

PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

**Town of Seneca Falls and Seneca Meadows, Inc.
HOST COMMUNITY AGREEMENT**

This Host Community Agreement (this "HCA") is made as of this ___ day of ____, 2023, by and between the Town of Seneca Falls, a municipal corporation organized under the laws of the State of New York, 130 Ovid Street, Seneca Falls, New York 13148 (the "Town") and Seneca Meadows, Inc., a corporation duly organized and existing under the laws of the State of New York, with offices at 1786 Salcman Road, Waterloo, New York 13165 ("SMI").

WITNESSETH:

WHEREAS, SMI owns and operates a private solid waste landfill and associated facilities in the Town of Seneca Falls known as the Seneca Meadows Landfill ("Landfill"), which is permitted by the New York State Department of Environmental Conservation ("DEC") and the Town for the disposal of certain wastes; and

WHEREAS, the Landfill has served the Town, its residents, and other customers for many decades; and

WHEREAS, SMI and the Town entered into a Host Community Agreement dated May 16, 2007 relative to a 178-acre expansion of the Landfill (the "2007 HCA"), which replaced a 1998 Host Community Agreement between the parties; and

WHEREAS, this HCA, by its terms shall supersede and restate the rights and obligations of the parties related to the 2007 HCA as more fully set forth herein; and shall be effective for as long as the Landfill is permitted by DEC but in no event more than 15 years, as more fully set forth herein; and

WHEREAS, notwithstanding the foregoing, it is understood and agreed by the parties that this HCA may be amended from time to time upon the mutual consent of the parties, but that the parties' collective intent is that this HCA be otherwise effective for a term described herein; and

WHEREAS, SMI and the Town desire to set forth their understanding with respect to the continued operation of the Landfill in the Town and to set forth certain terms to ensure its proper operation and the availability of disposal capacity for solid waste generated by Town and its residents; and

WHEREAS, the parties' collective intent is that the terms of this HCA will serve to mitigate any adverse impacts from the Valley Infill Expansion to the maximum extent practicable consistent with SMI's plan for the Valley Infill Expansion; and

NOW, THEREFORE, in consideration of the mutual covenants contained in this HCA, and the promises and the covenants set forth herein, including the Whereas clauses set forth above, the parties agree as follows:

I. PURPOSE

The purpose of this HCA is to define the rights and obligations of the parties related to the construction, operation, and maintenance of the Landfill, including its appurtenant facilities in the Town.

II. DEFINITIONS

In addition to terms defined elsewhere in this HCA, the terms defined in this Section shall have the meanings ascribed to them herein, for all purposes of this HCA, unless the context clearly

indicates some other meaning. Words in the singular shall include the plural and words in the plural shall include the singular where the context so requires.

- A. Beneficial Use Determination Materials—shall have the meaning set forth in 6 NYCRR Section 360.12 (or the most current regulation in place at the time the beneficial use material is accepted), or for which SMI has received DEC approval to beneficially use, pursuant to Section 360.12(d), Case Specific Beneficial Use Determinations or “Alternate Operating Cover” as set forth in 6 NYCRR Sections 363-6.21(c) or (d) or other beneficial or alternate use of waste materials as may be approved by DEC (all referred to herein as “BUD”).
- B. DEC—means the department or agency of the government of the State of New York created by Chapter 140 of the Laws of 1970, and having the jurisdiction, powers, and duties described in the Environmental Conservation Law of the State of New York, or any successor thereto.
- C. Effective Date—shall have the meaning ascribed to such term in Section V(A).
- D. Facility—means all aggregate elements of the Landfill and ancillary facilities in the Town, including, but not limited to, the Valley Infill Expansion, MSW disposal cells, weigh stations, above-ground leachate storage tanks, electrical equipment, piping, buildings, offices, maintenance areas, soil borrow areas, tire processing and recycling facility, leachate storage and treatment facility, gas collection and control facility, stormwater storage and processing, and truck staging and parking area, and any additions, replacements, appurtenances, and equipment as may be constructed or installed in the future.

- E. Hazardous Waste—has the meaning as defined in 6 NYCRR Parts 371 et seq.
- F. HCA—shall have the meaning ascribed to such term in the introductory paragraph of this HCA, together with any Appendices, Schedules, and Exhibits attached thereto.
- G. Landfill—The Seneca Meadows Landfill as currently permitted by DEC (depicted in Exhibit “A” attached hereto and made a part hereof, as of the date of this HCA) and as may be permitted in the future by DEC, including but not limited to the Valley Infill Expansion application currently under review by DEC.
- H. Landfill Gate Rate—means the posted rate at the Facility for the disposal of Solid Waste, which rate shall exclude all fuel surcharges, host fees or other governmental surcharges or taxes imposed by any government entity received from third parties for the disposal of Solid Waste at the Landfill.
- I. MSW—means Municipal Solid Waste as defined in 6 NYCRR Section 360.2.
- J. Odor Action Level—shall have the meaning ascribed to such term in Section VII(G).
- K. Property Value Protection Program—means the plan described in Section IX of this HCA, as depicted on Exhibit “C” attached hereto and made a part hereof.
- L. Post-Closure Care Period—means the approximately 30-year period commencing upon DEC’s acceptance of SMI’s certification of the completion of the installation of the final cover system over the Landfill, which is anticipated to occur

approximately two to three years after the Landfill has ceased accepting Solid Waste, as further defined in 6 NYCRR Section 360.2.

