

**AGREEMENT BETWEEN
THE TOWN OF NORTHFIELD
AND
CASELLA WASTE MANAGEMENT OF MASSACHUSETTS, INC**

THIS AGREEMENT is made and entered into this ___ day of January 2024, by and between Casella Waste Management of Massachusetts, Inc., with an address of 43 Industrial Drive, Belmont, NH 03220 (“**Casella**”) and the Town of Northfield, New Hampshire, a New Hampshire municipal corporation with an address of 21 Summer Street, Northfield, NH 03276 (“**Town**”) (“**Agreement**”).

WITNESSETH:

WHEREAS, Casella is in the business of collecting and transporting Acceptable Waste (as hereafter defined);

WHEREAS, Town is a municipal subdivision of the State of New Hampshire, and is responsible for, among other services, providing its residents with Acceptable Waste collection and transport services;

WHEREAS, Town wishes to contract for Acceptable Waste collection and transport services, and Casella wishes to provide such services to the Town;

NOW THEREFOR, in consideration of their mutual conditions and covenants contained herein, the parties hereto, intending to be legally bound, do hereby agree as follows:

I. DEFINITIONS

“**Acceptable Waste**” means Municipal Solid Waste. However, in no event shall Acceptable Waste mean or include Unacceptable Waste.

“**Bulky Waste**” means a large item or bundle, other than commercial Construction and Demolition Debris, White Goods or CRT’s, which cannot fit into a container or bag. Items include, but are not limited to, mattresses, couches, dressers/bureaus, bundled construction debris, chairs, large children’s toys, and prepared carpets. However, in no event shall Bulky Waste mean or include Unacceptable Waste.

“**Carts**” means sixty five (65) gallon or ninety five (95) gallon wheeled cart, one per residence for Acceptable Waste collection, owned and provided by Casella at its sole cost and expense.

“**Cathode Ray Tube**” (CRT) means any glass tube used to provide the visual display in televisions and computer monitors as defined by the State of New Hampshire’s Hazardous Waste Rules ENV-WM 1101, “Universal Wastes”.

“**Construction and Demolition Debris**” means bulky waste building materials resulting from the process of construction, remodeling, repair and demolition activities. However, in no event shall Construction and Demolition Debris mean or include Unacceptable Waste.

“**Contractor**” means Casella Waste Management of Massachusetts, Inc., its successors and assigns.

“**Disposal Facility**” means a facility selected by the Contractor or its affiliates that will receive and dispose of Acceptable Waste.

“**Municipal Solid Waste**” means non-baled solid waste normally disposed of by households and small businesses in the State of New Hampshire, and does not include Bulky Waste, Construction and Demolition Debris, Yard Waste, Cathode Ray Tubes or White Goods as defined herein. However, in no event shall Municipal Solid Waste mean or include Unacceptable Waste.

“**Residential Unit**” means a dwelling unit such as a single family residence, mobile home, condominium, or townhouse dwelling. For the purposes of this Agreement, Residential Unit

shall also include other locations identified by the Town that are to be serviced under this Agreement, but which may not be a dwelling (for example, the Town locations to be serviced as defined herein).

“Town” means the Town of Northfield, New Hampshire.

“Unacceptable Waste” means: (a) any material that by reason of its composition, characteristics or quantity is ineligible for disposal at the Disposal Facility or for handling at the MRF; as determined by Casella, or any applicable federal, state or local laws, rules, regulations, or permits; (b) hazardous, toxic, radioactive, hospital or laboratory wastes or substances, unless said waste has been deemed Acceptable Waste by any applicable federal, state or local laws, rules, regulations, or permits; (c) any other material that Casella reasonably concludes would require special handling or present an endangerment to the Disposal Facility or MRF, public health or safety, or the environment.

“White Goods” means any large metal item which cannot fit into a container or bag. Items include but are not limited to: dishwashers, washing machines, stoves, dryers or any appliance that contains Freon (refrigerators, air conditioners, freezers, dehumidifiers).

“Yard Waste” consists of, but is not limited to: leaves, grass, pine needles, logs, or brush.

