition or liability created or exacerbated as a result of any action taken or omitted by a third party.

vii. Conflicts with Permits. The Parties hereby acknowledge and agree that the construction, use and operation of the Property by Casella of Ontario, as set forth herein, is intended to be consistent with the construction, use and operation of the Property described in any final and binding Borrow Area Permit, including, without limitation, the 6 NYCRR Part 360 Permit for the Expansion. Casella of Ontario therefore agrees that throughout the application process for any Borrow Area Permit, Casella of Ontario will use its best efforts to ensure that the Borrow Area Permits, and the terms and conditions thereof, are consistent with this Agreement, and the terms and conditions hereof. To the extent, however, that this Agreement, or a term or condition hereof (collectively, the "**OMLA Term**"), conflicts, or is inconsistent, with any final and binding Borrow Area Permit, or a term or condition thereof (collectively, the "**Borrow Area Permit Term**"), the OMLA Term that conflicts with or is inconsistent with the Borrow Area Permit Term shall be deemed ineffective and the Parties shall, in lieu of said conflicting or inconsistent OMLA Term, add by mutual agreement as part of this Agreement a replacement term or replacement condition as similar in term or condition to said inconsistent OMLA Term that is not inconsistent with the applicable Borrow Area Permit Term.

viii. Landfill Regulations. The Parties hereby acknowledge and agree that Casella of Ontario may, at its option, designate the Property, subject to the use restrictions set forth in Section 5 hereof, as part of the Landfill facility under any applicable Permit, including the 6 NYCRR Part 360 Permit for the Landfill and/or the Expansion, and therefore subject the Property 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 Property as part of the Landfill.

c) Closure. Notwithstanding anything contained herein to the contrary, the Town shall permit Casella of Ontario to use the Property as a soil borrow area for the Landfill, free of any charge, assessment or fee, irrespective of whether this Agreement has terminated or expired, for the performance by Casella of Ontario of all Closure and Post Closure Care activities required by the OMLA or any Permit.

8. Town Obligations.

a) Town Permits and Agreements. The Town hereby acknowledges and agrees that there are no Permits or approvals required from the Town for the use of Property, as contemplated herein; and that Casella of Ontario shall be, to the extent permitted by law, vested

hereunder with full operational authority or control of the Property to use the Property, as contemplated herein.

b) Authority to Act on Behalf of Town. The Town (including, without limitation, the Supervisor, and all employees, agencies, boards, and commissions thereof) hereby agrees that Casella of Ontario, may, to the extent permitted by law, and without prior legislative, administrative or other authorization by the Town (provided that Casella of Ontario uses good faith efforts to keep the Town apprised thereof), (i) conduct all activities relating to the day-to-day operation of Property, as contemplated herein, including direct contact with Governmental Authorities related thereto, (ii) submit Permit applications (including, without limitation, applications for modifications and renewals of Permits), reports or other formal documents to Governmental Authorities related to the use the Property, as contemplated herein, and (iii) appear before any Governmental Authority, or at any public hearings or meetings, related to the use of the Property, as contemplated herein. The Town agrees that, to the extent lawful under SEQRA, that the County may seek and/or maintain lead agency status under SEQRA and act as lead agency regarding all activities related to the use of the Property as a soil borrow area for the Landfill, as contemplated herein.

c) Landfill Permits. The Town shall, during the Term hereof, and any extension thereto, cooperate with Casella of Ontario in obtaining, maintaining, renewing and/or modifying all Permits required for, or issued in relation to, the use of the Property as a soil borrow area for the Landfill, as contemplated herein.