- M. Solid Waste—means Solid Waste as defined in 6 NYCRR Section 360.2.
- N. Town—shall have the meaning ascribed to such term in the introductory paragraph of this HCA and, depending on the context, the geographic area thereof.
- O. Town Board—means the Seneca Falls Town Board, which is the executive body that governs the Town.
- P. Town Landfill Permit—means a permit for the disposal of waste within the Town and issued by the Town Board to SMI pursuant to chapter 185 of the Code of the Town of Seneca Falls.
- Q. Valley Infill Expansion—means a project to increase solid waste disposal capacity at the Landfill for which SMI applied for DEC approval on July 20, 2020.

III. FACILITY DESCRIPTION

The Facility, as defined in Section II.D of this HCA, is further depicted in its current configuration in Exhibit “A” attached hereto and made a part hereof to designate SMI’s facilities in the Town.

IV. RESTRICTIONS ON OWNERSHIP, TRANSFER, AND USE

- A. Ownership & Transfer—This HCA is applicable to SMI, its successors and assigns, and to all parties to which SMI transfers any or all of its ownership interests or

contracts or subcontracts concerning management and/or operations in, and responsibilities for, the Facility. The parties agree that this HCA touches and concerns the land and that all obligations undertaken by SMI shall be applicable to any entity or person to which the property is conveyed. In the event that SMI proposes to sell, lease, or otherwise transfer ownership or control of the Facility, SMI shall notify the Town at least ninety (90) days prior thereto, and provide written evidence that any such successor or assign has written notice of and acknowledges this HCA and the duties and obligations hereunder. SMI shall not transfer any of its interests in the ownership or operation of the Facility unless the proposed transferee has the financial capability, operational experience, and a favorable environmental compliance history to demonstrate to DEC that the transferee is capable of complying with the terms of this HCA, any and all permits associated with the Facility, and State and federal laws relevant thereto. SMI shall provide such documentation of its capability of compliance, including but not limited to information pertaining to the financial ability to comply with state and local permit obligations, as well as the buyer's environmental compliance history for the prior three (3) years, no later than forty-five (45) days prior to closing. The Town Board may seek further information and documentation premised upon its review thereof. The Town understands that DEC shall have jurisdiction to determine whether the proposed transferee is qualified to operate the Facility and to discharge the obligations of a permittee. Nothing herein shall waive the Town's right to challenge any decisions related to such potential transfer by DEC under applicable law.

B. Use—The Town and SMI agree that SMI shall be authorized to accept all materials permitted by DEC for disposal at the Facility, including but not limited to Solid Waste, MSW, construction and demolition debris, Beneficial Use Determination Materials, alternative operating cover (AOC), and, for processing, yard waste (leaves, garden debris, tree/brush debris). The Town and SMI further agree to the following disposal restrictions at the Facility:

1. SMI shall not accept for disposal at the Facility any regulated quantity of Hazardous Waste as defined in 40 CFR Part 261 and 6 NYCRR Parts 371 et seq.
2. No portion of the Facility shall be used for the burning of waste.
3. Any waste material listed or identified in SMI's most current DEC permit to operate the Landfill which is prohibited to be disposed of at the Facility by permit or applicable law shall not be accepted for disposal at the Facility.
4. With respect to BUD materials, Town approval for the classification of a waste as BUD materials is not required. However, SMI shall provide the Town with copies of any requests made to DEC for BUD materials and shall also provide copies of any and all DEC beneficial use decisions regarding those requests.
5. The Town acknowledges that the Facility may accept MSW generated within and outside of the Town, Seneca County, and the State of New York pursuant to DEC-issued permits during the term of this HCA.

6. Enforcement of Restrictions:

- i. SMI acknowledges that the Town has no adequate remedy by way of damages if SMI breaches or threatens to breach the obligations and restrictions contained within this HCA, and therefore, SMI agrees that, in such event, the Town may apply to a court of competent jurisdiction for equitable relief directing SMI to comply and/or enjoining or restraining SMI from any breach thereof.
- ii. In the event of a dispute concerning compliance with this HCA, SMI and the Town agree that they will engage in the dispute resolution process provided in Section XX of this HCA. If the dispute resolution procedures set forth in Section XX are unsuccessful, either party may proceed with the resolution of the dispute through judicial litigation.

V. TERM & TERMINATION

- A. The effective date of this HCA shall coincide with the commencement of disposal activities in the Valley Infill Expansion (the "Effective Date"), with the exception of Section X111(A), which may become effective sooner, and the term of this HCA shall run for as long as the Landfill is permitted by DEC, but in no event more than 15 years, except as otherwise provided herein. The 2007 HCA shall remain in full force and effect until the Effective Date. SMI shall notify the Town immediately upon the commencement of disposal activities in the Valley Infill Expansion.

This HCA shall terminate upon the first to occur:

1. The Facility no longer contains DEC-permitted Solid Waste disposal capacity in the Town, SMI is no longer disposing of Solid Waste at the Landfill, and SMI has no application pending for additional disposal; or
2. The Facility, for whatever reason, is no longer permitted, licensed, or otherwise authorized by DEC to operate as a Solid Waste disposal landfill in the Town.

B. In the event that this HCA is terminated pursuant to V.A.1 or V.A.2 above, SMI shall still be required to continue the complaint management program under Section VII of this HCA until the Facility enters the Post-Closure Care Period, and SMI shall perform all Post-Closure Care Period landfill gas management, odor control, and monitoring and management as required by Sections VI and VIII of this HCA, and the DEC for the duration of the Post-Closure Care Period.

VI. INVESTIGATIONS, OPERATIONS, MONITORING, & FACILITY LIAISON

A. INVESTIGATIONS, OPERATIONAL & MONITORING IMPROVEMENTS TO BE PERFORMED

This HCA shall require SMI to perform the action items and mitigation measures as set forth in Section VII of this HCA.