II. COLLECTION AND TRANSPORT OF ACCEPTABLE WASTE AND RECYCLING

Section 1. Casella shall do all the work necessary and furnish all motor trucks, labor, materials and implements as are necessary and required for the performance of the services hereinafter specified and in accordance with this Agreement (collectively referred to as the **“Services”** or **“Work”**) which shall be done in a good and workmanlike manner.

Section 2. Communication

In the case of service delays due to conditions beyond the control of Casella, such as weather, accident, road restrictions, etc., an authorized agent of Casella shall promptly contact the Town.

In the case of inclement weather, authorized agents of the Town and Casella shall make a joint decision prior to 5:00 a.m. to start collection service later in the day or to reschedule pick-up for the next consecutive scheduled pick-up day. If pick-up is moved to the next consecutive day, future collections shall be delayed by a day for the balance of the week.

Section 3. Collection Hours, General

Hours of collection shall be from 7:00 A.M. until 6:00 P.M., Monday-Friday, excluding holidays. When a regular collection date falls on a holiday, or on the day following a holiday, the collection schedule shall be delayed one day for the balance of that week. Holidays observed include New Years’ Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas. In the case of a missed collection pick-up, collection shall be made on the next scheduled collection day. Casella will prepare a collection schedule annually, which shall be subject to review and written approval by the Town.

Acceptable Waste placed for collection must be in authorized Carts. Overflow materials placed outside of Carts, in bags, or in unauthorized containers will not be collected by Casella, however, all materials which escape from collection vehicles or Carts when being handled by Casella shall be promptly retrieved by Casella.

Section 4. Acceptable Waste Collection

Once per week, Casella will collect Acceptable Waste from Carts placed at the sidewalk, at the edge of the travel way, or at such place as the Town shall direct, from each Residential Unit

situated upon public and private ways within Town. All Acceptable Waste shall become the property of Casella once collected. Any waste that is collected but which is later determined not to be Acceptable Waste shall remain the property of the Residential Unit where the waste was collected, and shall in no way be deemed to be or become property of Casella. After pick-up, Casella shall place Carts in the original location at pick-up, off the traveled way.

Section 5. Contractors Personnel

Casella shall assign qualified personnel with full authority to resolve complaints and service issues. Casella will provide the names and contact information of such personnel to the Town, which shall be available and on-call during normal business hours, and in the event of an emergency, after business hours. Employees shall carry a valid operator's license for the type of vehicle being operated and shall conduct themselves in a courteous and professional manner towards the public. Casella will promptly investigate and address complaints from the Town regarding Services or personnel to ensure that Services are being provided in accordance with this Section and Agreement.

III. FEES

Section 1. The Town shall pay Casella Fees as follows:

Acceptable Waste Collection: The Town agrees to pay Casella Two Hundred Twenty-Two Thousand Two Hundred Fifty Dollars (\$222,250.00) annually in equal monthly installments, for Acceptable Waste collection within the Town for year one of the Agreement.

Disposal: The Town is a member of the Concord Regional Solid Waste/Resource Recovery Cooperative (CRSWRRC). All Acceptable Waste collected shall be delivered to the Wheelabrator Facility in Penacook, New Hampshire under the terms set forth in the Solid Waste Disposal Contract between CRSWRRC and Wheelabrator Concord Company L.P. as long as such agreement is in effect.

Transfer Station Hauling: The Town agrees to pay Casella Two Hundred Ninety-Five Dollars (\$295.00) per haul, for Acceptable Waste collected at the Town Transfer Station for year one of the Agreement.

Disposal: The Town is a member of the Concord Regional Solid Waste/Resource Recovery Cooperative (CRSWRRC). All Acceptable Waste collected shall be delivered to the Wheelabrator Facility in Penacook, New Hampshire under the terms set forth in the Solid Waste Disposal Contract between CRSWRRC and Wheelabrator Concord Company L.P. as long as such agreement is in effect.

