



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

August 6, 2014

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

Authorize the Department of Environmental Services (DES) to enter into a **RETROACTIVE, SOLE SOURCE** contract (PO# 1012087) amendment with the City of Franklin (VC #177390) Franklin, New Hampshire for residual (grit) disposal services by increasing the contract by \$23,000 from \$26,900 to \$51,900, effective as of July 1, 2014 through June 30, 2018, upon Governor and Council approval. The original contract was approved by the Governor and Council on May 17, 2006 Item #70 and Amendment #1 was approved on October 20, 2010 Item # 44. 100% WRBP Funds.

Funding is available in the account as follows, with the authority to adjust encumbrances in each of the state fiscal years through the Budget Office if needed and justified. Funding for fiscal years 2016-2018 is contingent upon the availability and continued appropriation of funds.

	<u>FY15</u>	<u>FY16</u>	<u>FY17</u>	<u>FY18</u>
03-44-44-442010-1300-020-500261	\$5,000	\$5,500	\$6,000	\$6,500
Dept of Environmental Services, Winnepesaukee River Basin, Current Expense				

**EXPLANATION**

The Department of Environmental Services (DES) under the Winnepesaukee River Basin Program (WRBP) owns and operates the regional wastewater collection and treatment facilities for 10 communities in the Lakes Region. Approval of this **Sole Source, Retroactive** request will authorize the continuation of grit disposal services for the treatment plant located in Franklin as a City of Franklin (City) commercial account. This is a **sole source** amendment since the only alternatives to disposal of this material at the Penacook incinerator would involve trucking it to another secure landfill or to the Claremont incinerator for burial in its secure ashfill site. All of these other alternatives would have tipping fees comparable to the "spot rate" charges at the Wheelabrator facility in Penacook; all would have higher tipping charges compared to City commercial accounts; and all would involve much higher hauling charges because they are more distant from the Franklin treatment plant than Penacook. This is a **retroactive** amendment request since the contract approval process was not completed until early August when the signed amendment was returned to the WRBP following approval by the Franklin City Council on August 4<sup>th</sup>, 2014.

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council

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Grit is the sand, rock fragments and other heavy inorganic material that is found in raw sewage. Because such material does not benefit from wastewater treatment and can potentially damage equipment used to treat wastewater, the treatment plant staff removes the grit as soon as it enters the treatment plant. The only acceptable disposal location for grit is a secure landfill. In the Franklin area, the most cost effective way to dispose of grit is to send it to the Wheelabrator facility in Penacook for incineration, followed by landfilling at the cooperative's secure ash disposal site in Franklin. This, in fact, has been the method of disposal used by the WRBP Franklin Wastewater Treatment Plant since 2002 when the plant's monofill landfill was closed.

The material may be brought to the incinerator by plant staff and the WRBP direct-billed for the tonnage by Wheelabrator at its "spot rate" (which is currently approximately \$95.00 per ton). Alternatively, it can be taken to the incinerator by plant staff, and accepted at the incinerator as a commercial account of the City of Franklin, utilizing the City's current rate for such customers (which is about \$82 per ton). WRBP has a clear preference for the latter option, inasmuch as the tipping fee as a City commercial account is less than the "spot rate". The City has agreed to accept the WRBP as a commercial account, and this contract amendment will encumber funds for the tipping charges and the WRBP will be invoiced by the City.

All of the WRBP's operating expenses are paid for by the users of the system; there is no General Fund contribution to the system's operating budget.

This contract has been approved by the Department of Justice as to form, substance and execution.

We respectfully request your approval.

  
Thomas S. Burack, Commissioner

AMENDMENT #2  
CONTRACT CE 101243

This Agreement (hereinafter called "Amendment #1"), dated this 6<sup>th</sup> day of August, 2014, by and between the State of New Hampshire acting by and through its Department of Environmental Services, Water Division (hereinafter referred to as the "State") and the City of Franklin (VC# 177390), Franklin, New Hampshire (hereinafter called the "City").

**WHEREAS**, pursuant to an agreement (hereinafter called the "Agreement") dated March 6, 2006, and approved by the Governor and Council on May 17, 2006 at Item No.70 as Contract Number CE 101243 and Amendment #1 dated July 17, 2010 approved by the Governor and Council on October 10, 2010 at Item No. 44, the City agreed to perform certain services upon terms and conditions specified in the Agreement and in consideration of payment by the State of certain sums specified therein; and

**WHEREAS**, pursuant to the provisions of paragraph 17 of the Agreement, the Agreement may be amended, waived or discharged only by written instrument executed by the parties thereto; and

**WHEREAS**, the City and the State have agreed to amend the Agreement in certain respects;

**NOW THEREFORE**, in consideration of the foregoing, and the covenants and conditions contained in the Agreement and set forth herein, the parties hereto do hereby agree as follows:

1. **Amendment and Modification of Agreement:**

The Agreement is hereby amended as follows:

A) The price limitation governing the Agreement as set forth in the Agreement (line 1.8 of the General Provisions shall be increased by \$23,000.00 from \$26,900.00 to \$51,900.00 allocated as follows:

<u>FY15</u>	<u>FY16</u>	<u>FY17</u>	<u>FY18</u>
\$5,000	\$5,500	\$6,000	\$6,500

B) The effective date of the agreement shall be extended to June 30, 2018.

