

AGREEMENT FOR MUNICIPAL SOLID WASTE and RECYCLABLES COLLECTION

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 "City"), and Casella Waste Management, Inc., a Vermont business corporation duly authorized to conduct business in the Commonwealth of Massachusetts (hereinafter "Contractor").

WITNESSETH:

WHEREAS, City wishes to engage the Contractor to provide Waste Materials and Recyclables curbside collection service and the Contractor wishes to provide Waste Materials and Recyclables curbside collection service, and to transition from manual to automated collection;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, City and the Contractor agree as follows:

1. Definitions:

- a. City- shall mean the City of Pittsfield, a City situated in the Commonwealth of Massachusetts and shall include all publicly maintained streets and ways, and all buildings and improvements within City's boundaries.
- b. Recyclables - shall mean all that portion of Waste Materials (defined below) that consists of materials that may be processed as recyclables according to the end Processing Facility.
- c. Collection Day Route - shall mean the scheduled Waste Materials (defined below) and Recyclables collection patterned for particular calendar days, provided said schedule has been pre-determined by the Contractor and approved by the City. Collection routes will be specific and routine and collection shall occur on the same day each week for the same route. Contractor reserves the right to make minor modifications to the collection routes, to increase efficiency, or to improve the level of service. Modifications will not affect the overall scope of the work or add to the collection costs.
- d. Disposal or Processing Facility - shall mean the facility designated by the City and duly permitted to receive Waste Materials for disposal or Recyclables for processing, which shall be located within twenty-five (25) miles of the City's administrative offices.
- e. Normal Collection Day(s) – shall mean Monday, Tuesday, Wednesday, Thursday, and Friday except for Holidays as later defined herein, recognized and observed by selected Contractor.
- f. Storm Day - shall mean any Normal Collection Day that is cancelled due to weather by Contractor. In the event of a Storm Day, all remaining collection days for that week will be pushed forward by one day.
- g. Waste Materials shall mean Waste Materials as defined on Schedule A - Services.

2. For the duration of the Term, Contractor shall provide curbside collection of Waste Materials and Recyclables from approximately seventeen thousand, nine hundred (17,900) Residential Units, comprised of single, owner occupied multi-family with four or fewer units, , once per week, and municipal owned sidewalk and pole mounted receptacles three times per week, increasing to five times per week in the Summer months (one of which shall be Friday) on Normal Collection Days in accordance with the Collection Day Route, and shall deliver the same to the Disposal or Processing Facility and as more particularly set forth on Schedule A – Services (the "Services"). All fees payable to the Disposal or Processing facility, and any replacement thereof, shall be paid directly by City.