d) Vested Rights. In the event that the Town adopts any new, local law, ordinance, resolution or policy that has a material adverse impact on the rights of Casella of Ontario to construct, operate, maintain, upgrade or use the Property, as contemplated herein, all of the rights provided to Casella of Ontario hereunder shall be deemed vested rights and shall be protected and excluded from the operation of any such local law or ordinance. Notwithstanding the foregoing, nothing contained herein shall prevent the Town from enforcing any existing, or adopting any new, local laws, ordinances, rules or regulations that regulate public health, safety or welfare in a reasonable manner which do not materially and unreasonably interfere with Casella of Ontario's operation, management or use of the Property, as contemplated herein. If the Town is required by a county, state or federal statute to adopt any local law, ordinance, resolution or policy that has a material adverse impact on the rights of Casella of Ontario to construct, operate, maintain, upgrade, expand or use the Property, as contemplated herein, then, upon written notice from Casella of Ontario to the Town, this Agreement shall terminate and the Town shall pay, in lieu of any remedy available hereunder, a sum equal to the average appraised value of two (2) real estate appraisals of the Property, prepared by certified New York State Real Estate Appraisers, one from each Party.

e) Taxes. The Town hereby agrees that during the Term hereof, and any extensions thereto, the Town shall not charge Casella with any assessment of taxes, ad valorem taxes, fees or improvements on the Landfill, the Expansion or the Property.

f) Further Assurances. The Town shall, at Casella of Ontario's request, execute all documents, and do all things, consistent with the purposes of this Agreement, 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 operation and the use of the Property, as contemplated herein.

9. Representations and Warranties of the Town. The Town hereby represents and warrants, as follows:

a) Existence and Good Standing. The Town is a validly existing political subdivision in good standing under the laws of the State of New York.

b) Approval and Authorization. The Town has full power and authority to enter into this Agreement and to fully perform all of its duties and obligations hereunder. The Town has duly authorized the execution and delivery of this Agreement and the Town's performance of all of its duties and obligations contained herein. This Agreement constitutes a valid and legally binding obligation of the Town, enforceable in accordance with its terms.

c) No Litigation or Conflicts. There is no action, suit or proceeding pending or, to the best of the Town's knowledge and belief, threatened, against or affecting the Town, at law or in equity, before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, (i) wherein any decision, ruling or finding would adversely affect the transactions contemplated hereby, or (ii) arising, directly or indirectly, out of the existence, operation or use of the Property as a soil borrow area for the Landfill, as contemplated herein; and the execution, delivery and performance of this Agreement by the Town will not result in a violation of or be in conflict with any ordinance, agreement, instrument, judgment, decree, order, statute, rule, or regulation to which the Town is a party or has enacted, or by which the Town is bound.

d) Consents and Approvals. There are no approvals, authorizations, orders, consents, declarations, bids, registrations or filings with the Town or any other Governmental Authority or referendum of voters which has not been obtained that is required for the valid execution and delivery by the Town of this Agreement or the performance by the Town of its duties and obligations set forth herein.

e) Zoning. The use of the Property, as contemplated herein, is exempt from the Town's zoning and other land use laws. By executing this Agreement, the Town warrants, represents and agrees that the use of the Property, as contemplated herein, is and will be an existing, current vested use not subject to zoning requirements, which shall not be affected by any future zoning or land use regulations or changes in regulations. The Town agrees to enact any additional approvals, if required, that might be necessary for the use of the Property, as contemplated herein.

f) Cooperation with Casella of Ontario. The Town affirms to cooperate with Casella of Ontario, including in obtaining, maintaining, renewing, amending and modifying all necessary permits and approvals for the construction, operation and use of the Property, as contemplated herein.

g) Binding Contract. The Town is authorized to pass all necessary local laws and resolutions and take all necessary actions to meet the obligations and covenants contained herein. The Town agrees and covenants that it shall take no action inconsistent with the agreements, covenants and obligations contained in this Agreement.

h) Public Interest. The Town has determined that it is in the public interest of the citizens of the Town to enter into this Agreement and to authorize Casella of Ontario to use the Property, as contemplated herein, to obtain any Permits and approvals necessitated thereby, and to otherwise operate the Property in accordance herewith and the OMLA.

