

**Town of Macedon and Waste Management of New York, L.L.C.  
HOST COMMUNITY AGREEMENT**

This Host Community Agreement (the "HCA") made as of this \_\_\_\_\_ day of January, 2022, by and between the Town of Macedon, a municipal corporation organized under the laws of the State of New York, 32 West Main Street, Macedon, New York 14502 (hereinafter the "Town") and Waste Management of New York, L.L.C., a Delaware limited liability company, 425 Perinton Parkway, Fairport, New York 14450 (hereinafter "WMNY"). Town and WMNY each a "Party and collectively the "Parties").

WITNESSETH:

WHEREAS, WMNY owns and operates a solid waste landfill and recycling facility in the Town of Macedon known as High Acres Landfill and Recycling Center which is permitted by the New York State Department of Environmental Conservation for the disposal of certain wastes; and

WHEREAS, WMNY's High Acres Solid Waste Landfill and Recycling Center has been in operation since 1972 in the Town of Perinton and has been permitted in the Town since 2007; and

WHEREAS, Section 245-6(B) of the Macedon Code permits said Facility subject to a Special Use Permit; and

WHEREAS, WMNY and the Town, having agreed to conduct periodic review rather than anticipate the operation and impact of the Facility over the life of the Facility, WMNY has applied for a renewal of its Special Use Permit limited to five years to operate the Facility at the Site; and

WHEREAS, Section 300-186(F) of the Town Code requires, as a condition precedent to the issuance of a Special Use Permit, a Benefits Agreement co-terminus with the Special Use Permit whereby the anticipated impacts of this Facility on the citizens of the Town are mitigated; and

WHEREAS, WMNY and the Town wish to enter into an HCA Benefits Agreement to accomplish the purposes set forth in such agreement and so that the WMNY application for renewal of its Special Use Permit may be considered; and

WHEREAS, the current permitting of the Facility by the DEC allows for a capacity that would take approximately 30-35years to fill at the current allowable daily volumes of disposal; and

WHEREAS, it is agreed by the Parties hereto that the practical difficulties attendant to negotiating an HCA and issuing a Special Use Permit covering the anticipated life of the Facility are avoided by a five year agreement co-terminus with a Special Use Permit limited to five year terms which are renewable at the end of each term; and

WHEREAS, it is understood and agreed by the Parties that the provisions set forth in this five-year Benefits Agreement shall not be considered predictive nor the basis of any future agreement; and

WHEREAS, WMNY and the Town wish to ensure the proper operation of the Site; and

WHEREAS, WMNY and the Town have entered into a series of prior benefit agreements beginning in 2007 and renewed on December 8, 2016 for the operation of the landfill and host community benefits and the most recent agreement, as amended, was extended until December 31, 2021; and

WHEREAS, this HCA, by its terms, is intended to be effective for a 5-year term, 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 above; and

WHEREAS, WMNY and the Town desire to set forth their understanding with respect to the continued operation of WMNY's High Acres Solid Waste Landfill and Recycling Center 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 shall supersede and restate the rights and obligations of the Parties related to the prior benefits agreements as more fully set forth herein; and

WHEREAS, it is the intent of the Parties to continue this HCA or a similar agreement for as long as WMNY's High Acres Solid Waste Landfill and Recycling Center is operating and continues to have NYSDEC permitted solid waste disposal capacity in the Town, and

WHEREAS, it is understood and agreed by the Parties that the provisions set forth in this five-year HCA shall not be considered predictive nor the basis of any future agreement,

NOW, THEREFORE, in consideration of the mutual covenants contained in this HCA, and the premises and the covenants set forth herein, 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, maintenance of WMNY's High Acres Solid Waste Landfill and Recycling Center, including its appurtenant facilities in the Town.

## II. DEFINITIONS

The terms set forth in this HCA 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. Actionable - any odor event that meets the thresholds of Section XV(C).
- B. Aged Waste - any Municipal Solid Waste (hereinafter “MSW”) transported by rail to the Facility from the five (5) boroughs of New York, which has been stored more than seven days measured from the Oak Point rail facility to the landfill. WMNY shall provide an “exception” Deferred Waste Report which will be sent to the Town on a monthly basis.
- C. ASTM E544-18 - Standard practice for referencing or scaling odor intensity through a series or scale of concentrations of a known reference odorant identified as n-butanol.
- D. Beneficial Use Determination - "Beneficial Use Materials" shall have the meaning set forth in 6 NYCRR Part 360.12, Beneficial Use, or for which WMNY has received NYSDEC approval to beneficially use, pursuant to Section 360.12(d), Case Specific Beneficial Use Determinations or "Alternate Operating Cover" as set forth in NYCRR Part 363-6.21(c) or (d) or other beneficial or alternate use of waste materials as may be approved by NYSDEC (all referred to herein as "BUD").
- E. Compost - The stable humus-like material produced by the aerobic, thermophilic decomposition of solid organic constituents of solid waste.
- F. Cover - Soil or other suitable material, including any polyethylene film material like Enviro-cover, or a combination of same, acceptable to the NYSDEC that is used to cover disposed solid waste at a landfill.
- G. Deferred Revenue Balance – Net sum of the accumulation of the advance payments by WMNY and subsequent reduction in Benefit Payments (defined herein in Section XIV) to the Town. The balance as of December 31, 2021 is \$9,328,000.
- H. Facility - All aggregate elements of the High Acres Solid Waste Landfill and Recycling Center and ancillary facilities in the Town, including, but not limited to MSW disposal cells, weigh stations, above-ground leachate storage tanks, electrical equipment, piping, buildings, offices, maintenance areas, methane gas collection system, composting, soil borrow areas, construction debris (CD) landfill area, and any additions, replacements, appurtenances, and equipment, to be constructed or installed.
- I. Guaranteed Payment - The payment set forth in Section XIV, subparagraph E.
- J. Hazardous Waste - As defined in 6 New York Code Rules and Regulations

(hereafter NYCRR) Part 371 et seq.