3. Waste Materials and Recyclables shall be placed in carts as provided in Section 5 of this Agreement, and at the curb for collection, no later than 7:00 A.M., prevailing time, on the day of collection, and the Contractor shall not commence collections until that time. Collections shall end no later than 7:00 P.M., prevailing time.
4. Contractor shall receive title to all Waste Materials and Recyclables upon collection, however, in no event shall Contractor take title to Excluded Waste. Notwithstanding the foregoing, to the extent Excluded Waste is collected by Contractor, City shall reimburse Contractor for any additional costs or expenses associated with handling, disposal, and/or processing.
5. The Contractor shall supply each household with one (1) 48-gallon cart for Waste Materials and one (1) 48-gallon cart for Recyclables, as well as the necessary labor and equipment necessary to complete the Services as provided in this Agreement. Residents may request additional carts, which shall be provided by Contractor for an additional annual fee, which shall be invoiced and collected by the City. In the event that the number of carts necessary to provide Services exceeds 40,000 and/or requires the addition of a collection route, the Contractor shall be entitled to an equitable price adjustment to be negotiated with the City. The Contractor will provide 40,000 carts and service 35,800 carts. However, if cart service increases by more than 12%, an additional collection route will be necessary, warranting an equitable price adjustment. Each additional route will increase the price by \$251,000 per year, adjusted for the Consumer Price Index (CPI).
6. Vehicles used for Services shall transition from manual collection vehicles to vehicles designed and manufactured, for fully automated curbside collection, and as the Contractor determines to be appropriate for use in providing Services to all Residential Units and locations serviced pursuant to this Agreement, and which shall be compatible with carts that are being used as provided in Section 5.
7. Contractor personnel shall be duly qualified and trained in the performance all Services, and shall do so in a good and workmanlike manner. City may request removal of personnel from performance of Services hereunder for failure to meet this standard of performance.
8. Contractor shall deploy a mobile app option to participating City residents/households and will provide a media resource to aid in explaining automated collection for the City to deploy and share with residents/households. Contractor will also provide an informational guide/calendar, along with FAQ/Recyclables lists in a brochure upon delivery of carts, an example of which is included as Schedule A-1.
9. The Contractor shall comply with all State and Federal Laws and Regulations and City Ordinances, including, but not limited to, OSHA safety regulations, relating to the collection and transporting of recyclables, and Contractor shall require subcontractors to abide accordingly. Any violation of law, either by the Contractor or its subcontractors, shall be the sole responsibility of the Contractor.
10. When a Holiday falls on a weekday all collection days will be delayed by one day in light of the Holiday and will be noticed by Contractor, in advance.
11. All customer service calls will be directed to the Contractor's Customer Service department. The Contractor shall address missed stops on the same day, unless it is too late in the day or it is clear that the resident missed the curbside pick-up time. Otherwise, missed collections shall be addressed as set forth on Schedule A.
12. Contractor shall provide and deliver Waste Materials and Recyclables carts to residences prior to the start of this agreement unless otherwise agreed.
13. 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.

14. Fees. For each Term Year, City shall pay the Contractor, the Fee for Contractor's full performance of all obligations under this Agreement, including but not limited to provision of the Services.

Term Year One: \$2,419,751

Recyclables Collection Fee:
\$793,567.17

Waste Materials Collection Fee:
\$1,626,183.83

Extra Cart Fee:
(includes delivery)
Extra toter \$64.49
Tip fee: \$3.00 per tip

City shall make payment of the Fee as follows: 1/12 of the Fee plus extra cart fees shall be due and owing on the last day of each month in which the Contractor provides Services in accordance with this Agreement.

Annual Fee Increase: On the anniversary of the first year of the Term, all Fees will be increased by 4%. Thereafter, 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>

Fuel Adjustor: Contractor may assess a fee (the "Fuel Adjustor") on a monthly basis to cover increases in Contractor's costs caused by increases in the cost of diesel fuel over a floor price of **\$4.50 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 1B (the "Index") or a successor index. Each month Contractor 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:

$(\text{Service Month Index Price} - \text{Floor Price}) / \text{Floor Price} \times (\text{Fuel Allocation in Pricing}) \times (\text{Monthly Fee}) = \text{Fuel Adjustor}$

Example calculation, assuming a Floor Price of \$4.50 per gallon, a Service Month Index of \$5.50 per gallon, a Fuel Allocation of 9.8 percent, and a Year 1 monthly fee of \$192,365.33:

$$((\$5.50 - \$4.50) / \$4.50) * 9.8\% * \$192,365.33 = \$4,189.28 / \text{Month}$$

Pass Through Charges: Fees may be further adjusted upon thirty (30) days' notice to cover changes in local, state or federal laws or regulations, imposition of taxes, fees or surcharges, or due to an increase in the number of carts or residences served, or stops made.

15. Insurance. Contractor shall secure and maintain in force insurance coverage sufficient to insure claims for damages because of bodily injury, including death, and claims for damages, other than to the work itself, to property which may arise out of or result from the Contractor's operation under this agreement, whether such operations be by himself or by any or anyone directly or indirectly employed by any of them. The insurance shall name the City of Pittsfield as an additional insured and shall be written for not less than \$500,000 each person, \$1,000,000 each occurrence for bodily injury, and \$500,000 each occurrence, \$1,000,000 aggregate for property damage, or such amount as required by law, whichever is greater, and shall include contractual

liability applicable to the Contractor's obligations. Coverage must include the following: Premises/ Operations, Independent Contractors, Contractual Liability Assumed Under this Contract, Products/ completed operations, Broad Form Property Coverage, and Personal Injury.