10. Representations and Warranties of Casella of Ontario. Casella of Ontario hereby represents and warrants, as follows:

a) Existence of Good Standing. Casella of Ontario is validly existing as a limited liability company authorized to do business in the State of New York.

b) Approval and Authorization. Casella of Ontario has full power and authority to enter into this Agreement and to fully perform all of its duties and obligations hereunder. Casella of Ontario's Managers or Members, as the case may be, have duly authorized the execution and delivery of this Agreement and Casella of Ontario's performance of all of its duties and obligations contained herein. This Agreement constitutes a valid and legally binding obligation of Casella of Ontario, enforceable in accordance with its terms.

c) No Litigation or Conflicts. There is no action, suit, or proceeding pending or, to the best of Casella of Ontario's knowledge and belief, threatened, against or affecting Casella of Ontario, at law or in equity, before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality wherein any decision, ruling or finding would adversely affect the transactions contemplated herein; and the execution, delivery and performance of this Agreement by Casella of Ontario will not result in a violation of or be in conflict with any ordinance, agreement, instrument, judgment, decree, order, statute, rule, or government regulation to which Casella of Ontario is a party or by which Casella of Ontario is bound.

11. Survival of Representations and Warranties. All representations, warranties, promises, agreements, covenants and statements made herein shall survive for the Term hereof, and any extensions thereto, regardless of what investigations any Party may have made before or after the execution of this Agreement, except for those representations, warranties, promises, agreements, covenants and statements that are expressly waived in writing by the Party benefiting therefrom or expressly intended to survive the expiration or termination hereof. Nothing contained herein shall require a Party to waive any such representation, warranty, promise, agreement, covenant or statement.

12. Covenant of Quiet Enjoyment. The Town hereby warrants and agrees to defend title to the Property during the Term hereof, and any extension thereof, and further covenants and agrees that Casella of Ontario, upon observing and keeping the covenants, agreements and stipulations hereof on its part to be observed and kept, shall lawfully, peacefully and quietly hold, occupy, enjoy and operate said Property, as contemplated herein, during the Term hereof,

and any extensions thereto, including the pendency of any Dispute (as defined below) in accordance with Section 16 hereof, without hindrance, objection or molestation.

13. Termination. This Agreement may be terminated by mutual written agreement of the Parties or as otherwise expressly provided herein. Casella of Ontario shall, upon expiration or termination of the Term hereof, quit and surrender to the Town the Property, reclaimed in accordance with Section 7(b)(iv) hereof, unless otherwise agreed to by the Parties.

14. Breaches; Remedies. A breach of this Agreement shall mean a failure to comply with any material term or condition hereof. Any alleged breach by Casella of Ontario may be enforced by arbitration, as set forth in Section 16 hereof, but shall not give rights to the Town to terminate this Agreement. Each Party may cure such breach as set forth in Section 15 hereof. The non-breaching Party may, but shall not be obligated to, cure such breach, but only upon the breaching Party's failure to so cure in accordance with Section 15 hereof. If the non-breaching Party shall cure such breach, then the non-breaching Party may, by written notice, demand from the breaching Party payment of all costs and expenses of such cure (including reasonable attorney's fees, court costs and other out-of-pocket expenses), together with interest thereon from the date of incurrence thereof at a rate equal to either the highest rate permitted by applicable law or nine percent (9%), per annum, whichever is less.

15. Right to Cure Breach. Each Party shall, in the case of any breach of this Agreement, either:

a) Cure the breach to the satisfaction of the non-breaching Party (not to be unreasonably withheld, conditioned or delayed) within ninety (90) days of receipt of written notice from the non-breaching Party identifying the breach, or

b) Continuously demonstrate within ninety (90) days of receipt of written notice from the non-breaching Party identifying the breach that it is actively and continuously pursuing a course of action which can reasonably be expected to lead to a cure of the breach (the ninety (90) day period will be extended for so long as the breaching Party is actively and continuously pursuing such a course);

provided, however, that in the event of the failure of any Party to pay the other Party any sum or amount required to be paid hereunder when due hereunder, cure shall consist of payment within fifteen (15) days of written demand from the non-breaching Party, together with interest thereon from the date the payment was due at a rate equal to either the highest rate permitted by applicable law or nine percent (9%), per annum, whichever is less.