B. INFORMATION EXCHANGE & COMMUNICATION

1. SMI agrees to provide all of the DEC on-site monitor's daily inspections reports.

2. SMI shall provide the Town copies of all reports required to be made to DEC pursuant to its Part 360 Permit (“Part 360 Permit”) and Title V Permit (“Title V Permit”) and the applicable regulations, at the same time said reports are submitted to DEC.

3. SMI will notify the Town, in writing, no later than fourteen (14) days in advance of the commencement of major on-site construction activities that may disturb the waste mass where odors (gas or garbage) requiring mitigation may result or if there is a planned interruption with the flare system or gas plant. Pursuant to its Part 360 Permit, SMI will make available to the Town’s code enforcement officer all materials and documents that SMI submits to DEC in support of the said construction activities as well as documents or communications, including approvals that it receives from the DEC. Construction or replacement of the gas wells or flare system shall be construed as major on-site construction for purposes of this provision.

4. SMI will provide copies to the Town of any and all regulatory correspondence relating to the Landfill from any federal, state, or local environmental agency to SMI and/or emergency notification from SMI, including any responses made thereto by SMI as well as any further communications received or sent regarding such matter until it has been resolved.

5. The parties agree to meet once per month to discuss the operations at the landfill and any complaints.

VII. COMPLAINT MANAGEMENT PROGRAM

- A. SMI will contract with an independent third-party to establish, monitor, and maintain a website and an independent complaint hot line, which will be in operation and accessible 24 hours a day, 7 days a week, for the receipt of citizen complaints regarding Facility operations, including, but not limited to, odors, litter, dust, noise, truck traffic, hours of operation, and water quality.
- B. The telephone number for the complaint hot line will be published quarterly in local newspapers, and it will be posted in public areas (State, county, town and village offices, libraries, meeting halls) as permissible within the Town, and it will be posted on SMI's and the Town's website.
- C. All complaints received on the complaint system will be recorded in a complaint log, showing the date and time of the complaint, the name of the complainant and telephone and address if available, location, nature and duration of the stated circumstances giving rise to the complaint, and other supporting details. SMI will also record the details of its investigation and its findings including whether any mitigation measures were undertaken as a result. The Town shall be contemporaneously copied on all complaints sent from the independent third-party contractor to SMI.

- D. SMI agrees to create a web-based odor reporting system that provides the same immediate recording and response dispatching as the third-party hot line.
- E. SMI will timely investigate all complaints and determine the appropriate response to mitigate the conditions giving rise to the complaint. SMI will implement reasonable corrective measures to mitigate the conditions giving rise to the complaint.
- F. In the event that the Town retains an independent third-party consultant to monitor odors, such consultant must be technically qualified to monitor odors, and the Town shall promptly provide copies of any reports or correspondence prepared by the Town's consultant.
- G. Any responding personnel, including SMI and any other retained third-party firms, shall be trained in both the use of the N-Butanol scale as well as H₂S data collection using a Jerome or other approved H₂S meter. SMI shall provide the Town with copies of training certifications for all responding personnel prior to any person being permitted to respond to a citizen complaint. The N-Butanol scale shall be used and H₂S data recorded anytime an odor investigation is conducted. In addition, H₂S ambient data will be collected at the location of the complaint and compared to the 10 ppb H₂S hourly weighted standard set forth in DEC regulations (6 NYCRR Section 257-5.3) (the "Odor Action Level"). Should an ambient reading of H₂S be collected that is above the Odor Action Level, the verification steps and mitigation measures outlined in Exhibit "B" attached hereto (H₂S Ambient Air Monitoring Work Plan) shall commence. The Town will be included on all

associated correspondence and reports associated with any exceedances of the Odor Action Level.

- H. SMI will provide the monthly complaint log to the Town including the results of investigative activities and the ultimate resolution of the complaint. SMI will also provide to the complainant a copy of the complaint log relating to his or her complaint as soon as practicable after SMI completes its investigation. In the event of a landfill odor or other complaint episode which is the subject of more than 10 calls in any twenty-four-hour period, SMI will notify the Town Board and advise it of the status of its investigation, a summary of any H₂S exceedances, and corrective actions taken.
- I. Additional data collection, odor response, and mitigation procedures include:
1. Monthly download of the continuous perimeter H₂S monitors and provide a monthly summary report to the Town identifying any instances (date, time, location, and duration) where the perimeter H₂S concentration exceeded the DEC limit of 10-parts per billion of H₂S at the Facility property boundary. Included within the monthly report should be an analysis of any odor complaints which may correlate to the collected continuous H₂S monitoring data, along with a summary of any corrective measures that were taken by the Facility.
 2. Establishment and maintenance on SMI's website to receive, record, and respond to odor complaints from residents and businesses in the Town. The

date, time, location, and nature of all complaints will be documented. All information collected will be provided on a monthly basis to the Town.

3. Evaluation of odors at the complaint location utilizing the N-Butanol Scale to investigate and rate the intensity and duration of reported odors. The confirmed odor intensity will be the average result of 3 readings taken over a 30-minute period. Drive-by complaints will not be evaluated. The results will be reported in the platform noted above. The determination of an odor will be made pursuant to the ASTM standard E 544-18 as it relates to the prescribed liquid and air levels of the N-Butanol Scale, with an odor intensity scale of 1-8, as appended herein and further defined in the table below.