Section 2. Fee Adjustments:

1. **Fuel.** Casella shall assess a fee (the "Fuel Adjustor") on a monthly basis to cover increases in Casella's costs caused by increases in the cost of diesel fuel over a floor price of \$4.00 per gallon (the "Floor Price") based on the listed average price for diesel fuel for the month of service, as set forth on the EIA Retail On Highway Diesel Prices index for New England PADD 1A (the "Index") or a successor index. Each month Casella will assess a Fuel Adjustor whenever the average monthly Index fuel price listed for the month of service (the "Service Month Index Price") exceeds the Floor Price. The Service Month Index Price can be located on the internet at the following web site: <http://www.eia.gov/petroleum/gasdiesel/> and is listed in the spreadsheet link titled "full history". The Fuel Adjustor will be made according to the

following formula: $(Service\ Month\ Index\ Price\ minus\ Floor\ Price) / (Fuel\ Allocation) = Fuel\ Adjustor$. The maximum fuel charge will be \$5,000.00 per contract year.

Pass Through Charges. Fees may be further adjusted upon thirty (30) days' notice to cover increases in disposal and processing or due to uncontrollable circumstances, including, without limitation, changes in local, state or federal laws or regulations, imposition of taxes, fees or surcharges.

Annual Fee Increase. All Fees will be increased annually on the anniversary of each year of the Term by a percentage equal to the greater of (a) 5.0% or (b) the year-over-year percentage change in the Consumer Price Index for Garbage and Trash Collection. Consumer Price Index increases for Garbage and Trash Collection will be based on the Bureau of Labor Statistics as reported for the most recent month prior to the date of pricing increase/reset using the unadjusted percentage change for the most recent month as compared to the same month for the prior year. Reference is made to <https://www.bls.gov/news.release/cpi.t02.htm>.

Section 3. Payment: The Town shall pay Casella Fees for Services rendered under this Agreement in accordance with following payment schedule:

Casella shall submit an invoice to the Town by the 10th day of the month following the month Services were provided. All invoices shall be due and payable on a strict net thirty (30) days from date of invoice. Interest shall accrue on all past due invoices at the rate of one and one-half percent (1.5) per month.

IV. TERM

The Term of this Agreement shall be the period from April 1, 2024 through March 31, 2029, unless earlier terminated as provided for under the terms of this Agreement. The term of the Agreement shall be extendable for two (2) additional one (1) year terms mutually agreed to in writing by the parties

V. CASELLA WARRANTIES

Casella warrants and represents to the Town:

- a. Casella shall comply with existing requirements of federal, state and local laws, rules, regulations and ordinances applicable to the Services.
- b. Casella shall have and maintain through the term of this Agreement, at its sole cost and expense, all permits and licenses which are required by state or federal law or regulation, or by municipal ordinance, for the provision of Services.
- c. Casella has and shall provide trucks, personnel, and equipment sufficient to meet its obligations pursuant to this Agreement, in accordance with the collection schedules set each year by Casella and the Town.

CASELLA MAKES NO ADDITIONAL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

VI. TOWN WARRANTIES

The Town warrants and represents to Casella that:

- a. The Town shall take reasonable measures to cause to be delivered to Casella all Acceptable Waste and Recyclable Materials generated within its boundaries during the Term, as provided in this Agreement.
- b. The Town shall pay Casella for Services rendered as provided in this Agreement.

VII. LIMITATION OF DAMAGES

Neither party to this Agreement shall be entitled to consequential, indirect, special, punitive or treble damages as part of the Agreement.

VIII. INDEMNIFICATION

Casella shall defend, indemnify and hold harmless the Town and its officers, Selectboard members, elected officials, employees, volunteers, and agents (“Town Indemnitees”) from and against any and all liabilities, claims, damages, losses, penalties, forfeitures, suits, costs, and expenses including costs of defense, settlement and reasonable attorney’s fees, which the Town Indemnitees may hereafter incur, become responsible for, or pay out as a result of (i) death or bodily injuries to any person, destruction or damage to any property, including the loss of use resulting there from; (ii) contamination of the environment; or (iii) any violation of governmental law, regulations, or orders, to the extent caused, in whole or in part, by Casella, its employees, representatives agents, subcontractors, customers, guests, invitees or anyone directly or indirectly employed by any of them or anyone who acts for them, provided that in no event shall Casella indemnify or hold harmless the Town Indemnitees for their own negligence or willful misconduct.

