

SLUDGE HAULING AND DISPOSAL CONTRACT

This Contract, made this ____ day of December in the year Two Thousand and Twenty-Two, between (**Contractor name**) hereinafter called the Contractor, and the **Town of Montague**, acting by its Selectboard, hereinafter called the Town.

WHEREAS, the Town wishes to hire a qualified and responsible Sludge Cake hauler to meet the Sludge Cake disposal needs of its Water Pollution Control Facility (WPCF);

NOW, THEREFORE, in consideration of the mutual promises and benefits of this Contract, the Town and Contractor agree as follows:

1. Employment of the Contractor

The Contractor agrees to haul and properly dispose of Sludge Cake from the Town's WPCF. Said commitment is contingent upon the appropriation of sufficient funds by the Town to support the employment of the Contractor under the terms of this Contract.

2. Scope of Services

The Contractor shall perform in a good and professional manner, the following services:

- 2.1 The Contractor shall provide all vehicles and equipment necessary to transport Sludge Cake from the Town to an appropriate end-disposal site determined by the Contractor. The Contractor will provide at least one dump trailer for loading at the WPCF at all times.
- 2.2 The Contractor shall provide employees who are licensed to drive commercial vehicles and who are knowledgeable and experienced in transporting Sludge Cake from treatment facilities to disposal facilities.
- 2.3 The Contractor shall obtain all necessary permits to service this Contract. The Contractor shall pay all expenses associated with obtaining valid permits to operate for the life of this Contract.
- 2.4 The Contractor shall transport Sludge Cake under the terms and prices of this Contract only from the Montague WPCF as authorized by the Town through its WPCF Superintendent or assigned designee.
- 2.5 The Contractor shall ensure that all Sludge Cake hauled under this Contract is contained and enclosed at all times such that leaking and spilling are prevented.
- 2.6 The Town's WPCF and Contractor will arrange a pick up schedule, the Friday preceding the requested load, for the following week's Sludge Cake service. Changes to the pickup

schedule can be made with 48 hours' notice. Unless otherwise mutually agreed, service will be provided between 6AM-3PM Monday through Friday.

- 2.7 The Contractor will use safe driving, loading, and unloading practices while on and off the WPCF site. Access to the sites shall be solely for the purpose of collecting Sludge Cake from the facility, except at the request for other services by the Town and agreed upon by the Contractor.
- 2.8 The Contractor shall comply at all times with federal, state, and local laws, regulations, and ordinances which affect the work to be performed under this Contract, including, but not limited to laws, regulations, and ordinances for motor vehicles, worker health and safety, transporting Sludge Cake, and disposal of Sludge Cake.
- 2.9 The Contractor will be financially responsible for any damage to municipal equipment or property which is a result of an accident or negligence on behalf of the Contractor or its employees.

3. Participating Facility and Availability of Funds

This Contract is entered into by the Town and will be administered by its WPCF Superintendent in service to the Montague WPCF under authority of the Montague Selectboard.

This Contract may be canceled or altered if funds are not appropriated or otherwise made available by the Town to support the Contract.

4. Hauling and Collection Equipment

The Contractor will furnish and use all modern equipment and adequate personnel necessary to complete scheduled Sludge Cake removal operations. Containers for the storage and/or transportation of sludge must be watertight to effectively control and prevent the seepage of sludge from the containers. All vehicles and collection equipment shall be kept in good repair and appearance at all times.

In the event of equipment failure, the Contractor shall, within 24 hours, repair the equipment or provide a replacement to ensure that the removal of the Sludge Cake is not delayed in excess of a 24-hour period.

5. Material Conformity

The Town represents that, to the best of its knowledge, the Sludge Cake from its WPCF materially conforms to all federal, state, and local regulations regarding Sludge Cake to be disposed of in sanitary landfills or incinerators, with the exception of water content.

At the request of the Contractor, the WPCF Superintendent shall furnish a TCLP analysis or other analyses to determine the composition of the Sludge Cake.

5.1 Quality Standard. The Town warrants that the Sludge Cake identified in this Agreement and supplied to the Contractor are not classified as hazardous waste under United States Environmental Protection Agency (USEPA) and/or any other applicable laws and regulations, including but not limited to, state laws and regulations. The Sludge Cake shall meet the requirements of applicable law, regulation and permits for the uses contemplated in this Agreement. The Town will provide Sludge Cake that are not frozen and are free of any trash, hazardous waste or other debris. The Sludge Cake in the form of Dewatered Biosolids will have no free liquid, be *free from excessive malodors*, and pass a paint filter test. All materials generated at the Plant that fail to meet this Quality Standard shall be called “Non-Conforming Waste.” The Contractor has the right to refuse any Non-Conforming Waste in its sole discretion. The Town shall use reasonable business efforts to generate and provide to Contractor Sludge Cake that meet the Quality Standard. The Contractor shall have the right of first refusal to transport, process, recycle and/or dispose of Non-Conforming Waste.