- K. HCA - This HCA and Appendices, Schedules, and Exhibits attached thereto.
- L. Host Community Agreement or HCA - This Agreement and all Appendices, Schedules and Exhibits attached thereto.
- M. Landfill - The High Acres Solid Waste Landfill and Recycling Center as currently permitted by the NYSDEC, depicted in Exhibit A attached hereto and made a part hereof, as of the date of this HCA.
- N. Landfill Gate Rate - Shall be 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. [See Sections X(C) and XIII(A) as to use].
- O. Landfilled Materials – Shall mean MSW, sludge, special waste, construction debris, bulky wastes, and solidified wastes (but excluding yard waste and recyclables) and Beneficial Use Materials upon which a gate fee is charged and upon which Benefit Payments are made under Section XIV.
- P. Municipal Solid Waste (or "MSW") - Shall mean Municipal Solid Waste ("MSW") as defined in Section 360.2 of 6 NYCRR Part 360.
- Q. New York State Department of Environmental Conservation (or "NYSDEC") – 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.
- R. Per Ton Payment - Shall have the meaning ascribed to it in Section XIV, subparagraph A or B.
- S. Property Value Protection Program - The Property Value Protection Program shall be the plan described in Section VIII of this HCA, as depicted on Exhibit C attached hereto and made a part hereof.
- T. Recycling Fee - The payment from WMNY to the Town as set forth in Section XI of this HCA.
- U. Renewable Energy Fee - The payment from the WMNY to the Town as set forth in Section XIV of this HCA.

- V. Solid Waste - Shall mean Solid Waste as defined in Section 360.2 of 6 NYCRR Part 360.
- W. State Environmental Quality Review Act (or "SEQRA") - Article 8 of the Environmental Conservation Law of the State of New York and the implementing regulations set forth in 6NYCRR Part 617.
- X. Tipping Fee - The per ton rate charged to third party users to dispose of Solid Waste at the Facility.
- Y. Town - The municipal corporation known as the Town of Macedon in the County of Wayne and State of New York and, depending on the context, the geographic area thereof.
- Z. Town Board - Means the Macedon Town Board, which is the body that governs the Town in accordance with the provisions of New York Town Law.
- AA. Town Issued Solid Waste Facility Permit - A Special Use Permit for the disposal of waste within the Town and issued by the Town of Macedon to WMNY.

### III. FACILITY DESCRIPTION

The Facility, as defined in Section II(g) of this HCA, and is further depicted in Exhibit A attached hereto and made a part hereof to designate facilities in the Town.

### IV. RESTRICTIONS ON OWNERSHIP, TRANSFER AND USE

A. Ownership & Transfer - This HCA is applicable to WMNY, its successors and assigns, and to all parties to which WMNY transfers any or all of its ownership interests or contracts or subcontracts concerning management and/or operations in, and responsibilities for, the Facility. In the event that WMNY proposes to sell, lease or otherwise transfer ownership or control of the Facility, WMNY shall notify the Town at least sixty (60) 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. WMNY 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 NYSDEC 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. WMNY shall provide such documentation as the Town reasonably requires prior to the proposed date for transferring any such interest. The Town Board may seek further information and documentation premised upon its review thereof The Town understands that NYSDEC 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 the NYSDEC under applicable law.

B. Use - The Town and WMNY hereby agree that WMNY shall operate the Facility in accordance with, and subject to, the Town's special use permit. The Town and WMNY further agree that WMNY shall be authorized to accept all materials permitted by the NYSDEC for disposal at the Facility, including but not limited to Solid Waste, MSW, Beneficial Use Determination Materials (BUD) that have been approved by the NYSDEC, alternative operating cover (AOC), and yard waste (leaves, garden debris, tree/brush debris) for recycling/composting. The Town and WMNY further agree to the following disposal restrictions at the Facility:

1. No regulated quantity of Hazardous Waste as defined in Title 6 NYCRR Part 371 or the Regulations promulgated thereunder shall be disposed of at the Facility.

2. Any waste material listed or identified in WMNY's most current NYSDEC permit to operate High Acres 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.

3. Furthermore, the Facility shall not accept for disposal the following:

a. Natural gas and/or petroleum products shall not be disposed of at the Facility without the consent of the Town. This restriction does not include the disposal of petroleum contaminated soils that are generated from sources other than natural gas and/or petroleum oil exploration activities.

b. At no time shall wastewater treatment plant sludge accepted for disposal at the Facility exceed five percent (5%) or 70,000 tons per year, whichever is less, of all waste streams accepted for the disposal at the Facility.

c. WMNY agrees to modify site operations, including but not limited to the mitigative step listed in Section XV when site management employees determine that certain meteorological/atmospheric conditions (e.g., a sudden drop in atmospheric pressure or thermal inversion) may contribute to substantial off-site odors. The Town reserves the right to request temporary modification to operations if atmospheric or meteorological conditions warrant.

d. WMNY shall not accept for disposal at the Facility any hazardous waste, hazardous ash or nuclear waste, regulated medical waste, solid waste containing PCBs with a concentration greater than 50 ppm (parts per millions), de-characterized Hazardous Waste which has been treated in accordance with the requirements of 6 NYCRR 376 and no portion of the Facility shall be used for the burning of waste.

e. Except as otherwise set forth herein WMNY agrees to not accept Aged Waste for disposal. In the event WMNY becomes aware of Aged Waste that is to be delivered to the Facility, which may contribute to odor notifications, WMNY shall not accept such volume for disposal without the consent of the Town, and if such consent is not obtained, WMNY shall follow the procedures set forth in Section XV(D)(9).

4. With respect to BUD materials, Town approval for the classification of a waste as a Beneficial Use Material is not required. Upon written request of the Town, however, WMNY shall provide the Town with copies of any requests made to NYSDEC for BUDs and shall also provide copies of any and all NYSDEC beneficial use decisions regarding those requests.

5. No portion of the Facility shall be used for the operation of a solid waste incinerator, including a solid waste incinerator to energy facility.

