



IN CITY COUNCIL

ORDERED:

June 12, 2023

THAT, The CITY COUNCIL of the City of Newburyport hereby approves Amendment #2 to the contract entitled “Amendment #2 to the City of Newburyport Contract for Municipal Solid Waste Disposal ” originally dated July 22, 2013 by and between the City of Newburyport and Wheelabrator North Andover, Inc.

Said contract is attached hereto and incorporated herewith and marked ‘Contract: Municipal Solid Waste Disposal City of Newburyport and Wheelabrator North Andover, Inc.’ and dated July 22, 2013.

Councillor James J. McCauley

In City Council June 12, 2023:

Motion to refer to Community Services by Councillor McCauley, seconded by Councillor Preston. Roll call vote. 11yes. Motion passes.

**AMENDMENT #2 TO THE CITY OF NEWBURYPORT ¹
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

This Amendment #2 to the City of Newburyport Contract for Municipal Solid Waste Disposal (this “Amendment #2”) is dated as of July 1, 2023 (the “Effective Date”), by and between the City of Newburyport, Massachusetts, a municipal corporation organized and existing under the laws of The Commonwealth of Massachusetts (the “Municipality”), and Wheelabrator North Andover Inc., a Delaware corporation (the “Contractor”). Municipality and Contractor are sometimes referred to herein individually as a “party” and collectively as the “parties.”

WHEREAS, the Municipality and the Contractor are parties to that certain Contract for Municipal Solid Waste Disposal dated as of July 18, 2013, as amended by that certain Amendment #1 to City of Newburyport Contract for Municipal Solid Waste Disposal dated as of June 29, 2018 (collectively, the “Contract”); and

WHEREAS, the parties now wish to amend the Contract on the terms and conditions contained herein.

NOW THEREFORE, in consideration of the mutual promises set forth herein and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Contract. The Recitals above are incorporated into this Amendment #2.

2. Amendments.

a. The Cover Page and Preamble of the Contract shall be amended by replacing the words “July 1, 2013 through June 30, 2023” and replaced with “July 1, 2013 through June 30, 2028”; and further, the Preamble of the Contract is amended by replacing the words “June 30, 2023” appearing the last sentence thereof with the words “June 30, 2028.”

b.

Section 2 of the Contract is hereby deleted in its entirety and replaced with the following:

“The Contract shall commence work on July 1, 2013 and the Work shall continue through June 30, 2028.

The Municipality and the Contractor may by mutual consent renew the Contract for two (2) additional one (1) year terms. The renewal option shall be exercised by mutual written consent, in subject to applicable law, within ninety (90) days of the expiration date of this Contract. All terms and conditions contained in this Contract, including those set forth on Appendix A, shall continue in full force and effect during any renewal period.”

c. The second paragraph of Section 15.A. of the Contract is hereby deleted in its entirety and replaced with the following:

“The tipping fee shall be paid within thirty (30) days of the Municipality’s receipt of a proper monthly invoice and accompanying materials, as described below that includes the total tons

¹ 6/6/2023

of material delivered for the monthly period, fee per ton, and total monthly fee (tons X fee = total fee). The invoice shall also include the daily tonnage report of Acceptable Solid Waste delivered and accepted by the Contractor for the monthly period invoiced.”

d. Appendix A to the Contract is hereby deleted in its entirety and replaced by Appendix A attached hereto.

3. Limited Effect. This Amendment #2 is limited in effect and, except as specifically set forth above, shall apply only as expressly set forth in this Amendment #2 and shall not constitute a consent, waiver, modification, approval or amendment of any other provision of the Contract. Except as modified and amended by this Amendment #2, the terms and conditions of the Contract remain in full force and effect and are hereby ratified and affirmed.
4. Severability. In case any one or more of the provisions contained in this Amendment #2 should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired hereby. The parties shall enter into good faith negotiation to replace the invalid, illegal or unenforceable provision with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.
5. Headings. The headings used herein have been inserted in this Amendment #2 as a matter of convenience for reference only and are not a part of this Amendment #2 and shall not be used in the interpretation of any provision of this Amendment #2.
6. Governing Law. This Amendment #2 and the rights and duties of the parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of The Commonwealth of Massachusetts, and the parties hereby agree that any unresolved dispute arising under this Amendment #2 shall be only submitted in a court of competent jurisdiction located in The Commonwealth of Massachusetts.
6. Binding Effect; Counterparts. This Amendment #2 may be executed in one or more duplicate counterparts and by facsimile or other electronic transmission, each of which shall constitute an original but all of which shall become effective as provided above. Delivery of any executed signature page to this Amendment #2 by email transmission shall be as effective as delivery of a manually signed counterpart of this Amendment #2.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Amendment #2 to be executed by their duly authorized officers as of the Effective Date.

