

Host Community Agreement

This Host Community Agreement (“Agreement”) is made this ____ day of _____, 2023 by and between the Town of Hardwick, Massachusetts, a municipal corporation, acting through its Board of Selectmen, having a mailing address of P.O. Box 575, Gilbertville, Massachusetts 01031 (the “Town”), and Hardwick Landfill, Inc., a Massachusetts corporation, having a place of business at 25 Greens Hill Lane, Rutland, VT 05701 (the “Company”).

WHEREAS, the Company is the owner of the so-called Hardwick Landfill, located on Patrill Hollow Road in Hardwick (the “Hardwick Landfill”);

WHEREAS, the Company owns or has options to purchase land on Patrill Hollow Road that abuts the Hardwick Landfill (the “Property”);

WHEREAS, the Company intends to seek permits to reopen the Hardwick Landfill, and to develop the Property as a landfill (collectively, the “Landfill”), which will require a change in zoning of the Property and several approvals and permits from the Town;

WHEREAS, subject to obtaining requisite approvals for the Landfill, the Company desires to relocate a portion of Patrill Hollow Road located on the Property to improve the safety of the road and reduce the amount of land to be consumed by the Landfill; and

WHEREAS, the Town is desirous of entering into this Agreement with the Company concerning the operation of the Landfill, and to commemorate the host fee benefit to the Town.

NOW, THEREFORE, in consideration of these promises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, each intending to be legally bound, agree as follows:

1. DEFINITIONS

For the purpose of this Agreement, the following words and phrases shall have the following meanings:

1.01 “Acceptable Waste” shall mean “solid waste” as that term is now or hereafter defined in 310 CMR 19.000; provided, however, that Acceptable Waste shall include Special Waste to the extent the Company obtains necessary MassDEP approval to dispose of Special Waste at the Landfill, but shall not include Excluded Waste.

1.02 “All Required Approvals” shall mean all final, unappealable permits and approvals necessary for operation of the Landfill, including: (a) site assignment from the Hardwick Board of Health for the Landfill; (b) approval for relocation or termination of a portion of Patrill Hill Road; (c) approval by the Town of zoning bylaw amendments necessary for operation of the Landfill; (d) approval of the proposed height of the Landfill; and (e) solid waste management facility permit for the Landfill from the MassDEP.

1.03 “CPI” means the Consumer Price Index for Urban Consumers, Boston-Brockton-Nashua, MA-NH-ME-CT, as published by the United States Department of Labor, Bureau of Labor Statistics.

1.04 “Closing” shall mean the date on which this Agreement is fully executed and delivered to both parties.

1.05 “Daily Cover” shall mean cover material applied to the Landfill daily to cover the waste in accordance with 310 CMR 19.130(15)(c). Daily Cover shall include compacted soil and any alternative daily cover materials approved by the MassDEP.

1.06 “MassDEP” shall mean the Massachusetts Department of Environmental Protection, an agency of the Commonwealth of Massachusetts, and any successor agency.

1.07 "Excluded Waste" shall mean, except to the extent any such wastes are included in ordinary household refuse, highly flammable substances, Hazardous Waste, liquid wastes, certain pathological and biological wastes, explosives, radioactive materials, oil, petroleum, asbestos-containing materials (unless approved by MassDEP), autoclaved infectious waste, lead-acid batteries, radioactive materials, hospital and laboratory wastes, loads containing dead animal carcasses, bulk quantities of recyclable glass and non-ferrous metals, sealed containers, drums, pressurized gas cylinders, infectious wastes, loads containing human wastes, motor vehicles, unprocessed “auto fluff”, motor vehicle parts including, but not limited to, transmissions, engines, rear ends, springs, fenders, radiators and tires, except shredded tires, explosives, including dynamite, blasting caps, shotgun shells, fireworks, gasoline, kerosene, turpentine, liquid oil-based paints or any other waste excluded by an applicable environmental law or regulation, or excluded by any of the terms and conditions of any permits, licenses or approvals obtained with respect to the operation of the Landfill. This term shall also include such other waste material which the Company finds, in its sole discretion, to pose an unreasonable risk or danger to the operation or safety of the Landfill or the environment.