6. The Town acknowledges that the Facility may accept MSW generated within and outside of the Town, the Counties of Monroe and Wayne and the State of New York pursuant to certain NYSDEC issued permits during the term of this HCA.

7. Enforcement of Restrictions: WMNY acknowledges that the Town has no adequate remedy by way of damages in the event that WMNY breaches or threatens to breach these use restrictions, and therefore WMNY agrees that, in such event, the Town shall first follow the dispute resolution process provided in Section of XX of this HCA. If the dispute resolution procedures set forth in Section XX are unsuccessful, the Town may apply to the Courts and seek equitable relief directing WMNY to comply and/or enjoining or restraining WMNY from any breach hereof. WMNY shall indemnify the Town for any and all costs and expenses incurred or expended in connection with a breach of these provisions as more fully set forth in Section XXI of this HCA.

## V. TERM & SEVERABILITY

A. This HCA is effective upon approval by the Macedon Town Board and shall be subject to a 5-year term and thereafter continue as set forth below.

This HCA shall terminate upon the first to occur:

1. In the event that the HCA is not renewed at the end of the terms described above, but only with the written consent of the Town Board, which consent shall not be unreasonably denied, the HCA shall continue subject to its existing terms on a month-to-month basis until the Parties enter into a new agreement.

2. The Facility no longer contains NYSDEC permitted solid waste disposal capacity in the Town and WMNY is no longer disposing of Solid Waste at the High Acres Solid Waste Landfill and Recycling Center; or

3. The Facility, for whatever reason, is no longer permitted, licensed or otherwise authorized to operate a Solid Waste disposal landfill in the Town.

B. 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 reflect the original intent of the Parties therein.

2. 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 reflect the original intent of the Parties in the provision declared invalid.

3. The invalidity of such clause, provision, subsection, section or Article will not affect any of the remaining provisions hereof, and this HCA will be construed and enforced as if such invalid portion did not exist.

## VI. INVESTIGATIONS, OPERATIONS, MONITORING, & FACILITY LIAISON

### A. INVESTIGATIONS & OPERATIONAL IMPROVEMENTS TO BE PERFORMED

The HCA shall also require WMNY to perform the action items, including any necessary Operation & Maintenance (O&M) Plan amendments and corrective mitigative activities as set forth in the local operations and maintenance provisions appended hereto as Exhibit B (the "Local O&M Measures") to the extent reasonable and agreeable by WMNY, the Town and NYSDEC.

### B. MONITORING

This HCA shall also require WMNY to perform enhanced monitoring activities as set forth in the Local O&M Measures, appended hereto as Exhibit B to the extent reasonable and agreeable by WMNY, the Town and NYSDEC.

### C. INFORMATION EXCHANGE & COMMUNICATION

1. With NYSDEC approval, WMNY agrees that the NYSDEC on-site monitor will make available upon the Town's request copies of its daily inspections reports to the Macedon Town Engineer.

2. WMNY shall provide the Town copies of all cover letters associated with any reports required to be made to the NYSDEC pursuant to WMNY's 6 NYCRR 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 the NYSDEC. WMNY further agrees to allow the Town to review such reports as reasonably requested by the Town at a place and time mutually agreed to by WMNY and the Town.

3. WMNY will notify the Town, in writing, no later than seven (7) days in advance of the commencement of major on-site construction activities that may disturb the waste mass where undue odors (gas or garbage) may result or if there is a planned interruption with the flare system or gas plant. Pursuant to its Part 360, WMNY will make available to the Macedon Town Engineer all materials and documents that WMNY submits to the NYSDEC in support of



the said construction activities as well as documents or communications, including approvals that it receives from the NYSDEC. Construction, maintenance repair or replacement of the gas wells or flare system shall not be construed as major onsite construction for this provision.

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

5. WMNY shall notify the Town as promptly as practicable if there is a sustained unplanned interruption / loss of power at the gas plant or flare system.

6. The Town of Macedon Code Enforcement Officer and/or Town Engineer shall be the liaison to whom WMNY shall report all disclosures required by this HCA.

## VII. NYSDEC NOTIFICATION MANAGEMENT PROGRAM

A. WMNY will continue to fund a local notification hot-line telephone number which will be in operation and accessible on a 24-hour a day, 7-day a week basis for the receipt of citizen notifications regarding Facility operations, including, but not limited to, litter, dust, noise, truck traffic, hours of operation, odors, etc.

B. WMNY will ensure that the hotline number is prominently displayed on its website for High Acres Landfill. The Town will post the hotline number in public areas (town offices, meeting halls, etc.) and on its website.

C. WMNY will timely investigate a notification made by a Town resident who uses the NYSDEC Hotline (or any other follow-on notification method approved by the NYSDEC) by dispatching a responder who is trained to evaluate odors utilizing the N-Butanol Scale and can rate the intensity and duration of odor. The trained responder shall arrive at or near the corresponding complainant address as promptly as practicable, but not exceed 30 minutes on average.

D. In addition to the use of the N-Butanol Scale, both Parties agree to pursue the use of a portable field olfactometer that objectively measures and quantifies odor concentration in ambient air. The aforementioned responder will be trained and certified in the use of the portable field olfactometer prior to implementation.

E. WMNY will record all notifications received from the notification hotline in a notification log, showing the date and time of the notification, the name, telephone number and address location, nature and duration of the circumstances giving rise to the notification and other supporting details. WMNY will also record the details of its investigation and its findings and/or determinations.

F. WMNY will implement reasonable corrective measures to mitigate the conditions

giving rise to the notification, as described in Section XV Offsite Impacts.

G. WMNY will provide the Town full access to the notification log upon request by the Town, including the results of investigative activities and to the extent available and applicable the ultimate resolution of such notification.

H. WMNY and the Town agree that the NYSDEC on-site monitor may review the notification log in order to report on WMNY's compliance with the notification management program as well as to verify on-site observations associated with operational controls for odors.