Odor Categories	N-Butanol Scale	N-Butanol Concentration In Air PPM (VOL)	Intensity (Word Definition)	Duration	Frequency
1	0	0	No Odor	N/A	N/A
ACTIONABLE LEVEL					
2	0.5 TO 1	15	Slight	Aggregate total of 45 confirmed odor complaints that occur within a rolling seven (7) day period.	
3	>1 TO <3	30	Moderate	48-hr period	20 confirmed complaints
4	3 to 4	60	Distinct	24-hr period	10 confirmed complaints
5	4 or Greater	120+	Strong	12-hr period	5 confirmed complaints

4. In the event that an odor resulting from the landfill facility reaches an actionable level as defined in the table above, SMI shall determine the cause and implement mitigation steps to reduce odors as set forth herein. Potential remedial actions to be considered by SMI include:

- i. Reducing the size of the open face.
- ii. Increasing daily and intermediate cover.
- iii. Use of alternative cover systems.
- iv. Increasing the application of odor neutralizers.
- v. Installing additional horizontal and/or vertical gas collection lines.
- vi. Modification to system pressures.
- vii. Altering the hours of operation.
- viii. Other modifications deemed necessary to respond and resolve odor complaints.

5. SMI shall copy DEC on all correspondence with the Town concerning odor control.

VIII. OFF-SITE IMPACTS

- A. The Town acknowledges that the Facility is an industrial site with various components, and that it is possible that off-site impacts such as visual, aural, and olfactory may emanate from the Facility. SMI shall take all commercially reasonable steps (as a minimum those outlined below) as promptly as practicable to mitigate these off-site impacts.
- B. SMI agrees to implement semi-annual aerial drone sniffer surveys to assess surface emissions on the footprint of the landfill. Aerial drones will be equipped with methane (CH₄) measuring devices capable of detecting methane at a level below the existing DEC standard for surface scans (500 ppm). SMI will promptly undertake a field verification investigation at the surface in areas where the drone survey indicates potential exceedances of 500 ppm CH₄. Based upon this collected data, corrective actions will be planned and initiated within 10 days to correct any verified exceedances. The Town will be copied in writing within 10 days following the collection of the drone data on the data analysis, investigations, and corrective

actions initiated. In addition to the foregoing, SMI agrees to use the drone surveys to create a concentration map that identifies clusters of potential odor below 500 ppm CH₄, and SMI agrees to focus on reasonable and practical emission improvements, targeted at the identified clusters, as a result of the use of this tool. The goal of the use of this tool is to provide continuous improvements and reduction in emissions beyond that required by the existing DEC standard.

- C. SMI currently utilizes multiple odor neutralizer sprays, alternative daily covers, enhanced cover, and other techniques to mitigate any odors detected. SMI agrees to continue to evaluate, test, and report to the Town on any odor mitigation enhancements and improvements made on a continuous basis. Throughout the term of this HCA, SMI agrees annually to provide the Town a written evaluation of methods used during the preceding year.
- D. SMI commits to continue with its use of geomembrane caps to facilitate the enhanced collection of landfill gas, reduced fugitive emissions, improvements to sediment and erosion control, and overall improvements to odor. SMI agrees to placement of a minimum of 100 acres of geomembrane caps during the term of this HCA, as allowed and approved by DEC.
- E. During the term of this HCA, SMI agrees to provide an annual comprehensive odor evaluation, including new technologies, during the term of this HCA. SMI agrees to continue to test and implement as permissible, new technology that can substantially reduce odors. SMI shall document and evaluate the function and

efficiency of the existing landfill gas collection system including the preparation of as-built site plans and details showing:

1. The location of existing landfill gas collection, conveyance, and treatment infrastructure.
2. The location of all landfill gas monitoring points within the Facility.
3. The location of all active and inactive cells and all capped and uncapped cells.

F. SMI agrees to provide for four (4) permanent ambient air monitoring stations, each with an associated weather station, to provide for the continuous H₂S monitoring and data collection around the perimeter of the Landfill. The collected data shall be compared to the Odor Action Level. The H₂S Ambient Air Monitoring Work Plan, as approved by DEC, is attached as Exhibit “B” to this HCA. The approved plan includes an investigation using a Jerome handheld H₂S monitoring device if one or more of the monitoring stations indicate that the Odor Action Level has been exceeded. Where an exceedance has been verified based upon the investigation, corrective actions will be performed promptly and documented. SMI agrees to notify the Town in writing upon discovery of any exceedances and provide documentation of the corrective actions taken. In addition, SMI agrees to provide the Town a copy of the collected data on a monthly basis.

G. During responses to odor complaints, SMI personnel will collect odor observations at the complaint location measured on the N-Butanol Intensity Scale, as specified

in Exhibit “E” attached hereto (ASTM Standard E 544-18 N-Butanol Intensity Scale), and collection of H₂S ambient air quality from a calibrated approved hand-held meter. Should an ambient reading of H₂S be collected that is above the Odor Action Level, the verification steps and mitigation measures outlined in Exhibit “B” attached hereto (H₂S Ambient Air Monitoring Work Plan) shall commence.

- H.** If the Town notifies SMI in writing of a documented offsite event above the Odor Action Level, SMI will promptly commence with the investigation protocols identified in Section VII.
- I.** If after ten (10) days, the off-site odor impacts continue to exceed the Odor Action Level, SMI agrees to provide the Town a written summary of what mitigation measures have been applied to date and what additional steps are to be implemented/planned to further mitigate the odors.
- J.** If following twenty (20) days, the off-site odor impacts cannot be brought below the Odor Action Level, SMI shall submit an odor-specific work plan within seven (7) days describing what other mitigation measures will be employed, including an implementation schedule, in order to address fugitive off-site odors. This work plan shall include consultation with outside industry experts. SMI further agrees during such mitigation measures to restrict or divert waste streams and to cover areas of the Landfill that are creating off-site odors above the Odor Action Level until such exceedances can be resolved.
- K.** With a goal of reasonable and practical emission improvements, evaluate and take actions, including but not limited to:

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1. Excavation and repair of all existing gas collection lines as necessary.
2. Repair of all watered out gas conveyance headers and laterals.
3. Installation of additional vertical and horizontal gas collectors as necessary.
4. Installation/modification of dewatering pumps, flares, and other components as necessary.
5. Identification, evaluation, and installation of additional gas well dewatering infrastructure in wells where little or no well screen is available (i.e., flooded LFG extraction wells).
6. Installation of additional perimeter monitoring points as necessary.