16. Arbitration.

a) The Parties hereto agree that any differences, disputes, controversies and/or claims (collectively, "**Disputes**" and, individually, a "**Dispute**") among the Parties arising out of or related in any way to this Agreement, including, without limitation, any breach of this Agreement that is not cured in accordance with Section 15 hereof, will be settled by arbitration administered by the American Arbitration Association in accordance

with its applicable rules pertaining to the resolution of commercial disputes. The Parties further agree that before resorting to arbitration pursuant to this provision, they shall attempt to come to a reasonable settlement of any Dispute by having their authorized representatives attempt to negotiate a resolution of the Dispute for a period of thirty (30) days, and, if not resolved by said authorized representatives, by having other more senior members of each Party's management, who have no previous involvement in the Dispute, but who have the authority to resolve the Dispute, attempt to negotiate a resolution of the Dispute for an additional fifteen (15) days.

b) In the event arbitration is necessary, a panel of three (3) arbitrators will hear and decide the Dispute. Each Party will select an arbitrator and the arbitrators selected by the Parties will, within fourteen (14) days of their appointment, select the third, neutral arbitrator. If the arbitrators selected by the Parties are unable or fail to agree upon the third arbitrator, the American Arbitration Association shall select the third arbitrator. The three (3) arbitrators shall consist of individuals with no significant relationship with either Party.

c) Arbitration proceedings and submittals shall be held in Ontario County, New York.

d) Notwithstanding the existence of any Dispute, each Party shall continue to perform this Agreement, other than the issue in dispute, during the pendency of the Dispute.

17. Replacement Property. The Parties hereby agree that, upon the issuance in arbitration of a final, non-appealable determination holding that the Town has breached the Agreement under Sections 2, 6, 8, 9 or 12 hereof, or that a breach of this Agreement by the Town substantially limits, restricts or prohibits the rights of Casella of Ontario to use the Property, as contemplated herein, unless otherwise provided herein, Casella of Ontario may, at its option, terminate this Agreement, in which case, 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 breach, 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 Casella of Ontario's election hereunder, lease, or otherwise convey, to Casella of Ontario replacement property of similar size, condition and soils to the Property 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 Property 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/administrative proceeding costs and other out-of-pocket expenses) incurred, related to or arising out of said transaction (i.e., replacement lease of 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.

18. Cumulative Remedies. Except as set forth herein, the specified remedies to which the Parties may resort under the terms of this Agreement 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 or in equity in case of any breach or threatened breach of any term or condition of this Agreement and the exercise of any one remedy will not preclude the exercise of any other available remedy.

19. Indemnification. Each Party (each, an “**Indemnifying Party**”), to the fullest extent allowed by law, shall indemnify, defend and hold harmless the other Party, and any director, officer or affiliate of the other Party (each, an “**Indemnified Party**”), from and against any and all claims, actions, suits, judgments, proceedings, liabilities, obligations, losses, damages, amounts paid in settlement, interest, costs and expenses (including reasonable attorney’s fees, court costs and other out-of-pocket expenses incurred in investigating, preparing or defending the foregoing) (collectively, “**Losses**”) incurred or suffered by any Indemnified Party arising out of or related in any way to (i) the failure of any representation or warranty of the Indemnifying Party contained in this Agreement to have been true in all material respects as of the date when deemed made by the terms hereof; or (ii) the breach by the Indemnifying Party of this Agreement, or any term or condition hereof, to the extent not waived by the other Party. Casella of Ontario further agrees to defend, indemnify, hold harmless and discharge the Town from and against any and all Losses arising from Casella of Ontario’s use of the Property, as contemplated herein. The indemnification obligations set forth herein shall survive the expiration or termination hereof for a period of five (5) years. Neither Party shall, in any event, be liable for any Loss created, or portion thereof exacerbated, as a result of any action taken or omitted by the other Party or a third party.