#### VIII. PROPERTY VALUE PROTECTION PROGRAM

WMNY agrees by means of a Property Value Protection Program as set forth in Exhibit C attached hereto to provide compensation according to the terms and conditions of this program hereinafter set forth. 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 and the Property Value Protection Program is included in Exhibit C and is incorporated herein.

#### IX. TRAFFIC AND ROUTES OF TRAVEL

WMNY shall implement a litter collection program for the railroad siding and all internal WMNY access roads of the Facility in the Town to mitigate litter or unsightly condition on these areas and roads resulting from the operation of the Facility. This litter control program shall include at least quarterly clean ups of litter along such routes using adequate personnel. Based on the volume or presence of litter along these roadways, additional clean ups may be warranted.

All road vehicles transporting (not collecting) solid waste to the Facility shall be confined to state highways to the extent feasible. Roadways within the Facility shall be maintained for all weather operations so as to minimize dusty conditions that may impact the public road rights of way near the Facility. Measures will also be taken to prevent the track-out of such materials, including 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 may be required.

#### X. RESIDENTIAL DISPOSERS

During the term of this HCA and while the Facility has NYSDEC permitted solid waste disposal capacity in the Town and a Town Issued Solid Waste Facility Permit is in place with WMNY, any resident of the Town who wishes to transport in personal vehicles MSW, as defined above, to the Facility, shall be permitted access to the Facility during normal hours of operation as set forth by WMNY provided that:

A. Such resident displays, in clear view, a window decal issued by the Town for purposes of residential identification. Decals shall be provided by WMNY to the Town for issuance.

B. All such MSW was generated from their personal residence.

C. The quantity per trip shall be limited to one (1) 96-gallon toter or its equivalent. Any amount of MSW delivered in excess of (1) 96-gallon toter or its equivalent shall be charged at the Landfill Gate Rate with a minimum 1/4-ton charge for such excess.

D. The payment of the disposal fee contained in subparagraph F of this Section shall be paid by the resident at the time of disposal.

E. Construction and demolition materials are excluded from the materials permitted to be disposed of under this Section or at the Residential Drop Off Center.

F. Residential disposers evidencing the decals required pursuant to this Section will be charged a residential disposal fee posted at the Facility, which will initially be set at six dollars (\$6.00) per residential vehicle per trip. The residential disposal fee shall not increase by more than One Dollar (\$1.00) in any twelve (12) month period. WMNY will establish a drop-off location for residential vehicles.

#### XI. CURB-SIDE RECYCLING

In lieu of providing a curbside recycling program, commencing January 2022, WMNY shall, for the term of this HCA and while the Facility has NYSDEC permitted solid waste disposal capacity in the Town and a Town Issued Solid Waste Facility Permit in place with WMNY, pay to the Town a Recycling Fee of \$12,500.00 per month until the aggregate sum of \$150,000.00 is paid to the Town on an annual basis, and an additional \$12,500.00 per month shall be credited to the Town until the aggregate annual amount of \$150,000.00 shall be credited as a reduction of Guaranteed Payment Credits (defined in Section XIV hereof), for a total aggregate benefit per year of \$300,000.

#### XII. ANNUAL VOLUME

A. The Facility shall not accept a volume of waste materials, on a yearly basis, which is greater than: (1) permitted by law; (2) three thousand five hundred (3,500) tons per day based on an annualized average; or (3) as otherwise regulated by the NYSDEC.

B. This volume limitation does not include Beneficial Use Determination materials, yard waste, recyclables, materials for construction, or volumes of materials delivered by the Village of Fairport, Town of Perinton, Town of Macedon, or the Resident Drop-Off Center or other material not intended for disposal. Any proposed increase beyond the 3,500 tons annualized daily average allowed pursuant to WMNY's then current Part 360 Permit would be subject to the Town's review and approval. The approval of such a request would not be unreasonably withheld.

#### XIII. WASTE DISPOSAL/COLLECTION SERVICES

A. WMNY has established a Landfill Gate Rate for disposal fees for Solid Waste and other materials disposed of at the Facility. WMNY shall have the right to increase or decrease said Landfill Gate Rate or any Tipping Fee or other user rate at its discretion. Price increases or decreases by WMNY are not to be subject to Town approval.

B. During the term of this HCA and while the Facility has NYSDEC permitted solid waste disposal capacity in the Town and a Town Issued Solid Waste Facility Permit is in place with WMNY, no disposal fee will be charged to the Town, including from any department of same during the term of this HCA for up to five thousand (5,000) tons per year (averaged over the term of this HCA) of 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 WMNY 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.

C. WMNY will also accept at no cost to the Town sludge generated from facilities in which the Town participates up to an aggregate total of 200 tons per year,

D. WMNY will also accept at no cost to the Town, all leaf debris generated during the spring and fall leaf collection timeframes for the purpose of composting the materials, all brush / trees 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 or Town-contractor vehicles. This material is not subject to the volume restrictions of subparagraph B of this Section. 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 material exemption and may be subject to the Landfill Gate Rate.

The right of the Town to deliver leaf, tree/brush, and yard debris to WMNY shall at all times be subject to WMNY maintaining a permit to accept such materials and WMNY having capacity to accept such material at the time of delivery. During the term of this HCA and while the Facility has NYSDEC permitted solid waste disposal capacity in the Town and a Town Issued Solid Waste Facility Permit is in place with WMNY, WMNY 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 composting/wood mulch operation. The specifications and requirements for delivery of this material by the Town to the Facility are outlined in Exhibit

E. WMNY shall permit the Town to pick-up at the Facility at no cost double-ground wood mulch and composted leaf materials to the extent available. WMNY shall not guarantee the quantity or the quality of any of these products.

F. Should the Town or its agents, representatives or designees engage in the collection of MSW in all or in any part of the Town, the fee charged to the Town shall be the Landfill Gate Rate plus all applicable fees and surcharges in effect and ordinarily charged by the Landfill for the disposal of such materials.