IX. PROPERTY VALUE PROTECTION PROGRAM

SMI agrees to provide compensation according to the terms and conditions of the Property Value Protection Program as set forth in Exhibit "C" attached hereto. The purpose of this program is to compensate the owners of identified residential properties whose residences suffer a decline in value at the time of the sale of their property as a result of the Facility. A list of property owners of such properties is included in Exhibit "C" attached hereto and is incorporated herein.

X. TRAFFIC AND ROUTES OF TRAVEL

SMI shall use commercially reasonable measures to ensure that SMI's commercial customers and vendors avoid transportation routes through downtown Seneca Falls, depicted on the map attached as "Exhibit G", at all times. SMI agrees to pay its existing stone and construction material transporters currently using roadways through downtown the additional costs of traveling alternative routes. The only exception would be as directed by state or local police for emergency purposes.

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Roadways within the Facility shall be maintained for all weather operations so as to minimize dusty conditions that may impact the public road right-of-way. SMI shall undertake commercially reasonable measures to prevent the track-out of mud, stone, dirt, or other debris from the Facility to nearby and adjacent public roadways. Adequate and routine maintenance with a mechanical street sweeper and a water truck shall be implemented not less than once per day. The Facility shall utilize a wash station for vehicles whenever required to prevent the tracking of mud, stone, and dirt into the roadways.

XI. RESIDENTIAL COLLECTION/DISPOSAL SERVICES

During the term of this HCA and while the Facility has DEC-permitted solid waste disposal capacity in the Town and a Town Landfill Permit is in place, SMI agrees to provide the equipment and labor necessary to collect household residential waste from individual residences located within the limits of the Town, including those areas formerly known as the Village, as well as commercial waste from the businesses identified on **Exhibit "H"**, and dispose of such materials in the Landfill. SMI shall only provide the services described in the previous sentence with respect to waste contained in residential-type containers of up to 95 gallons in size. These services will be offered free of charge. These services exclude recycling. Acceptable bulky items, recycling, yard waste, and other landscape-type wastes will be accepted for disposal at no charge when delivered to the Facility by residents of the Town.

XII. TOWN WASTE DISPOSAL SERVICES

- A.** During the term of this HCA and while the Facility has DEC-permitted solid waste disposal capacity in the Town and a Town Landfill Permit is in place, no disposal fee will be charged to the Town, including from any department thereof, during the

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term of this HCA for up to five thousand (5,000) tons per year including Solid Waste generated as a result of Town special projects (*e.g.*, road ditch cleaning, vegetation maintenance, street sweeping and general spoils from excavation, demolition materials from Town-owned buildings/properties, or contaminated soils from Town-owned properties). All Solid Waste hereunder shall be delivered by Town vehicles or their designees. Any Town designees seeking to dispose of Solid Waste pursuant to this provision shall present to SMI a letter from the Town certifying that any such Solid Waste to be disposed of was generated by the Town or one of its departments and is not excluded pursuant to this paragraph.

- B.** SMI will also accept, at no cost to the Town, all leaf debris generated during the spring and fall leaf collection timeframes and all tree/brush material and yard debris (garden material, miscellaneous leaves, vines, ivy, weeds, etc., excluding grass clippings) originating from the Town that is delivered by Town vehicles. Wood debris (trees, brush, limbs, etc.) that is a result of natural disasters (which shall be defined to include, but not be limited to, weather events that are designated as “declared disasters” by the Federal Emergency Management Agency or New York State) shall be excluded from this fee exemption and may be subject to the Landfill Gate Rate. The right of the Town to deliver leaf, tree/brush, and yard debris to SMI shall at all times be subject to SMI maintaining a permit to accept such materials and SMI having capacity to accept such material at the time of delivery. During the term of this HCA and while the Facility has DEC-permitted solid waste disposal capacity in the Town and a Town Landfill Permit is in place, SMI shall use commercially reasonable best efforts to continue to maintain such a permit for the

acceptance of this waste and shall continue to operate the leaf, tree/brush, yard debris wood mulch operation. The specifications and requirements for delivery of this material by the Town to the Facility are outlined in Exhibit "D" attached hereto. The Town acknowledges that it is the primary source of yard debris for yard waste operations located at the Facility.

- C. SMI agrees to work cooperatively with the Town to establish and fund transport of collected organics diverted within the geographic boundaries of the Town of Seneca Falls to facilities designed and permitted to handle and process diverted organics. SMI agrees to send the Town a monthly log of the volume of organics received and sent to processing facilities. The diverted organics are required to be acceptable and to meet the specifications of the receiving facility for processing. Any unacceptable materials will be subject to disposal if they do not meet the required commercially acceptable specifications at that time.

XIII. HOST COMMUNITY BENEFIT PAYMENT

- A. SMI shall pay the Town a one-time payment of one million dollars (\$1,000,000) within thirty (30) days after the Town's delivery of the final executed copy of this HCA to SMI.
- B. SMI shall pay the Town of Seneca Falls a one-time payment of two million dollars (\$2,000,000) within thirty (30) days of receipt of all necessary permits to operate and construct the Valley Infill Expansion.