WHEELABRATOR NORTH ANDOVER INC.

By: _____
Name:
Title:

CITY OF NEWBURYPORT

By: _____
Name:
Title:

Appendix A

Contract Fees

The Municipality agrees to pay the Contractor \$90.00 per ton (“short ton” of 2000 pounds) of Acceptable Solid Waste delivered to the Facility during the period beginning on July 1, 2023 and ending on June 30, 2024 (the “Tip Fee”) Once per year, beginning on the first anniversary of the Effective Date, the Tip Fee, not including the per-ton environmental fee of \$1.25 per ton, shall be increased by 5% (five percent). In addition, thereto, customer shall also pay a per-ton environmental fee of \$1.25 per ton, which shall escalate by \$0.50 per ton on each anniversary of the Effective Date but which is not added to the tip fee increase per year. See chart below for clarification. In addition, thereto, customer shall also pay a per ton fuel fee based on the U.S. Energy Information Administration’s (EIA) Weekly Retail Diesel Prices Index, which you can view at www.eia.gov/petroleum/gasdiesel. This rate will be adjusted monthly using the index as posted on the third Tuesday of each month.

	FY23	FY24	Increase	FY25	Increase	FY26	Increase	FY27	Increase	FY28	Increase
Per ton fee	\$75.75	\$90.00		\$90.00		\$94.50		\$99.23		\$104.19	
5% CPI yrly				\$4.50		\$4.73		\$4.96		\$5.21	
Tip fee		\$90.00		\$94.50		\$99.23		\$104.19		\$109.40	
Environ fee: \$1.25 of tip + \$0.50 per year escalation		\$1.25		\$1.75		\$2.25		\$2.75		\$3.25	
Fuel fee per ton based on EIA adjusted monthly		\$2.42 as of June 2023									
Total Tip fee w/out Fuel fee	75.75	\$91.25	20%	\$96.25	5.48%	\$101.48	5.43%	\$106.94	5.38%	\$112.65	5.34%

MEMORANDUM

To: City Council President Heather Shand and Members
From: Mayor Sean Reardon
Energy and Sustainability Manager Molly Ettenborough
Date: June 6, 2023
Re: Solid Waste Disposal Contract July 2023

Below please find background information for the requested approval of a five (5) year contract for The City of Newburyport and Wheelabrator North Andover, the city's current solid waste disposal site.

Waste Disposal Background

In our region, there are two waste combustors that accept municipal solid waste, Covanta Haverhill and Wheelabrator North Andover. Newburyport has been bringing its solid waste to the Wheelabrator North Andover combustion facility since 2013. We originally signed a five-year contract which was then extended for five years. We are requesting a second amendment to our contract, which would extend the contract another five years.

Since last year, we have been working with the Massachusetts Department of Environmental Protection (DEP) and a solid waste contracting group consisting of two DEP regional groups: Northeast District 1 and 2 (cumulative total of 75 cities and towns). All members of this group have reported on the same trends, which are price increases and a reduction in capacity and increases in wait times at both facilities.

Across the board we are seeing all new disposal pricing coming in well over \$90/ton and in some cases over \$100/ton. One company has been quoting solid waste disposal trucking/rail out of the region at prices well over \$120/ton. Capacity in the region is strained and we are fortunate to have had a long-term relationship with Wheelabrator to continue as our disposal site. Please also note that solid waste disposal, collection and transport are exempt from 30B procurement laws.

Selection

Wheelabrator North Andover manages 1500 tons per day on site and landfills the residual ash locally. As reviewed with the Newburyport City Council several years ago, solid waste disposal capacity in Massachusetts and throughout the Northeast is and has continued to shrink as more landfills close. We believe continuing with Wheelabrator is the best choice at this time, as their rates are competitive compared with the other options in our region and their price escalation is consistent with the market.

Long-Term waste reduction

This tightening of disposal capacity has weakened the resiliency of Massachusetts waste disposal infrastructure and facility outages that were routine in the past are causing frequent operational problems. In response, MassDEP recently issued its final **2030 Solid Waste Master Plan**, which established goals for reducing disposal statewide by 30 percent (from 5.7 million tons in 2018 to 4 million tons in 2030) over the next decade. It set a long-term goal of achieving a 90 percent reduction in disposal to 570,000 tons by 2050.