2. **Effective Date of Amendment:**

This Amendment shall take effect upon the date of approval of this Amendment by the Governor and Executive Council of the State of New Hampshire.

3. **Continuation of Agreement:**

Except as specifically amended and modified by the terms and conditions of this Amendment, the Agreement and the obligations of the parties thereunder, shall remain in full force and effect with the terms and conditions set forth.

IN WITNESS WHEREOF, the parties set their hands as of the day and year first above written.

**THE STATE OF NEW HAMPSHIRE**  
**Department of Environmental Services**

By: Thomas S. Burack  
Thomas S. Burack, Commissioner

DATE: 8/11/2014

**CITY OF FRANKLIN, NEW HAMPSHIRE**

By: Elizabeth Dragon

DATE: 8-6-14

**Acknowledgment:**

State of New Hampshire County of Merrimack

On this 6 day of August, 2014 before

the undersigned officer, personally appeared Elizabeth Dragon,

and acknowledges himself to be the City Manager of

The City of Franklin, who executed the foregoing instrument for the

purposes therein contained.

IN WITNESS THEREOF, I hereunto set my hand and official seal.

Holly A Burbank

Holly A Burbank, Notary Public

Name and Title of Notary Public

My Commission Expires

July 10, 2018

**Approval by ATTORNEY GENERAL**

(Form, Substance and Execution):

[Signature]  
Assistant Attorney General Signature

8/19/14  
Date

**Approved by the GOVERNOR and COUNCIL, this** \_\_\_\_\_ **day of** \_\_\_\_\_, 2014

CITY CLERK'S CERTIFICATE

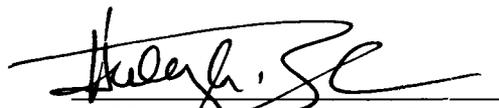
I, HOLLY BURBANK, hereby certify that I am the appointed City Clerk of the City of Franklin. I hereby certify that ELIZABETH DRAGON, City Manager of the City of Franklin, is authorized, empowered and directed to execute on behalf of the City of Franklin, a contract dated 8/6/14 with the Water Division, Department of Environmental Services of the State of New Hampshire for residual disposal services.

RESOLVED, that the City Clerk, HOLLY BURBANK, be authorized, empowered and directed to seal with the City Seal, a Certificate of the foregoing action.

I further certify that ELIZABETH DRAGON is the duly appointed City Manager, has accepted such office and is acting therein.

I further certify that the foregoing resolutions remain in full force and effect,

IN WITNESS WHEREOF, I have signed my name and affixed the seal of the City of Franklin, this 6 day of August, 2014.

  
\_\_\_\_\_  
HOLLY BURBANK  
City Clerk



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**  
 September 22, 2010

His Excellency, Governor John H. Lynch  
 and the Honorable Council  
 State House  
 Concord, New Hampshire 03301

APPROVED G & C  
 DATE 10/20/10  
 ITEM # 44

REQUESTED ACTION

Authorize the Department of Environmental Services (DES) to enter into a **RETROACTIVE, SOLE SOURCE** contract (CE101243) amendment with the City of Franklin (VC #177390) Franklin, New Hampshire for residual (grit) disposal services by increasing the contract amount \$17,100.00 from \$9,800.00 to \$26,900 effective upon Governor and Council approval effective as of July 1, 2010 through June 30, 2014. The original contract was approved by the Governor and Council on May 17, 2006 Item No.70. 100% WRBP Funds.

Funding is available in account, Winnepesaukee River Basin, as follows, with the authority to adjust encumbrances in each of the state fiscal years through the Budget Office if needed and justified. Funding for fiscal years 2012-2014 is contingent upon the availability and continued appropriation of funds.

