



CITY OF PITTSFIELD

DEPARTMENT OF PUBLIC SERVICES & UTILITIES, 100 NORTH ST, PITTSFIELD, MA 01201 413-499-9330

May 21, 2024

TO THE HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL:

Submitted herewith for your approval is the draft agreement between the City of Pittsfield and Casella Waste Management, Inc., for the operation of the Casella owned and operated Transfer Station located at 500 Hubbard Ave., which includes **transportation and disposal of waste, transportation of recyclables**, and the **residential drop-off service for Pittsfield residents**. The negotiated rates for waste and recyclables transportation and disposal are competitive. While the rate for trash is higher than the current agreement, the recyclables transportation rate is 18% less than the current agreement. This provides an incentive for residents and the community to divert from the waste stream.

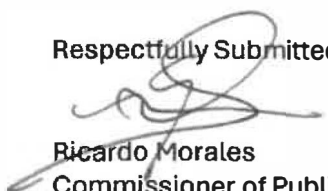
This agreement is pivotal in our efforts to improve waste management services, promote sustainability, and ensure a cleaner environment for our community. This letter outlines the key elements of this agreement and the anticipated benefits to our city.

Key Elements of the Agreement

The proposed agreement with Casella Waste Management, Inc. covers several critical areas:

- **Transportation and Disposal of Waste:** Under the agreement, Casella will handle the transportation and disposal of municipal solid waste at a rate of \$122 per ton.
- **Transportation of Recyclables:** Casella will also manage the transportation of recyclables at a rate of \$75 per ton.
- **Residential Drop-Off Service:** The agreement includes a residential drop-off service for Pittsfield residents with the following details:
 - A residency sticker for an annual fee is required for access, which includes free recycling and yard waste services.
 - Additional fees apply for different bag sizes for trash.
 - Recyclables will be free of charge with a weekly alternating schedule for paper/cardboard and bottles/cans.
 - Additional fees will apply for bulky items, mattresses, tires, e-waste, and Freon items; metal and brush disposal are free with specific conditions.

Respectfully Submitted,



Ricardo Morales

Commissioner of Public Services & Utilities

Cc: Matt Kerwood, Finance Director
Jeff Roucoulet, Business Manager

AGREEMENT FOR DISPOSAL SERVICES

THIS AGREEMENT (the "Agreement") is made this 1st day of July, 2024, by and between the City of Pittsfield, Massachusetts, a municipal corporation existing under the laws of the Commonwealth of Massachusetts (hereinafter "Generator"), and Casella Waste Management, Inc., a Vermont business corporation duly authorized to conduct business in the Commonwealth of Massachusetts (hereinafter "TS Operator").

DEFINITIONS

"Acceptable Waste" means municipal solid waste or "MSW". In no event shall Acceptable Waste mean or include Unacceptable Waste.

"Recyclable Materials" shall mean dual sort recyclables to include all recyclables accepted by the city and under the curbside collection agreement.

"Transfer Station" means the Pittsfield, Massachusetts Transfer Station at 500 Hubbard Avenue which is operated by TS Operator.

"Unacceptable Waste" means any material that is not Acceptable Waste or Recyclable Materials, including without limitation: (a) any material that by reason of its composition, characteristics or quantity is ineligible for disposal at the Transfer Station, as determined by TS Operator in its sole discretion, or any applicable federal, state or local laws, rules, regulations, or permits; (b) hazardous, toxic, radioactive, hospital or laboratory wastes or substances; (c) any other material that TS Operator reasonably concludes would require special handling outside the normal course or present an endangerment to the Transfer Station, the public health or safety, or the environment.

Other terms used in this Agreement are defined herein.

1.1 Acceptable Waste. Commencing upon the Effective Date, Generator shall have the right to deliver Acceptable Waste to the Transfer Station subject to the following quantities and restrictions:

a. Generator shall provide or be responsible for providing to TS Operator all appropriate manifesting if required.

b. All Acceptable Waste shall be managed by Generator and prepared for disposal by Generator in strict conformance with all federal, state and local laws, regulations, rules and ordinances.