1.08. “Force Majeure Event” means any act, event, or condition that is beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Agreement, and that materially interferes with or materially increases the cost of performing its obligations hereunder. Such acts or events may include, but not be limited to, acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, a significant change in economic conditions, adoption or change (including a change in interpretation or enforcement) of any federal, state, or local law, rule, or regulation or any common-law standard, rule proposition, or principle, superimposed after the fact that materially adversely affects performance, communication line failures, computer viruses, power failures, earthquakes or other natural disasters.

1.08 “Hazardous Waste” shall mean waste that is identified and regulated as “hazardous” pursuant to 310 CMR 30.00.

1.09 "Permitted Capacity" shall mean the capacity of the Landfill to receive Acceptable Waste, as approved by the MassDEP, and as may be amended from time to time.

1.10 "Special Waste " shall mean "special waste" as that term is now or hereafter defined and regulated in 310 CMR 19.061, or waste that requires special approval from the MassDEP under 310 CMR 19.061.

1.11 "Ton(s)" shall mean 2000 pounds or the volume equivalent.

2. **HOST FEES.**

2.01 Host Fee. The Company shall pay to the Town a fee (the "Host Fee") equal to six dollars (\$6.00) for each Ton of Acceptable Waste accepted by the Company for disposal in the Landfill, not including Acceptable Waste that may be accepted at the Landfill at no charge to the customer. The Host Fee shall not apply to material used for cover, capping, road base or landfill construction. Payments of the Host Fee shall be made for the time period from the date of first receipt of Acceptable Waste until the Landfill no longer receives Acceptable Waste.

2.02 The Host Fee amounts payable hereunder shall be adjusted annually beginning on the date when such amount first becomes payable and every anniversary of such date, to reflect seventy-five percent (75%) of the change in the CPI in the immediately preceding calendar year from the CPI for the calendar year in which such Host Fee amount first became payable, capped at a maximum three percent (3%) increase.

2.03 Payment. The Company shall pay the Host Fee monthly ("Payment Dates"), based on the previous calendar month's tonnage of Acceptable Waste that is subject to the Host Fee as defined in 2.01, above. Payments of the Host Fee shall be made on a monthly basis thirty (30) days after the end of the preceding month. The Company shall not pay a Host Fee for, and shall receive a credit against any prior Host Fees paid with respect to, Excluded Waste received in the belief it was Acceptable Waste. This paragraph shall not be construed as authorizing the Company to accept Excluded Waste for disposal at the Landfill.

2.04 Payment in Lieu of Taxes. Payment of the Host Fee shall be in lieu of all taxes, fees, charges or other assessments with respect to the Landfill (or any area into which the Landfill is expanded), including any statutory host fee under G.L. c. 111, § 150A or G.L. c. 16, §24A, except for real estate taxes imposed solely upon the land on which the Landfill is located. Notwithstanding the foregoing, the Company agrees that should it remove the structures on the Property it will not seek a reduction in the existing amount of real estate taxes attributable to the structures.

3. **OBLIGATIONS OF THE COMPANY**

3.01 Permitting. The Company shall use commercially reasonable efforts to obtain at its expense, all necessary permits, approvals, and authorizations to construct and operate the Landfill, including preparing all necessary permit applications, reports and/or studies.

3.02 Construction. The Company shall at its expense construct the Landfill to the extent of the permits so received and to the extent deemed appropriate by the Company, including preparing the subgrade and constructing landfill cells in accordance with such permits.

3.03 Operation. The Company shall at its expense be responsible for operation of the Landfill in accordance with the authorization to operate permit issued by MassDEP and all other permits, approvals, or authorizations issued for operation of the Landfill. The Company shall at its expense be responsible for providing and maintaining all necessary facilities, including equipment, for receiving and handling Acceptable Waste to be disposed of at the Landfill. The Company shall be responsible for closure and post closure care of the Landfill.

The Company shall submit to the Town Select Board annually surveyed plans of Landfill operations demonstrating that said operation is in accordance with the MassDEP-approved operating plan. A similar survey plan shall be submitted to the Town prior to any development of new Landfill cells.

3.04 Traffic. The Company shall instruct all truck operators (including all waste, cover and construction material trucks but excluding local Hardwick collection vehicles) on appropriate truck routes to access the Landfill, and in no case shall truck operators travel through Hardwick center. The Company shall inform all operators of trucks delivering waste to the Landfill of truck route restrictions imposed by the board of health of the Town of Ware.