	<u>FY 11</u>	<u>FY 12</u>	<u>FY 13</u>	<u>FY 14</u>
03-44-44-442010-1300-020-500261	\$4,050	\$4,200	\$4,350	\$4,500
Dept of Environmental Services, Winnepesaukee River Basin, Current Expense				

EXPLANATION

Grit is the sand, rock fragments and other heavy inorganic material that is found in raw sewage. Because such material does not benefit from wastewater treatment and, in fact, can damage equipment used to treat wastewater, the treatment plant staff removes the grit as soon as it enters the treatment plant. The only acceptable disposal location for grit is a secure landfill. In the Franklin, New Hampshire area, the most cost effective way to dispose of grit is to send it to the Wheelabrator facility in Penacook for incineration, followed by landfilling at the cooperative's secure ash disposal site in Franklin. This, in fact, has been the method of disposal used by the WRBP Franklin Wastewater Treatment Plant since 2002 when the plant's monofill landfill was closed. This is a Retroactive amendment request since the City's contract approval process, started in April, was not completed until late July when the signed agreement was returned to the WRBP. This request is considered to be Sole Source for the reasons listed below.

The material may either be brought to the incinerator by plant staff, and the WRBP direct-billed for the tonnage by Wheelabrator at its "spot rate", which is currently approximately \$90.00 per ton, or it can be taken to the incinerator by plant staff, and accepted at the incinerator as a commercial account of the City of Franklin, utilizing Franklin's current rate for such customers (which is about \$70 per ton). WRBP has a clear preference for the latter option, inasmuch as the tipping fee as a Franklin commercial account is far less

His Excellency, Governor John H. Lynch  
and the Honorable Council  
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than the "spot rate". The city has agreed to accept the WRBP as a commercial account, and this contract will encumber funds for the tipping charges and the WRBP will be invoiced by the city.

The only alternatives to disposal of this material at the Penacook incinerator would involve trucking it to another secure landfill or to the Claremont incinerator for burial in its secure ashfill site. All of these other alternatives would have tipping fees comparable to the "spot rate" charges at the Wheelabrator facility in Penacook, which is to say higher than the tipping charges to City of Franklin commercial accounts, and all would involve much higher hauling charges because they are more distant from the Franklin treatment plant than is Penacook.

We are recommending that the insurance requirements of Paragraph 14 be waived for this agreement, and have included this waiver in Exhibit C. Other than being invoiced as a co-op member by Wheelabrator, and sending the WRBP a bill for the grit's disposal (which, as noted earlier, will be taken to the incinerator by WRBP staff in a WRBP vehicle), the city will have no involvement in the disposal operation.

DES, under the Winnepesaukee River Basin Program (WRBP), owns and operates the regional wastewater collection and treatment facilities for ten communities in the Lakes Region. All of the WRBP's operating expenses are paid for by the users of the system; there is no General Fund contribution to the systems operating budget. This contract has been approved by the Department of Justice as to form, substance and execution.

We respectfully request your approval.

  
Thomas S. Burack, Commissioner

AMENDMENT #1  
CONTRACT CE 101243

This Agreement (hereinafter called "Amendment #1"), dated this 17 day of 3004, 2010, by and between the State of New Hampshire acting by and through its Department of Environmental Services, Water Division (hereinafter referred to as the "State") and the City of Franklin (VC# 177390), Franklin, New Hampshire (hereinafter called the "City").

WHEREAS, pursuant to an agreement (hereinafter called the "Agreement") dated March 6, 2006, and approved by the Governor and Council on May 17, 2006 at Item No.70 as Contract Number CE 101243, the City agreed to perform certain services upon terms and conditions specified in the Agreement and in consideration of payment by the State of certain sums specified therein; and

WHEREAS, pursuant to the provisions of paragraph 17 of the Agreement, the Agreement may be amended, waived or discharged only by written instrument executed by the parties thereto; and

WHEREAS, the City and the State have agreed to amend the Agreement in certain respects;

NOW THEREFORE, in consideration of the foregoing, and the covenants and conditions contained in the Agreement and set forth herein, the parties hereto do hereby agree as follows:

**1. Amendment and Modification of Agreement:**

The Agreement is hereby amended as follows:

A) The price limitation governing the Agreement as set forth in the Agreement (line 1.8 of the General Provisions shall be increased by \$17,100.00 from \$9,800.00 to \$26,900.00 allocated as follows:

<u>FY11</u>	<u>FY12</u>	<u>FY13</u>	<u>FY14</u>
\$4,050	\$4,200	\$4,350	\$4,500

B) The effective date of the agreement shall be extended to June 30, 2014.

**2. Effective Date of Amendment:**

This Amendment shall take effect upon the date of approval of this Amendment by the Governor and Executive Council of the State of New Hampshire.

**3. Continuation of Agreement:**

Except as specifically amended and modified by the terms and conditions of this Amendment, the Agreement and the obligations of the parties thereunder, shall remain in full force and effect with the terms and conditions set forth.

IN WITNESS WHEREOF, the parties set their hands as of the day and year first above written.