G. Pursuant to the provisions of Section XIII(B) above, if the Town engages in such collection, WMNY shall accept such volume at no cost to the Town for the volume set forth in Section XIII(B) above, provided such MSW is delivered via Town or Town contractor vehicles.

H. During the term of this HCA and while the Facility has NYSDEC permitted solid waste disposal capacity in the Town, and a Town Issued Solid Waste Facility Permit is in place with WMNY, WMNY agrees to provide containerized solid waste collection services on a weekly basis to the Macedon Town Hall, Library, DPW garage, Town Court, former Village Hall, Town Parks, any Town EMS Service stations and Macedon Fire Departments at no cost or fee to the Town. These services shall be provided weekly in-season, and off-season as often as agreed to by WMNY and the Town. The Table of Services shall be reviewed and mutually agreed to on an annual basis by WMNY and the Town's supervisor.

Account #	Name	Location	Qty	Service Type
806-223173	Macedon Center Fire Dept	2481 Canandaigua Rd	1	6 Yd FEL
806-221434	South Macedon Fire Dept	1 Canal Park Dr	1	8 Yd FEL
806-221437	Macedon Village Hall	81 W Main St	1	96 Gal Toter
806-225052	Macedon - Public Safe	1620 N Wayneport Rd	1	8 Yd FEL
806-221445	Macedon- DPW Facility	135 Main St	1	6 Yd FEL
806-221454	Macedon - Canal Park	1 Canal Park Dr	1	96 Gal Toter
806-221457	Macedon - Gravino Park	135 Main St	4	96 Gal Toters
806-88022	Macedon- Bullis Town Park	1777 Canandaigua Rd	12	96 Gal Toters
	Macedon Town Court	1890, Route 31	1	96 Gal Toter
806-85971	Macedon Town Hall	32 Main St	1	4 YD FEL
806-85978	Macedon Town Highway	2067 O'Neil Rd	1	3 Yd FEL

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I. WMNY and the Town mutually agree to discuss the creation of a residential organics recycling/composting program. The Town and WMNY may develop and implement a pilot program to compost organic wastes from residential properties in the Town and determine the efficacy and public interest in this program.

#### XIV. HOST COMMUNITY BENEFIT PAYMENT

Pursuant to the Amended and Restated Benefits Agreement dated December 8, 2016 and other prior benefit agreements between the Parties (collectively the “Prior Benefit Agreements”), the Parties agreed that one-half of any Benefits Payments over \$1,000,000.00 received by the Town from WMNY in any one calendar year for Landfilled Materials permanently landfilled or BUD used in that portion of the Facility located in the Town were to be allocated as a credit (the “Guaranteed Payments Credits”) against future Benefit Payments to be made on a per ton basis or against the cumulative Guaranteed Payments made by WMNY to the Town as required by the provisions of section VII of the Prior Benefits Agreements with such excess payments being the Deferred Revenue Balance. This credit operates as a reduction of \$1.60 in the per ton fee to be paid to the Town so that, to the extent that cumulative payments credits are not offset, the Town would receive a benefit of \$1.60 per ton with the other \$1.60 being applied as an offset to the Guaranteed Payments Credits until such credit is reduced to zero, at which time, the Town will receive the full \$3.20 per ton on all MSW accepted and permanently landfilled in the Town and \$1.35 per ton for all BUD.

The Parties hereby agree that the Deferred Revenue Balance is Nine Million Three Hundred Twenty-Eight Thousand Dollars (\$9,328,000.00) as of December 31, 2021. Subject to the foregoing, WMNY agrees to make the following payments to the Town (collectively the “Benefit Payments”), which Benefit Payments shall be made in accordance with Subsection A below or Subsection B below, at the election of the Town, with such election being made in writing by the Town to WMNY no later than thirty (30) days from the effective Date of this HCA, with such election to apply for the full five-year term of this HCA, Should the Town fail to make such election within the 30 days, the benefits will be calculated in accordance with Option B.

A. If the Town elects payments in accordance with this Subsection A., WMNY shall pay the Town the amount of Three Dollars and Twenty Cents (\$3.20) per ton on all materials accepted for disposal and permanently landfilled in that portion of the Facility located in the Town upon which a gate fee is charged, including, but not limited to, MSW, sludge, special waste, construction debris, bulky wastes, and solidified wastes, but excluding yard waste, recyclables and Beneficial Use Materials (BUD). To the extent the payments to be made hereunder exceed the annual Guaranteed Payment of \$1,000,000 per calendar year, the Benefit Payments made on all tons over the annual Guaranteed Payments (defined in Subsection E below) shall be paid at fifty percent (50%) (i.e., One Dollar and Sixty Cents (\$1.60) for MSW, and Sixty-Seven and ½ cents (\$0.675) for BUD and 50% of all WMNY fees and surcharges) consistent with above. The remaining fifty percent (50%) (i.e., One Dollar and Sixty Cents (\$1.60) for MSW, and Sixty-Seven and ½ cents (\$0.675) for BUD and 50% of all WMNY fees

and surcharges) shall be applied to the Deferred Revenue Balance until such credit has been entirely offset by the reduced payments allocated to the Deferred Revenue Balance.

B. If the Town elects payment in accordance with this Subsection B, WMNY shall pay the Town the amount of Two Dollars and Ninety Five Cents (\$2.95) per ton on materials accepted for disposal in that portion of the Facility located in the Town upon which a gate fee is charged including, but not limited to, MSW, sludge, special waste, construction debris, bulky wastes, and solidified wastes, but excluding yard waste, recyclables and Beneficial Use Materials (BUD). If the Town elects payments pursuant to this Subsection B., then the Benefit Payments shall continue at Two Dollars and Ninety-Five Cents (\$2.95) per ton and the Guaranteed Payments Credits shall be deferred for the full five-year term of this Benefits Agreement and recommence on January 1, 2027. The Parties further agree that if the Town elects payments pursuant to this Subsection XIV.B, the Deferred Revenue Balance shall be reduced from \$9,328,000.00 to \$6,900,000.00 as of the expiration of the five-year term of this HCA. The purpose of this option is to allow the Town a predictable benefit stream and reduction of the Deferred Revenue Balance without regard to the amount of materials accepted at the Facility.

