

**SOLID WASTE AND RECYCLABLE
MATERIAL COLLECTION SERVICES
AGREEMENT
TOWN OF FALMOUTH, MAINE**

This Agreement made this ___ day of _____, 202_ (the “Effective Date”) by and between Pine Tree Waste, Inc. (“Contractor”), a wholly owned subsidiary of Casella Waste Systems, Inc., and the Town of Falmouth, Maine (“Town”).

WHEREAS, the Contractor is in the business of collecting and transporting Municipal Solid Waste and Recyclables for ultimate disposal or processing; and

WHEREAS, the Town desires to engage Contractor for the curbside collection of Municipal Solid Waste and Recyclable Material and for the transportation of the same to ecomaine’s disposal and processing facilities;

NOW THEREFORE, in consideration of the mutual covenants and promises herein, the parties hereto agree as follows:

1. DEFINITIONS: For purposes of this Agreement, the following terms shall apply:

Approved Automated Collection Containers: Recycling and MSW Containers that are purchased and owned by the Town, pre-approved by Contractor, and compatible with automated collection vehicles put in service by Contractor.

Approved MSW Container (Manual Collection): A Town of Falmouth approved plastic bag that does not exceed 30-gallon capacity, nor weigh more than 40 lbs. when full. Contractor is not responsible for the collection and removal of any MSW that is not inside the approved plastic bag.

Approved Recyclable Materials Container (Manual Collection): A container that does not exceed 33-gallon capacity, nor weigh more than 40 lbs. when full with handles.

Bulky Waste: A large item or bundle, other than commercial Construction and Demolition Debris or hazardous waste, or White Goods which cannot fit into a container or bag. Bulky Waste is not included in the scope of this Agreement.

Commercial Waste: Any waste generated from a commercial source, which shall not be collected under the guidelines of this Agreement.

Construction and Demolition Debris (“C&D”): Waste building materials resulting from the process of construction, remodeling, repair, and demolition activities. Construction and Demolition Debris is not included in the scope of this Agreement.

ecomaine: The facility duly permitted to receive MSW and Recyclable Material for disposal and processing from the Town, located in Portland, Maine. All collection of MSW and Recyclable Material transported to ecomaine shall be limited to "acceptable waste" as determined by ecomaine. For the purposes of this Agreement "acceptable waste" shall be MSW and Recyclable Material as defined herein.

Effective Date: July 1, 2022.

Hazardous Waste: Wastes that are hazardous by reason of their pathological, explosive, radiological or toxic characteristics, or other special wastes as defined by State and Federal regulations. Hazardous Waste

is not included in the scope of this Agreement.

Municipal Solid Waste (“MSW”): Non-baled solid waste normally disposed of by households in the State of Maine, not including Bulky Waste, White Goods, or Commercial Waste; as defined herein, and not containing any Hazardous Waste.

Recyclable Material: All items approved by ecomaine as acceptable single-sort material that are placed at the curbside on collection day in an Approved Recyclable Materials Container.

Residence: An existing or future dwelling unit such as a house, mobile home, or multi-family dwelling with three units or less, not including commercial properties, motels or hotels.

White Goods: Any large metal items which cannot fit into a container or bag. White Goods are not included in the scope of this Agreement.

2. TERM:

The Initial Term of this Agreement shall be for six (6) years, beginning as of the Effective Date and expiring June 30, 2028, unless earlier terminated in accordance with this Agreement. The Term of this Agreement shall be automatically renewed for up to three (3), additional one (1) year periods (each a “Renewal Term”), unless the Town provides the Contractor with written notice of termination at least six (6) months prior to the end of the Initial Term or any Renewal Term.

3. SCOPE OF SERVICES:

Curbside Collection

Contractor will collect and transport MSW and Recyclable Material from the curbside of all Residences and other locations listed or shown on Schedule A, attached hereto and incorporated herein. Contractor shall submit to the Town for approval an updated Schedule A each July 1 to reflect any new Residences or other locations that are subject to curbside collection under this Agreement. Curbside collection of MSW and Recyclable Material will not start before 7:00 a.m. on the same day on routes established by Contractor and agreed to by the Town from time to time. Residents shall place MSW and Recyclable Material curbside by 7:00 a.m. on the designated collection day. Exceptions to collection hours will be permitted only upon mutual agreement of the parties. Contractor will provide an adequate number of vehicles for the collection of MSW and Recyclable Material. For manual collection, Contractor will not pick up any container or bag that exceeds a weight of forty (40) pounds. Contractor will not collect tires, Bulky Waste, C&D or other materials not specifically identified as acceptable MSW or Recyclable Material. Residents will have no limit on the amount of MSW or Recyclable Material that can be placed at curbside, provided that all MSW and Recyclable Materials are placed in an Approved MSW Container or Approved Recyclable Materials Container.