THE STATE OF NEW HAMPSHIRE  
Department of Environmental Services

By: Thomas S. Burack DATE: 8/11/2010  
Thomas S. Burack, Commissioner

CITY OF FRANKLIN, NEW HAMPSHIRE

By: Elizabeth Corrow DATE: 7-17-10  
Elizabeth Corrow City manager

Acknowledgment:

State of NH County of Merrimack

On this 17<sup>th</sup> day of July, 2010 before the undersigned officer, personally appeared Elizabeth Corrow and acknowledges himself to be the City manager of City of Franklin, who executed the foregoing instrument for the purposes therein contained.

IN WITNESS THEREOF, I hereunto set my hand and official seal.

Sarah J. Burgess Sarah J. Burgess, Notary Public  
Name and Title of Notary Public

Approval by ATTORNEY GENERAL (Form, Substance and Execution):

Evan Mulholland 8-12-10  
Assistant Attorney General Signature Date

Approved by the GOVERNOR and COUNCIL, this day of           , 2010

CITY CLERK'S CERTIFICATE

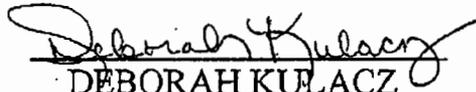
I, DEBORAH KULACZ, hereby certify that I am the appointed City Clerk of the City of Franklin. I hereby certify that ELIZABETH CORROW, City Manager of the City of Franklin, is authorized, empowered and directed to execute on behalf of the City of Franklin, a contract dated July 17, 2010 with the Water Division, Department of Environmental Services of the State of New Hampshire for residual disposal services.

RESOLVED, that the City Clerk, DEBORAH KULACZ, be authorized, empowered and directed to seal with the City Seal, a Certificate of the foregoing action.

I further certify that ELIZABETH CORROW is the duly appointed City Manager, has accepted such office and is acting therein.

I further certify that the foregoing resolutions remain in full force and effect,

IN WITNESS WHEREOF, I have signed my name and affixed the seal of the City of Franklin, this 17<sup>th</sup> day of July, 2010.

  
DEBORAH KULACZ  
City Clerk





The State of New Hampshire  
Department of Environmental Services



Michael P. Nolln  
Commissioner

March 6, 2006

His Excellency, Governor John H. Lynch  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

APPROVED G & C

DATE 17 March 2006  
ITEM # 766

REQUESTED ACTION

Authorize the Department of Environmental Services (DES) to enter into a SOLE SOURCE contract with the City of Franklin (VC # 21052) Franklin, New Hampshire for residual (grit) disposal services in the amount of \$9,800.00, effective July 1, 2006 through June 30, 2010. 100% Other Funds.

Funding is available in account, Winnepesaukee River Basin, as follows, with the authority to adjust encumbrances in each of the state fiscal years through the Budget Office if needed and justified. Funding for fiscal years 2008-2010 is contingent upon the availability and continued appropriation of funds.

	<u>FY 07</u>	<u>FY 08</u>	<u>FY 09</u>	<u>FY 10</u>
010-044-1300-020-0261 – Current Expense	\$2,450	\$2,450	\$2,450	\$2,450

EXPLANATION

The Department of Environmental Services (DES) under the Winnepesaukee River Basin Program (WRBP) owns and operates the regional wastewater collection and treatment facilities for ten communities in the Lakes Region. Approval of this request will authorize grit disposal services for the treatment plant.

Grit is the sand, rock fragments and other heavy inorganic material that is found in raw sewage. Because such material does not benefit from wastewater treatment, and, in fact, can damage equipment used to treat wastewater, treatment plant staff remove grit as soon as it enters the treatment plant. The only acceptable location for grit is a secure landfill, and in the Franklin, New Hampshire area, the least costly way to dispose of it is to send it to the Wheelabrator facility in Penacook for incineration, followed by landfilling at the cooperative's secure ash disposal site in Franklin. This, in fact, has been the method of disposal used by the City of Concord's Wastewater Treatment Plant.

His Excellency, Governor John H. Lynch  
and the Honorable Council  
March 6, 2006  
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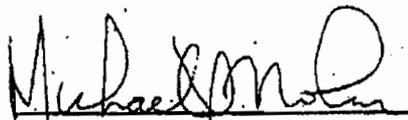
The material may either be brought to the incinerator by plant staff, and the WRBP direct-billed for the tonnage by Wheelabrator at its "spot rate", which is currently approximately \$75.00 per ton, or it can be taken to the incinerator by plant staff, and accepted at the incinerator as a commercial account of the City of Franklin, utilizing Franklin's current rate for such customers (which is about \$45 per ton). WRBP has a clear preference for the latter option, inasmuch as the tipping fee as a Franklin commercial account is far less than the "spot rate". The city has agreed to accept the WRBP as a commercial account, and this contract will encumber funds for the tipping charges and the WRBP will be invoiced by the city.