Generator Initial _____

TS Operator Initial _____

1.2 Unacceptable Waste.

a. TS Operator shall have the right to inspect, test and analyze any and all deliveries from Generator. TS Operator has the right to reject any delivery of waste in its sole discretion if (i) it is or contains Unacceptable Waste; or (ii) it has been generated or managed in a manner inconsistent with federal, state or local requirements for generating, handling or disposing of such material.

b. Any loads rejected by TS Operator shall be immediately removed from the Transfer Station, and disposed of in accordance with all federal, state and local laws, regulations, rules and ordinances. Generator shall indemnify and hold TS Operator harmless for any costs, expenses or liabilities (including without limitations costs of proper disposal, costs of transportation, fines, penalties, and attorney's fees) arising therefrom.

c. Generator shall indemnify TS Operator and any subsidiary, parent or affiliate from any and all costs incurred by TS Operator or any other party with respect to the handling of Unacceptable Waste, including without limitation any fines, penalties, investigation, transportation, removal or remedial costs assessed, incurred or threatened.

d. Acceptance of a delivery at the Transfer Station shall not create any presumption that the delivery did not contain Unacceptable Waste, whether or not such delivery was inspected or tested. Title to Unacceptable Waste shall remain with the Generator. Title to Acceptable Waste shall transfer to TS Operator at the time of acceptance at the Transfer Station.

1.3 Recyclable Materials. [fee structure]

a. Generator agrees to pay TS Operator disposal fees for Acceptable Recyclables at the rate of \$75.00 ton.

1.4 Fees. Generator agrees to pay TS Operator disposal fees for Acceptable Waste at the rate of \$122 per ton.

1.5 Fee Adjustments:

a. Fees will be adjusted annually on the anniversary of each year of the Term by a percentage equal to 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>

1.6 Payment. All invoices shall be due and payable on a strict net thirty (30) days from date of invoice basis. Generator shall pay any and all costs incurred by TS Operator for collection of unpaid balances, including without limitation costs of investigation and attorneys' fees.

Generator Initial _____

TS Operator Initial _____

1.7 Hours of Operation

a. Regular hours of operation at the Transfer Station are: Monday-Friday 7:00 AM to 5:00 PM and are subject to change without notice.

b. The Transfer Station will not be open on the following major holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Other closures may be observed at the Transfer Station without prior notice.

1.8 Access. TS Operator grants Generator and its agents, reasonable access to the Transfer Station for the limited purposes of this Agreement. Generator shall comply, and shall be responsible for the compliance of all of its agents, with all applicable laws and regulations, as well as all of TS Operator's safety rules and regulations at the Transfer Station. TS Operator will post or provide Generator with a copy of such safety rules and regulations, as appropriate.

1.9 Residential Drop-off

a. The Residential Drop-Off Service at the Transfer Station will be available Wednesdays from 12:00 PM to 3:30 PM, Thursdays from 12:00 PM to 3:30 PM, and Saturday from 7:00 AM to 12:00 PM. This service includes access to a variety of waste disposal options for residents, including the disposal of household waste, recyclables, bulky items, and other materials. Recycling will follow a weekly schedule, with Paper/cardboard accepted one week and bottles/cans accepted the next, following the same curbside pickup schedule. Additionally, brush and yard waste can be dropped off free of charge to residents. Details on the fees associated with these services can be found in the Schedule of Fees, included as Attachment B to this Agreement.

2. **TERM**

The initial Agreement term ("Term") shall be a period of 5 years, running from July 1, 2024 through June 30, 2029. Each one-year period of time within the Term shall be a "Term Year". The parties may mutually agree to renew the Term for one (1) additional 5- year period.

3. **WARRANTIES AND COVENANTS**

3.1 Warranties and Covenants of Generator.

a. Generator represents and warrants that (i) all waste delivered to the Transfer Station shall be Acceptable Waste; (ii) the waste shall comply with all applicable requirements under federal, state or local laws and regulations; and (iii) no change shall be made to the composition of such Acceptable Waste unless agreed to in writing by TS Operator.

b. Generator shall not include any Unacceptable Waste in any shipment.

c. Generator shall (i) cooperate in all respects with all orders or requests to TS Operator by any governmental body relating to the regulation of the Transfer Station or this Agreement; (ii) cooperate with TS Operator in any reasonable efforts by TS Operator to maintain

Generator Initial _____

TS Operator Initial _____

and apply for any permits, renewals, and necessary approvals that shall be necessary to perform its obligations under this Agreement.

d. Generator shall provide 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 any delivery.

e. Generator shall provide TS Operator with evidence of its insurance and the insurance of its haulers upon TS Operator's request.