Workmen's Compensation Insurance. Workmen's Compensation Insurance must be provided at the Contractor's expense in accordance with the provisions of M.G.L. Chapter 149, § 34A. The Contractor shall, before commencing performance of this Contract, provide by insurance for the payment of compensation and the furnishing of other benefits under M.G.L. Chapter 152, § 25C, as amended, to all persons to be employed under the Contract, and the Contractor shall continue such insurance in full force and effect during the term of this Contract. Proof of compliance with the aforesaid stipulations shall be furnished to the City's Purchasing Agent when requested and by submitting two copies of a properly endorsed insurance certificate issued by a company authorized to write Workmen's Compensation Insurance policies in the Commonwealth of Massachusetts. Any cancellation of such insurance whether by the insurer or by the insured shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and the Purchasing Agent at least fifteen (15) days prior to the intended effective date thereof, which date shall be expressed in said notice.

Vehicle Liability Insurance. The Contractor shall take out and maintain at his own expense during the life of this Contract vehicle liability insurance. The insurance shall name the City of Pittsfield as an additional insured and shall be written for not less than \$500,000 each person, \$1,000,000 each occurrence for bodily injury, and \$500,000 each occurrence, \$1,000,000 aggregate for property damage, or such amount as required by law, whichever is greater, and shall include contractual liability applicable to the Contractor's obligations. Coverage must include the following: Owned Vehicles, Leased Vehicles, Hired Vehicles, and Non-Owned Vehicles.

Certificates of Insurance. The Contractor shall deposit with the City Certificates of Insurance for the coverage required in form and substance satisfactory to the City, and shall deliver to the City new certificates thereof for any insurance about to expire at least ten (10) days before such expiration. All such insurance policies shall contain an endorsement requiring thirty (30) days written notice to the City prior to cancellation of coverage. Compliance by the Contractor with the insurance requirement, however, shall not relieve the Contractor from liability under the indemnity provisions.

The Contractor will carry out the obligations of this Agreement in full compliance with all the requirements imposed by or pursuant to M.G.L. c. 151, §1, et. seq. (Minimum Wage Law) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended. The Contractor will at all times comply with the wage rates as determined by the Commission or the Department of Labor and Industries, under the provisions of M.G.L. c. 149, §§ 26-270 (Prevailing Wage), to the extent same applies to this Agreement. In the event of a payroll dispute and upon request by the City, the Contractor will provide the City with the relevant certified payrolls.

16. Liquidated Damages

The Municipality expects the Contractor to provide a high-quality level of services consistent with the requirements of this Contract. To this end, any performance issues identified by the Municipality and reported to the Contractor shall be promptly resolved within twenty-four (24) hours. If the Contractor fails to perform consistent with these standards, the Municipality will be presumed to have suffered harm. Such harm caused by the Contractor's substandard performance cannot be easily ascertained, and the Contractor and the Municipality agree that the amount of liquidated damages is a reasonable estimate of just compensation to the Municipality in the event of the Contractor's failure to adhere to the performance standards of this Contract.

- a. Mixing of Recyclables and Trash. \$10 per incident.
- b. Failure to dispatch additional carts within 4 weeks of request. \$25 per incident.
- c. Failure to immediately clean up and repair damage caused by litter and/or spills. \$50 per incident.
- d. Failure to adhere to the work hours. \$50 per incident.