3.05 Hours of Waste Receipt. The Company agrees that the hours of waste receipt at the Landfill shall be from 7:30 A.M. to 4:00 P.M., Monday through Friday, inclusive, and 7:00 A.M. to 11:30 A.M. on Saturday. The Landfill shall not accept waste on the following public holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas. Notwithstanding the foregoing, the Company shall extend its hours of waste receipt in the event of a public disaster or emergency such as a hurricane or flood that results in a need to keep the Landfill open to receive disaster debris.

3.06 Landfill Oversight Program.

The Town intends to implement a Landfill Oversight Program, including engaging an individual landfill monitor and engineering support from an independent engineering consultant, hired jointly by the Boards of Health and Selectmen. Provided the Landfill is open and operating for the disposal of municipal solid waste, the Company will reimburse the Town for the actual and reasonable costs incurred by the Town for landfill oversight beginning when the Landfill begins receiving Acceptable Waste as follows:

- a. for the landfill monitor, not to exceed \$35,000 per year; and
- b. for an independent engineering consultant, not to exceed:
 - i. \$40,000 for calendar year 2023;

- ii. \$70,000 for calendar year 2024; and
- iii. \$35,000 for each year thereafter during the Term of this Agreement unless otherwise agreed upon by the Company and the Town.

The annual amounts for the landfill monitor shall be prorated for any partial year during the Term and adjusted annually by seventy-five percent (75%) of the change in the CPI in the immediately preceding year, capped at a maximum three percent (3%) increase. The landfill monitor shall be an individual who is mutually acceptable to the Town and Company for the purpose of monitoring the operation of the Landfill. The Company shall make such reimbursement payments to the Town within thirty (30) days of receipt of the Town's invoice providing evidence of the Town's actual and reasonable costs. The amounts set forth above shall be reduced or offset by any amount otherwise recovered by the Town from the Company for such services including, without limitation, amounts recovered by the Town or any of its boards as permit application fees, technical fees, other review fees or charges or under Section 3 of this Agreement.

3.07 Legal and Consulting Fees. The Company will reimburse the Town an amount not to exceed \$75,000 for legal and consulting fees actually incurred with respect to negotiating this Host Community Agreement and advising the Town concerning the bylaw amendments requested by the Company. The Company shall reimburse the Town within thirty (30) days of receipt of the Town's invoice including evidence of the Town's actual costs. The amounts set forth above shall be reduced or offset by any amount otherwise recovered by the Town from the Company for such services including, without limitation, amounts recovered by the Town or any of its boards as permit application fees, technical fees, other review fees or charges or under Section 3 of this Agreement.

3.08 Odor and Nuisance Control. The Company shall install and operate an active landfill gas collection system and flare as approved by MassDEP. The Company will review the feasibility of a renewable natural gas (RNG) or similar landfill gas-to-energy facility and use commercially reasonable efforts to install and operate such RNG or similar landfill gas-to-energy facility.

The Company shall work with the Board of Health to implement an odor and nuisance complaint procedure. The Company shall develop an Odor Control Plan and Nuisance Control Plan for the Landfill. The Odor Control Plan will describe the Company's program for proactively managing and monitoring odors, including: a description of wells and piping installed to collect landfill gases and the equipment used to treat odors, and the schedule for installing these materials for existing areas of the Landfill and for subsequent operating phases; the approach for managing odors at the active working face or from unlined landfill areas that are potentially beyond the influence of the active landfill gas recovery system; the program for monitoring odors; and the protocol for responding to any concerns or complaints by neighbors and the community.

The Nuisance Control Plan will describe the Company's program for managing and monitoring nuisance conditions, including vectors such as birds and rats, dust, and noise. The vector-management program will include a description of measures to be taken to

monitor for the presence of these vectors and methods for eliminating them to the extent practicable. This plan will also provide specific approaches to be used to control dust and noise at the Landfill.

3.09 Monitoring and Reporting. The Company shall ensure that operation and maintenance of the Landfill is in accordance with applicable laws and regulations and permits and approvals and does not result in a threat to the public health and safety or the environment. The Company will provide for the collection and assessment of data with respect to the Landfill's impact on groundwater, surface water, and air quality in and around the Landfill, as may be required by MassDEP, and will implement such remedial measures necessary to protect the Town's water and air resources from degradation as may be required by MassDEP and applicable laws and regulations.

