

**LEWISTON CITY COUNCIL AGENDA
CITY COUNCIL CHAMBERS
JANUARY 22, 2013**

6:00 p.m. Executive Session - To discuss an Economic Development issue of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.

7:00 p.m. Regular Meeting

Pledge of Allegiance to the Flag.
Moment of Silence.

Public Comment period - Any member of the public may make comments regarding issues pertaining to Lewiston City Government (maximum time limit is 15 minutes for all comments)

ALL ROLL CALL VOTES FOR THIS MEETING WILL BEGIN WITH THE COUNCILOR OF WARD 3.

REGULAR BUSINESS:

1. Public Hearing on the renewal application for a Special Amusement Permit for Live Entertainment for the Fraternal Order of Eagles, 1327 Sabattus Street.
2. Public Hearing on the renewal application for a Special Amusement Permit for Live Entertainment for Altera, 347 Lisbon Street.
3. Public Hearing & Final Passage regarding an amendment to the Business Licensing ordinance regarding the adoption of the State of Maine Rules for health inspections.
4. Resolve Authorizing the Department of Economic and Community Development to apply for and accept a three-year, \$2.5 million Lead Hazard Reduction Demonstration Grant as the Lead Agency in a partnership with Auburn.
5. Resolve Expressing the Opposition of the City Council of the City of Lewiston to proposals to shift burden of funding state government to the property tax and property tax payer.
6. Order Authorizing the City Administrator to execute a lease agreement with Casella Recycling, LLC to allow for the construction and operation of a Recyclable Materials Processing Facility at the City's Solid Waste Facility on River Road.
7. Reports and Updates.
8. Any other City Business Councilors or others may have relating to Lewiston City Government.
9. Executive Session pursuant to MRSA Title 1, section 405 (6) (E) to discuss a legal matter with the City Attorney.

LEWISTON CITY COUNCIL
MEETING OF JANUARY 8, 2013

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 6:00pm

SUBJECT:

Executive Session pursuant to MRSA Title 1, section 405 (6) (c) to discuss an Economic Development issue of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.

INFORMATION:

The Maine State Statutes, Title 1, section 405, define the permissible grounds and subject matters of executive sessions for public meetings.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

State statutes define the purposes for entering into an executive session.

EAB/kmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
---	---	---	---	---	---	---	---

To enter into an Executive Session pursuant to MRSA Title 1, section 405 (6) (c) to discuss an Economic Development issue of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.

LEWISTON CITY COUNCIL

MEETING OF JANUARY 22, 2013

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 1

SUBJECT:

Public Hearing on the renewal application for a Special Amusement Permit for Live Entertainment for the Fraternal Order of Eagles, 1327 Sabattus Street.

INFORMATION:

We have received a renewal application for a Special Amusement Permit for Live Entertainment from the Fraternal Order of Eagles, 1327 Sabattus Street.

The Police Department has reviewed and approved the application.

There was no reference to this business or property address in the Council Constituent Concern log, as maintained by the Administrator's Office.

The business owner has been notified of the public hearing and requested to attend.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EAS/KMM

REQUESTED ACTION:

1	2	3	4	5	6	7	M
---	---	---	---	---	---	---	---

To grant a Special Amusement Permit for Live Entertainment to the Fraternal Order of Eagles, 1327 Sabattus Street.

**CITY OF LEWISTON
APPLICATION FOR SPECIAL AMUSEMENT PERMIT**

Date of Application: 12/18/12 Expiration Date: 1/4/13 License fee: \$116.00

- Class A - restaurants with entertainment, which does not have dancing
- Class B - lounges/bars with entertainment, which does not have dancing
- Class C - either restaurants or lounges/bars with entertainment, including dancing
- Class D - function halls with entertainment, including dancing
- Class E - dance hall or nightclub that admits persons under the age of 21
- Class F - "chem-free" dance hall or nightclub for patrons aged 18 years and older, with no liquor service

Renewal Applicants: Has any or all ownership changed in the 12 months? Yes No

****PLEASE PRINT****

Business Name: FOE Dingo Bar Business Phone: 7866837

Location Address: 1327 Sabattus St Lewistn

(If new business, what was formerly in this location: _____)

Mailing Address: Same

Contact Person: Norm Marcotte Home Phone: 2405397

Owner of Business: membership Date of Birth: _____

Address of Owner: _____

Manager of Establishment: none Date of Birth: _____

Owner of Premises (landlord): _____

Address of Premises Owner: none

Does the issuance of this license directly or indirectly benefit any City employee(s)? Yes No
If yes, list the name(s) of employee(s) and department(s): _____

Have any of the applicants, including the corporation if applicable, ever held a business license with the City of Lewiston? Yes No If yes, please list business name(s) and location(s): _____

Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of the law? Yes No If yes, please explain: _____

CORPORATION APPLICANTS: Please attach a list of all principal officers, date of birth & town of residence

Corporation Name: FOE Domingo Peris 6/8

Corporation Mailing Address: 1327 Sabattus St Lew Me 04501

Contact Person: Theresa Marcotte Phone: 7869618

Do you permit dancing on premises? Yes No (If yes, you must first obtain a dance hall permit from the State Fire Marshall's Office) If yes, do you permit dancing or entertainment after 1:00 AM? Yes No

What is the distance to the nearest residential dwelling unit both inside and outside the building from where the entertainment will take place? _____

Please describe the type of proposed entertainment:

- dancing
- stand up comedian
- piano player
- music by DJ
- karaoke
- other, please list _____
- live band/singers
- magician
- other, please list _____

If new applicant, what is your opening date?: _____

Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above licensee and further agrees that any misstatement of material fact may result in refusal of license or revocation if one has been granted. Applicant agrees that all taxes and accounts pertaining to the premises will be paid prior to issuance of the license.

It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto.

I/We hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/We hereby waive any rights to privacy with respect thereto.

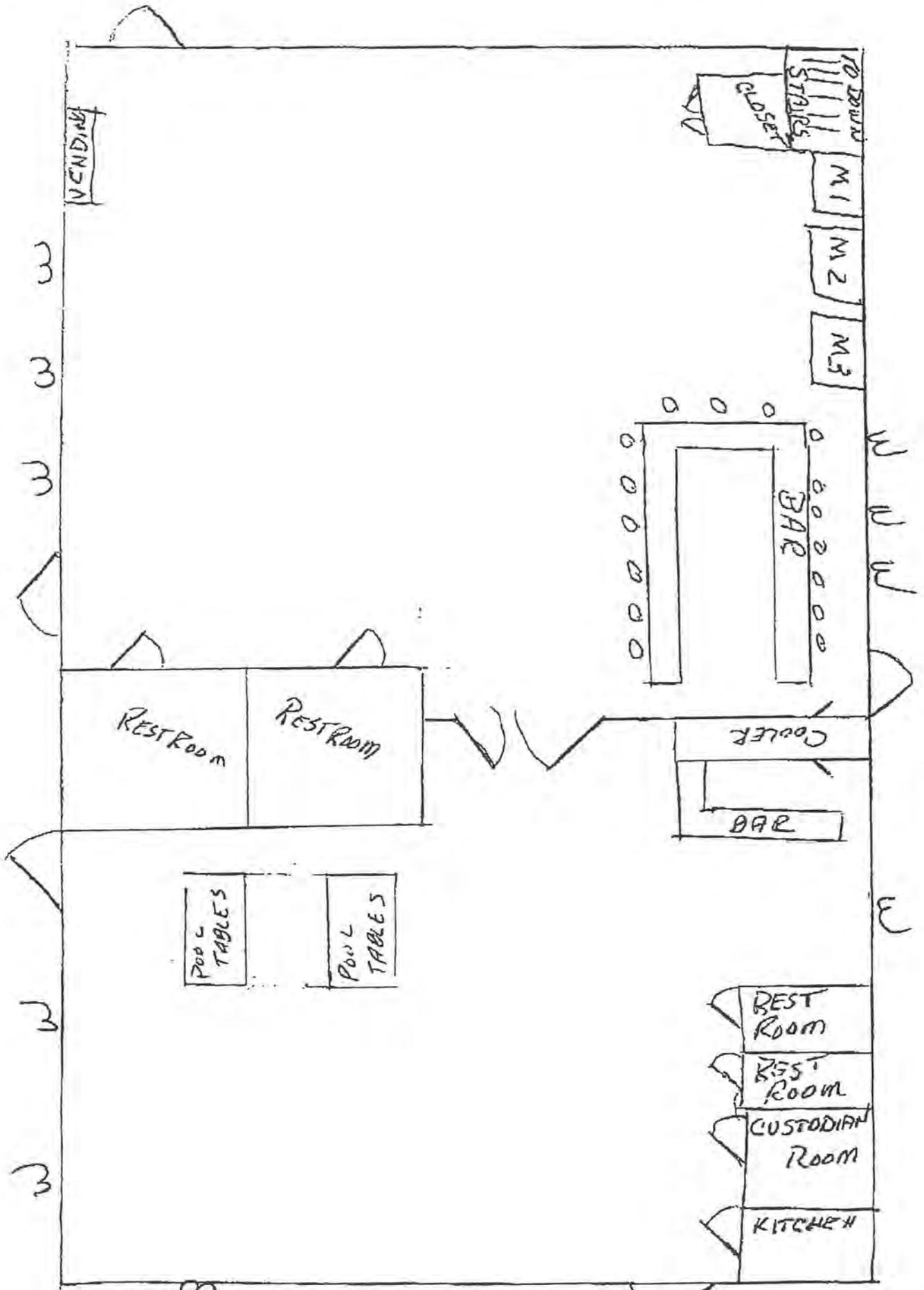
Signature: Theresa Marcotte Title: Secretary Date: 11/28/12

Printed Name: Theresa Marcotte

Sent to Code Enforcement: _____ Need reply by: _____ Approved: _____

Sent to Police & Fire: _____

Hearing Date: _____ Approved by Council: _____ Vote No: _____



December 26, 2012

Aerie 618 LEWISTON, ME
Current Officers - Term Ending 05/31/2013

JR PAST WORTHY PRESIDENT

MURVIL CHRISTIE
87 RIDGE RD
LISBON FALLS, ME 04252-6120

GAID#: 3700114
Home: (207) 353-2852
Club: 207-786-9618
Email:

WORTHY PRESIDENT

NORMAND MARCOTTE
39 GROVE ST
SABATTUS, ME 04280-4645

GAID#: 1817023
Home: (207) 7860706
Club: 207-786-9618
Email:

WORTHY VICE-PRESIDENT

CATHY L JOHANSEN
98 NO NAME POND RD
LEWISTON, ME 04240-2231

GAID#: 3871512
Home:
Club: 207-786-9618
Email:

WORTHY CHAPLAIN

ARLINE J GREENLAW
164 CROWLEY RD
LEWISTON, ME 04240-1501

GAID#: 3918826
Home:
Club: 207-786-9618
Email:

WORTHY SECRETARY

THERESE MARCOTTE
39 GROVE ST
SABATTUS, ME 04280-4645

GAID#: 3862627
Home: 207-240-5397
Club: 207-786-9618
Email:

TREASURER

DICK CARON
11 THORNE AVE
LEWISTON, ME 04240-3655

GAID#: 3262062
Home:
Club: 207-786-9618
Email:

WORTHY CONDUCTOR

JOAN MARSTON
47 OLD CEDAR GROVE RD
PITTSFORD, ME 04345-5359

GAID#: 3862659
Home: 207 268-2742
Club: 207-786-9618
Email:

INSIDE GUARD

MILDRED RIDER
87 RIDGE RD
LISBON FALLS, ME 04252-6120

GAID#: 4131856
Home:
Club: 207-786-9618
Email:

TRUSTEE

RYAN RUSSELL
140 RABBIT RD
SABATTUS, ME 04280-4953

GAID#: 4502389
Home:
Club: 207-786-9618
Email:

TRUSTEE

PATRICK S GAGNON
31 LORING AVE
LEWISTON, ME 04240-5107

GAID#: 4495287
Home: 2075771996
Club: 207-786-9618
Email:

TRUSTEE

TAMMY ST. AMANT
270 SCRIBNER BLVD
LEWISTON, ME 04240-4459

GAID#: 3862652
Home:
Club: 207-786-9618
Email:

TRUSTEE

JOSEPH A LEVASSEUR
1425 SABATTUS RD
LEWISTON, ME 04240-2114

GAID#: 3547150
Home:
Club: 207-786-9618
Email:

December 26, 2012

Aerie 618 LEWISTON, ME
Current Officers - Term Ending 05/31/2013

TRUSTEE

JEFF MCKENZIE
PO BOX 1164
SABATTUS, ME 04280-1164

GAID#: 1697811
Home: (207) 375-9580
Club: 207-786-9618
Email:



POLICE DEPARTMENT

Michael J. Bussiere
Chief of Police



TO: Kelly Mercier, Deputy City Clerk

FR: Lt. Adam D. Higgins, Support Services

DT: December 12, 2012

RE: Liquor License/Special Amusement Permit – **Altera**

We have reviewed Liquor License/Special Amusement Permit Application and have no objections to the following establishment;

Altera
347 Lisbon St.



171 Park St • Lewiston, Maine • 04240 • Phone 207-513-3137 • Fax 207-795-9007
www.lewistonpd.org



Professionalism

Integrity

Compassion

Dedication

Pride

Dependability

12/27/2012 ALTERA

APT #	YEAR MM DD TIME	REASON	ACTION	CALL #	VICINITY
-------	-----------------	--------	--------	--------	----------

[REDACTED]

2012 10 27 0129	POL-Liquor Laws	Cleared	12-95169	N
-----------------	-----------------	---------	----------	---

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

LEWISTON CITY COUNCIL
MEETING OF JANUARY 22, 2013

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 2

SUBJECT:

Public Hearing on the renewal application for a Special Amusement Permit for Live Entertainment for Altera, 347 Lisbon Street.

INFORMATION:

We have received a renewal application for a Special Amusement Permit for Live Entertainment from Altera, 347 Lisbon Street.

The Police Department has reviewed and approved the application.

There was no reference to this business or property address in the Council Constituent Concern log, as maintained by the Administrator's Office.

The business owners have been notified of the public hearing and requested to attend.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EAS/KMM

REQUESTED ACTION:

1	2	3	4	5	6	7	M
---	---	---	---	---	---	---	---

To grant a Special Amusement Permit for Live Entertainment to Altera, 347 Lisbon Street.