C. In addition to payments under either Subsections A. or B. above, commencing on the effective date of this HCA and for the five-year term of the Agreement, WMNY shall pay the Town a “Renewable Energy Fee” equal to Five Cents (\$0.05) per ton on all materials accepted for disposal and permanently landfilled in that portion of the Facility located in the Town upon which a gate fee is charged including, but not limited to, MSW, sludge, special waste, construction debris, bulky wastes, and solidified wastes, but excluding yard waste, recyclables and Beneficial Use Materials (BUD).

D. Commencing on the effective date of this HCA and for the five-year term of the Agreement, WMNY shall pay the Town the amount of One Dollar and Thirty-Five Cents (\$1.35) on all BUD materials for use in the Town upon which a gate fee is charged.

E. The Benefit Payments described in Subsections XIV (A or B) to D, above, are to be made on Landfilled Materials. The Benefits Payments on the Landfilled Materials, regardless of whether Subsection A. or Subsection B. is selected by the Town, shall be payable as follows:

1. Guaranteed Monthly Benefits Payments: So long as Landfilled Materials are being accepted and permanently landfilled at the Facility in the Town, WMNY shall make a guaranteed monthly payment of \$83,333.33 (the “Guaranteed Payments”) to the Town up to \$1,000,000.00 per year;

2. Monthly ‘True Up’: At the end of each calendar month of this Agreement, WMNY shall determine the actual volume of Landfilled Materials, which were permanently landfilled during the prior month, and shall calculate the Benefit Payments that should be made based on the actual tons and type of Landfilled Materials permanently disposed of within the Town or BUD, as applicable (the “Actual Payments Due”). If the Actual Payments Due for the month, after any off sets or credit that might be due as applicable to the Deferred Revenue Balance, are greater than the Guaranteed Monthly Benefit Payments, WMNY shall pay the Town the difference between the monthly guaranteed payment and actual payment due within thirty

(30) days of the end of each calendar month; and

3. Annual 'True-Up': At the end of each calendar year of this Agreement, WMNY shall determine the actual volume of Landfilled Materials, which were permanently landfilled or BUD used in that portion of the Facility located in the Town during that year, and shall calculate the Benefits Payments that should be made based on the actual tons permanently disposed of within the Town or BUD and AOC used and the Actual Payments Due. If the Actual Payments Due for the year are greater than the Guaranteed Payments made for the year, WMNY shall pay the Town the difference within sixty (60) days of such year end. WMNY shall provide the Town, upon the Town's request, substantiation for such calculations.

F. So long as Landfilled Materials are being accepted and permanently landfilled or BUD is used at the Facility in the Town, should WMNY collect any monies for the landfilled disposal of ordinary MSW and construction and demolition material originating from third-party customers to be disposed of or used in the Town above Thirty-Six (\$36.00) Dollars per ton, the Town, in addition to the above, shall receive eight percent (.08) of the difference between Thirty-Six (\$36.00) Dollars per ton and the actual per ton rate charged. This fee adjustment shall include environmental surcharges collected but exclude any fuel surcharges and special handling fees. Furthermore, special or profiled wastes (i.e., asbestos, sludge, dusty loads, etc.) are excluded from this fee adjustment since they, by their very nature, have special handling requirements and higher costs associated with the disposal of such items. Should the average rate charged per ton by the Facility to other Waste Management entities for MSW or construction & demolition material exceed Thirty-Six (\$36.00) Dollars per ton, the Town shall receive a Benefits Payment based on 8% of that average rate multiplied by the tons received at that average rate. Yard waste, recyclables and any other material that may be handled and re-directed, but not permanently disposed in the Facility, shall not be subject to the Benefits Payment.

G. In the event legislation is passed which is applicable to the Facility, and which requires the payment of a host benefit, royalty, or other compensation to the Town, WMNY shall be liable for payment to the Town of the greater of said compensation or the Benefits Payments hereunder, but not both.

H. Should WMNY pay a per ton payment to the Town of Perinton greater than \$3.20 per ton for MSW or \$1.35 for BUD, as applicable, the Benefit Payment to be made to the Town under this HCA on a per ton basis shall be immediately increased to an amount equal to the increase in the per ton amount paid to the Town of Perinton.

I. Future Revenue Sharing WMNY agrees to discuss with the Town future revenue generating projects which may involve revenue sharing opportunities in the Town associated the Facility. WMNY will notify the Town of the earliest practicable time in the development of such activities.

J. Under either option A or B able, the Parties understand and agree that the \$9,328,000 Deferred Revenue Balance referred to in this section is not a debt of the Town but rather intended to be a stream of benefits to the Town with the acknowledgement by WMNY to the Town that the benefits payable on the available air space in the Town would exceed the Deferred



Revenue Balance. WMNY agrees that the sole source of funds to be applied to this Deferred Revenue Balance are the reductions in benefits set forth above. If, for any reason, the benefits payable set forth above, and in any subsequent agreement are not sufficient to offset the Deferred Revenue Balance, the Town shall have no obligation to repay any outstanding Deferred Revenue Balance. The Parties agree that the sole source of Town funds for any reduction in the Deferred Revenue Balance are the formulae for percentage allocation set forth above.

K. Any Benefits Payments required by this HCA shall be paid to the Town in such manner and to such funds as are directed by the Town.

L. Each payment shall be allocated by WMNY to such funds, accounts, or districts as directed by the Town in its sole discretion, which are impacted by the Facility, now or in the future. WMNY agrees to become part of any improvement district extension that may provide services to the Facility.

### XV. 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. WMNY shall take all commercially reasonable steps (as a minimum those outlined below) as promptly as practicable to mitigate these off-site impacts as set forth in its Operation and Maintenance (O&M) Plan. Additional steps beyond those identified in the O&M Plan, including those referenced in the Local O&M Measures appended hereto as Exhibit B shall be implemented to control/mitigate off-site impacts.