C. Commencing on the Effective Date, an annual host community fee, payable in quarterly installments, shall be made by SMI to the Town equal to the sum of (1) four dollars and zero cents (\$4.00) per ton of all wastes received for disposal, excluding BUD materials, and (2) one dollar and fifty cents (\$1.50) per ton of all BUD materials accepted at the Facility; provided, however, that SMI will not be required to pay any annual host community fee for waste tires processed by its waste tire facility, for yard waste received by SMI at the Facility, for any waste that is accepted by SMI free of charge from within the geographic boundaries of the Town of Seneca Falls, Town of Waterloo, Village of Waterloo, or County of Seneca, or for any waste relocated at the Facility. Notwithstanding the per ton fee calculations set forth above, SMI shall pay the Town a minimum annual host community fee equal to three million dollars (\$3,000,000) during the term of this HCA. In addition, should DEC or the Town, or any other applicable permitting jurisdiction, revoke SMI's permit or approvals causing disposal activities at the Landfill to cease, the minimum annual host benefit payment shall cease to apply to annual or quarterly SMI payments to the Town. However, if during the term of this HCA SMI chooses to cease disposal activities at the Landfill for any reason besides revocation or modification of a permit or implementation of additional fees or taxes on SMI's operations by DEC, the State of New York, the Town, or any other applicable jurisdiction in a manner which substantially interferes with the operation of the Facility, then SMI will be required to continue to pay the minimum annual host community fee until the earlier to occur of (1) the five (5) year anniversary

date of any such cessation of disposal activities at the Landfill and (2) the termination of this HCA.

- D.** SMI operates on a calendar year accounting basis. Any payments required by this HCA shall be due thirty (30) days after each milestone is reached or the end of each calendar quarter, as applicable.
- E.** The per ton payments listed above shall remain fixed through the first calendar year following the Effective Date. Starting with the first January following the Effective Date, the per ton fees listed in Section XIII(D) shall be adjusted by seventy-five percent (75%) of the actual percentage change to the Consumer Price Index for All Urban Consumers (CPI-U), US City Average, as published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor) but in no case shall the increase exceed four percent (4%) per year.
- F.** Verification of tonnage and host payments may be performed by an independent certified public accountant selected by the Town and SMI. The audit will be paid for by SMI. The accountant will use a protocol approved by the Town and SMI. Neither the Town's nor SMI's approvals of the accountant or the protocol will be unreasonably withheld. SMI shall in no event be required to disclose financial statements, tax returns, or expenses.
- G.** SMI agrees to reimburse up to two hundred fifty thousand dollars (\$250,000) per year to the Town for actual engineering and legal services incurred by the Town in the evaluation, review, and monitoring of landfill plans, permitting, design, operations, testing, and other technical landfill matters. During the course of

operation of the Facility SMI is expected to make modifications and additions to its current infrastructure that the Town will use an independent engineer to evaluate using the above referenced funds.

- H.** Host community fees generated by this HCA may be used by the Town for public infrastructure, tax stabilization, fire prevention and protection, environmental protection, remediation and mitigation of adverse environmental impacts, economic development, road maintenance, planning and zoning, as well as other purposes.

XIV. END USE PLAN AND POST-CLOSURE OBLIGATIONS

SMI agrees to consult with the Town regarding prospective end uses of the Facility following cessation of active landfill operations, closure activities, and upon final closure certification. All end use and Post-Closure Care Period obligations shall conform to the most current DEC Post-Closure Care Period regulations in 6 NYCRR Section 363.9, as amended.

XV. COMPLIANCE WITH LAWS

- A.** SMI shall operate and maintain the Facility in compliance with all applicable federal, state, and local laws and all permits issued pursuant to those laws.
- B.** Notwithstanding anything to the contrary contained herein, if SMI's ability to operate the Facility is materially interrupted or terminated, by the rescission or modification of any permits, licenses, or approvals by any governmental agency, or the adoption of any law or regulation, whether state, federal, or local, or because of any act of God or situation beyond the reasonable control of SMI, then this HCA

shall be suspended upon notice to the Town; however, SMI shall continue to be responsible for the maintenance of the Facility, including the leachate collection system, gas collection system, and landfill cover system as set forth under applicable law, any separate leachate agreement between the parties and permits. If, within one hundred twenty (120) days of such notice, the Facility is able to resume similar operations then this HCA shall remain in force as if no interruption had occurred during the period in question. Neither party, therefore, shall have any cause of action for damages against the other arising from the suspension of this HCA because of the inability of the Facility to receive MSW from the Town if such inability resulted from the termination or expiration of any permits, licenses, or approvals, or any emergency situation or other condition beyond the reasonable control of the parties.

XVI. HOURS OF OPERATION

- A.** Hours of Operations directly related to acceptance and disposal of MSW, placement of cover, and other activities not directly related to the disposal of Solid Waste at the Facility shall be subject to the requirements and limitations set-forth in SMI's most current DEC Part 360 and Title V Permits, attached as **Exhibit "F"** to this HCA.

- B.** For special projects other than the operations set forth above, prior to commencing such projects, SMI shall notify the Town, in writing, of operating hours for such special projects. Special projects shall include final cover system placement, liner

construction, and installation and decommissioning of groundwater monitoring wells, among others.