20. Insurance; Casualty. Casella of Ontario covenants and agrees to procure and keep in force and effect during the Term hereof, and any extensions thereto, such insurance policies for the Property, with the premiums paid, in the coverages and amounts set forth **Exhibit “B,”** attached hereto and incorporated herein by reference, unless otherwise agreed to by the Parties in writing (the “**Insurance Policies**”). All Insurance Policies shall name the Town as an additional insured. A certificate of each Insurance Policy (and, as applicable, any renewals) shall be provided to the Town upon commencement of the Term and at least thirty (30) days prior to the expiration date of each Policy. Casella of Ontario agrees to ensure that its insurers either waive any subrogation claims against the Town, or waive any rights to recover from the Town for any loss or damage suffered by Casella of Ontario due to Casella of Ontario’s use of the Property, as contemplated herein. All amounts that shall be received under any Insurance Policy protecting the Property shall be first applied to the payment of the cost of repair, reconstruction or replacement of the Property that is damaged or destroyed. Any amount remaining from such proceeds after such repair, reconstruction or replacement shall immediately be paid to and be the sole property of Casella of Ontario. If such insurance proceeds shall be insufficient in amount to cover the cost of such repair, reconstruction or replacement, then Casella of Ontario shall promptly pay any deficiency, unless such damage or destruction was caused by the Town, in which case, the Town shall pay such costs.

21. Eminent Domain. To the extent permissible by law, the Town hereby agrees not to exercise any rights that it might have to acquire all, or any portion of, the Property, or the leasehold created hereby. If, during the Term of this Agreement, or any extension thereof, proceedings by any Governmental Authority against the Property results in a full or partial taking of the Property, which proceedings do not materially interfere with Casella of Ontario's ability to successfully use of the Property, as contemplated herein, the Town shall be entitled to receive the condemnation award or payment for such portion of the Property taken, less any cost or expense of Casella of Ontario arising from such taking, and Casella of Ontario shall continue to use the Property, as contemplated herein. If, during the Term of this Agreement, or any extension thereof, proceedings by any Governmental Authority against the Property result in a full or partial taking of the Property, which proceedings materially interfere with Casella of Ontario's ability to use the Property, as contemplated herein, then upon written notice from Casella of Ontario to the Town, this Agreement shall terminate with respect to that portion of the Property taken by said Governmental Agency and Casella of Ontario shall be entitled to, in lieu of any remedy available hereunder, the entire condemnation award or payment for said taking.

22. No Joint Venture. Neither this Agreement, nor any term or condition hereof, is intended, nor shall they ever be construed as to create, a legal partnership by and between the Town and Casella of Ontario, make the Town and Casella of Ontario joint venturers, or make either Party in any way responsible for debts and/or losses of the other Party. The Parties are and shall be independent contractors in their relationship with each other and no Party is, nor shall be considered, an agent or legal representative of the other Party for any purposes whatsoever. No Party has any express or implied authority to assume or create any obligation or responsibility on behalf of the other Party or to bind the other Party in any way.

23. Force Majeure. In the event that any Party hereto is rendered unable, wholly or in part, by an event of Force Majeure to carry out any of the obligations under this Agreement, then, in addition to the other remedies provided in this Agreement, the obligations of the respective Party which are prevented may be suspended during the continuation of the event of Force Majeure, but for no longer a period. At any time that any Party intends to rely upon an event of Force Majeure to suspend obligations as provided in this Section, such Party shall notify the other Parties as soon as reasonably practical describing in reasonable detail the circumstances of the event of Force Majeure. Notice shall again be given when the effect of the event of Force Majeure has ceased. No surety or bond shall be required during an event of Force Majeure.

24. Miscellaneous.

a) Definitions. Capitalized terms used herein, but not defined herein, shall have the meanings ascribed to such terms in the Host Agreement, as amended by the First Amendment and the Second Amendment. The following terms shall have the meanings set forth below for the purposes hereof:

- i. **“Closure”** shall mean those acts and activities required by any and all applicable federal and state laws, and regulations adopted thereunder, which result in a permanent cessation of use of the

Landfill, including the Expansion, as those requirements and regulations may be amended or modified, and which result in a stabilized municipal landfill which is not in active use, excluding those acts and activities which are required for Post-Closure Care (as defined below), including monitoring, reporting and maintenance for the periods set forth in the relevant environmental statutes and regulations, as they may be amended or shortened.