5.2 Odor Control. The Town is responsible for providing Sludge Cake that is free from excessive malodors. Sludge Cake that cause malodors during transport or at the Facility are considered Non-Conforming Waste per Section 5.1. The Town will ensure that malodors will be addressed during Service. The Town will install, operate, and maintain a system to introduce odor neutralizing compounds. It is incumbent on the Town to ensure the proper function, of the system and effective treatment of all Sludge Cake intended for removal by the Contractor.

5.3 Timely Odor Notification. The Town is responsible for prompt notification to Contractor (within 24 hours), of observable changes or process upsets that appear to reduce the effectiveness of the odor neutralizing compounds, or the general quantity of odor observed in the Sludge Cake or increases the level/intensity of the odor observed in the Sludge Cake.

5.4 Changes in Quality. The Town will use reasonable efforts to notify Contractor in writing ninety (90) days in advance of any change in the treatment or manufacturing process at the Plant that could materially affect the quality of the Sludge Cake. Any material change in the composition of the Sludge Cake to be generated may, in the sole discretion of Contractor, be considered a material change and, in the Contractor’s sole discretion, may require new characterization, approval, and price.

6. Title to Sludge Cake

Title to the Sludge Cake shall remain with the Town until the Sludge Cake is loaded on to the Contractor’s vehicle, at which time, title to the sludge and all risks and responsibilities therefore shall be transferred and borne by the Contractor.

Waste that is determined to be Non-Conforming Waste or hazardous waste shall not be loaded onto the Contractor’s truck(s) for removal and disposal. In the event that said Non-Conforming Waste or hazardous waste is loaded onto the Contractor’s truck(s), title to said waste shall not pass to the Contractor but shall remain with the municipality and the facility generating said Non-Conforming Waste or hazardous waste. Further, the Contractor is authorized to make arrangements for the lawful disposition of said Non-Conforming Waste or hazardous waste after approval is granted from the Town. The Town shall pay for any and all reasonable costs associated with the transportation,

treatment and disposal of said Non-Conforming Waste or hazardous waste. In addition, the Contractor shall receive compensation to cover reasonable costs associated with cleaning and restoring said equipment used to haul the Non-Conforming Waste or hazardous waste to a suitable condition.

7. Spillage of Materials

If, at any time, materials covered by this Contract are spilled by the Contractor or sub-Contractor onto a street or any property, whether publicly or privately owned, or the contents of a truck are spilled or illegally dumped onto a street or property, whether publicly or privately owned, the Contractor shall immediately clean up the spilled or illegally dumped material. The materials shall be cleaned up sufficiently so as to restore the cleanliness of the property and the safety of the occupants. The Contractor shall comply with all federal, state, and local laws, regulations, and other requirements of regulatory agencies, including but not limited to reporting, cleanup and mitigation of spills. All spills or illegal dumping incidents must be reported to the Town's WPCF Superintendent.

In the event of a spill, the Contractor shall indemnify, protect, and hold harmless the Town. The Contractor shall pay all costs associated with spill management, including those to Town, for legal services, fees, fines, and penalties associated with the spill or dumping.

8. Schedules and Safety

Pick up schedules will be arranged with the Town's WPCF Superintendent or his designee to ensure that collection vehicles are on site at the best possible times. In the event that a scheduled haul cannot be made or will be made later in the day than planned, the Contractor shall notify the facility by phone as early as it is known. If the Contractor repeatedly fails to notify the facility of scheduling delays, the Town may assess a financial penalty against the Contractor. If the Contractor repeatedly delays the hauling of Sludge Cake, it may terminate the Contract in accordance with Section 23 herein.

The hauler will use safe driving, loading, and unloading practices while on site. Haulers are expected to comply with all pertinent OSHA safety regulations.

9. Permits, Licenses and Fees

The Contractor represents and warrants that all necessary permits and approvals for the removal and disposal of Sludge Cake under this Contract have been validly issued and will remain in full force and effect during the term of this Contract.

10. Compliance with Laws

The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances, orders and decrees pertaining to the delivery, treatment, and transport of Sludge Cake, including without limitation the rules and regulations of the Massachusetts Department of

Environmental Protection which are now in force or may be promulgated during the term of this Contract.