Contractor shall maintain all equipment used in the performance of this Agreement in a clean and sanitary condition. Contractor shall perform all services in a neat, worklike manner subject to approval of the Town.

Contractor will transport all MSW and Recyclable Material collected under this Agreement to ecomaine for disposal or processing. Contractor will be responsible for the disposition of such MSW and Recyclable Material to the location specified above, however, in no case will the Contractor take title to Hazardous Waste, Bulky Waste, White Goods, or Commercial Waste. Contractor shall not mix Commercial or other non-residential MSW and/or Recyclable Material with those of the Town, nor will the Contractor mix MSW or Recyclable Material with any other municipality’s waste unless specifically authorized by the

Town. The Town shall be responsible for all costs associated with the disposal of MSW and Recyclable Material at ecomaine.

Contractor shall collect MSW and Recyclable Material from Approved MSW Containers (Manual Collection) and Approved Recyclable Materials Containers (Manual Collection) using compaction type trucks designed for manual collection until the Town has transitioned to automated collection service under this Agreement. Once service has been transitioned to automated collection, Contractor shall utilize trucks of the type that will accommodate automated collection from Approved Automated Collection Containers. Upon transition to automated collection, Contractor shall continue to provide service to the same service territory as identified on Schedule A, subject to accessibility and turn around capability.

Automated Collection

Contractor will endeavor to transition from manual collection to automated collection in accordance with the schedule set out below:

Sign contract and order new trucks	November 2022
Implementation meeting with Town	December 2022
Obtain accurate assessors property list	December 2022
Detailed written transition plan from Contractor to Town	January 2023
Driver and helper hiring and training	February 2023
Cart community outreach and education	May-August 2023
Cart assembly and delivery*	October 2023
Automated collection commencement	November 2023

***Current pricing does not include management of carts/collection containers. Fees associated with Cart management shall be determined by the parties.**

Collection and Holiday Schedule.

The collection schedule will be [insert] and will convert to a five-day schedule, to be mutually agreed between the parties, upon transition to automated collection services. Any change in normal collection schedule must be agreed to in advance by the Town Manager or the Town Manager’s designee, provided that postponements due to severe weather shall be determined no later than 6:00 a.m. on the scheduled date of collection. In the event that the holidays of Independence Day, Thanksgiving, Christmas, and New Year's Day or a postponement due to severe weather should fall on a scheduled collection day, then the collection for that day will be pushed to the following Saturday. Any decision by Contractor to postpone collection due to severe weather will be made in conjunction with the Town Manager or the Town Manager’s designee no later than 6:00 a.m. If collection is postponed due to severe weather, the Contractor shall not complete a partial day of collection. All collection scheduled for that day shall be postponed as set forth above. Other changes to the collection schedule are subject to mutual agreement by Contractor and the Town through the Town Manager or the Town Manager’s designee.

Daily Reports

Contractor shall be responsible for tagging any container or item that is not collected due to failure to meet contracted parameters. The tag shall identify the date and reason for non-collection.

Continuous Improvement

Contractor agrees to work to find ways to reduce operational costs, improve service efficiencies, and

reduce environmental impact. Such improvements may include the agreement of both parties to use equipment and technology that could be used but not be limited to tracking containers, providing data and using said data and technology to implement a pay as you throw program.

Non-Collection Protocol

All customer service calls shall be directed to Contractor's Customer Service Department at the following toll-free number: 207-883-9777. If Contractor receives a report of a missed stop by 3:00 p.m., Contractor shall provide service to the missed stop on the same day.

4. FEES. Town agrees to pay Contractor, for the above referenced services, the rates as specified below (“Fees”).

Curbside Collection Fees

The Contractor shall invoice the Town monthly and the Town will pay Contractor within thirty (30) days of the date of the invoice per the following schedule:

A. For the period of July 1, 2022 through October 31, 2022	\$39,833.33 per month.
B. For the period of November 1, 2022 through June 30, 2023	\$40,856.50 per month
C. For the period of July 1, 2023 through June 30, 2024	B Pricing Plus Annual Fee Increase
D. For the period of July 1, 2024 through June 30, 2025	C Pricing Plus Annual Fee Increase
E. For the period of July 1, 2025 through June 30, 2026	D Pricing Plus Annual Fee Increase
F. For the period of July 1, 2026 through June 30, 2027	E Pricing Plus Annual Fee Increase
G. For the period of July 1, 2027 through June 30, 2028	F Pricing Plus Annual Fee Increase