22nd

CITY OF LEWISTON
APPLICATION FOR SPECIAL AMUSEMENT PERMIT

Date of Application: 1/14/13 Expiration Date: 1/12/14 License fee: \$116.00

- Class A - restaurants with entertainment, which does not have dancing
- Class B - lounges/bars with entertainment, which does not have dancing
- Class C - either restaurants or lounges/bars with entertainment, including dancing
- Class D - function halls with entertainment, including dancing
- Class E - dance hall or nightclub that admits persons under the age of 21
- Class F - "chem-free" dance hall or nightclub for patrons aged 18 years and older, with no liquor service

Renewal Applicants: Has any or all ownership changed in the 12 months? Yes No

****PLEASE PRINT****

Business Name: ALTEA Business Phone: 207-333-713

Location Address: 347 Lisbon St. Lewiston ME 04240

(If new business, what was formerly in this location: _____)

Mailing Address: SAME

Contact Person: STEPHEN A WALLACE Home Phone: 207-333-713

Owner of Business: STEPHEN A WALLACE Date of Birth: 5-4-1962

Address of Owner: 14 JAGWAS DR. ~~SABATHUS~~ Sabathus ME 04280

Manager of Establishment: STEPHEN A WALLACE Date of Birth: 5-4-1962

Owner of Premises (landlord): ~~ALTEA~~ ~~Sabathus~~ Maurice Beeber

Address of Premises Owner: 17 McKinley Lewiston ME 04240

Does the issuance of this license directly or indirectly benefit any City employee(s)? Yes No
If yes, list the name(s) of employee(s) and department(s): _____

Have any of the applicants, including the corporation if applicable, ever held a business license with the City of Lewiston? Yes No If yes, please list business name(s) and location(s): This Past year + Cemetery under Altea.

Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of the law? Yes No If yes, please explain: _____

CORPORATION APPLICANTS: Please attach a list of all principal officers, date of birth & town of residence

Corporation Name: ALTERA

Corporation Mailing Address: 347 Lisbon St. Lewiston Me 04240

Contact Person: STEPHEN A WALLACE Phone: 207-333-7137

Do you permit dancing on premises? Yes No (If yes, you must first obtain a dance hall permit from the State Fire Marshall's Office) If yes, do you permit dancing or entertainment after 1:00 AM? Yes No

What is the distance to the nearest residential dwelling unit both inside and outside the building from where the entertainment will take place? upstairs Apartments owned by landlord.

Please describe the type of proposed entertainment:

- dancing
- music by DJ
- live band/singers
- stand up comedian
- karaoke
- magician
- piano player
- other, please list _____
- other, please list _____

If new applicant, what is your opening date?: _____

Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above/ licensee and further agrees that any misstatement of material fact may result in refusal of license or revocation if one has been granted. Applicant agrees that all taxes and accounts pertaining to the premises will be paid prior to issuance of the license.

It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto.

I/We hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/We hereby waive any rights to privacy with respect thereto.

Signature: [Signature] Title: owner Date: 1/14/2013

Printed Name: STEPHEN A WALLACE

Sent to Code Enforcement: _____ Need reply by: _____ Approved: _____

Sent to Police & Fire: _____

Hearing Date: _____ Approved by Council: _____ Vote No: _____

CITY OF LEWISTON, MAINE

Department of City Clerk

Supplementary Questionnaire for Corporate Applicants

1. Exact corporate name: ALTERA

2. Date of incorporation: Dec 2011

3. State in which you are incorporated: Maine

4. If not a Maine corporation, date corporation was authorized to transact business within the State of Maine: _____

5. List the names, addresses previous 5 years, birth dates, title of all officers, directors, and % of stock owned:

NAME	ADDRESS PREVIOUS 5 YEARS	BIRTH DATE	% OF STOCK	TITLE
Stephen A WALLACE	① 14 TAGWAS DR SARASOTUS ME 04280	5/4/62	100%	President
	② 747 Lisbon St. #6 Lewiston ME 04240			
	③ 42 Pine Ridge Rd. SARASOTUS ME 04280			
	129 Oak St. Apt 2 Lewiston ME 04240			

6. What is the amount of authorized stock? 100 Outstanding stock? _____

7. Is any principal officer of the corporation a law enforcement official?
NO

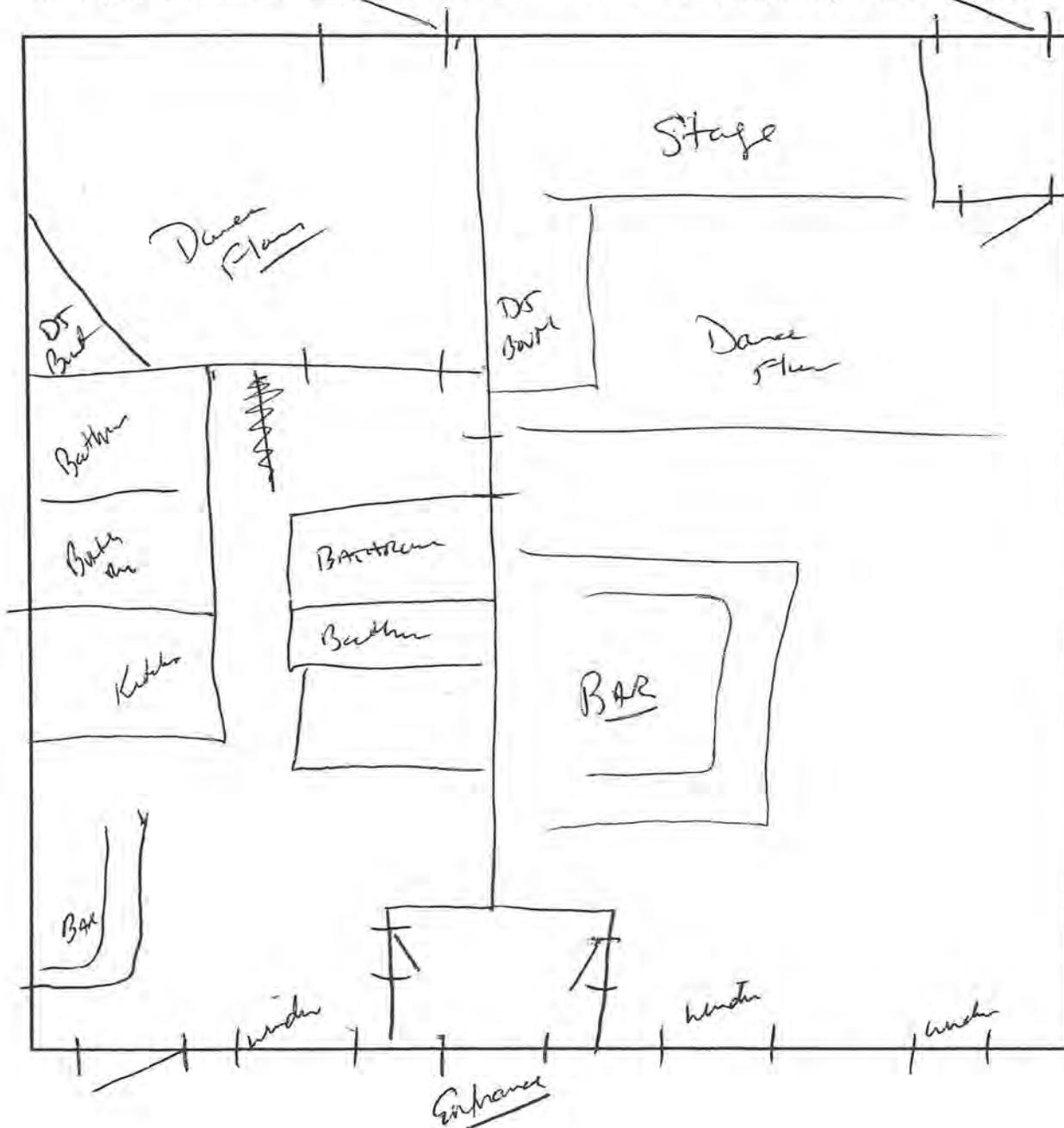
Dated at Lewiston on 1/14/2013
City or Town Date

[Signature]
SIGNATURE OF DULY AUTHORIZED OFFICER

**SPECIAL AMUSEMENT PERMIT
SUPPLEMENTAL APPLICATION FORM
ON-PREMISE DIAGRAM**

In an effort to clearly define your licensed premise and areas that the entertainment is allowed, the City of Lewiston is requiring all applicants to submit a diagram of the premise to be licensed in addition to a completed license application.

Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the areas of your diagram showing where in the facility the entertainment will be, the direction of any speakers and where the dance floor, if any will be located.





POLICE DEPARTMENT

Michael J. Bussiere
Chief of Police



TO: Kelly Mercier, Deputy City Clerk

FR: Lt. Adam D. Higgins, Support Services

DT: December 12, 2012

RE: Liquor License/Special Amusement Permit – **Fraternal Order of Eagles**

We have reviewed Liquor License/Special Amusement Permit Application and have no objections to the following establishment;

Fraternal Order of Eagles
1327 Sabattus Street



171 Park St • Lewiston, Maine • 04240 • Phone 207-513-3137 • Fax 207-795-9007
www.lewistonpd.org



Professionalism

Integrity

Compassion

Dedication

Pride

Dependability

LEWISTON CITY COUNCIL

MEETING OF JANUARY 22, 2013

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 3

SUBJECT:

Public Hearing and Final Passage regarding an amendment to the Business Licensing ordinance regarding the adoption of the State of Maine Rules for health inspections.

INFORMATION:

This item is a housekeeping item and passage is requested by the Code Enforcement Department.

In October 2012, the City Council adopted various State of Maine Rules regarding the Food Code, Lodging Establishments and Health Inspections. Since this time, the State adopted a newer version of the Rules regarding Health Inspections.

The City Council is asked to adopt the most recent (October 7, 2012) version of the State Rules Relating to the Administration and Enforcement of Establishments Licensed by the Health Inspection Program. This will bring the City's Code into compliance with the State of Maine Rules.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EAB/kmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
---	---	---	---	---	---	---	---

That the proposed amendment to the City Code of Ordinances, Chapter 22 "Businesses", Article II "Licenses", Section 22-49 receive final passage by a roll call vote.

**AN ORDINANCE PERTAINING TO THE ADOPTION OF STATE OF MAINE
ADMINISTRATIVE RULES RELATING TO FOOD SERVICE, LODGING AND
ADMINISTRATION AND ENFORCEMENT OF ESTABLISHMENTS LICENSED BY THE
HEALTH INSPECTION PROGRAM**

THE CITY OF LEWISTON HEREBY ORDAINS:

CHAPTER 22

BUSINESSES

ARTICLE II. LICENSES

Sec. 22-49 Adoption of State of Maine Rules.

For the purpose of protecting the public health the City hereby adopts and enacts the following State of Maine Rules:

1. State of Maine Food Code 2001 as adopted by the Maine Department of Human Services 10-144 CMR 200 and the Maine Department of Agriculture, Food and Rural Resources 01-001 CMR 331 May 1, 2001.
2. Rules Relating to Lodging Establishments, Department of Health and Human Services, Maine Centers for Disease Control and Prevention, Division of Environmental Health 10-144 CMR 206 January 1, 2003.
3. Rules Relating to the Administration and Enforcement of Establishments Licensed by the Health Inspection Program, Department of Health and Human Services, Maine Center for Disease Control and Prevention, Division of Environmental Health Inspection Program 10-144 CMR Chapter 201 ~~October 7, 2012~~ January 18, 2011.

Secs. 22-50– 22-70 Reserved.

REASON FOR PROPOSED AMENDMENT

The Maine Center for Disease Control (CDC) and the Maine Department of Health and Human Services (DHHS) has amended the Rules Relating to the Administration and Enforcement of Establishments Licensed by the Health Inspection Program; therefore, given our delegated authority to undertake inspections on behalf of the State of Maine, the January 18, 2011 rules must be adopted to replaced the October 7, 2012 amended rules.

LEWISTON CITY COUNCIL

MEETING OF JANUARY 22, 2013

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 4

SUBJECT:

Resolve Authorizing the Department of Economic and Community Development to apply for and accept a three-year, \$2.5 million Lead Hazard Reduction Demonstration Grant as the Lead Agency in a partnership with Auburn.

INFORMATION:

City staff are seeking approval to apply for a lead hazard reduction grant along with the City of Auburn. The Lewiston-Auburn area has the highest level of elevated blood lead levels in the State and the levels are extremely high in children and immigrant families.

This grant, if awarded, would require a 25% match from the City.

Please see the memorandum from Lincoln Jeffers for additional information.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EATB/kmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
---	---	---	---	---	---	---	---

To approve the Resolve authorizing the Department of Economic and Community Development to apply for and accept a three-year, \$2.5 million Lead Hazard Reduction Demonstration Grant as the Lead Agency in a partnership with Auburn.



**City of Lewiston Maine
City Council Resolve
January 22, 2013**



Resolve, Authorizing the Department of Economic and Community Development to Apply for and Accept a Three-Year, \$2.5 million Lead Hazard Reduction Demonstration Grant as the Lead Agency in a Partnership with Auburn

Whereas, Lewiston-Auburn have the highest elevated blood lead levels in the State of Maine; and

Whereas, in 2010, 22% of the elevated blood levels in Maine children under age 6 occurred in Lewiston-Auburn; and

Whereas, between 2005 and 2009, 116 children were lead poisoned in Lewiston-Auburn, twice the rate of the more populous Portland; and

Whereas, recent reports from the Maine Center for Disease Control indicate that despite past lead mitigation efforts and landlord and tenant educational efforts, blood test screening indicates that the incidence of childhood lead poisonings is increasing among Lewiston-Auburn's immigrant population; and

Whereas, the primary source of childhood lead poisoning comes from ingestion of lead paint chips, lead paint dust, or lead contaminated soils in pre-1970's vintage housing; and

Whereas, 80-90% of Lewiston-Auburn's downtown housing stock in Census Tracts 201, 202, 203 and 204 in Lewiston and Census Tracts 101, 103 and 105 in Auburn (the Target Area) were built prior to 1950; and

Whereas, housing of this age most often used lead based paint during initial construction and subsequent maintenance and rehabilitation; and

Whereas, that portion of this housing that is occupied by families with children 6 years of age and younger puts those children at risk for elevated levels of lead in their blood; and

Whereas, elevated lead blood levels may result in slow development, reduced IQ scores, learning disabilities, hearing loss, reduced height, and hyperactivity; and

Whereas, securing a Lead Hazard Reduction Demonstration Grant is projected to make 200 apartment units and 10 single family homes in the Target Area lead safe; and

Whereas, securing the grant will allow the Cities to expand their outreach, recruitment, blood level testing, intake, and education of families with children under age 6, with a special emphasis on Somali/Somali Bantu families, about the hazards of lead paint and how to protect their families; and

Whereas, owners of private rental housing with apartments suitable for occupancy by families with young children will be eligible to have those units tested for lead paint and, if tested positive, will be eligible for grant and loan assistance of up to \$7,500 per unit to make the unit lead safe;

Now, therefore, be It Resolved by the City Council of the City of Lewiston that

the City Council authorizes the Department of Economic and Community Development to apply as the lead agency in a consortium with Auburn for a three year, \$2.5 million Lead Hazard Reduction Grant and, by so authorizing, agrees that the City of Lewiston will provide a total of \$70,084 in each of the three years of the grant as its share of the grant match requirements.

