

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

**SOLID WASTE TRANSPORTATION AND DISPOSAL AGREEMENT FOR THE TOWN  
OF DEERFIELD, NH**

**THIS AGREEMENT** is made and entered into this 20th day of March 2024, by and between Casella Waste Management of Massachusetts, Inc., with an address of 53 Pelham Road, Salem, NH 03079 (“**Casella**”) and the Town of Deerfield, New Hampshire, a New Hampshire municipal corporation with an address of 8 Raymond Road, Deerfield, NH 03037 (“**Town**”).

**WITNESSETH:**

**WHEREAS**, Casella is in the business, among others, of transporting and disposing Acceptable Waste and Recyclable Materials;

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

**WHEREAS**, Town is desiring of procuring such Acceptable Waste transportation and disposal services, and Casella is desiring of consideration of providing such services to the Town; and

**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, bureaus, bundled construction debris, chairs, large children’s toys, and prepared carpets. However, in no event shall Bulky Waste mean or include Unacceptable Waste.

**“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 operated by the Contractor or its affiliates that will receive and dispose of Acceptable Waste and is legally empowered to accept same.

**Material Recovery Facility (“MRF”)** means a location to be maintained by the Contractor for the purpose of sorting and preparing Recyclable Materials for market.

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

**“Recyclable Materials” or “Zero-Sort®”** means mixed paper to include but not be limited to: newspapers, office paper, magazines, junk mail, paper bags; boxboard (dry-food boxes, egg cartons & rolls); corrugated cardboard (bundled, not exceeding 2’x2’x2’); plastic bottles, jugs, tubes & lids (empty kitchen, laundry & bath containers); glass bottles and jars; aluminum and steel cans (foil & empty food & beverage cans).

**“Town”** means the Town of Deerfield, 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 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, the public health or safety, or the environment.

**“White Goods”** means any large metal items, 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. TRANSPORTATION AND DISPOSAL OF ACCEPTABLE WASTE**

**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 proper performance of the service hereinafter specified and in accordance with the attached Specifications (collectively referred to as the “service” or “work”).

**Section 2.** All service under this Agreement shall be done to the satisfaction of the Board of Selectmen and its agent and shall conform to all determinations and directions of the Board of Selectmen and its agent relating to the proper interpretations of the specifications, the fitness of the persons employed on the work or the number thereof, the suitability, amount, quality and value of anything done, injury or loss sustained by Casella, and the amount thereof, or any expense, loss or damage incurred by the Town, and the amount thereof or the date of completion or termination of the work. Casella shall permit the Board of Selectmen and/or the agent or such persons designated by the Board of Selectmen to inspect the work and equipment at all times in all places. Casella and all its employees and agents shall perform in a professional manner, including but not limited to dress and language.

### **Section 3. Communication**

Regular meetings shall be held between authorized agents of the Town and authorized agents of Casella throughout the year as needed.

In the case of a situation beyond the control of Casella, such as weather, accident, road restrictions, etc., an authorized agent of Casella shall contact the Town and apprise them of the situation.

In the case of inclement weather, an authorized agent of the Town and Casella shall make a joint decision to service later in the day or to reschedule pick up to the next day.

### **Section 4. Performance Bond**

There is no Performance Bond associated with the Contract.

### **Section 5. Collection Hours**

The hours of service shall be from 7:00 A.M. until 4:00 P.M. When a service date falls on or after a holiday the service shall be delayed one day for the balance of that week. The holidays to be observed are New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas. Casella shall not make collections on any holiday.

### III. FEES

The Town shall pay Contractor as follows,

Town of Deerfield, NH (1 Year Agreement)				
Description	Haul Rate (Per Haul)	Disposal Rate (Per Ton)	Monthly Rental Rate	Notes
Municipal Solid Waste (Trailer)	\$815.00	Billed Direct to Town	\$1,500.00	\$110.00/Hr Demurrage Charge
Municipal Solid Waste (Roll Off)	\$465.00	Billed Direct to Town		
Construction and Demolition Debris	\$300.00	\$145.00 per Ton		
Recycle (OCC/Paper)	\$350.00	New England High minus \$90.00 per Ton	\$150.00	42YD Break Away Container
Tin	\$300.00	100% Rebate to Town		
Plastic	\$465.00	Billed Direct to Town	\$150.00	42YD Break Away Container
Glass	\$440.00	Billed Direct to Town		
Spare Compactor Box			\$150.00	42YD Break Away Container
Trailer Decommission Fee	\$10,000.00	One time payment paid on contract expiration date: March 31, 2025		

Town of Deerfield, NH (Year 2 Option)				
Description	Haul Rate (Per Haul)	Disposal Rate (Per Ton)	Monthly Rental Rate	Notes
All Fees will be increased annually on the anniversary of each year of the Term (April 1st) 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 <a href="https://www.bls.gov/news.release/cpi.t02.htm">https://www.bls.gov/news.release/cpi.t02.htm</a> .				
Trailer Decommission Fee	\$5,000.00	One time payment paid on contract expiration date: March 31 2026		

All Fees will be increased annually on the anniversary of each year of the Term (April 1<sup>st</sup>) 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>.