Annual Fee Increase

Beginning July 1, 2023, all Fees will be increased annually on July 1 by a percentage equal to the greater of (a) three percent (3.0%) or (b) the year-over-year percentage change in the Consumer Price Index for Garbage and Trash Collection. The Fees shall not be increased by more than six and a half percent (6.5%) (“CPI Threshold”) in any given year unless the CPI exceeds the CPI Threshold for two (2) consecutive years during the Initial Term or any Renewal Terms. In which case, the CPI Threshold will not apply for that year or for the remainder of the Agreement. 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>.

Please refer to Schedule B for Annual Increase Examples.

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 \$6.50 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 1A (the “Index”) or a successor index. For any month of service in which the average monthly Index fuel price listed (the “Service Month Index Price”) exceeds the Floor Price, Contractor will assess a Fuel Adjustor. 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 calculated according to the following formula:
((Service Month Index Price-\$6.50)/6.50) (15.4%) (Monthly Fee) = Fuel Adjustor

For any month of service in which the Service Month Index Price drops below \$4.50 per gallon, Contractor will credit the Town 7.7% based on the following formula: ((\$4.50 - Service Month Index Price)/4.50) (7.7%) (Monthly Fee) = Fuel Adjustor

5. INDEMNIFICATION. Contractor will indemnify, defend, and hold Town harmless from and against any and all loss, damages, claims, causes of action, and other expenses (including reasonable attorney's fees) arising from bodily injury, including death to persons, or property damage, including environmental liability, in any way attributable, directly or indirectly, to the acts or omissions of Contractor; provided, however, that in no event shall Contractor indemnify the Town to the extent that any loss, damage, claim, cause of action, or expense arises out of the negligence of the Town. The parties acknowledge that the Town is a political subdivision of the State of Maine to which the Maine Tort Claims Act applies. Nothing in this Agreement is intended, or shall be construed, to constitute a waiver of any defense, immunity or limitation of liability that may be available to the Town, its officers, agents and employees, pursuant to the Maine Tort Claims Act, 14 M.R.S. §§ 8101 et seq., or as otherwise provided by law.

6. PERMITS AND LICENSES. Contractor, at its sole cost and expense, shall maintain throughout the term of this Agreement all permits, licenses, and approvals necessary or required for Contractor to perform the work and services described herein.

7. INDEPENDENT CONTRACTOR. Contractor shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of the Town. Contractor shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder and all persons performing the same and nothing herein shall be construed as creating a partnership or joint venture between Town and Contractor. No person performing any of the work or services described hereunder shall be considered an officer, agent, servant, or employee of Town, and no such person shall be entitled to any of the benefits available or granted to employees of Town.

8. NON-ASSIGNMENT. Neither Contractor nor Town shall assign, transfer, convey, or otherwise hypothecate this Agreement of their rights, duties, or obligations hereunder or any part thereof without the prior written consent of the other, which consent shall not be unreasonably withheld.

9. COMPLIANCE WITH LAWS AND REGULATIONS. Contractor will comply with any and all federal, state, and local laws and regulations now in effect, or hereafter enacted during the term of this Agreement, which are applicable to Contractor, its employees, agents, or subcontractors, if any, with respect to the work and services described herein.

10. INSURANCE.

Contractor shall obtain and maintain insurance throughout the term of this Agreement sufficient to protect itself from risks associated with performance of this Agreement, at Contractor's sole cost and expense, but not less than the insurance coverages set forth below.

Worker's Compensation	Statutory
Employer's Liability	\$1M
Commercial General Liability (Personal/Bodily Injury Liability)	\$2M per occurrence
Commercial General Liability (Property Damage Liability)	\$2M per occurrence
Automobile Liability (Bodily Injury)	\$3M per occurrence

Automobile Liability (Property Damage)
Excess Umbrella Liability

\$3M per occurrence
\$5M Each Occurrence

Upon commencement of work under this Agreement, and during the term of this Agreement upon reasonable request of the Town, Contractor shall provide the Town with a copy of the certificate evidencing the above-referenced insurance coverages, and naming the Town as an additional insured thereon for coverage only in those areas where government immunity has been expressly waived by 14 M.R.S. § 8104-A, as limited by § 8104-B and § 8111. Contractor shall provide proof of Worker's Compensation Insurance coverage, with an endorsement waiving all rights of subrogation against the Town, its agents, officers or employees. To the extent the insurance coverage required above does not include coverage for environmental-related claims, Contractor agrees that the indemnification provisions set forth in Section 5 above shall include such claims.