Economic and Community Development

Lincoln Jeffers
Director



To: Honorable Mayor and Members of the City Council
From: Lincoln Jeffers
RE: Lead Grant Application
Date: January 17, 2013

In 2009, Lewiston and Auburn jointly applied for and were successful in securing a \$2.2 million Lead Based Paint Hazard Control grant from HUD. The grant was administered by Lewiston. Over the course of three years, 234 housing units were made lead safe, 53 children under the age of six were screened for levels of lead in their blood, 47 landlords were trained in lead safe practices, and 144 tenant households received lead awareness and proper cleaning technique training. The number of housing units made lead safe from the 2009 grant exceeded the grant goals, but much work remains.

Community Development would like to apply for a \$2.5 million Lead Hazard Reduction Demonstration Grant. The grant would be for a three year period, would be done in concert with Auburn, and would again, be administered by Lewiston. The grant would require the hiring of a Program Manager, which would be done on a contractual basis and paid for by the grant. The grant will also require a construction management field person. That role would be played by Auburn's current Rehab Coordinator. The lead grant would cover a portion of his salary.

The grant would be used to provide outreach and education to tenants and landlords, with a special emphasis on connecting with the immigrant community; testing for elevated lead blood levels in children; testing for lead based paint in units; and funding to make units lead safe. The goal is to make 200 downtown apartment units and up to 10 single family homes lead safe. Funding will be provided at up to \$7,500 per apartment unit, with two options for receiving the funding: 1) a 90% grant with 10% equity from the building owner, or 2) an 85% grant with 15% loan at 0% interest funded from CDBG.

The grant requires a 25% local match. City partners on the grant, such as Healthy Androscoggin, will provide some of that match. Each city estimates that it will require approximately \$70,084 annually for their share of the match funds. That match may be met with CDBG loans or private match specific to the grant, or by other rehabilitation work done to improve the safety of units that lead work is being done in. The exact amount Lewiston needs to match may vary. Unlike the 2009 grant, Lewiston and Auburn have agreed to grant the funds on a first come, first serve basis regardless of location, so the split on grant funds invested in each community may not be 50/50.

The grant application is due on February 4th. The Council is being asked to authorize submittal of the application. I will be available for questions.

LEWISTON CITY COUNCIL

MEETING OF JANUARY 22, 2013

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 5

SUBJECT:

Resolve Expressing the Opposition of the City Council of the City of Lewiston to proposals to shift the burden of funding state government to the property tax and property tax payer.

INFORMATION:

The City Council is asked to adopt the proposed Resolution to go on record as opposing the Governor's proposed state budget funding items such as a reduction in municipal revenue sharing and other proposals. Please reference the Resolve which outlines the impacts of the proposed budget adjustments.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EATB/kmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
---	---	---	---	---	---	---	---

To approve the Resolve expressing the opposition of the City Council of the City of Lewiston to proposals to shift the burden of funding state government to the property tax and property tax payer.



**City of Lewiston Maine
City Council Resolve
January 22, 2013**



Resolve, Expressing the Opposition of the City Council of the City of Lewiston to Proposals to Shift the Burden of Funding State Government to the Property Tax and Property Tax Payer.

Whereas, the State Administration has submitted a proposed budget for the coming biennium that will dramatically shift the burden of funding state government to the property tax by eliminating or significantly modifying long-standing property tax relief programs; and

Whereas, the proposal to suspend municipal revenue sharing would result in a \$4 million revenue loss to the City of Lewiston, representing 12.5% of the City's general fund operating budget and \$2.18 on the property tax rate; and

Whereas, the proposal to redirect the excise tax on tractor trailers will reduce the City's revenues by an additional \$370,000 or 20 cents on the tax rate; and

Whereas, eliminating the homestead exemption in FY 15 for those under 65 will increase taxes for no longer qualifying residents by \$227 in that year if the City's tax rate remains unchanged; this represents a tax increase of over 10% for most of those losing the exemption; and

Whereas, low and moderate income residents under the age of 65 who now qualify for the state property tax circuit breaker program will no longer qualify for it in the coming budget year; and

Whereas, starting in the second year of the biennium, the business equipment tax reimbursement program, under which businesses are fully reimbursed for property taxes they pay on certain business equipment, will be eliminated with most qualifying property transferred to the business equipment tax exemption program; under this program, the City will only be reimbursed by the state for 60% of the taxes due, reducing City revenues by an estimated \$897,000 in FY15, or 49 cents on the tax rate; and

Whereas, if enacted, these changes will reduce City revenues by at least \$4,370,000 in FY 14 and \$5,267,500 in FY 15, excluding certain impacts on the school budget; and

The City of Lewiston is an EOE. For more information, please visit our website @www.ci.lewiston.me.us and click on the Non-Discrimination Policy.

27 Pine Street Lewiston, Maine 04240 Telephone (207) 513-3017 Fax (207) 784-2959

Whereas, to replace these revenues through property taxation, the City's tax rate would have to increase by approximately \$2.38 in FY 14 and an additional \$0.49 in FY 15 before considering any other expenditure increases that may be required; and

Whereas, alternatively, reducing expenditures by this amount would require eliminating all capital expenditures and dramatically reducing staff over and above the almost 20% reductions that have been implemented since 2002; and

Whereas, further staffing and expenditure reductions of this magnitude would undermine our ability to provide basic public services; and

Whereas, even a balance between tax increases and spending cuts would result in much higher property taxes in return for services that would no longer meet resident expectations or needs;

Now, therefore, be It Resolved by the City Council of the City of Lewiston that

the City Council hereby expresses its strong opposition to provisions included in the recently proposed state budget that would significantly shift the burden of funding state government to the property tax and property tax payer. These proposals will dramatically increase property taxes in Lewiston, taxes which often are unrelated to the ability of property owners to pay, and will require spending reductions which will call into question our ability to protect the health and welfare of our community and provide our residents with basic government services.

Be it Further Resolved, that

The City Clerk is directed to provide copies of this resolve to the members of the legislature representing the City of Lewiston, members of the Appropriations Committee, and the Governor.

LEWISTON CITY COUNCIL

MEETING OF JANUARY 22, 2013

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 6

SUBJECT:

Order Authorizing the City Administrator to execute a lease agreement with Casella Recycling, LLC to allow for the construction and operation of a Recyclable Materials Processing Facility at the City's Solid Waste Facility on River Road

INFORMATION:

The City Council is asked to consider approval of a Lease Agreement with Casella Recycling, LLC for the construction and operation of a Processing Facility at the City's Solid Waste complex on River Road. The Solid Waste facility is currently underutilized and this agreement would generate additional revenues for the City.

The total estimated positive impact to the City's bottom line is in excess of \$250,000, an amount that will increase over time. This proposal will also guarantee the City the best commercial rates for accepting and processing recyclables and will support efforts to increase recycling in the community.

Please see the attached materials for additional information.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The City Administrator recommends approval of the requested action.

EAB/kmm

REQUESTED ACTION:

1	2	3	4	5	6	7	M
---	---	---	---	---	---	---	---

To approve the Order authorizing the City Administrator to execute a lease agreement with Casella Recycling, LLC to allow for the construction and operation of a Recyclable Materials Processing Facility at the City's Solid Waste Facility on River Road.



**City of Lewiston Maine
City Council Order
January 22, 2012**



Order, Authorizing the City Manager to Execute a Lease Agreement with Casella Recycling, LLC to Allow for the Construction and Operation of a Recyclable Materials Processing Facility at the City's Solid Waste Facility on River Road.

Whereas, the City instituted single stream recycling in July 2011, and, since then, has seen an approximate 50% increase in recycled materials collected; and

Whereas, the City currently delivers this material to our Solid Waste Facility where it is shipped by Casella to its processing facility in Charlestown, Massachusetts; and

Whereas, Cassella Recycling has approached the City with a proposal to develop a recyclable materials processing facility at our Solid Waste complex; and

Whereas, this proposal will make use of a currently underutilized City facility; provide the City with first year taxes, lease payments, and fees of approximately \$163,000; and reduce certain current operating expenses; and

Whereas, the total estimated positive impact to the City's bottom line is in excess of \$250,000, an amount that will increase over time; and

Whereas, this proposal will create 25 new jobs, guarantee the City the best commercial rates for accepting and processing recyclables, and will support the City's efforts to increase recycling in our community and region;

Now, therefore, be It Ordered by the City Council of the City of Lewiston that

The City Administrator is hereby authorized to execute an agreement with Casella Recycling, LLC to allow for the construction and operation of a recyclable materials processing facility at the City's solid waste complex on River Road, such lease to be substantially in the form as is attached hereto.



City of Lewiston Executive Department

EDWARD A. BARRETT
City Administrator

PHIL NADEAU
Deputy City Administrator



January 17, 2013

To: Honorable Mayor and Members of the City Council
Fr: Edward A. Barrett
Su: Draft Lease with Casella for Materials Processing Facility

Attached please find a draft of a possible lease with Casella for a Materials Recycling Facility at the City's River Road Solid Waste Facility.

The basic provisions of the lease remain similar to the summary information that has been presented to you in the past. The full draft, however, provides much greater detail.

During the various workshops on this issue, members of the public raised a number of questions regarding the provisions of the lease. These, along with the appropriate lease references, are:

- No out of state waste should be allowed.

Article 4 B. page 4: "In-State Material. CASELLA shall accept only those Zero-Sort materials originating within the State of Maine. No out of state waste of any type will be accepted for processing or storage at the leased Premises. For purposes of this section, in-state waste shall not include waste originating from out of state sources that is subsequently processed or handled at a facility located within the State of Maine, with the exception of cardboard, plastic, and other acceptable materials as defined in Section 4A above recovered at the KTI Biofuels, Inc. facility located in Lewiston, Maine."

Note that this provision specifically addresses the concern that out of state waste would be brought somewhere into Maine, pre-processed to become in-state waste, then brought to Lewiston. That is specifically not allowed with the exception of recyclable materials from KTI, materials which are already here. Further, only specified zero-sort materials can be accepted as outlined in Attachment B of the lease.

- In addition to liability insurance, other insurance should be required.

See Article 7 beginning on page 10 of the lease.

- Concern over Casella's frequent litigation.

See Article 28, Exclusive Jurisdiction/Dispute Resolution, on page 24. This establishes a mediation and arbitration process in lieu of court action in virtually all instances involving

a dispute. According to City Attorney Martin Eisenstein: "The mediation/arbitration provisions are exclusive. The courts respect these clauses, so that if suit were brought in court it would be dismissed because of the exclusive jurisdiction provisions." Generally speaking, mediation and arbitration are less time consuming and expensive when compared to court actions.

- Concern that the City may undertake environmental remediation in "consultation" with Casella.

See Article 5 A, page 6. "...such remediation efforts to be undertaken by the CITY and made in consultation with CASELLA but without the CITY being bound to follow the CASELLA advice."

- The requirement that Casella use "commercially reasonable" efforts to dispose of residue at MWAC is not definitive enough.

According to Attorney Eisenstein: "It (commercially reasonable) is a term of art, and it is what a like party (i.e. a recycler and processor) in like circumstances would do to remove the residue. There is no better definition, other than to determine if the recycling industry has a standard."

- Material should not be allowed into Lewiston's landfill

See Article 4 A, page 4: "Casella shall not dispose of any materials or residue at the adjacent CITY-owned and operated landfill." Other sections of the lease also make it clear that Casella has no right of access to the City's landfill.

- Need to define "temporary" in regard to storage of hazardous waste.

See Article 5. C. 6. On page 7: "Not permanently place, cause to be placed, deposit, or discharge any hazardous waste upon the Premises or upon any other portion of the CITY's adjacent property and further expressly agree that it shall indemnify the CITY from any and all costs, expense, or liability of whatever kind or nature, including reasonable attorneys fees and costs and any penalties and fines, incurred by the CITY in detecting, evaluating, removing, treating, disposing of, or otherwise responding to any hazardous waste placed or deposited in violation of this paragraph. CASELLA agrees that it shall not violate any local, state, or federal regulation, ordinance, or statute pertaining to hazardous waste or hazardous materials and further expressly agrees that it shall indemnify the CITY from any and all costs, expense, or liability, of whatever kind or nature, including reasonable attorneys fees and costs and any penalties and fines, incurred by the CITY for any such violation. Such costs shall be deemed to include, without limitation, the CITY's costs and attorneys fees of defending any suit filed by any person, entity, agency, or governmental authority; paying any fines imposed in connection with such suit; paying any judgments or otherwise settling any damage claims; complying with any order by a court of competent jurisdiction directing the CITY to take any remedial action with respect to such waste; and all associated attorney's fees and costs. For the purpose of this paragraph, the term "hazardous waste" shall be deemed to include every substance now or hereafter designated as a hazardous waste under any provision of state or federal law. CASELLA's obligations under this paragraph shall be deemed to survive the expiration or termination of this Lease."

- Concern regarding Casella's finances and whether the City is protected should Casella fail.

Should Casella go into bankruptcy, it would constitute a default of the lease (see Article 12 page 15) which would give rise to several alternatives depending on the actual circumstances. If there is a mortgage on the lease, the mortgage holder or its nominee would have the right to enter into a new lease with the City under the same terms and conditions as the lease with Casella. If a mortgage holder forecloses on Casella's interest in the lease, they would assume the responsibilities of Casella under the lease and would have the right to assign the lease to another party with the City's consent. Absent a mortgage, a default would occur and the City would have access to the proceeds of a bond posted by Casella (see Article 25, page 22). That bond would be in the amount of \$500,000 for the first two years of the lease and \$225,000 starting in year three, with the amount of the bond adjusted annually based on a formula tied to the change in Gross National Product.