17. Performance Bonds

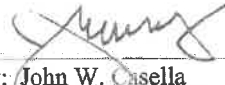
Completion and performance of all work covered in this Contract as well as full payment of all suppliers, agents, laborers, or subcontractors employed in the performance of this Contract. Such bond must be in a form and with a surety acceptable to the Municipality and must provide for the protection of all persons supplying labor or materials used for the performance of the work. The Contractor agrees to keep such bond, or replacement thereof, at all times during the performance of this Contract. The amount of such bond shall equal to \$2,420,000. The performance bond must be executed by a surety company of recognized standing authorized to do business in the Commonwealth of Massachusetts. The surety company will hold a current certificate of authority as acceptable surety on federal bonds in accordance with the U.S. Department of Treasury Circular 570 Current Revision. This performance bond must be provided to the Municipality no less than 14 calendar days prior to the Commencement Date. Said bond shall be executed yearly, shall be obtained prior to the execution of the initial Contract, and shall be a condition precedent to the execution of the Contract and each and any renewal thereof. The Bond shall be delivered to the Municipality at least sixty (60) days prior to July 1st of each year that this Contract is in force and effect.

18. Incorporated herein by reference and made a part hereof are the attached Schedule B- Standard Terms and Conditions.

19. Any notice, payment, demand or communication required or permitted to be delivered or given by the provisions of this Agreement shall be deemed to have been effectively delivered or given and received on the date personally delivered to the respective party to whom it is directed, or when deposited by registered or certified mail, with postage and charges prepaid and addressed to the parties at the addresses set forth below:

Casella Waste Management, Inc.:
Attention: Shelley Sayward, SVP &
General Counsel
Casella Waste Systems, Inc.
25 Greens Hill Lane
Rutland, Vermont 05701
(802)770-2215
Shelley.sayward@casella.com

CASELLA WASTE MANAGEMENT, INC.:


By: John W. Casella
Title: Vice President & Secretary
Date: June 27, 2024

City of Pittsfield:
City of Pittsfield
70 Allen Street
Pittsfield, Massachusetts 01201

CITY OF PITTSFIELD:


By: Peter M. Marchetti
Title: Mayor
Date: July 16, 2024

Schedule A – Services

1. **Services.** City hereby grants to Contractor the exclusive right to provide Services, except in the case of a breach of the Agreement by the Contractor. Collections shall be made for both Recyclables and Waste Materials on the same Normal Collection Day, and the Normal Collection Day in each district shall not be subject to rotation, except as may be temporarily required due to Holidays or emergency conditions.
2. **Waste Materials.** Waste Materials shall consist of household Solid Waste generated by residents, businesses, institutions and municipalities and shall not include construction and demolition debris, sludge, items of Excluded Waste or other materials requiring special handling or disposal ("Special Waste"), Hazardous Waste, radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biosolids, biohazardous, toxic or listed or characteristic hazardous waste as defined by applicable law or any otherwise regulated waste, or items banned from disposal within the Commonwealth of Massachusetts ("Waste Ban Items") ("Excluded Waste"). Hazardous waste includes, but is not limited to, any amount of waste listed or characterized as hazardous by the United States Environmental Protection Agency or any state agency or pursuant to RCRA, and including future amendments thereto, and any other applicable law.
3. **Recyclables -** The following items are classified as Recyclables:
 - Glass- Clean unbroken glass containers, bottles/jars.
 - Cans - Clean aluminum, tin/steel containers.
 - Paper - Clean, dry, unsoiled newspaper and magazines.
 - Cardboard
 - Plastic - PETE & HDPE containers (milk jugs & soft drink containers)
 - Massachusetts recyclable materials. Reference is made to:
<https://recyclesmartma.org/wp-content/uploads/2020/09/Recycle-Smart-Infographic-1-1.pdf>
4. **Process and Disposal Facility(s):** Waste Materials and recyclables shall be delivered for disposal to the Pittsfield, Massachusetts Transfer Station at 500 Hubbard Avenue. In the performance of its obligations under this Agreement, the Contractor shall be required to comply with all rules and regulations as may be established from time to time by either facility, which have been provided to Contractor in advance. Processing and Disposal Facility shall invoice the City directly.
5. **Backdoor Collection.** The Contractor shall provide "backdoor" Waste Material and Recyclables collection for residents who have physical impairments due to age or disability to accommodate collection and return of their carts at the door of the residential unit, instead of requiring them to take their carts to curbside for pickup. Residential Units to receive backdoor collection shall be as decided from time-to-time by the City.
6. **Household Hazardous Waste Disposal Day.** Each Term Year, Contractor shall contribute \$7,000 towards a Household Hazardous Waste Disposal Day' organized by the City. Contribution adjustments for Garbage and Trash Collection shall be based on the Consumer Price Index (CPI) increases. Such adjustments will be made in increments of \$500 with each adjustment occurring only when the CPI increase surpasses a \$500 threshold.
7. **Educational Contribution.** Each Term Year, the Contractor shall provide two \$1,300 contributions towards educational scholarships for qualified individuals pursuing an environmental or engineering careers. Contribution adjustments for Garbage and Trash Collection shall be based on the Consumer Price Index (CPI) increases. Such adjustments will be made in increments of \$500 with each adjustment occurring only when the CPI increase surpasses a \$500 threshold.

