

RESOLUTION TO APPROVE NON-BINDING MEMORANDUM OF UNDERSTANDING TO SETTLE LITIGATION REGARDING SENECA MEADOWS, INC., SUBJECT TO APPROVAL OF COURT

WHEREAS, the Town of Seneca Falls and the Town of Seneca Falls Town Board (collectively as the “Town”) have been engaged in litigation with Seneca Meadows, Inc. (“SMI”), in the matter captioned *Seneca Meadows, Inc. v. Town of Seneca Falls, et al.*, Seneca County Supreme Court Index No. 51622, wherein SMI asserted several causes of action against the Town challenging the legality of Local Law #3 of 2016, including alleged violations of the New York State Environmental Quality Review Act (“SEQRA”), alleged claims of unlawful bias/conflict of interest, and denial of substantive due process rights; and

WHEREAS, the Parties to the Action have negotiated certain settlement terms, and the Town intends to enter into settlement, subject to the conditions stated herein, the terms of such settlement being contained in a Memorandum of Understanding, which is attached and made a part hereof, said terms to materially include the discontinuance of the Action against the Town, with prejudice, and the adoption of an amendment of the existing Host Community Agreement (“HCA”) to include the following:

1. In lieu of quarterly payments, beginning January 1, 2019, host community payments shall be guaranteed to be no less than \$5 million annually, said \$5 million to be paid in advance towards the Town’s anticipated 5.5% share of SMI’s gross revenues, which will be held in escrow until all legal challenges to any of the actions referenced herein have been defeated and are unappealable; payment will be returned to SMI if preceding condition cannot be met.
 - a. Beginning 2019, in the event 5.5% of SMI’s year-end gross revenues exceed the above \$5 million payment, that additional difference shall be paid to the Town on January 1 of the following year, together with the \$5 million advance due for that year.
2. The above advance payment shall be paid on January 1 of each year thereafter.
 - a. The above referenced percentage shall be increased as follows:
 - i. Beginning in 2022, to 6.0%, beginning in 2025 to 6.25%, beginning in 2028 to 6.5%.
3. If SMI’s gross revenue drops below thirty million dollars (\$30,000,000.00) in any calendar year while the HCA is effective, the host community fee for that year shall

revert to the revenue share percentages under the HCA without any minimum advance obligation, payable in quarterly installments; any overpayments shall be credited against the next host community fee owed under the HCA or refunded to SMI. However, in the event host community fee payments do not total five million dollars (\$5,000,000.00) in any given year, the Town may, in its sole discretion, exercise the right to change the contractual closure date to that year in which the aforementioned payment failure occurs.

4. SMI shall stop accepting solid waste by 12/31/2037 and shall immediately begin closure activities as required by the DEC.
5. The HCA shall include a closure date of 12/31/2037, and SMI agrees to refrain from any request for DEC permits that would allow operation past 2037.
6. Reimbursement of the Town's professional consultants' fees (including engineering and legal) relating to the SMI landfill, up to \$100,000.00/year, which will be held in escrow until all legal challenges to any of the actions referenced herein have been defeated and are unappealable; payment will be returned to SMI if preceding condition cannot be met.
7. SMI will not challenge the adoption of a local law (including the amendment of Local Law #3 of 2016) that is consistent with and mirrors the amended HCA insofar as incorporating a firm closure date of all solid waste management activities relating to SMI.
8. As consideration for the Town's entering into the amended HCA, SMI shall make a lump sum payment of \$3.5 million to the Town upon execution of an amended Host Community Agreement ("HCA"), which will be held in escrow until all legal challenges to the HCA or any of the other actions referenced herein have been defeated and are unappealable; payment will be returned to SMI if preceding condition cannot be met.

WHEREAS, aforementioned proposed settlement terms shall be fully subject to a final settlement agreement, environmental review under SEQRA, and court approval by Town Law § 68, and

WHEREAS, the Town believes that settlement with the aforementioned material terms is just, reasonable, desirable and in the best interests of the Town because said settlement is the most efficient way to bring about a definitive conclusion to litigation, avoids significant expense and

the uncertainty of success on the merits, as well as the prospect of additional significant time and expense associated with pursuing or defending potential appeals, and the potential need to conduct further administrative proceedings (which carries its own risks and expenses associated with any additional litigation and appeals associated with those proceedings); and

WHEREAS, the Town believes that this settlement also takes into account the significant impact the Seneca Meadows landfill (“Landfill”) (and its ultimate closure) has on the Town, including social, environmental, and economic impacts, employment, taxes, and quality of life of Town residents; the Town believes that this settlement provides the Town with the maximum benefit and resources to adequately preserve and maintain the Town’s quality of life and also plan for the permanent closure of the Landfill.

NOW, THEREFORE, BE IT:

RESOLVED, the attached non-binding Memorandum of Understanding be approved and accepted by the Town Board; and be it further

RESOLVED, that the aforementioned proposed settlement shall be conditioned upon the adoption of a local law as referenced above; and it is further

RESOLVED, that the aforementioned proposed settlement shall be subject to environmental review under SEQRA; and

RESOLVED, that the Town Supervisor is designated as the officer of the Town who shall apply for such approval pursuant to Town Law § 68.

The foregoing resolution was put to a vote as follows:

<u>Name</u>	<u>Vote</u>
Gregory P. Lazzaro, Supervisor	
Dave DeLelys, Councilman	
Vittorio Porretta, Councilman	
Lou Ferrara, Councilman	

Doug Avery, Councilman