The only alternatives to disposal of this material at the Penacook incinerator would involve trucking it to another secure landfill, or to the Claremont incinerator for burial in its secure ashfill site. All of these other alternatives would have tipping fees comparable to the "spot rate" charges at the Wheelabrator facility in Penacook, which is to say higher than the tipping charges to Franklin commercial accounts, and all would involve much higher hauling charges because they are more distant from Franklin than is Penacook.

We are recommending that the insurance requirements of Paragraph 14 be waived for this agreement, and have included this waiver in Exhibit C. Other than being invoiced as a co-op member by Wheelabrator, and sending the WRBP a bill for the grit's disposal (which, as noted earlier, will be taken to the incinerator by WRBP staff in a WRBP vehicle), the city will have no involvement in the disposal operation. Because of the nature of the service being provided, we feel there is essentially no risk to the state if the requirements of Paragraph 14 of the P-37 contract form are waived, and in fact have been waived for past agreements of this nature.

All of the WRBP's operating expenses are paid for by the users of the system; there is no General Fund contribution to the systems operating budget. This contract has been approved by the Department of Justice as to form, substance and execution.

We respectfully request your approval.

  
Michael P. Nolin, Commissioner

MPN/SD:ba

[g:franklin\grp\adm\grit disposal 2006\g&c grit disposal fy 2007-10]

Subject: GRIT DISPOSAL SERVICES

**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

**1. Identification and Definitions.**

1.1 State Agency Name Department of Environmental Services		1.2 State Agency Address 29 Hazen Drive, Concord, New Hampshire 03302	
1.3 Contractor Name City of Franklin, NH		1.4 Contractor Address 316 Central Street, Franklin, New Hampshire 03203	
1.5 Account No. 010-044-1300-020-026	1.6 Completion Date June 30, 2010	1.7 Audit Date n.a.	1.8 Price Limitation \$9,800.00
1.9 Contracting Officer for State Agency Michael P. Nolin, Commissioner		1.10 State Agency Telephone Number (603) 271-3503	
1.11 Contractor Signature <i>[Signature]</i>		1.12 Name & Title of Contractor Signer <i>Brian J. Sullivan, Director Municipal</i>	

1.13 Acknowledgment: State of NH, County of Merrimack  
On 2/16/06 before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily prove to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.

1.13.1 Signature of Notary Public or Justice of the Peace  
[Seal] *Marie G. Creasey* MARIE G. CREASEY, Notary Public  
My Commission Expires May 15, 2007

1.13.2 Name & Title of Notary Public or Justice of the Peace  
*Marie G. Creasey, Notary Public*

1.14 State Agency Signatures  
*Michael P. Nolin* 1.15 Name/Title of State Agency Signer(s)  
Michael P. Nolin, Commissioner

1.16 Approval by Department of Personnel (Rate of Compensation for Individual Consultants)

By: \_\_\_\_\_ Director, On: \_\_\_\_\_

1.17 Approval by Attorney General (Form, Substance and Execution)  
By: *[Signature]* Assistant Attorney General, On: 5/1/06

1.18 Approval by the Governor and Council  
By: \_\_\_\_\_ On: \_\_\_\_\_

**2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("the State"), engages contractor identified in block 1.3 ("the Contractor") to perform, and the Contractor shall perform, that work or sale of goods, or both; identified and more particularly described in EXHIBIT A incorporated herein ("the Services").

**3. EFFECTIVE DATE: COMPLETION OF SERVICES.**  
3.1 This agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Council of the State of New Hampshire approve this agreement, ("the Effective Date").  
3.2 If the date for commencement in Exhibit A precedes the Effective Date all services performed by Contractor between the commencement date and the Effective Date shall be performed at the sole risk of the contractor and in the event that this Agreement does not become effective, the State shall be under no obligation to pay the contractor for any costs incurred or services performed; however that if this Agreement becomes effective all costs incurred prior to the effective date shall be paid under the terms of this Agreement. All services must be completed by the date specified in block 1.6.

**4. CONDITIONAL NATURE OF AGREEMENT.** Notwithstanding anything in this agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the account identified in block 1.5 in the event funds in that account are reduced or unavailable.

## 5. CONTRACT PRICE; LIMITATION ON PRICE; PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in Exhibit B, incorporated herein.

5.2 The payment by the State of the contract price shall be the only, and the complete, reimbursement to the Contractor for all expenses, of whatever nature, incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by RSA 80:7 through 7-C or any other provision of law.

5.4 Notwithstanding anything in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made, hereunder exceed the price limitation set forth in block 1.8 of these general provisions.