8. Holidays shall include: New Years' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day.
9. Complaints. In the event that a regular scheduled collection is missed and a complaint is registered with the Contractor or the City, the Contractor shall be required to make a special collection of the waste within twenty-four (24) hours of notification at no additional cost to the City, including Saturdays. The City shall promptly notify the Contractor of complaints received by the City. The Contractor shall receive and respond promptly to all complaints regarding services provided under this Agreement. Should a complaint be unresolved for longer than five (5) days, the City shall have the right to affect a resolution to the satisfaction of the City at no additional cost to the City.
10. Excluded Waste. If Excluded Waste is discovered before it is collected by Contractor, Contractor may refuse to collect the entire cart. In such situations, Contractor shall contact the City and the City shall undertake appropriate action to ensure that such Excluded Waste is removed and properly disposed of. If any Excluded Waste is not discovered by Contractor before it is collected, Contractor may, in its sole discretion, remove, transport and dispose of such Excluded Waste at a location authorized to accept such Excluded Waste in accordance with all applicable laws, subject to reimbursement of costs as provided in the Agreement.
11. Containers, Carts, and Equipment. All carts, containers, any other equipment that Contractor furnishes under this Agreement shall remain Contractor's property. City shall be liable for all loss or damage to such equipment (except for normal wear and tear and for loss or damage resulting from Contractor's handling of the equipment). City and its residents shall use the equipment only for its proper and intended purpose and shall not overload (by weight or volume), move or alter the equipment. City shall fully reimburse Contractor for any and all claims resulting from personal injuries or death, or the loss of or damage to property (including the equipment) arising out of the improper and unintended use, operation or possession of the equipment by the City, or the City's residents, employees, agents, suppliers, or guests.

Amortization of Cart Value. The value of the provided carts will be amortized over a period of ten (10) years as follows:

- The value of the carts will be amortized to fifty percent (50%) within the first five (5) years.
 - The value of the carts will be amortized to zero percent (0%) at the end of ten (10) years.
12. Bulky Waste and Christmas Tree Pickup Schedules: The Contractor shall make available a bulky waste pickup date each month except for December, May, June, and July, which will have two bulky waste pickups per month city-wide, collecting bulky waste placed at the curbside and identified with a bulky waste sticker provided by the Municipality. Additionally, the Contractor shall provide two (2) Christmas tree pickup dates per route during the month of January. These dates are to be included in the printed calendar.
 13. Roll-out Schedule: The Contractor provided schedule for the roll-out of the automated service with toter delivery and education is included in Schedule C of this agreement.
 14. Invoicing. The Contractor shall deliver an invoice for payment for the preceding month's service to the City not later than the fifteenth (15th) day of each calendar month. Such payment shall be presented in a form acceptable to the City and shall be the rate as set forth in this Agreement.
 15. Records. The Contractor shall maintain and make available for inspection by the City weight tickets and records of all tonnage collected and shall also maintain and make available the current list of the Residential Units receiving "backdoor" service. The Contractor shall report to the city every month, all customer service resolutions. Contractor shall provide City with an annual report of materials collected each year, to be delivered to the City by January 31.