Nothing herein is intended nor shall it be construed to extend, modify or waive any of the defenses, immunities and limitations of liability available to Town under the Maine Tort Claims Act, codified at 14 M.R.S.A. §§ 8101-8118.

11. TERMINATION.

In the event Contractor materially defaults in the performance of any of the material covenants or agreements to be kept, done or performed by it under the terms of this Agreement, Town shall notify Contractor in writing of the nature of such default. Contractor upon receipt of said notice shall have twenty (20) days to correct the default with due diligence. If Contractor fails to correct the default as provided above, the Town reserves the right to terminate this Agreement with thirty (30) days' written notice to Contractor. The Town also reserves the right to terminate this Agreement upon (30) days' notice if the Town funds become unavailable.

12. NOTICES. All notices required or contemplated by this Agreement shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the parties as follows:

To Town:

Town of Falmouth
271 Falmouth Road
Falmouth, ME 04105

To Contractor:

Attention: General Counsel
Pine Tree Waste, Inc.
25 Greens Hill Lane
Rutland, Vermont 05701

Or to such other addresses as the parties may designate in writing.

13. WAIVER. A waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or any other provision.

14. LAW TO GOVERN. Town and Contractor agree that the laws of the State of Maine shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

- 15. TITLE OF SECTIONS.** Section headings inserted herein are for convenience only and are not intended to be used as aids to interpretation and are not binding on the parties.
- 16. AMENDMENT.** This Agreement may be modified or amended only by a written consent duly executed by the parties hereto or their representatives.
- 17. SEVERABILITY.** The invalidity of one or more of the phrases, sentences, clauses or Sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated.
- 18. SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon the parties hereto, their successors, and permitted assigns.
- 19. ENTIRETY.** This Agreement and any Exhibits attached hereto contain the entire Agreement between the parties as to the matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect.
- 20. 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. In no event shall general economic conditions, including but not limited to labor shortages or supply chain issues, be considered a Force Majeure under this Agreement.
- (B) Neither party shall be liable to the other for damages without limitation if such party's performance is delayed or prevented due to an event of Force Majeure ("Force Majeure Event"). In such event, the affected party shall promptly notify the other of the Force Majeure Event 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 Event, the other party may, at any time thereafter, terminate this Agreement.

21. COMPLIANCE WITH LAWS

Contractor shall perform all services under this Agreement in compliance with all applicable federal, state and local laws, regulations, ordinances and codes.

–

Signature Page Follows

AGREED AS OF THE DATE ABOVE WRITTEN.

TOWN OF FALMOUTH, MAINE

PINE TREE WASTE, INC.

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

SCHEDULE A

[INSERT]

SCHEDULE B
ANNUAL INCREASE EXAMPLES

Example Increase Scenario 1:

First Year Increase (7/1/2023): 6.5% increase
Second Year Increase (7/1/2024): 7% increase
**(two consecutive year rule activated, threshold no longer applicable.)
Third Year Increase (7/1/2025): 6%
Fourth year increase (7/1/2026): 7%
Fifth increase (7/1/2027): 8%

Example CPI Trash and Garbage Index:	
2022:	7% (above threshold) *
2023:	8% (above threshold) *
2024:	6%
2025:	7%
2026:	8%

Example Increase Scenario 2:

First year increase (7/1/2023): 6.5%
Second Year Increase (7/1/2024): 6%
Third year increase (7/1/2025): 6.5%
Fourth year increase (7/1/2026): 8%
**(two consecutive year rule activated, threshold no longer applicable.)
Fifth increase (7/1/2027): 9%

Example CPI Trash and Garbage Index:	
2022:	7% (above threshold) *
2023:	6% (below threshold)
2024:	7% (above threshold) *
2025:	8% (above threshold) *
2026:	9%

Example Increase Scenario 3:

First year increase (7/1/2023): 6.5%
Second Year Increase (7/1/2024): 5%
Third year increase (7/1/2025): 6.5%
Fourth year increase (7/1/2026): 6%
Fifth increase (7/1/2027): 6.5%

Example CPI Trash and Garbage Index:	
2022:	7% (above threshold) *
2023:	5% (below threshold)
2024:	7% (above threshold) *
2025:	6% (below threshold)
2026:	9% (above threshold) *