Note that the City is not providing financing or tax breaks to the company. At worst, we would retake control of the property and have access to the bond to address any City costs in doing so. Under the assumption that there is a sufficient market to justify the facility, it is also possible that another operator may express interest. If not, the City would then have the property back and could use it for whatever purpose we wished.

A variety of other concerns were raised as well, many on items unrelated to the lease itself. Please see the separately provided response prepared by City staff. Casella has previously provided responses to questions and concerns.

A decision making paradigm that I frequently employ involves analyzing the worst possible and best possible outcomes likely to result from selecting an alternative. In this case, there are basically two alternatives: we can move forward with the Casella proposal or we can reject it.

The best possible outcome from moving forward would be for the processing facility to move forward and operate successfully for 20 years. This has the potential for providing the City with a minimum of \$5,000,000 in financial benefits over this period, excluding any additional benefit we might receive from favorable processing terms.

The worst possible outcomes might include:

- The project not moving forward due to permitting, financing, or pre-existing environmental issues affecting the site. Should this occur, the City would experience no harm and the current situation would continue.
- The project failing at some point in the future due to its revenue stream and/or financial issues of the corporation. In this instance, the City would own an improved and enlarged facility that could potentially be used for other purposes and would have access to proceeds of the bond posted to guarantee the lease. Keep in mind that the City is providing Casella with no tax incentives or low interest loans and, as such, will have no public funds directly invested in the project.
- Disputes involving the lease. Unlike other circumstances involving landfills and incinerators, this proposal is a fairly straightforward land and building lease. As such, it is less likely to lead to high cost disputes between the parties and, if a dispute does arise, the lease requires mediation followed if necessary by arbitration.

Overall, therefore, I have concluded that this proposal offers the City significant positive benefits against relatively minor and limited downside potential.

One other factor that should be mentioned in regard to concerns about Casella's history is that the facility that is proposed for the City's solid waste facility could be sited on other private property, either in Lewiston or elsewhere in the region, so long as such a facility meets the applicable land development codes, i.e., zoning and site plan requirements. If there is a market for such a facility, it will be built. If sited on private land, the ability of a local community to monitor and regulate activities is confined to the land development code and/or reliance on state and federal regulators. A lease, however, offers the landlord, in this case the City, significantly greater control over activities on the property. By lease, we can regulate the source of material by, for example, excluding materials from outside of the state, require that it be processed and stored within a building, regulate the hours of operation, and incorporate into the lease the various state and federal permits and regulations, thus allowing us to exert significantly greater control than would otherwise be possible.

While I recognize that the Council should and must take into consideration issues involving Casella's finances and past history, I would recommend that the Council approve moving forward with this project for the following reasons:

- The positive financial impact it will provide to the City
- Putting an underutilized City facility into productive use
- The additional jobs that will be created
- The potential for producing long-term savings to the City for processing our recyclables
- The additional protections that are provided through a lease as opposed to zoning and land use regulations and dependence on state and federal regulators
- The limited downside potential of the project as discussed above

Should you have any questions about this or any of the other information provided, please feel free to contact me.

SUMMARY
PROPOSED TERMS AND CONDITIONS
LAND AND BUILDING LEASE – RECYCLABLE MATERIALS PROCESSING FACILITY
January 15, 2013

- Leased Area:** Solid Waste Facility Building and 3+/- Acres, excluding City landfill, gatehouse, and existing outdoor recycling area (see separate map). The City will continue to staff and operate the Gatehouse, Recycling drop off areas, and landfill.
- Term:** Twenty year initial term with mutual options to extend for additional five year periods. Casella will pay a fee of \$25,000 at the time the lease is signed, which will be applied to the first year of the lease unless otherwise forfeited. Casella will have ten months from signing the lease to (1) obtain all necessary permits and authorizations and (2) to secure the necessary equity or financing for the facility. If condition (1) cannot be met, Casella may terminate the lease and the prepayment will be refunded. This fee will also be refunded if either party provides notice to the other that they are unwilling to proceed as a result of the results of the environmental assessments required by the lease (see below under Environmental Assessments). Regular lease payments will commence upon the earlier of Casella receiving a certificate of occupancy to operate the facility or six months after the start of construction, whichever occurs first.
- Rental:** \$5,638 per month (\$67,656 per year) adjusted annually based on GDP-IPD floored at 2% and capped at 5%. Casella to make full first year lease payment on the date regular lease payment begin.
- Scale Fee:** Casella will pay a \$5 per entry weigh fee, this amount to be adjusted every five years based on the same escalator used for rents. Initially, this should provide about \$9,100 in annual revenue based on an estimate of 7 in-bound vehicles per day. At full operation, this would increase to about \$14,300 based on 11 in-bound vehicles per day. Casella will pay \$75,000 of this scale fee in advance to cover the cost of replacing a City scale that is at the end of its useful life.
- Permitted Use:** A Zero Sort Recycling Material Reprocessing Facility that will only accept recyclables originating from within the State of Maine with the exception of cardboard, plastic, and other specified recyclable materials recovered from KTI. No materials or residue shall be accepted at the City's landfill.
- Environmental Assessment:** Casella shall pay for a Phase I environmental assessment of the leased property to be performed by a consultant acceptable to City. If this reveals problems, either party may withdraw from the agreement with 30 day notice or the parties may agree to split the cost of a Phase II assessment. If the Phase II finds environmental issues that are likely to be

remediated at a cost of less than \$25,000, Casella will pay for the remediation. If more than \$25,000, either party can terminate the lease within 60 days of the results or agree to continue the lease and share equally in the cost of the remediation in excess of \$25,000 with the remediation to be undertaken by the City in consultation with Casella.

Plans/Specs: City must approve all site plan adjustments/building additions/renovations. Casella must maintain the facility free of any and all mechanics or other liens.

Space to be Provided to City: Casella to provide adequate space within the leased buildings, at no rent to the City, for the City to accept and process universal and electronic waste, waste oil, and appliances or equipment containing Freon.

Permits/Regulations: Casella shall obtain and maintain in force at all times all required licenses and permits and shall abide by all local, state, and federal laws and regulations.

Residue: Casella shall exercise commercially reasonable efforts to work with Mid Maine Waste Action Corporation (MWAC) to take its residue.

Processing: All material processing is to be done inside the building.

Storage: All processed materials shall be stored inside the building

Hazardous Waste: Not permitted to be processed/stored except temporarily in accordance with all applicable rules and regulations. Casella will fully indemnify city against any and all liability for such materials.

Hours: Material will be accepted from 7am to 5 pm Monday through Friday and for a minimum of four hours on Saturday. Inside processing can continue until 10 p.m. Maintenance on processing equipment can be done at anytime.

Noise: Below 70 dba at property line.

Payment/Performance Bonds: Required for all construction activities; in addition, a general security bond against a default by Casella will be required in the initial amount of \$500,000. This will be reduced to \$225,000 in year three of the lease and will be adjusted annually thereafter based on the same formula used for rental adjustments.

Operating Expenses paid by Casella: Utilities; snowplowing; trash removal; taxes; pavement maintenance. This will transfer to Casella some City expenses currently associated with the City building to be leased.

Maintenance/Repair/Replacement: Casella responsible for all maintenance, repair, replacement, normal wear and tear excepted. City has right to inspect. In case of fire or other casualty, Casella shall rebuild/restore within a reasonable time.

Insurance: The lease outlines in detail the amounts and types of coverage. It will require general liability insurance with a \$3 million combined single limit (CSL) and a \$3 million umbrella; \$1 million CSL and statutorily required workers compensation coverage; \$3 million CSL comprehensive automobile coverage; replacement value all risk insurance on the building; and commercial business interruption insurance equal to 1 year loss of profit. City to be a named insured.

Indemnity: City and Casella will provide mutual indemnification/hold harmless to each other. This protects both parties against liability claims resulting from actions of the other.

Passage and Easement: Given the shared nature of portions of the area to be leased, City has passage and easement rights required to continue to operate the landfill/other city related functions on adjacent property. Casella will have easement rights to access their leased property; however, this right does not extend to the landfill.

Termination and Default: Acts of default include: failure to make lease payments within 7 days of notice that a payment is overdue; violation of any terms or conditions of lease; abandonment of the property for six months; assignment to creditors without City approval; bankruptcy. City must give notice of default. Casella has 30 days to cure. If termination results, City is entitled to damages, including rent, up to the amount owed for 24 months from the date of termination, less any rental income the City might receive for re-leasing the property to another party, although the City is under no obligation to attempt to re-lease.

Assignment and Sublease: City must approve any assignment or sublease except for lender collateral, with such consent to not be unreasonably withheld.

Title to Buildings/Structures/Improvements: Vest in City upon completion.

City Recyclables: The City currently has a three year contract with Casella to accept recyclable materials with a City option to extend the contract for an additional two years. The City agrees to exercise this option. Casella will offer the City two additional five-year options to extend the current agreement, which the City may review and accept, if so desired, and in accordance with our purchasing policies. Under the lease, however, the City's recyclable materials will be accepted at best available commercial rates offered to other customers should those rates be more advantageous to the City than those provided under the existing

agreement or any extension to it. There is no requirement for City to use Casella for processing recyclables beyond June 30, 2016.

Right to Review Records: City can review records related to: origin of waste; destination of processed materials and residue; and charges to other customers. Such records must be maintained on site for at least three years.

Surrender at end of lease: Property will be returned to the City in as good a condition as existed at lease inception, normal wear and tear excepted. All personal property to be removed within 30 days, except that provided initially by the City, unless City agrees to accept such property. Any damage resulting from removal of property/equipment to be repaired by Casella.

Hold Over at end of lease: If Casella is not out by the end of lease, Casella must continue to pay rent plus a 50% penalty.

Employees: To the extent permitted by federal and state law, Casella shall give preference to residents of Lewiston/Auburn and the immediately surrounding communities for employment.

Finance and Mortgagee Rights: Casella has the right to mortgage the property to a bank or other financial institution for a term not exceeding the term of the lease. Mortgagee has the right to step in and cure any default on the part of Casella. Mortgagee must approve any material change or amendment to the lease. If mortgagee forecloses, it will have the right to take possession under same terms and conditions as Casella. Mortgagee may assign lease with City permission

Dispute Resolution: Should there be a dispute regarding any provisions of the lease, the parties are required to first enter into mediation in an attempt to resolve the dispute. If this is not successful, the dispute must be submitted to arbitration.

Existing City Agreements: The City currently has agreements in place with a number of other municipalities to accept their single stream recyclables. These agreements are either short-term or annual. Casella will have the option of continuing to honor such agreements or requesting that the City terminate them in accordance with their terms and conditions.

RESPONSES TO QUESTIONS RAISED
REGARDING PROPOSED MATERIAL PROCESSING FACILITY
JANUARY 15, 2013

1. What are the benefits of this proposal to the City?

During the first year of operation the City will receive \$163,756 in taxes, lease payments, and fees. This amount will increase over time. In addition, Casella will assume certain facility operating expenses now covered by the City. We estimate these savings at about \$90,000. The total positive impact to the City's bottom line will be in the range of \$253,756.

In addition, an underutilized city facility will be put to productive use and create 25 new jobs; the City will be guaranteed the best commercial rates for accepting and processing our recyclables; and Casella will assist in educational efforts and programs to increase recycling.

2. How large an area will be leased?

The leased area will include about 3 acres encompassing the current shredder building and some surrounding land. It will not include any portion of the City landfill, the outdoor drop-off recycling area, or the gatehouse, all of which will continue to be staffed by City employees.

3. Will this involve the landfill?

The landfill will remain owned and operated by the City. No materials will be accepted in the landfill from Casella's operations.

4. Will single stream material come from out of state?

All material will be from within the State of Maine with the exception of recycled materials recovered from processing at KTI's facility in Lewiston. Proposed lease gives City right to audit and verify sources.

5. Will it affect MWAC's ability to receive sufficient waste?

Not directly. While recycling rates may increase as zero sort is implemented, this would occur naturally as more communities move to single stream recycling. The materials handled by Casella and other recyclers are already removed from the waste stream. Draft lease proposes that Casella exercise all reasonable commercial efforts to utilize MWAC for its residues.

6. How much residual waste will there be and where will it go?

Casella estimates residuals (materials received at the facility that cannot be recycled) are estimated at approximately 7.5% of material received. At start, residuals will be roughly 1,500 tons per year. At capacity, this will increase to 3,000. Casella to use reasonable commercial efforts to utilize MWAC.

7. Will the recycling facility/landfill remain open to the public? What hours?

Yes. The facility will remain open to the public with its current hours of 7:15 a.m. to 2:45 p.m. Monday through Friday; Saturday from 8 a.m. to noon.

8. How much truck traffic?

Initially, 7 inbound and 4 outbound trucks are expected per day growing to 11 inbound and 8 outbound at capacity. The most recent data we have available on truck traffic in the area comes from 2011 counts on Plourde Parkway south of the Turnpike. That count showed 1,117 trucks per day. At startup, the additional trucks traveling to the City's solid waste facility would increase truck traffic at that location by about 1%; at capacity by about 1.7%. While there may be fewer trucks on River Road, that road also carries truck traffic from Fed Ex and Estes Trucking as well as from construction related activity in the area.

9. Why shouldn't the city take bids/issue an RFP

Casella has existing municipal/commercial contracts that are sufficient to justify a facility in Maine. The only other such facility in Maine is Eco-Maine which still has capacity for additional material and is unlikely to be interested in a second location. Other companies are unlikely to be interested since they do not have existing single-stream contracts/volumes to justify such a facility.

10. How is the City protected against lawsuits by Casella

The lease includes dispute resolution provisions that require mediation and arbitration as alternatives to court action. Should the City be sued, the suit would be thrown out and directed to mediation/arbitration. Mediation and arbitration are both less costly and less time consuming. In addition, the a City Development Corporation has leased land for the KTI operation on Plourde Parkway for twelve years without disputes or court actions.

11. How will hazardous waste be handled

While relatively little hazardous material is found in single-stream recycling, what is found will be handled in accordance with state and federal rules and regulations, will be segregated and appropriately stored, and disposed of in an appropriate manner.