XVII. DRINKING/GROUND WATER MONITORING AND PROTECTION PROGRAM

In the event of a determination by DEC, the New York State Department of Health, or the Seneca County Department of Health, that potable drinking water wells in the Town of Seneca Falls have been contaminated at levels in excess of applicable standards set forth in regulations and such contamination results from the construction or operation of the Facility, SMI agrees to pay for the design, application, permitting, and construction of public water mains, supply lines, water storage tanks, and/or pumping stations designed for, and capable of, supplying potable water to the affected properties in the Town of Seneca Falls. SMI agrees to comply with all applicable federal, state, and local laws in the design, application, and construction of the water supply extensions and hook ups.

XVIII. FIRE PROTECTION CONTROL AND SAFETY

- A. SMI must ensure an adequate supply of water is available at the Facility for fire suppression activities. SMI at least once annually will check the adequacy of supply to and operability of all standpipes at the Facility.
- B. SMI will meet bi-annually with the Chiefs of the fire departments which provide fire protection to the Town of Seneca Falls, either directly, by contract or by mutual aid agreement, to review current access, fire suppression, water supply placement, training needs, and other related issues. Such plan shall be updated within 30 days

after each subsequent meeting. SMI must take reasonable steps to mitigate any concerns raised by the fire chiefs.

- C. SMI will provide up to \$30,000.00/year for the Bridgeport Fire District. The Bridgeport Fire District will use these funds to purchase special equipment necessary to be prepared for fire suppression and control at the Facility. The Bridgeport Fire District will submit purchase orders to SMI which will promptly, but no later than thirty (30) days after receipt, review them and provide funds for the purchase of the equipment.
- D. In addition to the payment specified in Section C above, SMI will provide payment for special training which may be required for the Bridgeport Fire District to provide fire protection for the Facility. Reimbursement under this paragraph shall be limited to training specifically to combat fires at landfills and waste tire facilities.

XIX. INSURANCE

SMI shall provide the Town annually with evidence of insurance, issued by a carrier qualified to do business in the State of New York, in the amounts and coverage set forth below or such other amounts as the parties may agree to from time to time:

- A. Commercial General and Umbrella Liability Insurance. SMI shall maintain commercial general Liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$10,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this

location. The Umbrella Liability shall follow the underlying forms and it shall be so stated on the Certificate of Insurance.

- B.** CGL insurance shall be written on an ISO occurrence form CO 00 01 01 96 (or a substitute form providing equivalent coverage and equivalent exclusions) and shall cover liability arising from premises, operations, vicarious liability for independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
- C.** The Town shall be included as an additional insured under the CGL for the policy identified above, using ISO additional insured endorsement “CG 20 11” or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Town but only respects the services performed by SMI under this contract. There shall be no endorsement or modification of the CGL to make it excess coverage over other available insurance; alternatively, the CGL shall state: “That it is excess or pro rata, the policy shall be endorsed to be primary and noncontributory with respect to the additional insured.”
- D.** Waiver of Subrogation. SMI waives all rights against the Town and its agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by the Commercial General Liability or Commercial Umbrella Liability insurance maintained pursuant to subparagraph A of this Section.

- E. SMI shall purchase pollution legal liability coverage, including contractor's pollution liability coverage, and maintain same in force for the term of this HCA applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; third party offsite cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims; all in connection with any loss arising from the insured Site. Such coverage shall be maintained in an amount of at least \$10,000,000 per loss, with an annual aggregate of at least \$20,000,000. The coverage required by this subparagraph E of this Section shall be written to include sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. The coverage required by this subparagraph shall be placed with an Insurer with an AM Best rating of A- or better.
- F. Automobile Liability. SMI shall provide evidence of Business Automobile Liability insurance with limits not less than \$1,000,000 per each accident. The Business Automobile Liability must include coverage for liability arising out of the use of all owned, leased, hired, and non-owned automobiles.
- G. Workers Compensation and Employers Liability. SMI shall provide evidence of Statutory Employers Liability insurance limits of \$100,000 per each accident, \$100,000 per each employee, and \$500,000 policy limit as required for New York State.

- H.** If coverages are written on a claims-made basis, SMI warrants that any retroactive date applicable to coverage under the policy precedes the Effective Date; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 5 years beginning from the time that work under this contract is completed.
- I.** SMI shall provide to the Town a certificate of insurance documenting the existence of coverages as required in this HCA. Such certificate shall be delivered to the Town before work under this HCA shall commence.
- J.** SMI will endeavor to notify the Town within thirty (30) days of any cancellation or non-renewal of any insurance coverages required by this Section. Such notice shall be made to the Supervisor of the Town.
- K.** SMI will provide 100% of the obligations required by the appropriate authorities in the event of the closure/Post-Closure Care Period of the Facility. The collateral required will be decided by the overseeing authority and can be bonds, letters of credit, cash, or appropriate insurance.

XX. DISPUTE RESOLUTION

In the event of a breach of any provision of this HCA by either party, the non-breaching party shall provide the breaching party with written notice stating the nature of the breach. The breaching party shall remedy the breach no later than 30 days after receipt of such notice. Failure to remedy any breach of this HCA within the cure period shall amount to a breach of this HCA. In the event that a court of competent jurisdiction finds that a breach of this HCA has occurred,

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Draft Host Community Agreement

the breaching party shall be required to pay all reasonable attorneys' fees, including interest at the statutory rate set forth in the New York State Civil Procedure and Rules, and other litigation costs.