B. The categorical determination of an odor will be made pursuant to the ASTM Standard E544-18 as it relates to the prescribed liquid and air levels of N-Butanol Scale, with an odor intensity scale of 1-8, appended hereto as Exhibit E, and further defined in the table below.

C. In the event that undue off-site odors resulting from either gas or garbage reach an "Actionable" level as defined in the table below, WMNY shall recognize, determine cause and implement mitigation steps to reduce odors as described in the following Subsections XV(D), (E), and (F).

ODOR CATEGORIES	N-BUTANOL SCALE	N-Butanol Concentration in Air • 1 in vol	INTENSITY (word definition)	DURATION	FREQUENCY'
1	0	0	No odor	N/A	N/A
		<b>ACTIONABLE</b>	<b>LEVEL</b>		
2	0.5 to 1	15	Slight	Aggregate total of 4 notifications that occur within a rolling seven (7) day period	5 confirmed odor

				48-hr period	20 confirmed
3	>1 to < 3	30	Moderate		notifications
				24-hr period	10 confirmed
4	3 to < 4	60	Distinct		notifications
				12-hr period	5 confirmed
5	4 OR GREATER	120+	Strong		notifications

1: All odor notifications must be received through the NYSDEC Notification Hotline (or any follow on official notification method approved by the NYSDEC) as described in Section VII of this HCA from property specific addresses and the complainant to be named and address and telephone number given to allow a responder who is trained to evaluate odors utilizing the N-Butanol Scale to investigate and rate the intensity and duration of odor from the corresponding complainant. The trained responder shall arrive at or near the corresponding complainant address in a timely manner as set forth herein. Drive-by notifications will not be considered. The confirmed odor intensity will be the average result of three (3) readings taken over a 30-minute period at the notification location.

D. Procedurally, the Town will notify WMNY in writing of a documented "Actionable" event that meets the intensity and duration thresholds defined above. WMNY then agrees to provide written explanation for the odors and what, if any, mitigative steps will be taken to address off-site impacts. WMNY further agrees to provide this written explanation to the Town and the NYSDEC (if necessary) within 24-hours of the Town's written notification. WMNY further agrees that it shall have a reasonable opportunity to address such notification with two (2) ten (10) day time periods as described below, starting 24 hours following WMNY's response to the Town to address off-site odor impacts which may include the implementation of some or all of the following at WMNY's professional and reasonable discretion:

1. Altering the hours/days of operation;
2. Placement of cover such as E.I. Environ-Cover system and/or application of thicker cover over odiferous waste;
3. Additional application of neutralizers (liquid and granular) at the working face;
4. Deploy additional portable odor control misting units to the working face;
5. Disposal of MSW into "lower" cells;
6. Minimization of the size of the active working face;
7. Initiate additional gas collection wells / vacuum improvements
8. Initiate placement of temporary geo-synthetic cover;
9. Diversion of MSW;
10. Implement additional operational modifications (temporary or permanent), to the extent reasonable and effective not described herein, but identified in the Operation & Maintenance Plan to control odors, all in accordance with the Facilities Permits and applicable laws; or
11. Implement any other mitigative measure not described herein or listed in the Facility's Operation and Maintenance Plan, but considered reasonable and necessary to effectively mitigate odors.

E. If after ten (10) days, the off-site odor impacts continue to meet any of the odor category thresholds identified above, WMNY agrees to provide the Town a written summary of what mitigative steps have been applied to date and what additional steps are to be implemented/planned to further mitigate the odors.

F. If following twenty (20) days, the off-site odor impacts cannot be resolved to the satisfaction of the Town and/or the NYSDEC, WMNY shall submit an odor specific work plan within seven (7) days describing what other mitigative steps will be employed, including an implementation schedule, in order address fugitive off-site odors. This work plan shall include consultation with outside industry experts. WMNY further agrees during such curative measures to restrict or divert waste streams and to cover areas of the Landfill that are creating undue off-site odors until these odors can be resolved to the reasonable satisfaction of the Town.

G. WMNY shall indemnify and hold harmless the Town pursuant to Section XXI for any breach of this Section XV.

#### XVI. END USE PLAN AND POST CLOSURE OBLIGATIONS

End use, closure and post-closure are operational aspects of the Facility and are governed by NYSDEC statutes and regulations. WMNY and Town acknowledge that the NYSDEC statutes and regulations pre-empt regulation of the Facility in such matters by the Town. However, within the parameters of the Facility's End Use Plan filed with the NYSDEC, WMNY 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, closure and post closure obligations shall conform to the most current NYSDEC Post Closure Regulations 6 NYCRR Part 363.9, as amended. To the extent that the Macedon Town Code, Section 300-186 I, provides for maintenance and monitoring in excess of that required by NYSDEC, the Parties agree that the provisions of the NYSDEC regulations shall control.

#### XVII. COMPLIANCE WITH LAWS

A. WMNY 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 WMNY's ability to operate the Facility is interrupted, terminated, or otherwise adversely affected by the rescission or modification of any permits, licenses, or approvals by any governmental agency, whether state, federal or local or because of any act of God or situation beyond the reasonable control of WMNY, then this HCA shall be null and void upon notice to the Town; however, WMNY 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. If, within one hundred twenty (120) days of such notice, the Facility is able to resume similar operations then this HCA shall be in force as if no interruption had occurred during the period in question. Neither Party, therefore, shall have any cause of action for damages or consequential damages against the other arising from the termination of this HCA because of the inability of

the Facility to receive MSW from the Town or Village if the said 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.

#### XVIII. 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 limited to the requirements and limitations set-forth in WMNY most current NYSDEC Part 360 and Title V Permit for High Acres Landfill, as shown in Exhibit F.

B. Further, operations directly related to the acceptance (delivery) and disposal of MSW by rail at the Facility shall not take place on Saturdays except for those Saturdays that follow a major holiday. Major holidays shall include New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day and Christmas Day. Operations on Saturdays following major holidays shall be limited to operations no later than 2:00pm.