12. Casella is anti-competitive and seeking a monopoly

At the moment, there are a number of firms that are able to contract for recyclable collection. There are currently two organizations that provide sorting capabilities – Eco Maine and Casella. This agreement is unlikely to change this.

13. Instead of single stream, can the City make more by separating?

At the time the City moved to single-stream, a full financial analysis was undertaken. It showed that the City would save approximately \$40,000 per year by moving to this method, assuming that no revenues would actually result from the sale of these materials. These savings were realized during the first full year of operation. In addition, the City received \$48,595 in revenue during FY12 and has received \$957 so far

this year. While the market has declined, the City's agreement precludes us from paying anything for recyclables, even under poor market conditions. While higher revenues are possible if a community separates materials, the cost of doing so is higher, especially if the cost of capital equipment, such as bailers, is included. It is generally recognized that single stream is less expensive due to savings in costs to collect the materials and reduced costs to process them for reuse.

In addition, the City experienced a 35% increase in material recycled during the first year of single stream. During the first quarter of the second year, we experienced a further 15% increase. This reflects both an increase in the acceptable materials and the ease offered to residents through this method of recycling.

14. Zero sort material is contaminated and has lower market value

Improvements in automated sorting equipment have largely eliminated this problem. In addition, end users have established quality standards that must be met for such materials. Automated pre-sorted systems meet and exceed the required standards and are often of similar quality to curb sorted/processed materials.

15. How will environmental liability be handled?

To establish a baseline on the property, a Phase I environmental analysis will be conducted at Casella's cost by a company approved by the City. If there are problems identified, a Phase II may be undertaken. Environmental liabilities are assigned, by lease, to Casella. In addition, we anticipate few issues given the limited hazardous waste likely to come to the facility.

16. Westbrook is against the proposed Casella transfer station – we don't want municipal solid waste brought here.

Westbrook has approved the transfer facility. In speaking with Westbrook's City Administrator, they are pleased with the project and have a good working relationship with Casella. Casella will accept only those recyclable materials specified in the lease. This does not include traditional municipal solid waste.

17. Casella has a track record of landfilling recyclables

The City's lease authorizes us to review not only records relating to the origin of the material, but records on the locations to which it is shipped.

18. Considering the city has firsthand knowledge in dealing with Casella as a corporate citizen given KTI's operation in Lewiston, what has its track record been?

The property on Plourde Parkway was originally leased by KTI in November 1985. The lease was for 30 years. The land was originally owned by the City but subsequently transferred to South Park Corporation. The South Park Development Corporation was founded in July 1986 to develop an industrial park near what is now Exit 80. Its founding principals were *to provide fully serviced development sites for the purposes of promoting orderly growth, accommodating the diversification and expansion of the City of Lewiston industrial base, and providing increased employment opportunities.* An independent board was created to manage the affairs of SPDC.

Casella acquired KTI in 1999. The lease was revised and updated in 2010 in recognition of a significant investment on Casella's part to upgrade and update the installation. Casella has met all of its obligations under the lease to date including the required investments and improvements to the property. KTI provides the City of Lewiston with approximately \$120,000 per year in disposal benefits for bulky and wood waste. For the current tax year, Casella/KTI pays \$43,060.27 in real estate tax and \$18,366.35 in personal property tax. They have two trucks registered in Lewiston that had excise tax of \$750. Their current monthly lease payment to South Park is \$2,498.57, or roughly \$30,000 per year. This represents total revenue to the City/South Park of slightly more than \$92,000.

19. After the building is built what negative consequence could occur if Casella goes out of business?

Should Casella go into bankruptcy, it would constitute a default of the lease which would give rise to several alternatives depending on the actual circumstances. If there is a mortgage on the lease, the mortgage holder or its nominee would have the right to enter into a new lease with the City under the same terms and conditions as the lease with Casella. If a mortgage holder forecloses on Casella's interest in the lease, they would assume the responsibilities of Casella under the lease and would have the right to assign the lease to another party with the City's consent. Absent a mortgage, a default would occur and the City would have access to the proceeds of a bond posted by Casella. That bond would be in the amount of \$500,000 for the first two years of the lease and \$225,000 starting in year three, with the amount of the bond adjusted annually based on a formula tied to the change in Gross National Product.

Note that the City has not directly invested in this proposal nor has it provided any financing or tax breaks to the company. At worst, we would retake control of the property and have access to the bond to address any City costs in doing so. Under the assumption that there is a sufficient market to justify the facility, it is also possible that another operator may express interest. If not, the City would then have the property back and could use it for whatever purpose we wished.

20. What costs might the City incur under this proposal

Should this lease be approved, some changes will be required at the Solid Waste Facility. To accommodate relocating certain materials from the existing building, primarily sheetrock and municipal solid waste delivered directly to the facility, construction of a cover over a portion of the outdoor recycling area will be required to ensure that these materials remain dry. Alternative arrangements will have to be made for winter storage of certain mowing and summer use equipment now stored in the existing building. We estimate that the worst case costs associated with these changes is \$310,000 if a cold storage building must be built. Of this, \$140,000 is available in bond funds issued for solid waste facility improvements for projects that have either been completed or which will no longer be needed. An additional \$40,000 is available from other bond funds remaining after projects have been closed out. The remainder can be covered through available economic development funds and/or the first year lease payment of \$67,656. I would note that the worst case cost estimate should be recovered by the City in approximately 15 months through revenues from Casella and expenditure reductions associated with the facility that will be leased.

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

Lease Agreement

This Lease (the "Lease") is made and entered into the _____ day of _____, 2013 by and between the CITY OF LEWISTON, a municipal corporation organized by law with a principal place of business in Lewiston, County of Androscoggin, State of Maine (the "CITY") and Casella Recycling, LLC, a Maine limited liability corporation having its principal place of business in the City of Charlestown, County of Suffolk, Commonwealth of Massachusetts ("CASELLA").

WITNESSETH:

In consideration of the mutual promises herein contained and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows.

ARTICLE 1: LEASED PREMISES

The CITY hereby leases to CASELLA and CASELLA hereby leases from the CITY those premises described in Attachment A, annexed hereto (+3 ACRES), and including the buildings and structures located therein known as the Solid Waste Facility Processing Building (collectively the "Premises"). This Lease specifically excludes areas outside of the Premises shown on Attachment A and, more particularly, the CITY's adjacent recycling area and sanitary landfill, all of which shall remain under the sole control and management of the CITY and not subject to any rights of CASELLA. CASELLA shall use the Premises to construct and operate a Recyclable Materials Processing Facility (the "Facility") for the processing of materials that can be recycled, as more fully described in Attachment B ("Recyclable Materials").

ARTICLE 2: TERM & CONSTRUCTION DATE

- A. Term. This Lease shall extend for a term of twenty (20) years from the Effective Date (hereinafter defined) unless sooner terminated as hereinafter provided. The Lease may be extended for additional terms of five (5) years upon mutually acceptable terms and conditions and agreement of the parties.

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

B. Construction Date. CASELLA shall have ten (10) months from the date of execution of the Lease to satisfy (or waive, in CASELLA's sole judgment), the following conditions precedent (the "Conditions Precedent") to effectiveness of the Lease (The first day of the calendar month immediately following the month in which the Conditions Precedent are satisfied is referred to as the "Construction Date"):

(1) CASELLA shall have received all necessary permits, approvals and authorizations, including all state and local construction and operating permits, approvals and authorizations, for the construction and operation of the Facility by the scheduled Construction Date. Casella shall undertake commercially reasonable efforts to obtain such permits, approval and authorizations in a timely manner.

(2) CASELLA shall have secured necessary equity and/or debt financing, in the exercise of its reasonable judgment, for the construction and operation of the Facility in an economically viable fashion for a period of not less than the initial Term of this Lease (all mortgages and financings to be in accordance with Article 24 hereof).

If the Construction Date has not occurred within ten (10) months of the date of the execution of this Lease or if the Phase I Termination Rights and Phase II Termination Rights further described in Article 5 (A) are triggered pursuant to the terms of said Article V, either party may terminate this Lease, with no liability to the other party, except as set forth in Section 2(C), upon thirty (30) days written notice served on the other party.

C. Rental Deposit. CASELLA shall make a deposit of Twenty Five Thousand Dollars (\$25,000) to the CITY within thirty (30) days of execution of the Lease (the "Rental Deposit"). The Rental Deposit shall be applied to the rental payments for the first year of the Lease in an amount of Two Thousand Eighty Three Dollars and Thirty Three Cents (\$2,083.33) per month. If the Lease is terminated by CASELLA based on the inability of CASELLA to satisfy Conditions Precedent set forth in Section 2(B) (2) above, the Rental Deposit shall not be returned to CASELLA. If the Lease is terminated by CASELLA based on an inability of CASELLA to satisfy Conditions Precedent set forth in Section 2(B) (1) above, or the Lease is terminated by either party pursuant to the Phase I Termination Rights or Phase II Termination Rights

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

further described in Article 5 (A), the Rental Deposit shall be returned to CASELLA within thirty (30) days of the termination of the Lease.

ARTICLE 3: RENTAL & EFFECTIVE DATE

- A. Base Rental. In addition to the other obligations imposed herein, CASELLA hereby agrees to pay the CITY, as the base rental (the "Base Rental") during the term hereof, the sum of Five Thousand Six Hundred Thirty Eight Dollars (\$5,638) in advance on the first day of each and every month of said term commencing on the first day of the month following the Effective Date (hereinafter defined). The Effective Date shall be the date of issuance of an occupancy permit to CASELLA for the purpose of operating a Recyclable Materials Processing facility on the Premises or six (6) months after the Construction Date, whichever occurs first. CASELLA agrees to pay the full annual rental of Sixty-Seven Thousand Six Hundred Fifty-Six Dollars (\$67,656) to the CITY on the first day of the month following the Effective Date in full satisfaction of the Base Rental for the first twelve (12) months of the Lease term ("First Lease Payment").
- B. Additional Rental. In addition to the Base Rental, Casella agrees to pay as additional rental a percentage increase, beginning on the anniversary date of the Effective Date, and each anniversary date thereafter, effective on the anniversary of the Effective Date, an amount equal to the percentage increase of the Gross National Product – Implicit Price Deflator (Source – Survey of Current Business – Department of Labor) as compiled for the most recent twelve (12) month period for which such data is available as compared with the comparable figure for the prior twelve (12) month period.
Notwithstanding anything to the contrary, the increase shall not be less than two percent (2%) per year nor greater than five percent (5%) per year.
- C. Place of Payment. Unless and until the CITY has otherwise notified CASELLA in writing, all payments of Base Rental and Additional Rental shall be paid to the CITY by CASELLA in care of the City Treasurer, City of Lewiston, 27 Pine Street, Lewiston, Maine 04240.

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

- D. Set-Off. CASELLA shall not have the right or option to set off or deduct from either the Base Rental or Additional Rental any charges or obligation of CASELLA.

ARTICLE 4: PERMITTED USES: LESSEE'S WORK

- A. Material Processing Facility. CASELLA shall use the Premises solely as a Recyclable Materials Processing Facility, which shall be licensed as a solid waste transfer facility by the Maine Department of Environmental Protection (the "DEP Solid Waste Permit") and may also be permitted as a junkyard for waste and material storage by the City of Lewiston (the "City Junkyard Permit"), as such licenses and permits may be amended or modified from time to time, provided that at all times CASELLA shall maintain all requisite licenses and permits to operate the Facility as a solid waste transfer facility and as a junkyard. Recyclable Materials activities permitted on the Premises shall be limited to accepting, sorting, and shipping Recyclable Materials for appropriate reuse, which include the materials found on Attachment B, and only those similar non-hazardous materials for which a market exists and that the CITY has approved in writing, such approval not to be unreasonably withheld, conditioned or delayed. The Recyclable Materials on Attachment B may be updated by the parties from time to time. Casella shall not dispose of any materials or residue at the adjacent CITY-owned and operated landfill.
- B. In-State Material. CASELLA shall accept only those Recyclable Materials originating within the State of Maine. No out-of-state waste of any type will be accepted for processing or storage at the leased Premises. For purposes of this section, in-state waste shall not include waste originating from out of state sources that is subsequently processed or handled at a facility located within the State of Maine, with the exception of cardboard, plastic, and other acceptable materials as defined in Section 4 (A) above recovered at the KTI Biofuels, Inc. facility located in Lewiston, Maine.
- C. New Construction and Improvements. CASELLA shall undertake such site work and construct such buildings and structures as may be required to support the activities authorized by this Lease. Such work and construction is preliminarily shown on Attachment A. Final approval of such buildings and structures is subject to CASELLA

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

submitting a site plan prepared and stamped by a State of Maine licensed engineer to the CITY and its Planning Board for review and approval. Such finally approved site plan shall be attached to the Lease, be deemed part of the Lease, and be referred to as the Site Plan. CASELLA shall at all times during the Term of this Lease and any extension thereto remain in conformance with the Site Plan as may be modified from time to time pursuant to this Section 4 (C). The Site Plan may be modified in the future by CASELLA if proposed changes are approved in advance by the CITY, such approvals to not be unreasonably withheld, conditioned, or delayed. All buildings constructed on the Premises shall be designed and constructed in accordance with all applicable federal, state, and local laws, rules, and regulations, including conditions imposed by the City Planning Board. CASELLA shall submit plans and specifications to the CITY for any structures which are new or which will be relocated on or after the initial commencement date of this Lease.

- D. Space Provided to CITY. CASELLA shall provide, at no rent to CITY, adequate space within the Premises for the CITY to accept and process universal and electronic waste, waste oil, and appliances or equipment containing Freon, subject to certain indemnity provisions from CITY to CASELLA to be further described in a sub-lease agreement between the parties attached as Attachment C.