3.10 Access to Records. The Town Selectmen and their designated representatives shall have the right at reasonable times and upon reasonable notice to examine the non-proprietary and non-confidential records of waste receipts of the Company which pertain to the operation of the Landfill and the performance of the requirements of this Agreement, including without limitation all weight slips. The Company shall preserve such records pertaining to the Landfill for a period of at least three (3) years or as may otherwise be required by law following the close of each fiscal year of the Company. This obligation shall survive termination of this Agreement.

3.11 Entries and Inspections. The Company agrees to grant representatives designated by the Town Selectmen the right to inspect the Landfill upon reasonable notice to the Company and subject to the Company's safety rules and regulations. To the extent practicable or reasonable, said inspection shall be during the hours of operation of the Landfill, but may be at such other times which, in the Selectmen's judgment, are warranted. Said right of inspection shall include the right to have access to and to copy at all reasonable times all records that are required to be kept by the Company pursuant to the terms of this Agreement and state law and regulation.

3.12 Compliance with Law. The Company shall maintain and operate the Landfill at all times in compliance with all applicable local, state and federal laws, regulations, orders, permits and approvals including without limitation, G.L. c. 111, § 150A and all applicable regulations of the MassDEP, including without limitation, 310 CMR 16.00 and 19.000, et seq. The Company shall comply with all site assignments and modifications to site assignment issued by the Board of Health, any special permits issued by the Planning Board, any Orders of Conditions issued by the Conservation Commission, and all permits and final approvals issued by the MassDEP or the Board of Health for construction or operation of the Landfill.

3.13 Enforcement. Subject to the terms agreed to herein, this Agreement may be enforced at law or in equity by any court of competent jurisdiction in the Commonwealth of Massachusetts. Nothing herein shall be construed to limit the power and authority of the Town or any of its officers, boards, or commissions to promulgate bylaws and regulations, or, in any way, to limit the authority of the Town to exercise its statutory power and authority.

3.14 Relationship to Site Assignment and Other Town Approvals. The Company shall be obligated to comply with the terms of this Agreement in addition to any approvals or conditions imposed by other Town officers, boards or commissions pursuant to their respective statutory or regulatory authority. To the extent that this Agreement imposes obligations on the Company that are more stringent than any other applicable permit approvals or conditions, or that are more favorable to the Town, the Company shall be obligated to comply with the terms of this Agreement in addition to the approvals or conditions imposed by such other officers, boards, or commissions.

3.15 Disposal of Leachate. Provided that the Landfill is open and operating for the disposal of Acceptable Waste, the Company agrees to dispose and the Town agrees to accept all of the Landfill leachate at the Town's Publicly Owned Treatment Works (POTW) facility to the extent sufficient capacity exists pursuant to the terms of a Leachate Disposal Agreement to be negotiated between the Town and the Company to ensure that such an agreement remains in effect during the term of this Agreement. [AGREEMENT TO BE NEGOTIATED]

3.16 Financial Assurance. The Company shall establish and maintain the financial assurance mechanism for closure of the Landfill and for post-closure monitoring and maintenance of the Landfill in such amounts and using financial assurance mechanisms as approved by the MassDEP pursuant to 310 CMR 19.051. The Company shall provide the Town Selectmen with a copy of the financial assurance mechanism(s) and any new, substitute or replacement financial assurance mechanism(s) during the term of this Agreement.

3.17 Post Closure Master Plan. The Company shall provide the Town with a conceptual Master Plan for post-closure use of the Landfill before attaining the Landfill's full Permitted Capacity. The Company and the Town agree to negotiate in good faith the incorporation of reasonable post closure open space and passive recreational uses for the Landfill consistent with public health, safety and environmental protection and good landfill design, operation, closure and post closure practices.

3.18 Insurance. The Company will provide the Town Selectmen annually with evidence of insurance, issued by a carrier qualified to do business in the Commonwealth of Massachusetts, in the amounts and coverage set forth below or such other amounts as the parties may agree from time to time:

<u>Coverages</u>	<u>Limits of Liability</u>
Worker's Compensation	Statutory
Employer's Liability	\$5,000,000
Personal Bodily Injury Liability	\$5,000,000
Combined Single Limit	
Automobile Bodily Injury	\$5,000,000

Combined Single Limit	
Automobile Property Damage	\$5,000,000
Combined Single Limit	
Excess Umbrella Liability	\$2,000,000
Each occurrence	

Environmental Impairment: During the Term, so long as such insurance is commercially available, the Company shall cause the Landfill to be insured for third-party environmental impairment under a claims made policy carried by the Company. The policy shall provide umbrella coverage of not less than \$10,000,000.