## 6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS; EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to civil rights and equal opportunity laws. In addition, the vendor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap or national origin and will take affirmative action to prevent such discrimination.

6.3 If this agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States, access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants and conditions of this Agreement.

## 7. PERSONNEL

7.1 The performance of the Services shall be carried out by employees of the Contractor. The Contractor shall at its own expense, provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 The Contractor shall not hire, and shall permit no subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services, to hire any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final.

## 8. EVENT OF DEFAULT, REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Events of Default"):

- 8.1.1 failure to perform the Services satisfactorily or on schedule; or
- 8.1.2 failure to submit any report required hereunder; or
- 8.1.3 failure to perform any other covenant or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

- 8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this agreement, effective two (2) days after giving the Contractor notice of termination; and
- 8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the Contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor; and
- 8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and
- 8.2.4 treat the agreement as breached and pursue any of its remedies at law or in equity, or both.

## 9. DATA; ACCESS; CONFIDENTIALITY; PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 On and after the Effective Date, all data, and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement shall be the property of the State, and shall be returned to the State upon demand upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by RSA 91-A or other existing law. Closure pursuant to a right to know request shall require prior written approval of the State.

10. **TERMINATION.** In the event of an early termination of this Agreement for reason other than the completion of the Services, the Contractor shall deliver to Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("the Termination Report") describing in detail all Services performed, and Contract Price earned, to the including the date of termination. To the extent possible, the form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in EXHIBIT A.

11. **CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefit worker's compensation or other emoluments provided by the State to its employees.

12. **ASSIGNMENT, DELEGATION AND SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the Services shall be delegated or subcontracted by the Contractor without the prior written consent of the State.

13. **INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this Agreement.

## 14. INSURANCE AND BOND.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, both for the benefit of the State, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per incident; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 of these general provisions, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 of this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Each policy shall contain a clause prohibiting cancellation or modifications of the policy earlier than 10 days after written notice thereof has been received by the State.

15. **WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that event, or any subsequent Event. No express failure of any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other default on the part of the Contractor.

16. **NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, above.

17. **AMENDMENT.** This agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire.

18. **CONSTRUCTION OR AGREEMENT AND TERMS.** This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns.

19. **THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this agreement shall not be construed to confer any such benefit.

20. **SPECIAL PROVISIONS.** The additional provisions set forth in EXHIBIT C hereto are incorporated as part of this Agreement.

21. **ENTIRE AGREEMENT.** This agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.

EXHIBIT A  
THE SERVICES

Residual disposal services for washed grit, to be delivered by state vehicle to the Wheelabrator Concord Company, L.P. Resource Recovery Facility ("Wheelabrator"), and accepted as a commercial account with the City of Franklin, New Hampshire, in compliance with the standard "Terms and Conditions for Delivery of Co-operative Hauler Tonnage" required by Wheelabrator and the City of Franklin (attached to this Agreement as Attachment "A").

EXHIBIT B  
COST PROPOSAL AND TERMS OF PAYMENT

State to be invoiced by the City of Franklin – based on the city's standard tipping charge for its commercial accounts in effect at the time of disposal.

- City to be paid within thirty (30) days of receipt of invoices for tipping charges.

EXHIBIT C

\* State to comply with standard hauler "TERMS AND CONDITIONS FOR DELIVERY OF COOPERATIVE HAULER TONNAGE" attached by reference, with the following exceptions:

*Paragraph 1:* Waste is washed grit from the WWTP process that has been determined by Wheelabrator to be "acceptable waste".

*Paragraph 4:* Gross unloaded vehicle weight of the state vehicle used to transport waste to Wheelabrator is approximately 10,500 pounds.

\* The insurance requirements of paragraph 14 are hereby waived.

ATTACHMENT A

WHEELABRATOR CONCORD COMPANY, L.P.  
RESOURCE RECOVERY FACILITY

TERMS AND CONDITIONS FOR DELIVERY OF  
COOPERATIVE HAULER TONNAGE

Hauler hereby agrees to deliver Acceptable Waste to the Resource Recovery Facility which is located in Penacook, New Hampshire (the "Facility"), in accordance with the following terms and conditions. Hauler's acceptance of the terms and conditions contained herein is evidenced by the execution of this document.

1. DEFINITIONS

- a. Acceptable Waste – means all types of household garbage, trash, rubbish, refuse, and combustible agricultural, commercial and light industrial waste but excluding Unacceptable Waste.
- b. Cooperative means the Concord Regional Solid Waste/Resource Recovery Cooperative, a New Hampshire non-profit cooperative corporation established pursuant to RSA Chapter 53A and RSA Chapter 292, and its successors.
- c. Cooperative Member means any town, city or other political subdivision of and within the State of New Hampshire, having legal jurisdiction over solid waste management within its corporate limits and which, either before or after the date hereof, has elected to become a member of the Cooperative.