f. Generator shall be fully responsible for the actions or omissions of the transporters used to deliver waste to the Transfer Station. Generator shall ensure that its transporters (i) perform their obligations in a good and workmanlike manner consistent with applicable best professional practices and standards in the industry for performing similar services; (ii) comply with all applicable federal, state and local laws and ordinances and all lawful orders, rules and regulations of any governmental authority, including but not limited to, social security and income tax withholding laws, employment compensation laws, environment, safety and health laws; and (iii) have all necessary permits, licenses and other forms of documentation, and its personnel have received all necessary training including, but not limited to, health and safety training, required to perform services hereunder. Upon request of TS Operator, Generator shall furnish copies and/or evidence thereof to TS Operator

3.2 The warranties and covenants of this Section shall survive the expiration or termination of this Agreement.

4. STANDARD TERMS & CONDITIONS

TS Operator's Standard Terms & Conditions are attached hereto as Attachment A and are incorporated hereby in their entirety.

5. NOTICES.

All notices to be given to Generator or TS Operator, shall be in writing and delivered personally, or shall be mailed by U.S. Express, registered or certified mail, return receipt requested or a reputable overnight courier as follows:

Generator Initial _____

TS Operator Initial _____

Generator

City of Pittsfield

TS Operator

Casella Waste Systems, Inc.
25 Greens Hill Lane
Rutland, VT 05701
Attn: General Counsel

6. COUNTERPARTS.

This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but which together will constitute the same instrument.

IN WITNESS THEREOF, the parties have executed this Agreement as of the date first set forth above.

**CASELLA WASTE MANAGEMENT
OF MASSACHUSETTS, INC.**

CITY OF PITTSFIELD:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Generator Initial _____

TS Operator Initial _____

ATTACHMENT A

Standard Terms & Conditions

Governing Law. This Agreement and any issues arising hereunder or relating hereto shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts except for conflicts of law's provisions that would apply the substantive law of another state.

Venue. 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 Massachusetts.

Limitation of Liability. Neither party shall be liable to the other for special, incidental, exemplary, punitive or consequential damages including without limitation loss of use, loss of profits or revenues, or cost of substitute or re-performed services, suffered, asserted or alleged by either party or any third party arising from or relating to this Agreement, regardless of whether those damages are claimed under contract, warranty, indemnity, tort or any other theory at law or in equity.

Disclaimer of Joint Venture, Partnership, and Agency. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the parties or to impose any partnership obligation or liability upon either party. Neither party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other party.

Force Majeure.

a. "Force Majeure" means shall mean any act, event or condition materially and adversely affecting the ability of a party to perform or comply with any material obligation, duty or agreement required under this Agreement, if such act, event, or condition is beyond the reasonable control of the nonperforming party or its agents relying thereon, is not the result of the willful or negligent action, inaction or fault of the party relying thereon, and the nonperforming party has been unable to avoid or overcome the act, event or condition by the exercise of due diligence, including, without limitation: (i) an act of God, epidemic, landslide, lightning, earthquake, fire, explosion, storm, flood or similar occurrence; (ii) an act of public enemy, war, blockage, insurrection, riot, general unrest or restraint of government and people, civil disturbance or disobedience, sabotage, act of terrorism or similar occurrence; (iii) a strike, work slowdown, or similar industrial or labor action; (iv) an order or judgment (including without limitation a temporary restraining order, temporary injunction, preliminary injunction, permanent injunction, or cease and desist order) or other act of any federal, state, county or local court, administrative agency or governmental office or body which prevents a party's obligations as contemplated by this Agreement; or (v) adoption or change (including a change in interpretation or enforcement) of any federal, state or local law after the Effective Date of this Agreement, preventing performance of or compliance with the obligations hereunder.

b. Neither party shall be liable to the other for damages without limitation (including liquidated damages) if such party's performance is delayed or prevented due to an event of Force Majeure. In such event, the affected party shall promptly notify the other of the event of Force Majeure and its likely duration. During the continuation of the Force Majeure Event, the nonperforming party shall (i) exercise reasonable efforts to mitigate or limit damages to the performing party; (ii) exercise reasonable due diligence to overcome the Force Majeure event; (iii) to the extent it is able, continue to perform its obligations under this Agreement; and (iv) cause the suspension of performance to be of no greater scope and no longer duration than the Force Majeure event requires.

c. In the event of a delay in either party's performance of its obligation hereunder for more than sixty (60) days due to a Force Majeure, the other party may, at any time thereafter, terminate this Agreement.