ARTICLE 5: COVENANTS OF CASELLA

- A. Acceptance of Premises. CASELLA shall accept delivery of the Premises in an “as is” state, subject to the completion of a Phase I Environmental Assessment to be undertaken by CASELLA by a qualified consulting firm acceptable to the CITY. Should either party deem the results of such assessment to be problematic, either party may terminate this Lease within thirty (30) days of the receipt of the results of the Phase I Assessment with no further obligations to the other (“Phase I Termination Rights”). Alternatively, the parties may agree to undertake a Phase II Environmental Assessment with the cost of such assessment to be divided equally. In the absence of such termination, the parties shall be deemed to have agreed to undertake a Phase II assessment, which CASELLA shall undertake using a qualified consulting firm acceptable to the CITY. Should the Phase II assessment indicate a reasonable

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

likelihood of the existence of environmental issues that are likely to require remediation at a cost of twenty-five thousand dollars (\$25,000) or less, CASELLA shall undertake such remediation in a manner, and using contractors, acceptable to the CITY. Should the Phase II assessment indicate a reasonable likelihood of the existence of environmental issues that are likely to require remediation at a cost in excess of twenty-five thousand dollars (\$25,000), the CITY and CASELLA shall each individually, within sixty (60) days of receipt of the results of the assessment, have the right to terminate this Lease ("Phase II Termination Rights"). In the event that either party does not provide notice to the other party of termination within such sixty (60) day period, then the parties shall be deemed to have agreed to continue the Lease in full force and effect and to share equally in those costs of remediation in excess of twenty-five thousand dollars (\$25,000), such remediation efforts to be undertaken by the CITY and made in consultation with CASELLA but without the CITY being bound to follow the CASELLA advice. No representations as to the state of the Premises are made by the CITY.

- B. Business Use. CASELLA agrees that, without prior written consent of the CITY, the Premises shall be occupied by no other person or firm, its agents, employees, contractors, vendors, or suppliers, except in accordance with the provisions hereof with respect to the construction of buildings and facilities and delivery of materials and removal of product and by-products pursuant to the Article 4 permitted activities.
- C. Lawful Use. CASELLA will use and occupy the Premises and appurtenances thereto in a careful, safe, and proper manner and will not commit, suffer, or permit the same to be used for any unlawful purpose and will conform to and abide in all material respects by any and all governmental regulations respecting the Premises and the use and occupancy thereof. Without limiting the generality of the foregoing, CASELLA shall:
1. Obtain and maintain in force at all times all licenses and permits, whether state, federal, or local, necessary for CASELLA to operate its businesses.
 2. Remove all waste material not destined for beneficial reuse to an appropriate place for lawful disposition thereof. Such material will not be accepted or placed in the CITY's adjacent sanitary landfill. CASELLA shall undertake commercially reasonable efforts to dispose of residue from the processing of the Recyclable Materials at the Mid-Maine Waste Action Corporation incinerator

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

located in Auburn, Maine unless that facility is unable or unwilling to accept such material.

3. Prevent any leaching of petroleum products or other materials into the ground in accordance with all laws, rules, regulations, and requirements established by or in connection with the Maine Department of Environmental Protection.
4. Cause all conveyors and all machinery, with the exception of mobile processing equipment, to be fully and safely placed within buildings and/or enclosed so as to prevent access by unauthorized persons and to minimize any possible escape of dust and other materials into the atmosphere.
5. Construct its facilities and operate the same in full compliance with all local, state, and federal requirements, specifically including relevant fire prevention codes and environmental laws.
6. Not permanently place, cause to be placed, deposit, or discharge any hazardous waste upon the Premises or upon any other portion of the CITY's adjacent property and further expressly agree that it shall indemnify the CITY from any and all costs, expense, or liability of whatever kind or nature, including reasonable attorneys fees and costs and any penalties and fines, incurred by the CITY in detecting, evaluating, removing, treating, disposing of, or otherwise responding to any hazardous waste placed or deposited in violation of this paragraph. CASELLA agrees that it shall not violate any local, state, or federal regulation, ordinance, or statute pertaining to hazardous waste or hazardous materials and further expressly agrees that it shall indemnify the CITY from any and all costs, expense, or liability, of whatever kind or nature, including reasonable attorneys fees and costs and any penalties and fines, incurred by the CITY for any such violation. Such costs shall be deemed to include, without limitation, the CITY's costs and attorneys fees of defending any suit filed by any person, entity, agency, or governmental authority; paying any fines imposed in connection with such suit; paying any judgments or otherwise settling any damage claims; complying with any order by a court of competent jurisdiction directing the CITY to take any remedial action with respect to such waste; and all associated attorney's fees and costs. For the purpose of this paragraph, the term "hazardous waste" shall be deemed to include every substance now or hereafter designated as a hazardous waste under any provision of state or federal law.

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

CASELLA's obligations under this paragraph shall be deemed to survive the expiration or termination of this Lease.

7. Make deliveries to the Premises from 7 a.m. to 5 p.m. on Monday through Friday and from 8 a.m. to 12 p.m. on Saturday, with no Sunday operation, subject to longer daily and/or weekly operation with the CITY's consent. The processing of Recyclable Materials delivered to the Facility will be permitted from 6 a.m. to 10 p.m. to the extent that all processing occurs within an enclosed structure. Notwithstanding the foregoing sentences, CASELLA shall be permitted to perform maintenance and repairs on the plant and equipment at any time.
 8. Operate the Premises so as to produce no more than seventy (70) dBa of noise measured at the property line. Transient noise caused by backup alarms on vehicles shall be disregarded for purposes of determining compliance with this requirement.
 9. All deliveries of Recyclable Materials shall be deposited and stored within the processing building. Once processed, these materials shall be stored inside a building until transported from the Premises. Staging areas and storage of all materials shall be in accordance with the terms and conditions of the City Junkyard Permit and DEP Solid Waste Permit as such may be modified, renewed, or amended from time to time.
- D. Payment and Performance Bonds. With respect to any construction (labor or materials) contemplated by Article 4 hereof and any repairs to or restoration or reconstruction thereof, and also to any other construction or other work which is lienable under Maine law from time to time in effect, CASELLA shall, prior to commencement thereof, submit a request to the CITY as to whether a bond will be required, and, if requested by the CITY, provide to the CITY a payment and performance bond or bonds naming the CITY as obligee in full contract price for such labor and materials (including, where applicable, any contractual element for profit and/or overhead), all in form and issued by insurers approved by the CITY.
- E. Creation of Additional Hazards. Except for the use of the Premises contemplated by this Lease, CASELLA shall neither do, nor permit, any act or thing which may increase the casualty risk, fire hazard, or insurance coverages on the Premises, except with the prior written consent of the CITY and assumption by CASELLA of additional rates arising from such additional potential hazard. If CASELLA should cause an increase in

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

the hazard, the CITY reserves the right to require a higher minimum level of insurance. Without limiting the generality of the foregoing, no fuel burning equipment, except vehicles and boilers necessary for providing heat to buildings, will be used on the Premises.

- F. Utilities. CASELLA shall pay all bills for water, sewer, stormwater, trash removal, gas, and electricity, fuel oil, and other utilities which may be assessed or charged against the occupant of the Premises during the term of this Lease.
- G. Taxation. CASELLA agrees that the Premises shall be deemed taxable by the City of Lewiston Tax Assessor during the entire term hereby created. CASELLA shall promptly pay on or before the due date thereof all real estate taxes (land and buildings) and all taxes on its personal property at the Premises, including, without limitation, excise taxes on its mobile equipment predominantly stationed at the Premises, which shall be registered under Maine law at CASELLA's place of business at Lewiston, Maine, it being intended that the City of Lewiston shall benefit from the tax on such mobile equipment.

ARTICLE 6: MAINTENANCE, REPAIR, RELACEMENT, AND RESTORATION

- A. CASELLA's Obligation. CASELLA agrees that, except for reasonable wear and tear and casualty damage, and at its sole cost and expense, it shall make all repairs, alterations, and restorations to the Premises, including foundations, roof, interior and exterior structural components of the buildings, and the non-structural components of the Premises (including all doors, doorframes, glass, window sashes, floor coverings, and including the water and sewer systems and plumbing, heating, air conditioning, electrical and electric systems) (i) as may be necessary to maintain said portions of the Premises in as good repair and condition as the same are on the date of substantial completion of CASELLA's work and execution of the certificate of occupancy; and (ii) which may be required by any laws, ordinances, or regulations of any public authority having jurisdiction, the applicability of which CASELLA shall be entitled to contest in an appropriate form.
- B. Right of Access. The CITY and its designated representatives shall have a right of access to inspect the Premises and to order corrective measures consistent with the terms of this Lease and/or applicable law. In the event CASELLA fails to make repairs to keep the

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

Premises and all improvements thereon in a safe and sanitary condition, the CITY shall have the right to enter upon the Premises for purposes of making repairs and to charge the cost of such reasonable repairs to CASELLA, which charges shall be payable within ninety (90) days of demand by the CITY in the form of an invoice for such charges and costs to CASELLA.

- C. Due Diligence. Before making any repairs, alterations, or restorations regarding the Premises or any improvements thereon, CASELLA agrees that it will procure all necessary permits. CASELLA agrees to pay promptly when due the costs of any work caused to be done by it on the Premises so that the Premises shall at all times be free of liens for labor or materials. CASELLA agrees to save harmless and indemnify the CITY from and against any and all injury, loss, claim, or damage to any person or property occasioned by or arising out of the doing of any such work by CASELLA or its employees or agents.
- D. Snow Removal. CASELLA shall be responsible for snow removal within the Premises and shall be responsible to perform all snow and ice removal necessary to its operations at the Premises.
- E. Trash Removal. CASELLA shall be responsible for all waste and trash removal at the Premises.
- F. Pavement Maintenance. CASELLA shall be responsible for maintaining all pavements (including parking areas) throughout the Premises in a manner that allows for the safe passage of vehicles and equipment throughout the Premises and through the Premises to adjacent CITY property.

ARTICLE 7: Insurance.

CASELLA shall purchase and maintain in full force and effect, at all times during the term of this Lease, a policy or policies of public liability and property damage insurance with policy limits of not less than those outlined below with the CITY as named insured, as its interests shall appear, and CASELLA shall furnish the CITY with the ACORD-25 certificates for such insurance and copies of endorsements reflecting additional insured status at or prior to the commencement of the term, and within 30 days prior to the expiration of any such policies. All such insurance certificates shall provide that such policies shall not be canceled without at least 30 days prior written notice to the CITY. CASELLA agrees, at the request of the CITY, but in any event not

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

more often than once every 5 years, to increase the limits of its general liability insurance to such limits as are then customarily carried with respect to premises similar to the Leased Premises within the State of Maine. The designation of insurance policy minimum limits shall not be construed to be, nor operate as, a limitation on the financial liability of CASELLA in respect to the hold harmless provisions of this Lease but only establish a minimum threshold for third-party payment. The amounts of such coverage shall be initially no less than as follows:

<u>Type</u>	<u>Amount</u>
1. Workers' Compensation	\$1 Million combined single limit Statutory Employers Liability
2. Comprehensive Public Liability to include but not be limited to the following with additional umbrella policy for not less than the following: a) premises/operations b) independent contractor c) personal injury coverage d) product/completed operations e) contractual liability	\$3 Million combined single limit with an additional umbrella policy for not less than \$3 Mullion
3. Comprehensive Automobile Liability coverage to include coverage for: a) owned/rented automobiles b) non-owned automobiles c) hired cars	\$3 Million combined single limit
4. Standard Form Replacement Value All Risk Insurance Policy	Replacement Value
5. Commercial Business Interruption	Equal to 1 year loss of profit

ARTICLE 8: DAMAGE BY FIRE OR OTHER CASUALTY

If, during the Term hereof, the buildings and improvements on the Premises shall be destroyed or damaged in whole or in part by fire or the elements or by any other cause whatsoever, then CASELLA shall cause the same to be repaired, replaced, or rebuilt as nearly as practicable to the condition existing just prior to such damage or destruction and within a period of time which, under all prevailing circumstances, shall be reasonable. CASELLA shall repair, replace, or rebuild the affected portion of the Premises with due diligence.

Prior to commencing any work necessary to repair, replace, or rebuild the buildings and

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

other improvements, CASELLA shall furnish the CITY with complete plans and specifications for such repairing, replacing, and rebuilding, which plans and specifications shall meet with the reasonable approval of the CITY and with the approval of any governmental board, bureau, or body then exercising jurisdiction with regard to such work. CASELLA shall cause such repairs, replacement, or rebuilding to be performed in accordance with the plans and specifications therefor and any applicable law, statute, ordinance, regulation, or requirement of the federal, state, or municipal governments. CASELLA shall not be entitled to any abatement or reduction in Rent during the period of such restoration or rebuilding.

ARTICLE 9: COVENANT OF THE CITY

The CITY shall warrant and defend CASELLA in the quiet peaceable possession of the Premises during the term hereof so long as CASELLA shall perform any and all of the covenants, agreements, terms, and conditions herein agreed to be kept by CASELLA.

ARTICLE 10: INDEMNITY

- A. General Indemnification - CASELLA shall defend, indemnify, and hold the CITY and its inhabitants, officers, employees, and agents completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines, or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorneys' fees, court costs, and expert witness fees), of any nature whatsoever arising out of or incident to the use, occupancy, conduct, or management of the Premises or the acts or omissions of CASELLA's officers, agents, employees, contractors, subcontractors, licensees, or invitees, unless such injury, death, or damage is caused by the negligence and/or intentional acts or omissions of the CITY and/or its agents or employees utilizing the Premises. CASELLA shall give to the CITY reasonable notice of any such claims or actions.

- B. Waiver of Workers' Compensation Immunity - CASELLA hereby expressly agrees that it will defend, indemnify and hold the CITY, its inhabitants, officers, employees and agents completely harmless from any and all claims made or asserted by CASELLA's agents,

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

servants, or employees arising out of CASELLA's activities under this Lease; provided, however, that CASELLA's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability arising from the negligence and/or intentional acts or omissions of the CITY and/or others utilizing the Premises and/or portions thereof as herein provided. For this purpose, CASELLA hereby expressly waives any and all immunity it may have under the Maine Workers Compensation Act in regard to such claims made or asserted by CASELLA's agents, servants, or employees. Subject to the limitations hereinabove set forth, the indemnification provided under this paragraph shall extend to and include any and all costs incurred by the CITY to answer, investigate, defend, and settle all such claims, including but not limited to the CITY's costs for attorneys fees, expert and other witness fees, the cost of investigators, and payment in full of any and all judgments rendered in favor of CASELLA's agents, servants, or employees against the CITY in regard to claims made or asserted by such agents, servants, or employees.