## ATTACHMENT A

d. Hazardous Waste – means (i) waste containing explosive, toxic or pathological substances, (ii) waste defined or classified as hazardous waste at any time under the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901, et seq.), NH RSA 147A as amended, or any other applicable federal, state or local law or any regulation thereunder, or waste defined by any applicable federal, state or local law, or any regulations thereunder as low-level or high-level radioactive waste, (iii) waste prohibited for incineration by any local, state or federal agency with jurisdiction over the Facility because of its toxic nature, (iv) waste (other than Acceptable Waste of the character referred to in the definition of Acceptable Waste) the processing of which would result in Hazardous Waste under (i), (ii), (iii) above, or (v) containers which hold or which previously have held waste described under (i), (ii) or (iii) above. If any governmental entity having jurisdiction shall determine that any substances which are not, as of the date of this Agreement, considered harmful or of a toxic nature or dangerous, are harmful, toxic or dangerous, such substances shall thereafter be deemed Hazardous Waste.

e. Service Contract means the Service Contract between Concord Regional Solid/Waste Resource Recovery Cooperative and Wheelabrator Concord Company, L.P. ("WCC") dated December 2, 1985, as amended.

f. Unacceptable Waste means (i) Hazardous Waste; (ii) pathological and biological waste, oil sludge, cesspool or other human waste, human remains, street sweepings, large items of machinery and equipment such as automobile and vehicular parts (except tires), trailers, agricultural equipment, marine vessels,

## ATTACHMENT A

or similar items, farm and other large machinery, wire and cable from industrial sources, plastics from industrial sources in excess, in total, of five (5) percent of Facility wasteload, foundry sands, tree stumps, liquid wastes and slurries, explosives (including ammunition and firearms), radioactive materials; (iii) any item of waste exceeding six feet six inches in any one of its dimensions or being in whole or in part a solid mass, the solid portion of which has dimensions such that a sphere with a diameter of eight (8) inches could be contained within such solid portion; (iv) animal remains, dirt, concrete and other non-burnable construction materials and demolition debris; and chemicals from industrial and commercial sources such as cleaning fluids, petroleum products, paints, acids, caustics, pesticides, insecticides, poisons, drugs or other materials the processing of which WCC reasonably believes would pose a threat to health or safety or the processing of which may cause damage to the Facility; and (v) any waste which, if processed, would violate or cause the violation of any judicial decision, order or action of any federal, state, or local government or any agency thereof or Applicable Law.

If any governmental agency or unit having appropriate jurisdiction shall determine that any substance which is not, as of the effective date, considered harmful or of a toxic nature or dangerous, is harmful, toxic or dangerous, such substance shall thereafter be deemed Unacceptable Waste. However, unless required by Applicable Law the inclusion of small quantities of clause (iii) items in any given

## ATTACHMENT A

quantity of Acceptable Waste, as defined under clause (a) of the definition thereof, shall not render the composite waste Unacceptable Waste.

Tires shall be deemed unacceptable Waste only if the total quantity of tires delivered by or on behalf of the Cooperative shall exceed 100 tires per day or, if, in any single delivery, tires constitute more than twenty five (25) percent of such delivery by weight; provided that tires shall be deemed Unacceptable Waste to the extent that their processing would materially impair the Facility's ability to meet the Performance Standards or comply with Applicable Law.

### 2. MANNER OF DELIVERY

Hauler agrees to deliver Acceptable Waste in a clean, orderly and safe manner during scheduled delivery days and hours and in such a manner that the Acceptable Waste will not be spilled or blown on the Facility Site, or onto adjacent state or city roads. Should waste be spilled or blown, Hauler will promptly, at its sole cost, collect and remove such spilled or blown waste. WCC may inspect the contents of any vehicle delivering waste to the Facility and may require the Hauler delivering Unacceptable Waste to separate all Unacceptable Waste from Acceptable Waste. If such separation is impractical, WCC may refuse the entire load. The Hauler agrees to adhere to WCC safety rules and regulations at all times while on the Facility premises as specified in Exhibit I attached and made a part hereto. Prior to initiating deliveries to the Facility, the Hauler shall also complete and provide WCC with a copy of the form attached here to as Exhibit II.

## ATTACHMENT A

### 3. REMOVAL OF WASTE

Hauler hereby agrees to remove at its sole cost any waste rejected by WCC in accordance with paragraph-1. Hauler will be charged for any additional costs reasonably incurred by WCC for any special handling required to segregate Unacceptable Waste for the removal of such rejected waste by the Hauler.