Representations and Warranties of Authority. Each party represents and warrants to the other that:

a. it is duly qualified to do business and is in good standing in every jurisdiction in which this Agreement requires its performance;

b. it has full power and authority to execute, deliver and perform its obligations under this Agreement;

c. the execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action by such party; and

Generator Initial _____

TS Operator Initial _____

d. the execution and delivery of this Agreement by such party and the performance of the terms, covenants and conditions contained herein will not violate the articles of incorporation or by-laws of such party, or any order of a court or arbitrator, and will not conflict with and will not constitute a material breach of, or default under, the provisions of any material contract by which either party is bound.

These warranties shall survive the expiration or termination of this Agreement.

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.

Entire Agreement. It is understood and agreed that all understandings and agreements heretofore had between and parties thereto are merged in this Agreement, which alone fully and completely expresses their agreement and contains all of the terms agreed upon between the parties with respect to the subject matter of this Agreement, and that this Agreement is entered into after full investigation, neither party relying upon any statement or representation, not embodied in this Agreement, made by the other. All exhibits, schedules and other attachments are a part of this Agreement and the contents thereof are incorporated herein by reference.

Amendment. This Agreement may not be amended, modified or supplemented, except in writing and signed by the parties.

Non-Waiver. No waiver by any party to this Agreement of any failure or refusal by the other party to comply with its obligations shall be deemed a waiver of any other or subsequent failure or refusal to so comply. No waiver by either Party of any right or remedy hereunder shall be valid unless the same shall be in writing and signed by the Party giving such waiver. No waiver by either Party with respect to any default, misrepresentation, or breach of warranty or covenant hereunder shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

Severability; Modification Required By Law. If any term or provision of this Agreement shall be found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions thereof or hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreement of the parties herein set forth.

Headings, Pronouns. The headings of sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement. The pronouns "he", "she" or "it" are also used for convenience, and in the event that an improper pronoun has been used, it shall be deemed changed so as to render the sentence in which it is contained effective in accordance with its terms.

Successors and Assigns. This Agreement and all of the provisions thereof and hereof shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

Assignment. Neither this Agreement nor any of the rights, interests, obligations, and remedies hereunder shall be assigned by either party, including by operation of law, without the prior written consent of the other, such consent to not be unreasonably withheld, conditioned or delayed, except (1) to its parents, subsidiaries and affiliates, (2) at its expense to a person, firm, or corporation acquiring all or substantially all of the business and assets of the assigning party provided that the assignee assumes the obligations of the assigning party arising hereunder from and after the date of acquisition, and (3) as security to entities providing financing for the assigning party or for any of its affiliates or for construction, reconstruction, modification, replacement or operation of any of the facilities of the assigning party or its parents, subsidiaries or affiliates.

Generator Initial _____

TS Operator Initial _____

Construction. This Agreement and its exhibits and schedules are the result of negotiations between the parties and have been reviewed by all parties. Accordingly, this Agreement will be deemed to be the product of the parties thereto and no ambiguity will be construed in favor of or against any party.

No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any third party any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

No Brokers. The parties agree that they have entered into this Agreement without the benefit or assistance of any brokers, and each party agrees to indemnify, defend and hold the other harmless from any and all costs, expenses, losses or liabilities arising out of any claim by any person or entity that such person or entity acted as or was retained by the indemnifying party as a finder or broker with respect to the sale of the assets described herein.

Further Acts. Each party agrees to perform any further acts and to execute, acknowledge, and deliver any documents which may be reasonably necessary to conduct the provisions of this Agreement.

Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but which together will constitute the same instrument.

Disputes. If a claim or dispute arises out of this Agreement or its performance, the parties agree to endeavor in good faith to resolve it equitably through negotiation, or if that fails, through non-binding mediation under the rules of the American Arbitration Association, before having recourse to the courts. However, prior to or during negotiation or mediation, either party may initiate litigation that would otherwise become barred by a statute of limitations.