11. Insurance

The Contractor shall at all times during the contract maintain in full force and effect Employer's Liability, Workers Compensation, Public Liability and Property Damage insurance, including contractual liability coverage. All insurance shall be by insurers and for policy limits acceptable to the Town and the Commonwealth of Massachusetts. Before commencement of work hereunder, the Contractor agrees to furnish the Town with certificates of insurance or other evidence satisfactory to the Town to the effect that such insurance has been procured and is in force.

For the purpose of this Contract, the Contractor shall carry the following types of insurance in at least the limits specified below:

Coverage	Limits of Liability
Workers Compensation	Statutory
Employers Liability	\$1,000,000
Bodily Injury Liability (except automobile)	\$1,000,000 each occurrence \$3,000,000 aggregate
Property Damage Liability (except automobile)	\$1,000,000 each occurrence \$3,000,000 aggregate
Automobile Bodily Injury Liability	\$3,000,000 each occurrence
Automobile Property Damage	\$1,000,000 each occurrence
Excess Umbrella Liability	\$5,000,000 each occurrence

The Town shall be named as an “additional insured” under the liability and automobile insurance. The general liability insurance policy should contain a broad form general liability endorsement.

12. Sub-Contractors

If the Contractor chooses to subcontract any or all of the awarded contract, they will notify the Town in writing and identify the Sub-Contractor, owner, address, phone number and all pertinent license numbers, such as those from a state and/or federal regulatory agency. The Contractor must also provide proof of insurance for the Sub-Contractor(s) as listed in Section 11 of this Contract.

13. Indemnification

The Contractor will indemnify, save harmless, and exempt the Town and its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorneys' fees incident to any work done in the performance of this Contract arising out of a willful or negligent act or omission of the Contractor, its officers, agents, servants and employees, provided, however, that the Contractor

shall not be liable for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorneys' fees arising out of a willful or negligent act or omission of the Town and its officers, agents, servants, and employees.

The Town will indemnify, save harmless, and exempt the Contractor and its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorneys' fees incident to any work done in the performance of this Contract arising out of a willful or negligent act or omission of the Town, its officers, agents, servants and employees, provided, however, that the Town shall not be liable for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorneys' fees arising out of a willful or negligent act or omission of the Contractor and its officers, agents, servants, and employees.

14. Assignment

The Town and the Contractor bind themselves and any successors and assigns to this Contract. The Contractor, including its subsidiaries, shall not assign, sublet, or transfer its interest in this Contract without written consent of the Town. The Town shall not assign, sublet, or transfer its interest in this Contract without written consent of the Contractor.

15. Conflict of Interest

Each party shall adhere to the provisions of Massachusetts General Laws, Chapter 268A, with respect to the Conduct of Public Employees. In addition, no member, officer, or employee of either party, or its designees, agents, no member of the governing body of the Town during his/her tenure or for one (1) year thereafter (or such longer period as may be provided in Chapter 268A of the Massachusetts General Laws), shall have any interest in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Contract.

16. Liability of Public Officials

To the full extent permitted by law, no official, employee, agent or representative of the Town shall be individually or personally liable on any obligation under this Contract.

17. Non-Discrimination

The parties hereto shall not discriminate against any person because of race, color, religion, gender, gender orientation or gender identity, age, genetic information or disability, ancestry, religion, national origin, veteran status, marital status, political affiliation or belief or any other class protected under state and federal law.

18. Term

This Contract shall be for a term of two and a half (2.5) years, beginning January 1, 2023 and ending June 30, 2025. The Town, at its sole discretion, may negotiate with the Contractor for renewal of this Contract at terms agreeable to both the Town and the Contractor.

19. Fuel Adjustments

The Contractor's bid was calculated using the DOE On-Highway diesel price per gallon for New England as of November 14, 2022: \$6.060.

The fuel adjustment will be calculated using the Contractor's percentage of the wet ton price identified for transportation. The Contractor will apply the fuel adjustment only to the dollar amount associated with transportation. It will not include disposal.

Should the price per gallon of diesel fuel decrease by more than \$1 from the bid price, the Town will receive a fuel credit.

20. Payment

The WPCF agrees to pay the Contractor for its services within thirty (30) days of receipt of a bill. If an account is over ninety (90) days past due, the Contractor may: (a) suspend service until payment in full is made without breaching or terminating or otherwise affecting the remaining terms of this Contract; or (b) terminate this Contract, according to the provisions in Section 24 of this Contract.