C. For special projects other than the operations set forth above, prior to commencing such projects, WMNY shall notify the Town, in writing, of operating hours for such special projects. Special projects shall include such items as final cover system placement, liner construction, installation and decommissioning of groundwater monitoring wells.

#### XXIV. INSURANCE

WMNY 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 from time to time:

A. Commercial General and Umbrella Liability Insurance. WMNY 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, 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 WMNY under this contract. There shall be no endorsement or modification of the CGL to make it excess coverage over other available insurance; alternatively, the COL 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. WMNY 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 XIX.

E. Contractor's Pollution Liability with a limit of \$10,000,000 each claim and an annual aggregate of \$10,000,000.

F. WMNY shall purchase pollution legal liability coverage and maintain same in force for the duration 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.

G. Coverage as required in subparagraph F 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.

H. Automobile Liability -WMNY shall provide evidence of Business Automobile Liability insurance with limits not less than \$1,000,000 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.

I. Workers Compensation and Employers Liability -WMNY shall provide evidence of Statutory Employers Liability insurance limits of \$100,000 each accident, \$100,000 each employee and \$500,000 policy limit as required for New York State.

J. Coverage as required in subparagraph F of this section shall be placed with an Insurer reasonably acceptable to the Town.

K. If coverages are written on a claims-made basis, WMNY warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; 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.

L. WMNY shall provide to the Town a certificate of insurance documenting the existence of coverages as required in this HCA. The certificate shall be signed by a person authorized by the insurer to bind coverage on its behalf as described in the certificate. Such certificate shall be delivered to Town before work under this HCA shall commence.

M. The Town shall receive a minimum of sixty (60) days prior written notice of cancellation or non-renewal of any insurance coverages required by this Section. Such notice shall be made to the Supervisor of the Town.

N. WMNY will provide 100% of the obligations required by the appropriate authorities in the event of the closure/post closure of the Facility. The collateral required will be decided by the overseeing authority and can be bonds, letters of credit, cash or appropriate insurance.

O. WMNY shall cause its insurance carriers to name the Town as an additional insured where appropriate in the context of the coverage. Such coverage is to be primary and non-contributory in so far as the Town and its insurance program.

## XXV. DISPUTE RESOLUTION

A. The Town and WMNY agree that the Town Engineer shall be the liaison to WMNY and the Town Engineer shall be kept fully apprised of issues related to the Facility.

B. In the event of any controversy, claim, disagreement or dispute ("Dispute") arising out of or relating to this HCA, or the relationship between the Parties, the Parties shall first use their commercially best efforts to resolve the Dispute through negotiation. During negotiation, the Parties shall, without delay, continue to perform their respective obligations under this HCA that are not related to the Dispute. To invoke the dispute resolution procedures set forth in this Section, the invoking Party shall give to the other Party written notice of its decision to negotiate ("Dispute Notice"). The Dispute Notice shall include a detailed description of the issues subject to the Dispute and a proposed resolution thereof. The Town Supervisor having responsibility for compliance of this HCA and a member of the Executive Management of WMNY will attempt to resolve the Dispute within thirty (30) days of the Dispute Notice. If such individuals are unable to resolve the dispute in thirty (30) days, then thereafter either Party may request mediation prior to initiating litigation.

C. All Disputes shall then be submitted to non-binding mediation prior to initiating any court proceedings. Each Party shall bear its own costs, including its own attorneys' and/or expert fees and costs related to the mediation. The cost of the mediation service shall be borne by both Parties unless otherwise agreed by the Parties. The Town and WMNY shall mutually agree on a mediator for such purposes. Such mediator shall have experience in landfill design and operations. Such mediation shall occur within thirty (30) days of the selection of a mediator. Such mediator shall make its report within thirty (30) days of such mediation. Such decision shall be provided in writing to both WMNY and the Town.

D. If the Dispute is not resolved through the mediation process, either Party may thereafter institute a suit in a court of competent jurisdiction. If any litigation is commenced under this HCA, the successful Party shall be entitled to recover, in addition to such other relief as the court may award, its reasonable attorneys' fees, expert witness fees, litigation-related expenses, court costs and other costs incurred in such litigation or proceeding. Both Parties agree to waive any right to have a jury participate in the resolution of the dispute or claim, whether sounding in contract, tort or otherwise, between any of the Parties or any of their respective affiliates arising out of, connected with, related to, or incidental to this HCA, to the fullest extent permitted by law.

#### XXVI. INDEMNIFICATION

WMNY 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 breach of any of the terms hereof by WMNY, any violation of WMNY's Part 360 Permit or the willful misconduct or negligent act or omission of WMNY, 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, WMNY shall not indemnify the Town from any such liabilities or costs arising from the negligence or willful misconduct of the Town, its employees, residents and agents or third parties not under contract to or control of WMNY.

#### XXVII. 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.

#### XXVIII. ENTIRE AGREEMENT

The Parties hereto understand and acknowledge that this HCA and the terms herein and its attachments represent the entire and complete agreement between the Parties, and all prior agreements between the Parties, whether written or oral, are deemed to have been merged herein or superseded, including, without limitation, the Prior Benefits Agreement; provided however, all Per Ton Payments set forth therein and the conditions and reporting with respect to these shall continue in accordance with the Prior Benefits Agreement until January 1, 2022, at which time the entire Prior Benefits Agreement shall be deemed superseded by this HCA.

## XXIX. 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 Macedon.  
                  Attn: Then serving Town Supervisor  
                  32 West Main Street  
                  Macedon, NY 14502

WMNY:          Waste Management of New York, LLC  
                  425 Perinton Parkway Fairport, NY 14450  
                  Attn: District Manager

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



IN WITNESS WHEREOF, the Parties hereto have signed this Host Community Agreement the day and year first written above.

THE TOWN OF MACEDON

WASTE MANAGEMENT OF  
NEW YORK, LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Approved by Resolution of the Town Board on the day of 13<sup>TH</sup> Day of January, 2022.