IX. EXCUSE OF PERFORMANCE

Delays in performance or failure of performance by either party of any of its obligations pursuant to this Agreement may be excused in the event such performance is prevented by a cause or causes beyond the reasonable control of such party, provided that prompt notice of such delay or failure is provided by the affected party to the non-affected party and the affected party is diligent in attempting to remove such cause(s). Such causes shall include, but shall not be limited to, acts of God, war, riot, fire, explosion, accident, flood, sabotage; lack of adequate fuel, power, raw materials, labor, containers, or transportation facilities; lack of available permitted disposal capacity at Disposal Facility; national defense requirement; injunctions or restraining orders; changes in governmental laws, regulations, permits, approvals, requirements, orders or actions; refusal by any government entity to grant, issue or renew any required permit or approval for the Disposal Facility; labor trouble, strike, lockout or injunction (provided that neither party shall be required to settle labor disputes against its own best judgment) (collectively “excused event”). In the event of a delay in or nonperformance by Casella as a result of an excused event under this Article, the Town may terminate this Agreement, upon ten (10) days written notice to Casella. Notwithstanding anything to the contrary in this Agreement, including but not limited to the occurrence of an excused event, the Town shall not be obligated to pay for Services not rendered by Casella.

X. INSURANCE

Casella shall obtain and maintain throughout the term of this Agreement, at Casella’s sole cost and expense, not less than the insurance coverage set forth below:

<u>Coverage</u>	<u>Limits of Liability</u>	
Worker's Compensation	Statutory	
Employer's Liability	\$1,000,000	
Personal/Bodily Injury Liability	\$2,000,000	Combined Single Limit
Property Damage Liability	\$2,000,000	Combined Single Limit
Automobile Bodily Injury	\$5,000,000	Combined Single Limit
Automobile Property Damage	\$5,000,000	Combined Single Limit
Pollution Liability Insurance	\$1,000,000	

Casella shall provide excess coverage above the underlying Commercial General Liability, Commercial Business Automobile Liability, pollution liability, and Workers Compensation insurance policies with limits of, minimum, \$5,000,000 per occurrence or claim and \$5,000,000 aggregate.

The certificate of insurance shall provide the Town with thirty (30) days written notice of cancellation of any of the coverage's named in the certificate(s). The Town shall be named as additional insured under the Casella's general liability insurance, automobile liability insurance and pollution liability insurance policies.

Casella shall require certificates of insurance from subcontractors. Subcontractors will carry limits of insurance equal to or greater than those carried by Casella. These certificates shall evidence waivers of subrogation in favor of Casella and the Town, and shall be made available to the Town upon request.

XI. EXCLUSIVITY

The Town agrees that during the Term hereof, Casella shall be the sole and exclusive provider to the Town of the Services set forth herein.

XII. INDEPENDENT CONTRACTOR

At all times during the term of this Agreement, Casella is and shall perform the Services required in this Agreement as an independent contractor, and as such shall have and maintain complete control over all of its employees, agents and operations. Neither party nor anyone employed by Casella shall be, represent, act, support or be deemed to be the agent, representative, employee or servant of the Town.

XIII. COVENANTS

In addition to its other obligations hereunder, both the Town and Casella represent, warrant, covenant and agree to each other that each shall (a) cooperate in all respects with all orders or requests by any governmental body relating to the regulation of Acceptable Waste, the Disposal Facility, MRF, or this Agreement; (b) cooperate in any reasonable efforts to maintain and apply for any permits, renewals, and necessary approvals that shall be necessary to perform its obligations under this Agreement; and (c) shall provide immediate oral notice and confirming written notice within twenty-four (24) hours of becoming aware of the possibility that materials other than Acceptable Waste may be contained in waste collected hereunder.

XIV. GOVERNING LAW AND AGREEMENT TO MEDIATE

This Agreement and any issues arising hereunder or relating hereto shall be governed by and construed in accordance with the laws of the State of New Hampshire.