XXI. INDEMNIFICATION

SMI agrees to indemnify and hold harmless the Town from and against any and all liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, and costs and expenses incidental thereto (including cost of defense, settlement, and reasonable attorney and consultant fees), which the Town may hereafter suffer, incur, be responsible for or pay out as a result of bodily or personal injuries (including death) to any person; damage (including loss of use) to any property (public or private), including clean up and related costs directly or indirectly caused by or arising out of SMI's breach of any of this HCA; any violation of SMI's Part 360 Permit or the willful misconduct or negligent act or omission of SMI, its employees, or subcontractors in the performance of this HCA whether occasioned by environmental pollution or other cause arising from the general operation of the Facility as determined by a court of competent jurisdiction with such determination to be final. The foregoing notwithstanding, SMI shall not indemnify the Town from any such liabilities or costs arising from the negligence or willful misconduct of the Town, its employees, residents, agents, or third parties not under contract to or control of SMI.

XXII. OBLIGATIONS OF THE TOWN

- A. The Town agrees and covenants that it will not institute or maintain an action pursuant to Article 78 of the Civil Practice Law and Rules against the Commissioner of DEC, or DEC itself relating to the issuance and/or renewal of a permit to construct and operate the Valley Infill Expansion, as defined herein, in the Town of Seneca Falls.

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- B. Nothing herein will be construed as preventing the Town from opposing any other landfill, or solid waste management unit not described in this HCA from being constructed or operated.
- C. In the event that the Town, in the future, modifies the terms and conditions of any permits issued to SMI or its regulations governing the operation of the Facility in a manner which substantially interferes with the operation of the Facility, which is inconsistent with DEC's regulation of the Facility, and which requires SMI to materially change its operations to its significant detriment, SMI may opt, at its discretion, to terminate the HCA. Prior to such determination, SMI and the Town must attempt to resolve the dispute utilizing alternative dispute resolution procedures mutually agreeable to both. SMI must exhaust its administrative remedies, if any, prior to the termination of the HCA. SMI reserves its rights to initiate a judicial challenge to the Town's permit or regulations in question, which challenge shall not serve as a waiver of its right to terminate the HCA. In the event that SMI opts to terminate this HCA and either the Town or SMI seeks a judgment in a court of competent jurisdiction to declare the rights of the parties under this HCA, any host community benefit payments otherwise due under this HCA shall be deposited with the court or an escrow agent mutually agreeable to both parties pending the outcome of the litigation. SMI shall bear the burden of proof in any such litigation by a preponderance of the evidence. In the event that SMI terminates this HCA, the Town reserves whatever rights it may have to enjoin the Facility from further operation and to compel its closure. SMI specifically reserves any and all rights it may have to challenge, oppose, or litigate the Town's jurisdiction or

authority to require a host community agreement as a condition to construct or operate the Facility.

XXIII. GOVERNING LAW

This HCA shall be governed by the internal laws of the State of New York without regard to New York's conflicts of law rules.

XXIV. ENTIRE AGREEMENT

The parties hereto understand and acknowledge that, as of the Effective Date, this HCA represents the entire and complete agreement between the parties related to the subject matter described herein, and all prior agreements between the parties, whether written or oral, regarding the same, including the 2007 HCA, are deemed to have been merged herein and superseded by this HCA as of the Effective Date.

XXV. NOTICES

All notices, consents, waivers, and other communications under this HCA must be in writing and will be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt); (b) sent by registered mail, return receipt requested; or (c) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses set forth below (or to such other addresses as a party may designate by notice to the other parties):

Town: Town of Seneca Falls
 130 Ovid Street
 Seneca Falls, New York 13148
 Attn: Town Supervisor

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SMI: Seneca Meadows, Inc.
1786 Salcman Road
Waterloo, New York 13165
Attn: District Manager

XXVI. MISCELLANEOUS

- A.** Waiver. The failure of any party to insist on the strict performance of any term or provision hereof will not be deemed a waiver of the right to insist on strict performance of any other term or provision, nor will it be deemed a waiver of any subsequent breach.
- B.** Severability. If any clause, provision, subsection, section, or article of this HCA shall be ruled invalid by any court of competent jurisdiction, then the parties will:
1. Promptly meet and negotiate a substitute for such clause, provision, section, or article, which will to the greatest extent legally permissible effect the original intent of the parties herein;
 2. If necessary or desirable to accomplish item 1 above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this HCA; and
 3. Negotiate such changes in, substitutions for, or additions to the remaining provisions of this HCA as may be necessary in addition to and in conjunction with items 1 and 2 above to effect the original intent of the parties in the provision declared invalid.

4. The invalidity of such clause, provision, subsection, section, or article will not affect any of the remaining provisions hereof; provided, however, that if Sections V.A and/or XXII.C are invalidated and the parties are unable to reach an agreement pursuant to items 1 and 2 above, SMI shall have the right to terminate this HCA.

C. Authority.

1. The Town represents and warrants that the Town's supervisor executed this HCA pursuant to a resolution adopted by the Town Board of the Town of Seneca Falls, at a meeting thereof held on _____, and that _____, Supervisor, whose signature appears hereafter, is both duly authorized and empowered to execute this instrument and enter into such an agreement on behalf of the Town. This instrument will be executed in triplicate and at least one copy thereof will be permanently filed, after execution thereof, in the office of the Town Clerk, Town of Seneca Falls, Seneca Falls, New York.
2. SMI represents and warrants that its Vice President executed this HCA and that _____, whose signature appears hereafter, is both duly authorized and empowered to execute this instrument and enter into such an agreement on behalf of Seneca Meadows, Inc. This instrument has been executed in triplicate and at least one copy hereof will be permanently filed in the office of Seneca Meadows, Inc.

[THIS SPACE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE FOLLOWS.]

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IN WITNESS WHEREOF, the parties hereto have signed this HCA on the day and year first written above.

TOWN OF SENECA FALLS

SENECA MEADOWS, INC.

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

Approved by Resolution of the Town Board on the ____ day of _____, 2023.