- C. CASELLA shall indemnify, defend, and hold harmless the CITY from and against all claims and actions, and all expenses incidental to such claims or actions, based upon or arising out of damage to property or injuries to persons or other tortious acts caused or contributed to by CASELLA or anyone acting under its direction or control or in its behalf in the course of CASELLA's activities under this Lease and/or others utilizing the Premises, provided that CASELLA's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability arising from the negligence and/or intentional acts or omissions of the CITY or anyone acting under its direction or control or in its behalf under this Lease.
- D. The CITY hereby expressly agrees that it will defend, indemnify, and hold CASELLA harmless from any and all claims made or asserted by the CITY's agents, servants, or employees arising out of the CITY's activities under this Lease; provided however that the CITY's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability based upon the negligence and/or intentional acts or omissions of CASELLA or anyone acting under its direction or control or in its behalf in the course of CASELLA's activities under this Lease. For this purpose, the CITY hereby expressly waives any and all immunity it may have under Maine's Workers' Compensation Act in regard to such claims made or asserted by the CITY's agents, servants, or employees

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

subject to the limitations hereinabove set forth. The indemnification provided under this paragraph shall extend to and include any and all costs incurred by CASELLA to answer, investigate, defend, and settle all such claims, including but not limited to CASELLA's costs for attorney fees, expert and other witness fees, the cost of investigators, and payment in full of any and all judgments rendered in favor of the CITY's agents, servants, or employees against CASELLA in regard to claims made or asserted by such agents, servants, or employees.

- E. The indemnification and hold harmless provisions of the CITY contained in this Lease, notwithstanding anything to the contrary in this Lease, shall not be considered to, and shall not, expand or create liability on the part of the CITY to any person (including the persons so indemnified) for claims from which the CITY is released, exempted, and/or protected by the Maine Tort Claims Act, as it is currently in effect or is in the future from time to time modified or expanded. The obligations and exposure of the CITY under any indemnification obligations contained in this Lease are subject to the foregoing limitations and are further subject to and shall not exceed the amounts payable to any claiming party under any liability insurance or other applicable insurance the CITY is maintaining at the time of such claim, if any, whichever is higher.
- F. CASELLA agrees that all personal property of every kind and description that may at any time be in or on the Premises shall be at its sole risk and that the CITY shall not be liable for any damage to said property or for any loss suffered by CASELLA in its business caused by any manner whatsoever. The CITY shall not be liable for any damage to said property or for any loss suffered by CASELLA in its business caused by any manner whatsoever unless arising as a result of the CITY's misconduct or negligence. The CITY shall not be liable for any damage to persons or property resulting from fire, explosion, falling building materials, steam, gas, electricity, rain, water, snow, or leaks in any part of the Premises or from the pipes, appliances, plumbing works, or from the roof, streets, or subsurface, or from any other place.
- G. Under no circumstances shall either party ever be liable for special, incidental, exemplary, punitive, indirect or consequential damages.

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

ARTICLE 11: PASSAGE AND EASEMENT

The parties acknowledge that the Premises is used by CASELLA and other parties and that, in order to accommodate various uses, the CITY in this Lease reserves certain rights and uses related to the Premises to itself and its successors and assigns. The CITY hereby reserves for itself, its residents, and its customers the right to pass through the Premises during the hours in which the City accepts materials at its recycling area or landfill for purposes of accessing other CITY property and operations located in or adjacent to the Premises to include the CITY's sanitary landfill, adjacent CITY-owned property, and the office building used by the CITY and located near the River Road frontage of the Premises. In addition, the CITY's authorized employees shall have this right and easement at all times, whether during or outside of CASELLA's operating hours. These rights shall also extend to those authorized by the CITY to access the CITY's sanitary landfill, the household hazardous waste facility located adjacent to the premises, and other adjacent CITY owned property.

The parties also acknowledge that CASELLA and its authorized agents require access to adjacent portions of CITY-owned and controlled property for purposes of access to the Premises and to fulfill various requirements of this Lease. Therefore, the CITY grants to CASELLA, its agents, and its customers the right to pass through these areas as shown on Attachment A, attached hereto, for these purposes. This right shall not extend to access to the CITY's adjacent sanitary landfill.

ARTICLE 12: TERMINATION OF LEASE

- A. Provisions as to Default. The following acts shall constitute acts of default:
1. If, notwithstanding the lack of notice or demand by the CITY to CASELLA, the rent or any part thereof (including additional rent) shall at any time be in arrears and unpaid for a period of seven (7) calendar days after notice thereof from the CITY to CASELLA, or
 2. If CASELLA shall fail to keep and perform any of the covenants, agreements, and conditions of this Lease on its part to be kept and performed within thirty (30) days of notice of such failure to CASELLA, or

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

3. If CASELLA shall vacate or abandon the Premises for a period of six consecutive months during the term of this Lease or shall make an assignment for the benefit of its creditors without the consent of the CITY or if the interest of CASELLA hereunder shall be sold upon execution or other legal process, or
 4. If CASELLA shall have entered against it by any Court having jurisdiction a decree or order for relief in respect of CASELLA in an involuntary case under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect, or if a receiver, liquidator, assignee, trustee, custodian, or similar official is appointed regarding CASELLA or any substantial part of its property, or if CASELLA fails generally to pay its debts as they come due, or if CASELLA files a voluntary petition in bankruptcy or takes any corporate action in furtherance of any of the foregoing.
- B. Notice of Default. With regard to the occurrence of an event of default under subparagraph 12(A)(2), above, the Lease shall terminate if CASELLA has failed to cure such default within thirty (30) days from the date the CITY gives CASELLA written notice of such default. With regard to the occurrence of an event of default under subparagraphs 12(A)(1), (3) or (4) above, the Lease shall terminate upon the City giving notice to CASELLA of termination of the Lease.
- C. Real Property and Fixtures Thereto. Upon the termination of this Lease by expiration of the term or because of a default by CASELLA, all buildings, fencing, paving, plumbing, heating, lighting, and similar fixtures not excluded under Article 18 shall become the sole property of the CITY, free from any claim by CASELLA or its successors or assigns.
- D. Remedies for Default. The CITY shall have the right to the following remedies which are intended to be cumulative and in addition to any other remedies provided under applicable law for default and its right to terminate under Subsection 12B:
- (i) The CITY may terminate the Lease and retake possession of the Premises. Following such retaking of possession, the CITY shall not be obligated to relet the Premises.
 - (ii) The CITY may make any payment or perform any obligation which CASELLA has failed to perform. The CITY shall be entitled to recover from CASELLA upon demand all amounts so expended plus interest from the date of the expenditure at the rate of one and one-half percent (1½%) per month together with the CITY's reasonable attorneys' fees and costs of collection for failure to pay. Any such payment or performance by the CITY shall not waive CASELLA's default.

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

(iii) In any action to enforce any terms of the Lease, the City shall be entitled to its reasonable attorneys' fees and costs.

- E. Limitation of Rental Obligation Upon Default. In the event of a termination as a result of CASELLA's default, the CITY shall be entitled to actual direct damages in an amount not to exceed twenty-four (24) months Base Rental and Additional Rental.

ARTICLE 13: ASSIGNMENT OR SUBLEASE.

Except for an assignment to a lender for collateral security, CASELLA shall not have the right to assign this Lease or sublet the Premises, or any part thereof, without the written consent of the CITY, such consent to not be unreasonably withheld. By giving consent, the CITY agrees to accept the assignee of CASELLA, but such assignment shall not release CASELLA from the performance of any obligations under this Lease unless such release is otherwise specifically provided for in writing between the CITY and CASELLA. In the event the Premises are sublet, said sublease shall be for the full term of this Lease unless this Lease is sooner terminated, as provided herein, in which event such sublease shall be coterminous with this Lease.

Notwithstanding anything to the contrary in this section, CASELLA may assign this Lease to any entity controlling, controlled by, or under common control with CASELLA without obtaining the CITY's consent.

ARTICLE 14: NEW CONSTRUCTION AND RECONSTRUCTION.

No material change in the construction or modification of the buildings located on the Premises shown in the Site Plan, after substantial completion of CASELLA's initial improvements, shall be made without the prior consent of the CITY, except such construction as may be required as a result of a casualty loss, in which case the building or buildings thus damaged shall be returned to their pre-existing condition.

ARTICLE 15: LIENS

CASELLA will promptly discharge (either by payment or by filing of the necessary bond or otherwise) any mechanics', materialmen's or other liens against the Premises or any buildings, structures or improvements thereon, which liens may arise out of any payment due for labor,

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

services, materials, supplies or equipment which may have been furnished to or for CASELLA or the Premises during the term of the Lease.

ARTICLE 16: TITLE TO BUILDINGS, STRUCTURES, AND IMPROVEMENTS

Title to the buildings, structures, and improvements constructed on the Premises by CASELLA shall pass to the CITY upon their completion, personal property of CASELLA excepted. The CITY shall retain title to all building, structures, improvements, facilities and installations currently located on the Premises.

ARTICLE 17: RIGHT OF ENTRY.

The CITY, or any of its duly authorized agents, may enter upon the Premises at all reasonable times and with reasonable advance notice to CASELLA to examine the condition of the Premises, the state of repair and maintenance being performed by CASELLA, and, for purposes of determining compliance with this Lease, to examine records relating to the origin of Recyclable Materials received at the Facility, the locations to which processed waste and residuals have been shipped, and the pricing structure in place for other CASELLA customers.

ARTICLE 18: SURRENDER.

CASELLA shall surrender and deliver up the Premises at the end of the term in as good order and condition as existed upon substantial completion of CASELLA's work and the execution of the initial certificate of occupancy, reasonable use, normal wear and tear, and damage by casualty excepted. All machinery and equipment installed or used by CASELLA in the operation of its business on the Premises, with the exception of any machinery or equipment initially provided by the CITY, whether such equipment and machinery is later replaced, upgraded, or improved, shall, at the termination of the leasehold, be removed from the Premises and the Premises shall be returned to the CITY in broom clean condition. Any such property shall be removed by CASELLA within thirty (30) days following the end of the term hereby created unless the CITY consents in writing to the non-removal thereof, with such property then becoming the property of the CITY. Any damage to the land or the buildings of the CITY caused by CASELLA's removal of any of its property shall be promptly repaired by CASELLA such that the land or buildings of

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

the CITY shall be returned as nearly as possible to its condition at the commencement of the Lease, ordinary wear and tear excepted.

ARTICLE 19: HOLD-OVER.

Rights acquired under this Lease shall not extend beyond the term hereby created, and no holding over or continuing in the occupancy of the Premises shall not cause or be construed to be an extension of this Lease, but, in any and all such cases, CASELLA shall be a tenant at will at the option of the CITY, subject to removal by the CITY by summary process and proceedings. CASELLA hereby agrees to pay for the time CASELLA retains possession of the Premises or any part thereof after the termination of this Lease at the rate of rental provided for herein, including additional rental, plus an additional 50% of total rental and to pay all expenses of the CITY incurred in enforcing the provisions of this Article 19. This Agreement shall not constitute a waiver by the CITY of any right of re-entry.

ARTICLE 20: CITY RECYCLABLES.

CASELLA shall accept Recyclable Materials delivered to the Premises by the CITY or its contractors or agents for processing under terms and conditions that meet or exceed the most favorable financial terms and conditions offered by CASELLA to any other customer utilizing the services of the Facility. The CITY hereby exercises its option under the existing agreement with CASELLA for processing of Recyclable Materials for the additional two (2) year period ending June 30, 2016. CASELLA hereby offers the City options to further extend such existing agreement for two (2) additional five (5) year periods beyond June 30, 2016, which the City may consider and accept in accordance with its normal purchasing policies.

ARTICLE 21: SCALE; WEIGH FEE

CASELLA agrees to pay for the value of the replacement of one CITY-owned scale in an amount not to exceed Seventy-Five Thousand Dollars (\$75,000), such amount to be paid within thirty (30) days of the date of the Construction Date (the "Pre-Payment"). In addition, CASELLA shall pay to CITY an initial weigh fee of five dollars (\$5) per vehicle entering the PREMISES for the purpose of delivering recyclables for processing (the "Weigh Fee"). The CITY will be

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

responsible for tracking the number of vehicles entering the PREMISES daily, and will provide CASELLA with a monthly report. The Weigh Fee shall be adjusted on every fifth (5th) anniversary of the Effective Date in an amount equal to the percentage increase of the Gross National Product – Implicit Price Deflator over the most recent five (5) year period for which this data is available. Notwithstanding anything to the contrary, each five (5) year increase shall not be less than ten percent (10%) nor greater than twenty-five percent (25%). The Weigh Fee shall not be collected from CASELLA by the CITY until CASELLA has been credited in an amount equal to the amount initially paid by CASELLA for the Pre-Payment. The CITY shall provide CASELLA with a monthly statement showing the Weigh Fee credit. Once this Weigh Fee credit has been satisfied, CITY shall invoice CASELLA monthly for the Weigh Fee.

ARTICLE 22: EXISTING CITY AGREEMENTS

In the event that CITY has agreements to accept Recyclable Materials in effect with other municipalities as of the date this Agreement is executed, CITY shall provide CASELLA with copies of such agreements within thirty (30) days of that date. CASELLA may, at its option, continue to honor such agreements or request that CITY exercise its right to terminate such agreements in accordance with their terms and conditions. At the request of CASELLA, the CITY shall assist CASELLA in meeting with such municipalities regarding continued use of CASELLA services provided on the Premises.

ARTICLE 23: ACCESS TO RECORDS

CASELLA shall provide the CITY with access to inspect all records documenting the origin of all commercial materials received at the Facility for processing and the locations to which processed material and residues are sent for reuse or disposal. All such records shall be maintained at the Facility for a minimum of three (3) years from the time of their creation. Such access shall be provided within normal business hours upon reasonable prior written notification to CASELLA. For purposes of this paragraph, "reasonable notification" shall include any actual notification to CASELLA not less than one business day prior to the date of inspection. Any such inspections shall be conducted in a manner which does not unduly interfere with CASELLA's operations on the leased premises.

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

ARTICLE 24: MISCELLANEOUS

- A. Notice. Any notice to be served by and on behalf of either party to the other under this Lease or in connection with any proceedings or any act growing out of this Lease and the tenancy hereby granted, shall be sufficiently served by forwarding the same by registered or certified mail to such party by the other or by delivery in person or as by service of legal process addressed to the parties as set forth herein.

If to Lessee: Casella Recycling, LLC
 14-24 Bunker Hill Industrial Park
 Charlestown, MA 02129
 Attn: Bob Cappadona, VP

With copy to: Casella Waste Systems, Inc.
 25 Greens Hill Lane
 Rutland, VT 05701
 Attn: Office of General Counsel

And with a further copy to a bank (mortgagee) to be designated from time to time by Lessee.