Indemnification

Mutual Indemnity.

a. Each of the parties (each, an "Indemnifying Party"), to the fullest extent allowed by law, shall indemnify, defend (with counsel reasonably acceptable to the Indemnified Party) and hold harmless the other party and any director, officer, affiliate or elected or appointed officials of the other party (each, an "Indemnified Party") from and against any and all claims, actions, suits, judgments, proceedings, liabilities, obligations, losses, and damages, amounts paid in settlement, interest, costs and expenses (including reasonable attorney's fees, penalties (civil, criminal or administrative), court costs and other out-of-pocket expenses incurred in investigating, preparing or defending the foregoing) relating to or arising from personal injury, bodily harm or death, property damage or damage to the environment ("Losses") incurred or suffered by any Indemnified Party to the extent that such Losses arise by reason of, or result from (i) the material breach or inaccuracy of any representation or warranty of the Indemnifying Party contained in this Agreement; (ii) the material breach by the Indemnifying Party of any of its covenants or agreements contained in this Agreement, or (iii) the gross negligence or willful misconduct of the Indemnifying Party or any of its agents, employees or subcontractors; to the extent not waived by the other party, in each case.

b. The indemnification obligations of the parties under this Section shall inure to the benefit of the directors, officers, affiliates, employees and elected or appointed officials of the parties and (i) with regard to claims arising in contract, shall expire, as to each party, six (6) years from the date of expiration or termination of this Agreement, and (ii) with regard to claims arising in tort or otherwise, shall expire three (3) years from the date of expiration or termination of this Agreement.

Third Party Claims.

a. The Indemnified Party seeking indemnification under this Agreement shall promptly notify the party against whom indemnification is sought of the assertion of any claim, or the commencement of any action, suit or proceeding by any third party, in respect of which indemnity may be sought hereunder and will give the Indemnifying Party such information with respect thereto as the Indemnifying Party may reasonably request, but failure to give such notice shall not relieve the Indemnifying Party of any liability hereunder (except to the extent the Indemnifying Party has suffered material prejudice by such failure). The Indemnifying Party shall have the right, but not the obligation, exercisable by written notice to the Indemnified Party within thirty (30) days of receipt of notice from the Indemnified Party of the commencement of or assertion of any claim, action, suit or proceeding by a third party in respect of which indemnity may be sought hereunder (a "Third-Party Claim"), to assume the defense and control the settlement of such Third-Party Claim with counsel reasonably satisfactory to the Indemnified Party.

Generator Initial _____

TS Operator Initial _____

b. The Indemnifying Party or the Indemnified Party, as the case may be, shall have the right to participate in (but not control), at its own expense, the defense of any Third-Party Claim that the other is defending, as provided in this Agreement.

c. The Indemnifying Party, if it has assumed the defense of any Third-Party Claim as provided in this Agreement, shall not consent to a settlement of, or the entry of any judgment arising from, any such Third-Party Claim without the Indemnified Party's prior written consent (which consent shall not be unreasonably withheld) unless such settlement or judgment relates solely to monetary damages. The Indemnifying Party shall not, without the Indemnified Party's prior written consent, enter into any compromise or settlement that (i) commits the Indemnified Party to take, or to forbear to take, any action, or (ii) does not provide for a complete release and, if applicable, covenant not to sue by such third party of the Indemnified Party.

Generator Initial _____

TS Operator Initial _____

ATTACHMENT B

Residential Drop-Off

Hours of Operation:

Wednesday 12:00PM – 3:30PM

Thursday 12:00PM - 3:30PM

Saturday 7:00AM – 12:00PM

Customer Fees:

Pittsfield Residency Sticker – \$120 charge annually for a sticker that would allow residents access to the depot as well as free recycling and yard waste.

Bag Rate:

Extra fee of \$3.00/each for 15 Gallon or smaller bag

Extra fee of \$5.00/each for a 32 Gallon sized bag

Extra fee of \$8.00/each for larger contractor bags

Recycling:

No Extra Charge

Recycling would follow a weekly schedule where OCC/Paper would be accepted one week, and bottles/cans would be accepted the next.

Bulky Items:

Extra fee of \$10/each for small bulky items

Extra fee of \$20/each for medium bulky items

Extra fee of \$30/each for large bulky items

Other Items:

- Mattresses – \$55/each
- Tires - \$17 off rim \$23 on rim
- E-waste – \$45/each Large (TV/Monitor) \$10/each Small (Keyboard)
- Freon- \$75/each Large \$35/each Small
- Metal – No charge
- Brush- No Extra Fee to resident. Casella will charge the City of Pittsfield \$225 for each haul and \$25/yard. Brush must be less than 4 feet and bundled. Leaves must be in a recyclable brown bag. No fully loaded pickups, trailers, or other large vehicles.
- Hazardous Waste Day – To be determined in the future.

Generator Initial _____

TS Operator Initial _____