- ii. **“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.
- iii. **“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 Property, 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 preceded by the adjectives “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 or the use of the Property, as contemplated herein, as applicable.
- iv. **“Post Closure Care”** shall mean those acts and activities which are required for post-closure care of the Landfill, including the Expansion, including, without limitation, monitoring, reporting and maintenance for the time periods set forth in the relevant environmental statutes and regulations, including, without limitation, 6 NYCRR Part 360, as they may be amended from time to time, and all Permits.

b) Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and assigns.

c) Third Party Beneficiary; the County. The Parties hereby acknowledge that the County owns the Landfill, is the holder of all Permits related to the Landfill, including the Expansion, and has granted to Casella of Ontario full authority and control of the Landfill, including the Expansion, for the operation thereof, all in accordance with the OMLA. The Parties therefore agree that this Agreement confers certain benefits upon the County, including, without limitation, the rights granted herein to Casella of Ontario, as the operator of the Landfill, to use

agricultural or farming purposes; provided, however that, in either case, no such assignment shall release Casella of Ontario from liability hereunder.

h) Modifications. This Agreement cannot be changed orally, but only by agreement in writing signed by the Party against whom enforcement of the change, modification or discharge is sought, or by its duly authorized agent.

i) Strict Performance. The failure or delay of either Party to insist on the strict performance of any of the terms, covenants and provisions of this Agreement or to exercise any option contained herein shall not be construed as a waiver, abandonment or relinquishment for the future of such term, covenant, condition, provision or option, nor prevent any election under or enforcement or exercise of any right, privilege or option hereunder.

j) Captions and Headings. Captions and headings throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any term or condition, or of the scope or intent, of this Agreement, nor in any way affect this Agreement, or the terms and conditions hereof.

k) Severability. In the event that any term or condition contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other term or condition of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable term or condition had never been contained herein; provided, however, that it is the intention of the Parties that, in lieu of such term or condition that is held to be invalid, illegal or unenforceable, there should be added by mutual agreement as a part of this Agreement a term or condition as similar in term or condition to such illegal, invalid or unenforceable term or condition as may be possible, valid, legal and enforceable.

l) Authority of Parties. The individual who has executed this Agreement on behalf of its respective Party expressly represents and warrants that he/she is authorized to sign on behalf of such Party for the purpose of duly binding such Party to this Agreement.

m) Counterparts. This Agreement may be executed by the Parties in any number of counterparts, each of which shall be deemed an original instrument, but all of which, together, shall constitute but one and the same instrument. Any Party may execute this Agreement by PDF signature and the other Party will be entitled to rely on such PDF signature as evidence that this Agreement has been duly executed and delivered by such Party.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have caused their respective duly authorized officers to execute this Agreement under seal as of the date and year first above written.

TOWN OF SENECA, NEW YORK

By: _____

Title: _____

Date: _____

**CASELLA WASTE SERVICES OF ONTARIO,
LLC**

By: _____

Title: _____

Date: _____

ACKNOWLEDGMENTS

STATE OF NEW YORK)

COUNTY OF _____) ss.:

On the ___ day of _____, 2014, before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity and that by her/his signature(s) on the instrument, the individual, or the person on behalf of which the individual acted, executed the same.

Notary Public

STATE OF NEW YORK)

COUNTY OF _____) ss.:

On the ___ day of _____, 2014, before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity and that by her/his signature(s) on the instrument, the individual, or the person on behalf of which the individual acted, executed the same.

Notary Public

EXHIBIT A

DESCRIPTION OF PROPERTY

EXHIBIT B

INSURANCE

Workers Compensation

Shall meet all New York State requirements.

General Liability

Limits of liability shall be no less than \$3 million combined single limit per occurrence, \$3 million aggregate limit.

Shall include coverage for Independent Contractors.

Shall include coverage for Blanket Contractual Liability.

Shall include coverage for Completed Operations.

Shall include coverage for Products Liability.

Shall include coverage for Property Damage, including coverage for explosion, collapse and underground operations.

Auto

Limit of liability of no less than \$3 million combined single limit.

Shall cover owned, non-owned and hired vehicles.

Shall provide bodily injury and property damage coverage on a per-occurrence basis.

Shall contain the MCS-90 endorsement.

Professional Liability

Limit of liability of no less than \$1 million.

Umbrella

Limit of liability of no less than \$10 million.