The Town agrees that the underlying limits of liability may be less than the above minimum amounts if made up for by excess umbrella liability coverage.

The Company shall direct its insurance carriers to name the Town as an additional insured where appropriate in the context of the coverage.

4. **INDEMNIFICATION**

Excluding any claims caused by the gross negligence or intentional misconduct of the Town, the Company shall defend, with competent counsel, indemnify and hold harmless the Town, its agents and representatives, from and against any liability, cause of action, or claims of any nature arising from the Company's operation of the Landfill including, without limitation, any liability arising from any breach by the Company of this Agreement, or any claim arising from the permitting, construction or operation of the Landfill, excluding any claims arising from any former operation of the Landfill or disposal of waste in the Landfill by or on behalf of the Town.

To the fullest extent permitted by law, the Town agrees to defend, with competent counsel, indemnify and hold harmless the Company from and against any liability, cause of action or claims of any nature arising from any bodily injury, including death, or property damage incurred by any Town official, employee, contractor or representative while on the Property except to the extent caused by the negligence of the Company.

5. **REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

The Company represents and warrants to the Town as follows:

5.01 The Company is a corporation duly incorporated, validly existing and authorized to do business under the laws of Massachusetts with the full legal right, power and authority to enter into and fully and timely perform its obligations under this Agreement.

5.02 The Company is duly authorized to execute and deliver this Agreement and this Agreement constitutes a legal, valid and binding obligation of the Company which is enforceable against the Company in accordance with its terms.

5.03 Neither the execution or delivery by the Company of this Agreement nor the performance by the Company of its obligations in connection with the transactions contemplated hereby or the fulfillment by them of the terms and conditions hereof conflicts with, violates or results in a breach of any law or governmental regulation applicable to it or materially conflicts with, violates or results in a breach of any term or condition of any order, judgment or decree or any agreement or instrument to which the Company is a party or by which the Company or any of its properties or personal property is bound or constitutes a default thereunder.

5.04 All corporate action has been taken which is required for the valid execution and delivery by the Company of this Agreement and the performance by the Company of its obligations hereunder.

5.05 There is no action, suit or proceeding at law or in equity before or by any court or governmental authority pending or threatened against the Company in which an unfavorable decision, ruling or finding would materially and adversely affect the performance by the Company if its obligations hereunder or any other transaction contemplated hereby or that in any way would materially adversely affect the validity or enforceability of this Agreement or the rights of the Town set forth herein.

6. REPRESENTATIONS AND WARRANTIES OF THE TOWN

The Town represents and warrants to the Company as follows:

6.01 The Town is a municipality in the Commonwealth of Massachusetts with full legal right, power and authority to enter into and to fully and timely perform its obligations under this Agreement.

6.02 There is no action, suit or proceeding at law or in equity before or by any court or governmental authority pending or threatened against the Town in which an unfavorable decision, ruling or finding would materially adversely affect the performance by the Town of its obligations hereunder or other transactions contemplated hereby or that in any way would materially adversely affect the validity and enforceability of this Agreement.

7. SURVIVAL OF REPRESENTATIONS AND WARRANTIES

The representations and warranties of the parties contained in this Agreement shall survive the date hereof and shall expire upon termination of this Agreement. Neither the Town nor the Company shall have any liability whatsoever with respect to any such representations or warranties after the survival period for such representation and warranty expires.

8. TERM/TERMINATION

8.01 Term. This Agreement shall be effective as of the date hereof and shall continue in effect until the Permitted Capacity of the Landfill has been reached or the Landfill is no longer receiving Acceptable Waste, whichever occurs first.