Invoices will be submitted monthly to the Montague WPCF, 34 Greenfield Rd. Montague, MA 01351. Each invoice must specify the date(s) of service, tonnage disposed, and destination/disposal site.

21. Failure to Perform

Neither the Town nor the Contractor shall be liable for its failure to perform hereunder due to contingencies beyond its reasonable control including, but not limited to, strikes or other labor disputes, riots, governmental actions, fires, changes in law, weather, or acts of God affecting either party hereto.

22. Right to Remedy

In the event the Contractor is unable to perform any part of the service described herein for reasons other than those described in Section 21 of this Contract, the Contractor shall have the right to remedy the Town complaint within 48 hours (excluding Sundays and holidays) without breach of this Contract. The Town shall notify the Contractor in writing of any service complaint and allow the Contractor the reasonable right to cure without termination or breach of

this Contract. If the Town's complaint is of such a nature that it can be reasonably cured or remedied within 48 hours (excluding Sundays and holidays) and the Contractor is unable to cure or remedy the Town's complaint after proper notice (except for the reasons set forth in Number 21 of this Contract), the Town shall have the right to terminate this Contract according to the provisions of Section 23 of this Contract. The Contractor shall be liable for any excess costs incurred by the Town to remedy the incident(s).

This section does not waive the Town's right to make alternate arrangements for sludge removal, including hiring another hauler, should the Contractor be unable to remove sludge within 24 hours of notification from the facility.

All parties' rights and remedies provided in this Contract are in addition to any other rights and remedies provided by law.

23. Termination

The Town may terminate this Contract by providing the Contractor with ten (10) days written notice in the following instances:

- a) If the Contractor abandons its work under this Contract, or if for any reason, the timely completion of such work is rendered improbable, unfeasible, impossible or illegal;
- b) If the Contractor violates any of the material terms of this Contract and fails to cure subsequent violations within 48 hours (excluding Sunday and holidays) of receipt of written notice thereof;
- c) If the Town reasonably determines based upon objective evidence that the Contractor is not satisfactorily fulfilling its obligations under this Contract or that the objectives of the Scope of Work are not being achieved.

The Contractor may terminate this Contract in the event that the Town is more that ninety (90) days in arrears in payment. The Contractor will provide the Town notice and fifteen (15) business days to correct the non-payment. The Town has the right to negotiate a mutually agreed payment plan with the Contractor to prevent termination of the Contract.

24. Modifications

No modification of this Contract shall be binding on the Contractor or the Town unless set out in writing signed by both parties.

25. Severability

If any section, subsection, sentence or clause of this Contract shall be adjudged illegal, invalid, or unenforceable such illegality, invalidity, or unenforceability shall not affect the legality, validity or enforceability of the Contract as a whole or of any section, subsection, sentence or clause hereof not so adjudged.

26. Notices

Any notices, bills, invoices, or reports required by this Contract shall be sufficient if sent by the parties via United States mail, postage paid, to the address noted below:

Town:

Chelsey Little, Superintendent
Montague WPCF
34 Greenfield Rd.
Montague, MA 01351

Contractor:

27. Statutes, Ordinances, Compliance with Laws. All applicable State Laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over the work to be performed shall apply to the contract throughout, and they will be deemed to be included in the contract as though written out in full in the contract.

28. Legal Certification. By acceptance of this Contract, the Contractor certifies that it has complied, and will continue to comply with, all ordinances, laws and regulations, including but not limited to all Massachusetts tax laws, and certifies that it is authorized to do business in Massachusetts.

29. Entire Understanding

This Contract, together with the documents listed below and attached to this Contract, constitute the entire understanding and agreement of the Town and Contractor with respect to the subject matter hereof. If discrepancies occur between sections in this Contract and the Invitation to Bid or addenda, the language in the Contract sections shall take precedence.

- a. Invitation for Bid (IFB) for Sludge Cake Hauling and Disposal dated November 21, 2022.
- b. The Contractor's Cost Proposal Forms submitted on December 6, 2022.
- c. Any documents submitted by the Contractor after December 6, 2022 that refer to the Contractor's intended performance under this Contract or costs associated with this Contract.
- d. Insurance Certificates evidencing the insurance required in the IFB.

IN WITNESS WHEREOF, the **Town** and **(Contractor Name)** have executed this Contract as of the date first written above.

Town of Montague Selectboard

(Contractor Name)

Selectboard Chair

Signature

Selectboard Member

Title

Selectboard Member

Date

Date