Schedule B- 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 conflict of law provisions that would apply the substantive law of another state.

Venue. The parties consent to the jurisdiction of the state and federal courts having jurisdiction over City, 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. Notwithstanding the foregoing, in no event shall direct damages of either party be precluded by virtue of this Limitation of Liability.

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 of 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) a signification change in economic conditions; (v) 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 (vi) 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 commercially reasonable efforts to mitigate or limit damages to the performing party; (ii) exercise commercially 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. it has filed all state tax returns, paid all taxes and complied with all laws of the Commonwealth relating to taxes;

d. it has complied with all laws of the Commonwealth relating to contributions and payments in lieu of contributions to the Employment Security System;

e. it provides worker's compensation insurance and all other insurance benefits required by Massachusetts Law;

f. it is not presently debarred or suspended from providing goods or services to the City or Commonwealth;

g. it has paid all real estate and municipal taxes due to the City

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

i. 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:

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- a. By the City for lack of appropriation Upon 90 calendar days' notice to the Contractor, the Municipality may terminate this Contract due to non-appropriation or availability of sufficient funds for the purposes of the Contract or an unforeseen public emergency, and without penalty or prejudice to any other right or remedy. In such case, the Municipality and Contractor shall make all payments pursuant to this Contract up to the effective date of termination. Neither the Contractor nor its consultants, subcontractors or suppliers shall be entitled to lost profits on work not performed or services not provided due to such termination. Payment by the Municipality hereunder shall be considered full and final compensation to the Contractor under the Contract.
- b. By both parties upon mutual written agreement.
- c. 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.
- d. 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, 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 the parties 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.

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. 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.

Assignment. 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, but neither this Agreement nor any of the rights, interests, obligations, and remedies hereunder shall be assigned by any party, including by operation of law, without the prior written consent of the other party. Notwithstanding the preceding sentence, however, this Agreement may be freely assigned by Casella Waste Management, Inc., without consent, to any entity controlling, controlled by or under common control with Pine Tree Waste, Inc.

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.

Further Acts. Each party agrees to perform any further acts and to execute, acknowledge, and deliver any documents which may be reasonably necessary to carry out 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 one and 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. Each party (in this case, each an "Indemnifying Party") shall, to the fullest extent allowed by law, indemnify and hold harmless the other party and any director, officer, or affiliate (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 an Indemnified Party or any third party arising by reason of, or resulting from (i) the material breach or inaccuracy of any representation or warranty of the Indemnifying Party; (ii) the material breach by 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.

The indemnification obligations of each party under this Section shall inure to the benefit of the directors, officers, affiliates, and employees of such party.

Schedule C – Roll-Out Schedule

Please see the proposed roll-out schedule for the automation of the contract. Please be advised this schedule could change due to unforeseen circumstances. We will be in constant communication during this process with any changes to properly inform residents in a timely fashion.

Automated Service Education:

Begin on July 1st, 2024, with estimated two-month initial process.

Securement of ASL trucks

90 days from contract execution to all trucks available. Will have two trucks for recycling to start on 9/13/24.

Securement and delivery of Carts

Order once contract is executed.

Delivery completed within 75 days after contract execution.

Roll-out of automation by quadrants

Recycling routes:

- Friday route: 9/13/2024
- Thursday route: 9/19/2024
- Wednesday route: 9/25/2024
- Tuesday route: 10/1/2024
- Monday route: 10/7/2024

Trash routes:

- Friday route: 10/18/2024
- Thursday route: 10/24/2024
- Wednesday route: 11/6/2024
- Tuesday route: 11/12/2024
- Monday route: 11/18/2024