If to the Lessor: City of Lewiston
 27 Pine Street
 Lewiston, ME 04240
 ATTN: City Administrator

With copy to: City Clerk
 City of Lewiston
 27 Pine Street
 Lewiston, ME 04240

All such notices shall be effective from the date of delivery of the same to the United States Postal Service or from the date of receipt if delivery in person or by service of legal process. All notices and consents required by the provisions of this Lease shall be in writing.

- B. Memorandum of Lease. The CITY and CASELLA agree to execute a Memorandum of Lease, which CASELLA, at its expense, shall record with the Registry of Deeds of Androscoggin County, Maine.

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

- C. Employees. To the extent permitted by federal and Maine law, CASELLA agrees to use commercially reasonable efforts to employ individuals who reside in Lewiston, Auburn, or any other municipality bordering upon Lewiston and Auburn for its operations at the Premises, including management personnel.
- D. Permits. All federal, state, and local permits necessary for the accomplishment of the construction of buildings, improvement of land, and operation of the facilities on the Premises shall be at the sole expense of CASELLA.
- E. Binding Effect. The terms of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- F. Governing Law. This Lease shall be construed in accordance with the provisions of the laws of the State of Maine.
- G. Entire Agreement. The parties hereto agree that this Lease contains the entire agreement between the parties hereto with respect to the matters set forth herein and supersede any prior understandings between them.
- H. Amendment. This Lease may be amended only by a document making specific reference to this Lease and executed on behalf of the CITY and CASELLA.

ARTICLE 25: SECURITY

CASELLA shall furnish to the CITY a bond issued by a bonding company approved by the CITY in order to assure the availability of funds to remedy any default hereunder, including, without limitation, any failure to comply with environmental requirements, and to provide for abatement of nuisances, removal of materials stored other than as herein limited, and to provide for restoration and clearing of the Premises upon the termination of this Lease, whether by expiration of the term hereby created or by any default by CASELLA. Such bond shall initially be in the amount of Five Hundred Thousand Dollars (\$500,000), to be provided upon site plan approval by the City of the proposed materials processing facility. This amount may be reduced at the third anniversary of its issuance to Two Hundred Twenty Five Thousand Dollars (\$225,000), which amount shall be adjusted annually thereafter in accordance with the formula provided with respect to Additional Rental in Article 3, Section B, above.

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

ARTICLE 26: FINANCING: MORTGAGE RIGHTS

- A. Financing. CASELLA shall be entitled to mortgage, assign, or transfer its leasehold interest in the Premises to a bank or other financial institution (“Mortgagee”) for the purpose of obtaining construction and long-term financing for CASELLA’s Project during the term of this Lease, provided that:
- a. The term of any debt secured by any such mortgage assignment or transfer (in either case, a “mortgage”) shall not exceed the term of this Lease; and
 - b. CASELLA shall give notice to the CITY of the existence of any mortgage, together with the name and address of the mortgagee and a copy of any Mortgage that is a matter of public record. Upon such notice, such mortgagee is deemed a Mortgagee for purposes of Article 24.
- B. Cure of CASELLA’s Default. In the event that the CITY sends CASELLA written notice of an act of default by CASELLA under any of the terms of the Lease, the CITY agrees to also simultaneously send a copy of such notice (the “Default Notice”) to any Mortgagee of which it has written notice. The Mortgagee shall have a period of thirty (30) days after receipt of a Default Notice to cure any such act of default, provided that where an act of default by its nature takes longer than thirty (30) days to cure, the Mortgagee shall have an additional thirty (30) days to cure such default. The CITY also agrees that if an act of default by CASELLA is incapable of being cured by the Mortgagee, and if the CITY terminates this Lease because of such incurable default, then a new Lease will be executed by the CITY with the Mortgagee or its nominee as Lessees upon the same material terms and conditions as are contained in this Lease.
- C. No Amendment. The CITY agrees that so long as any Mortgage is in effect, no material change, modification, or amendment to this Lease shall be effective without the prior written consent of the Mortgagee and no termination or surrender of this Lease shall be effective without the CITY providing Mortgagee with prior written notice.
- D. Foreclosure by the Mortgagee. If any Mortgagee shall become the owner of CASELLA’s interest under this Lease pursuant to a foreclosure of any Mortgage, or if any Mortgagee shall enter into possession of the Premises under the rights granted in its Mortgage, the Mortgagee shall have the right to take possession of the Premises and to become the legal owner and holder of the leasehold estate created under this Lease, provided Mortgagee has provided notice to the City of the same, and shall hold such estate upon the same

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

terms and conditions as held by CASELLA. However, in such event, the Mortgagee shall only be liable under the terms and conditions of this Lease during the period of time the Mortgagee holds such estate, and not thereafter, nor shall the Mortgagee be liable for any default under the terms or conditions hereof which arose before said estate became vested in the Mortgagee, provided, however, that (i) the CITY shall have the right to terminate this Lease in the event that rentals accruing before said estate became vested in the Mortgagee are not paid in full within thirty (30) days after possession by Mortgagee, or (ii) if the Mortgagee shall obtain CASELLA's leasehold interest in the Premises, the Mortgagee shall have the right to assign this Lease in accordance with the requirements of Article 13.

- E. Continuing Liability of CASELLA. The existence of any Mortgage or any foreclosure by a Mortgagee shall not relieve CASELLA from any liability or responsibility for its obligations under this Lease.

ARTICLE 27: CUMULATIVE NATURE OF CITY'S RIGHTS.

Except as may be specifically limited by Article 25, all rights and remedies of the CITY under this Lease shall be cumulative and none shall be exclusive of any other right or remedy allowed by law, nor as a waiver of its authority to assert such rights in the future. The waiver of any one right by the CITY shall not be construed to be a waiver of any other right.

ARTICLE 28: EXCLUSIVE JURISDICTION/DISPUTE RESOLUTION.

- A. The parties agree and consent that the exclusive jurisdictions for purposes of any claim arising from or related to this Amended Agreement as to which a party seeks injunctive relief shall be the state and federal courts of the State of Maine. For all other disputes, claims or controversies arising out of or relating to this Lease or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of the parties' agreement to arbitrate set forth herein, whether based on contract, tort, common law, equity, statute, regulation, order or otherwise ("Disputes"), the Parties agree to pursue the dispute resolution procedures set forth in Section 26B.

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

- B. Either party may elect to institute dispute resolution procedures before JAMS, as follows:
1. By providing to JAMS office in Boston, MA and the other party a written request for mediation, setting forth the subject of the Dispute and the relief requested. Such mediation shall be conducted by JAMS pursuant to its mediation procedures. The parties will cooperate with JAMS and with each other in selecting a mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. The parties agree that they will participate in the mediation in good faith and that they will share equally in its costs. Such mediation shall take place in Lewiston Maine, unless the parties mutually agree to conduct the mediation at another location. If mediation does not resolve the Dispute, then the parties shall arbitrate the Dispute as set forth in subsection (B)(2) below.
 2. All other Disputes shall be determined by arbitration in accordance with the following procedures:
 - a. The arbitration shall be conducted in Lewiston, Maine before a single arbitrator. The arbitration shall be administered by JAMS, Boston MA office, pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules, or pursuant to JAMS' Streamlined Arbitration Rules and Procedures, as provided for pursuant to such Rules. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.
 - b. In any arbitration arising out of or related to this Lease, the arbitrator is not empowered to award punitive or exemplary damages, or consequential or special damages, and the parties waive any right to recover any such damages.

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

ARTICLE 29: NONDISCRIMINATION

CASELLA for itself, its personal representatives, successors in interest and assigns, and as part of the considerations hereof, does hereby covenant and agree as a covenant running with the land that (1) no person or group of persons shall be excluded on the grounds of race, color, religion, sexual orientation, or national origin from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use or occupancy of said Premises and (2) in the construction of all improvements, buildings, structures, on, over or under such land and the furnishing of services thereon, no person or group of persons shall be excluded on the grounds of race, color, religion, sexual orientation, or national origin from participation in, denied the benefits of, or be otherwise subjected to unlawful discrimination.

ARTICLE 30: 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.

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

- 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.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed in their respective names and on their respective behalves by their duly authorized officers this _____ day of _____, A.D., 2013, at Lewiston, Maine.

LESSOR, CITY OF LEWISTON.

BY: _____

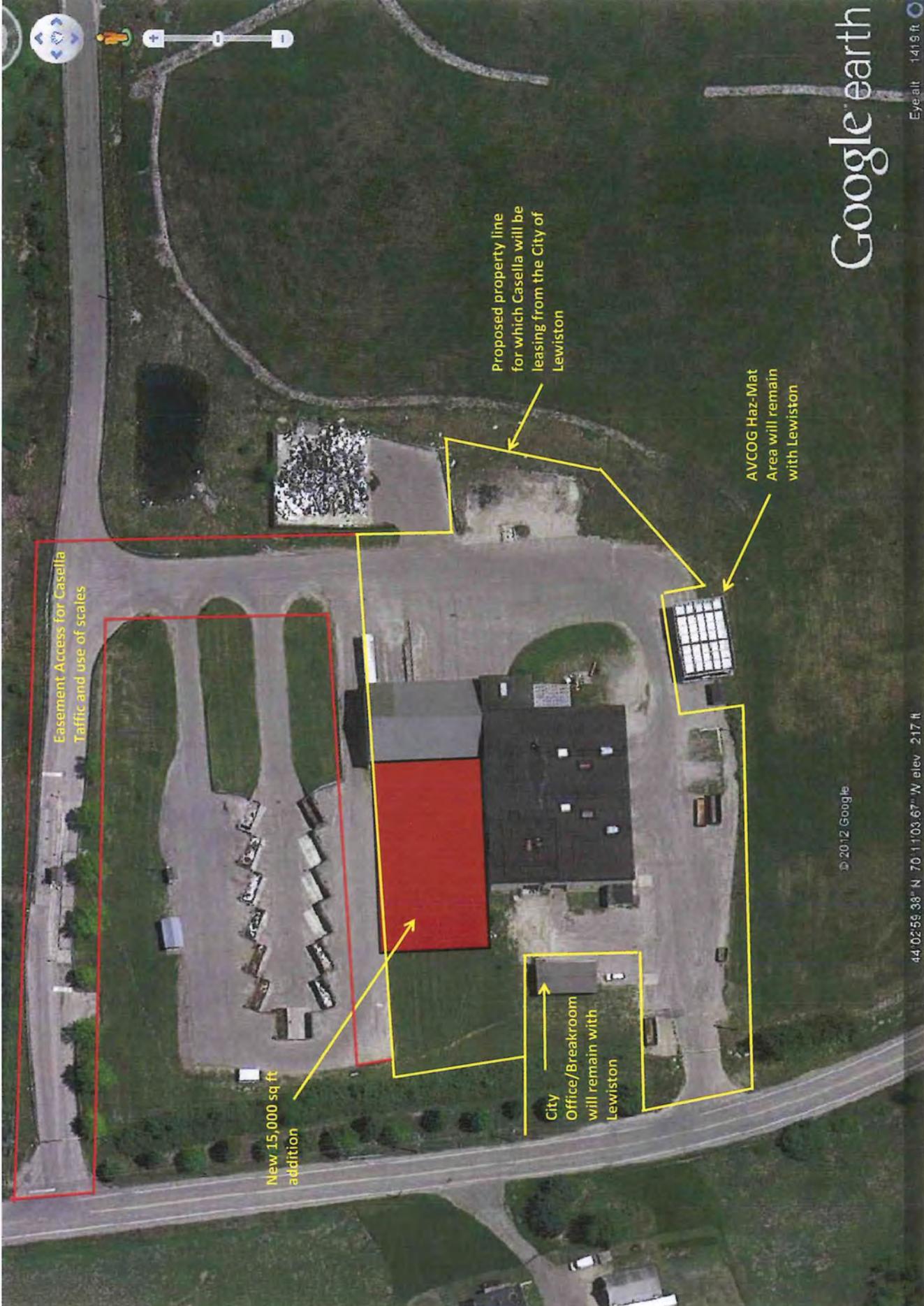
LESSEE, CASELLA RECYCLING, LLC

BY: _____

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

ATTACHMENT A

DESCRIPTION OF PREMISES



Easement Access for Casella
Traffic and use of scales

New 15,000 sq ft
addition

City
Office/Breakroom
will remain with
Lewiston

Proposed property line
for which Casella will be
leasing from the City of
Lewiston

AVCOG Haz-Mat
Area will remain
with Lewiston

© 2012 Google

44°02'59.38" N 70°11'03.67" W elev. 217 ft

Google earth

Eye alt 1419 ft

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

ATTACHMENT B

**Acceptable Material Single Stream Residential Commingled Containers and Residential
Fiber:**

Aluminum food and beverage containers

aluminum soda and beer cans, cat food cans, etc.

Glass food and beverage containers

Flint (clear)

Amber (brown)

Emerald (green)

Ferrous Cans

soup, coffee cans, etc.

P.E.T. plastic containers with the symbol #1

no microwave trays

H.D.P.E. natural plastic containers with the symbol #2

milk jugs and water jugs containers only (narrow neck containers)

H.D.P.E. pigmented plastic containers with the symbol #2

detergent, shampoo, bleach bottles without caps (narrow neck containers)

Plastics labeled 3 thru 7.

Mixed Rigid Plastics

(5 gallon buckets, plastic toys, plastic pools)

Old Newspaper (ONP)

Sunday inserts are acceptable paper.

Kraft Paper Bags

Old Corrugated Containers (OCC)

no wax coated.

Magazines (OMG)

Coated magazines, catalogues and similar printed materials, junk mail, and soft cover books.

DRAFT LEASE
MATERIALS PROCESSING FACILITY
JANUARY 15, 2013

ATTACHMENT C

Sub-Lease Agreement for Space Provided for City Use on the Premises

To Be Provided

LEWISTON CITY COUNCIL
MEETING OF JANUARY 22, 2013

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. 9

SUBJECT:

Executive Session to discuss a legal matter with the City Attorney.

INFORMATION:

The Maine State Statutes, Title 1, section 405, define the permissible grounds and subject matters of executive sessions for public meetings.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

The state statutes outline the issues that will be discussed in executive session.

EAB/KMM

REQUESTED ACTION:

1	2	3	4	5	6	7	M
---	---	---	---	---	---	---	---

To enter into an Executive Session pursuant to MRSA Title 1, section 405(6)(E) to discuss a legal matter with the City Attorney.