8.02 Termination. This Agreement may be terminated at any time:

- (a) By mutual agreement of the Town and the Company;
- (b) By the Company if any legal proceeding or government investigation results in an unfavorable judgment, order, decree, stipulation or injunction that prevents the Company from operating the Landfill, prevents the Company from engaging in the activities contemplated by this Agreement, or otherwise has a material adverse effect on the ability of the Company to perform its obligations hereunder; or
- (c) By the Town if the Company fails to perform its obligations under Sections 2, 3 or 4, above, and fails to cure such default pursuant to Subsection (d) below.
- (d) Upon a breach by a party of its obligations under this Agreement, such party shall (i) cure the breach within ninety (90) days of receipt of written notice from the non-breaching party; or (ii) continuously demonstrate within such cure period that it is actively and continuously pursuing a course of action which can reasonably be expected to lead to a curing of the breach (in which case the ninety (90) day period will be extended for so long as the breaching party is actively and continuously pursuing such a course); provided, however, that in the event of the failure of any party to this Agreement to pay the other party or parties any sum or amount required to be paid when due hereunder, cure shall consist of payment which will be made within fifteen (15) days of written demand from the non-breaching party.

9. **DISPUTE RESOLUTION.**

9.01 Settlement. The parties agree that before resorting to non-binding arbitration pursuant to this Section, they shall attempt to come to a reasonable settlement of any dispute (i) by having their authorized representatives attempt to negotiate a resolution of the dispute for a period of thirty (30) days, and, if not resolved by the authorized representatives, then (ii) if there are more senior members of management, by having other more senior members of each party's management, who have had no previous involvement in the dispute, but who have the authority to resolve the dispute, attempt to negotiate a resolution of the dispute for an additional fifteen (15) days.

9.02 Agreement to Non-Binding Arbitration. In the event settlement of a dispute is not timely achieved in accordance with the time frame established in Section 9.01, the parties agree that any disputes that may arise between them (including, but not limited to, any controversies or claims arising out of or relating to this Agreement or any alleged breach thereof, and any dispute over the interpretation or scope of this arbitration clause, but excluding claims for non-payment and any enforcement action by any official, board or agency of the Town for enforcement of any law, regulation, order or permit, which the parties agree are outside of this Agreement) shall be attempted to be resolved by non-binding arbitration as described in this Section.

9.03 Selection of Panel. In the event settlement is not achieved and non-binding arbitration is necessary, a panel of three arbitrators will hear and decide the dispute. Each of the Company and the Town will select an arbitrator and the arbitrators selected by such parties will, within fourteen (14) days of the appointment of the second of them, select the third arbitrator, who shall be a retired or former judge. The panel of three arbitrators shall consist of individuals who shall not have then or previously had any significant relationship with any of the parties and who shall sit as neutral arbitrators.

9.04 Choice of Law. The non-binding arbitration panel shall have the right only to interpret and apply the terms and conditions of this Agreement in question in accordance with the laws of the Commonwealth of Massachusetts and may not alter or modify any such term or condition. The Massachusetts Rules of Civil Procedure and the Massachusetts Rules of Evidence in effect at the time of any arbitration proceedings under this Agreement shall be applied in all such proceedings.

9.05 Venue. The non-binding arbitration proceedings shall be conducted in Worcester, Massachusetts, or in such other location as the parties may agree in writing.

9.06 Arbitration Award. The arbitration award shall be non-binding, provided that upon written agreement of the parties, application may be made in any court of competent jurisdiction for confirmation of the arbitration award and entry of judgment in conformity therewith. The arbitration panel shall make written findings of fact and conclusions of law, or, if the parties agree that such formal findings and conclusions are not required, the arbitration panel shall prepare a reasoned opinion.

9.07 Limitation on Damages. No party shall be entitled to punitive or treble damages as part of the non-binding arbitration award.

9.08 Expenses of Arbitration. Each party shall be responsible for payment of fees and expenses to its designated arbitrator, and the parties shall share equally the fees and expenses of the third arbitrator and other expenses related to the arbitration. Each party shall be responsible for payment of its own attorneys' fees.

9.09 Litigation. In the event that any dispute between the parties becomes the subject of a court proceeding subsequent to completion of the non-binding arbitration ("litigation"), the parties agree that (a) the arbitration award, including findings of fact and conclusions of law, or the reasoned opinion, shall be admissible into evidence in the litigation; (b) the parties waive their rights to demand trial by jury and the litigation shall be decided by a judge sitting without a jury; (c) the exclusive venue for any litigation shall be the Commonwealth of Massachusetts Superior Court, Worcester County; (d) no party to litigation shall be entitled to receive any punitive or treble damages; and (e) in any action arising under this Agreement, the Company agrees to accept service of process delivered in hand or by certified mail to its agent for service of process and consents to the jurisdiction of the Commonwealth of Massachusetts Superior Court, Worcester County.