The Parties agree that all actions or proceedings arising in connection with this agreement shall be tried and litigated only in the state and federal courts having jurisdiction over Rockingham County, New Hampshire.

The undersigned parties agree that any disputes that may arise between them (including but not limited to any controversies or claims arising out of or relating to this Agreement or any alleged breach thereof, and any dispute over the interpretation or scope of this mediation clause) shall be subject first to non-binding mediation administered by a third party mediator selected by the parties.

XV. ENTIRE AGREEMENT AND CONSTRUCTION

This Agreement represents the entire understanding and agreement between the parties hereto relating to the receipt, transportation, storage, treatment, processing, and disposal of waste and supersedes any and all prior agreements, whether written or oral that may exist between the parties regarding the same. The validity, interpretation, and performance of this Agreement shall be governed and construed in accordance with laws of the State of New Hampshire.

XVI. SURVIVAL

The obligations of the Town, as well as any obligation for the payment of money or otherwise arising from the conduct of the parties during the term hereof shall survive the Term hereof and shall remain in full force and effect until satisfied, discharged, or waived. Any terms, obligations, conditions, representations, warranties, covenants and indemnities herein which are or may be performed in whole or in part subsequent to the termination or expiration of this Agreement shall survive the termination or expiration for any reason.

XVII. ASSIGNMENT

Casella may assign this Agreement, with prior written consent from the Town: (1) at its expense to a person, firm, or corporation acquiring all or substantially all of the business and assets of Casella or Casella Waste Systems, Inc., or its subsidiaries, provided that the assignee assumes the obligations of Casella arising hereunder from and after the date of acquisition, and (2) at its expense as security to entities providing financing for Casella or Casella Waste Systems, Inc., or its subsidiaries for construction, reconstruction, modification, replacement or operation of any of the facilities of Casella or its affiliates. All other efforts or attempts or actual assignment by either of the parties to assign this Agreement shall be void ab initio, and without effect.

XVIII. TERMINATION

This Agreement may be terminated:

- a. by both parties upon mutual written agreement; or
- b. immediately upon notice by either party in the event that any of the representations and warranties contained in this Agreement are shown to be untrue; or
- c. by either party in the event of a failure by the other party to perform a material obligation as follows (a "Default"): if the Default has not been cured by the defaulting party within thirty (30) days from receipt of notice from the non-defaulting party, the non-defaulting party may (i) terminate this Agreement immediately upon notice, or (ii) agree in writing that the defaulting party is diligently pursuing a cure, and extend the cure period at its sole discretion, subject to immediate termination upon notice; or

- d. automatically, at the end of the period of the Town's approved appropriation, in the event adequate appropriations are not approved by the Town through the appropriate process to fund this Agreement, any such termination shall be without any additional cost to, or penalty paid by, the Town.

XIX. MISCELLANEOUS

If any provision of this Agreement or any portion of such provision, of the application thereof to any circumstances or person is held invalid, the remainder of this Agreement, or the remainder of such provisions, and the application thereof to other persons or circumstances shall not be affected thereby. No provision of this Agreement may be waived, whether by course of conduct or otherwise, except by an instrument in writing signed on behalf of each party and otherwise as expressly set forth in this Agreement. This Agreement shall bind, and insure to the benefit of the parties, their heirs, successors, and assigns. This Agreement is not intended to be a third party beneficiary contract or to confer any rights on any person other than the parties to this Agreement.

XX. AUTHORIZATION AND EXECUTION

The execution, delivery, and performance of this Agreement by the Town has been duly authorized by all appropriate actions of its governing body; this Agreement has been duly executed and delivered by its authorized officer(s); and this Agreement constitutes the legal, valid and binding obligations of the Town, enforceable in accordance with its terms.

Signature Page Follows

IN WITNESS WHEREOF, the parties hereto intending to be legally bound have caused their duly authorized representatives to set their hands and seals on the date and year written below.

Accepted this ____ day of _____, 2024.
Town of Northfield

By: _____
Authorized Person

Witness

Accepted this ____ day of _____, 2024.
Casella Waste Management of Massachusetts, Inc.

By: _____
Authorized Person

Witness

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