Collection Customer Energy and Environmental Fee: Casella will assess a Collection Customer Energy and Environmental Fee each month, calculated based on a percentage of total invoice, excluding taxes. This fee is collected to recover expenses associated with fluctuating fuel costs as well as direct and indirect company-wide costs to operate our collection, transfer, recycling, landfill, and landfill gas to energy and organics operations in a safe and environmentally sustainable manner. <https://www.casella.com/fees>.

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

Trailer fees may be further adjusted upon thirty (30) days' notice to cover increases in hauling, rental and demurrage charges.

The Town agrees to pay Casella monthly 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 in 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 for a period of one (1) year, from April 1, 2024 through March 30, 2025, unless earlier terminated as provided for under the terms of this Agreement. The term of the Agreement shall be extendable for an additional one (1) year period upon mutual agreement by the parties.

#### **V. CASELLA WARRANTIES**

Casella warrants and represents to the Town:

- (a) Casella shall comply with all existing requirements of federal, state and local laws, rules, regulations and ordinances applicable to the collection and transportation services to be performed by it hereunder.
- (b) If any discrepancy or inconsistency is discovered in the Agreement for this relation to such federal, state and local laws, rules, regulations and ordinances Casella shall forthwith report the same to the Town in writing.
- (c) Casella understands and agrees that because public health, safety and convenience of Town are involved in the performance of this Agreement, the performance requires meticulous attention to detail and that a high standard of work is justified.

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 all Acceptable Waste generated within its boundaries and under its control during the term of this Agreement, which are developed, owned, operated and otherwise controlled by the Town.
- (b) The Town shall make all monthly payments to Casella that are properly payable.

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

#### **VII. LIMITATION OF DAMAGES**

Neither party to this Agreement shall be entitled to consequential, direct, 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, board members, 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; that are 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.

#### **IX. EXCUSE OF PERFORMANCE**

Except for the obligation to pay for services rendered (the Town shall not be obligated to pay for services not rendered by Casella as a result of excused event under this Article), delays, or failure of performance by either party of any of its obligation pursuant thereto, 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 delays 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 nonperformance by Casella as a result of excused event under this Article, the Town may terminate this Agreement, upon ten (10) days written notice to 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	

Coverage includes all owned, non-owned, leased and hired automobiles. If pollution liability coverage is on a claims-made basis, Casella will maintain coverage in force for a period of three (3) years following completion of the work specified in the agreement.

Casella shall provide excess coverage for each contract 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, the 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 or MRF or this Agreement; (b) cooperation 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 with immediate oral notice and confirming written notice within twenty-four (24) hours of its awareness of the possibility that materials other than Acceptable Waste may be contained in the waste that may be or has been 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. This Agreement and the attached Exhibits and all other attachments and addenda are hereby made part of this Agreement. 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 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) 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 the parties to assign this Agreement shall be void ab initio, and without effect.

#### **XVIII. TERMINATION**

This Agreement may be terminated:

1. 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
2. Except in the case of non-performance of services by Casella (which shall be governed by Article XVIII, section 3 below), 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
3. Should Casella after notice from the Town and a ten (10) day opportunity to correct the problem, fail or refuse to perform services under Article II, in accordance with this Agreement, unless such failure is caused by a default by the Town, then the Town shall have the right to terminate this Agreement. or
4. The Town shall have the right to terminate this Agreement, without cause, upon ninety (90) days prior written notice to Casella.

By the town in the event adequate appropriations are not approved by the town to fund the agreement.

#### **XIX. MISCELLANEOUS**

If any provisions 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.



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 25<sup>th</sup> day of March, 2024.  
Town of Deerfield

By: Frederick J. McGarry  
Frederick McGarry – Board of Selectmen Chair

Paul W. P. [Signature]  
Witness

Accepted this 26<sup>th</sup> day of March, 2024.  
Casella Waste Management of Massachusetts, Inc.

By: [Signature]  
Authorized Person

[Signature]  
Witness