9.10 Acknowledgment of Non-Binding Arbitration. The parties hereto acknowledge that this document contains an agreement to engage in non-binding arbitration. After signing this document, each party understands that it will not in the first instance be able to bring a lawsuit concerning any dispute that is covered by this non-binding arbitration agreement except as provided in this section or unless it involves a question of constitutional law or civil rights. Instead, each party has agreed to submit any such dispute to a panel of arbitrators as described herein.

10. STRICT PERFORMANCE

The failure of either party to insist on the strict performance of any of the terms, covenants and provisions of this Agreement or to exercise any option herein contained shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition, provision or option.

11. FORCE MAJEURE

Neither the Town nor the Company shall be responsible for delays or failures in performance resulting from a Force Majeure Event. Such excuse of performance shall only be to the extent reasonably forced on such party by such Force Majeure Event and such party shall continue to perform all other responsibilities hereunder. This provision shall not, however, relieve a party from using reasonable efforts to overcome or remove a Force Majeure Event.

12. CAPTIONS AND HEADINGS

Captions and headings throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision or of the scope or intent of this Agreement nor in any way affect this Agreement.

13. MODIFICATIONS

This Agreement cannot be changed orally, but only by agreement in writing signed by the parties.

14. SEVERABILITY

In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein; provided, however, that it is the intention of the parties hereto that in lieu of each term, clause, or provision that is held to be invalid, illegal or unenforceable, there shall be added by mutual agreement as a part of this Agreement a term, clause or provision as similar in terms to such invalid, illegal or unenforceable, term, clause or provision as may be possible and valid, legal or enforceable.

15. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

16. BINDING AGREEMENT

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

17. NOTICE

All notices or other communications to be given hereunder shall be in writing and may be given by personal delivery, reputable overnight delivery service, or by registered or certified United States mail, return receipt requested, properly addressed as follows:

To the Town:

Town of Hardwick Board of Selectmen
[INSERT street address]
P.O. Box 575
Gilbertville, MA 01031
Attn: Chair

With a copy to:

To the Company:

Hardwick Landfill, Inc.
25 Greens Hill Lane
P.O. Box 866
Rutland, VT 05702

With a copy to:

Casella Waste Systems Inc.
25 Greens Hill Lane
P.O. Box 866
Rutland, VT 05702
Attn: Office of General Counsel

or to such other person as the Town or the Company, as the case may be, shall have specified by notice duly given pursuant to this Section.

18. ASSIGNMENT AND CHANGE IN CONTROL

The Company agrees that this Agreement shall be binding upon and inure to the benefit of successor owners and operators of the Landfill. The Company further agrees that it will not sell, lease or otherwise dispose of the Landfill or dispose of a controlling interest in the Company to any person or entity that intends to continue the Landfill operation without first obtaining the written agreement of such person or entity to be bound by this Agreement. Any assignment by

the Company in connection with any financing, or to any entity controlling, controlled by, or under common control with the Company, shall not be considered disposition of a controlling interest in the Company.

19. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Town and the Company with respect to the matters described herein and cancels and supersedes all prior negotiations, representations, understandings and agreements, either written or oral, between such parties with respect to the subject matter hereof.

20. COUNTERPARTS

This Agreement may be executed in two (2) counterparts, each of which will be considered an original, and both of which taken together shall constitute one and the same instrument.

21. NULLITY

This Agreement shall be null and void in the event that the Company does not receive All Required Approvals by December 31, 2026, however, this Agreement may be extended in the sole discretion of Company.

22. AUTHORITY OF PARTIES

The individuals who have executed this Agreement on behalf of the respective parties expressly represent and warrant that they are authorized to sign on behalf of such entities for the purpose of duly binding such entities to this Agreement.

IN WITNESS WHEREOF, the Town and the Company have caused their respective duly authorized officers to execute this Agreement under seal as of the day and year first above written.

THE TOWN:

HARDWICK BOARD OF SELECTMEN

By: _____
Chairman

Attest: _____

Date of Execution: _____

(the Town Seal)

By: _____
Member

Attest: _____

Date of Execution: _____ (the Town Seal)

By: _____
Member

Attest: _____

Date of Execution: _____ (the Town Seal)

Approved as to
form: _____ (Town Counsel)

COMPANY:

HARDWICK LANDFILL, INC.

By: _____

Attest: _____

Date of Execution: _____ (Corporate Seal)