### 4. DELIVERY VEHICLES

Hauler shall cause all vehicles used for deliveries of Acceptable Waste to the Facility to be self-emptying, in safe and clean condition and in good repair. No waste may be delivered in any vehicle with a gross vehicle weight of less than 27,500 pounds.

### 5. WEIGHING PROCEDURES

WCC shall utilize and maintain motor truck scales to weight all vehicles delivering Acceptable Waste to the Facility. Waste vehicles delivering Acceptable Waste to the Facility shall have the name of the Hauler and truck number permanently indicated and conspicuously displayed in a location approved by WCC. The Hauler shall identify to WCC at the time of delivery, the Cooperative Member from which all waste in any delivery to the Facility originated. Each incoming waste vehicle shall be weighed, indicating gross weight, time, Hauler, truck identification number and the Cooperative Member or Members to whom the load is to be allocated on a weight record. Each vehicle will also be weighed after unloading or a tare weight will be used. WCC shall give the vehicle operator a copy of the weight record containing all such information at the completion of the weighing process.

## ATTACHMENT A

### 6. REFUSAL OF DELIVERY

WCC shall have the right without any liability to Hauler to refuse deliveries of:

- (a) Any Unacceptable Waste.
- (b) Any waste delivered at other than the then established receiving hours for the receipt of Cooperative Waste pursuant to the Service Contract and posted by WCC. Until revised pursuant to the Service Contract the Facility receiving hours shall be from 6:00 a.m. to 6:00 p.m., Monday through Saturday, excepting Holidays, as defined in the Service Contract.
- (c) Any other Acceptable Waste which WCC is unable to accept or process for whatever reason.

WCC shall provide the Hauler with clear instructions for the delivery to an alternate disposal site provided by WCC of any Acceptable Waste which WCC refuses to accept and for which WCC has responsibility for disposal pursuant to the Service Contract.

### 7. APPLICABLE LAW

The laws of the State of New Hampshire shall govern the validity, interpretation, construction and performance of these terms and conditions.

### 8. COMPLIANCE WITH LOCAL LAWS

Haulers shall comply with all federal, state and local regulations and all administrative positions known to it, except for such period as it may in good faith be contesting the validity of application therefore.

ATTACHMENT A

9. NOTICES

All notices hereunder shall be in writing with notice deemed to be given upon receipt, addressed as follows:

If to Hauler: Franklin Wastewater Treatment Plant  
Steven C. Dolloff, Superintendent  
P.O. Box 68  
Franklin, New Hampshire 03235

With a copy to: Department of Municipal Services  
City of Franklin  
Brian Sullivan, Director  
43 West Bow Street  
Franklin, New Hampshire 03235

If to WCC: Wheelabrator Concord Company, L.P.  
11 Whitney Road  
Penacook, New Hampshire 03303

Changes in the respective addresses to which such notices shall be sent may be made from time to time by either party by notice to the other party. Notice given otherwise than by mailing shall be effective when received.

Nothing in these terms and conditions shall be construed to alter or amend the rights or obligations of WCC or the Cooperative under the Service Contract.

EXHIBIT "C"

Nothing in these terms and conditions shall be construed to alter or amend the rights or obligations of WCC or the Cooperative under the Service Contract. In the event of any conflict between these terms and conditions and the Service Contract, the provisions of the Service Contract shall govern.

BY: Steven Cheloff  
Hauler.

Date: 4-24-06

BY: John Johnson  
Wheelabrator Concord Co., L.P

Date: 4/21/06



**CITY OF FRANKLIN, NEW HAMPSHIRE**  
**Municipal Services Department**

*"A Friendly City on the Move"*

43 West Bow Street • 03235

Tel: (603) 934-4103

FAX: (603) 934-7409

CITY CLERK'S CERTIFICATE

I, CYNTHIA HALLBERG, hereby certify that I am the appointed City Clerk of the City of Franklin. I hereby certify that Brian J. Sullivan, Director of Municipal Services of the City of Franklin, is authorized, empowered and directed to execute on behalf of the City of Franklin, a contract dated February 17, 2006 with the Water Division, Department of Environmental Services of the State of New Hampshire for residual disposal services.

RESOLVED, that the City Clerk, CYNTHIA HALLBERG, be authorized, empowered and directed to seal with the City Seal, a Certificate of the foregoing action.

I further certify that Brian J. Sullivan is the duly appointed Director of Municipal Services, has accepted such office and is acting therein.

I further certify that the foregoing resolutions remain in full force and effect,

IN WITNESS WHEREOF, I have signed my name and affixed the seal of the City of Franklin, this 17th day of February, 2006.

  
CYNTHIA HALLBERG  
City Clerk