This contract is our first step towards securing solid waste disposal. We are also working on trash collection, recycling processing and collection and hauling RFPs with a start date of July 1, 2024.

Contract:
Municipal Solid Waste Disposal
City of Newburyport
and
Wheelabrator North Andover, Inc.
July 1, 2013 through June 30, 2018

7/18/2013
City of Newburyport
Health Department

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

**July 2013 through June 30, 2018
Contract for Municipal Solid Waste Disposal
City of Newburyport and Wheelabrator North Andover, Inc.**

This Contract for Disposal of Municipal Solid Waste hereinafter referred to as "THE CONTRACT" is made and entered into as of the first day of July 2013 by and between the City of Newburyport, Massachusetts, a political subdivision of the Commonwealth of Massachusetts hereinafter referred to as "THE MUNICIPALITY" with address as follows: City of Newburyport, 60 Pleasant Street, Newburyport, Massachusetts 01950 acting through its Mayor, as applicable, and its contractor, Wheelabrator North Andover, Inc., hereinafter referred to as "THE CONTRACTOR" with a waste-to-energy facility located at 285 Holt Road, North Andover, Massachusetts 01845 (the "Facility") agree to the terms of this contract with an expiration date of June 30, 2018 and the costs of the contract in accordance with Appendix A attached.

1. Definitions

Whenever the following terms, or pronouns in place of them, are used in this Contract, the intent and meaning shall be interpreted as follows:

ACCEPTABLE SOLID WASTE or ACCEPTABLE WASTE: means all household garbage, trash, rubbish, refuse, normally or which may be hereinafter collected and disposed of by or on behalf of Municipality, but excluding, without limitation (i) Hazardous Waste (as defined below), explosives and ordnance materials, pathological wastes, radioactive materials, lead acid batteries, sludges, highly inflammable substances, cesspool or other human wastes, human and animal remains, motor vehicles, farm or other large machinery, nonburnable construction materials and demolition debris and hazardous refuse of any type or kind including those addressed by regulations adopted by the United States Environmental Protection Agency ("EPA") pursuant to the Resource Conservation and Recovery Act of 1976, as amended, or other federal or state statutes, such as, but not limited to, cleaning fluids, hazardous paints, acids, caustics, poisons, radioactive materials, fine powdery earth used to filter cleaning fluid, and refuse of similar nature; (ii) any item of waste exceeding six feet in any one of its dimensions or being in whole or in part a solid mass, the solid mass portion of which has dimensions such that a sphere with a diameter of eight inches could be contained within such solid mass portion; (iii) all large household appliances, commonly referred to as "white goods" including, without limitation, refrigerators, stoves, washing machines, drying machines, water heaters, and the like; (iv) any controlled substances regulated under the Controlled Substances Act, 21 USC 801 et seq., or any equivalent state law; (v) small appliances containing chlorofluorocarbons (CFCs) including, without limitation, air conditioners, water coolers, and dehumidifiers; and (vi) all other items of waste which Contractor reasonably believes would be likely to pose a threat to health or safety or the acceptance and disposal of which may cause damage to the Facility or be in violation of any judicial decision, order, action, permit, authorization, license, approval or registration of any federal, state or local government or any agency thereof, or any other regulatory authority or applicable law or regulations. In addition, the parties recognize that some substances which are not, as of the date of this Agreement, considered harmful or of a toxic nature or dangerous, may be determined by the EPA or any other federal, state, or local agency subsequent to the date hereof to be hazardous, toxic, dangerous, or harmful, and at the time of such determination, such substances shall cease to be Acceptable Waste.

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

- ALTERATION:** Change in the form or character of any work performed or to be performed or any change in the terms of the contract.
- CONTRACT:** The written agreement executed between the Municipality and the Contractor setting forth the obligations of the parties hereunder, including, but not limited to, the performance of the work, the furnishing of all labor, vehicles, equipment and materials, and the basis of payment.
- The Contract includes this signed contract, Wage Rates, Performance Bonds, General and Detailed plans, any Extra Work orders and agreements, the Invitation for Information and Contractor's response thereto, the pertinent Municipal Policies that are required to complete the work in an acceptable manner, if any, including authorized extensions thereof, all of which constitute one instrument. All of the documents listed above shall be incorporated herein by reference and made a part hereof. In the event that the Invitation for Information or the Contractor's response to the Invitation for Information conflicts with the language, terms and conditions of this signed contract, then the terms of this signed contract shall control and supersede all other documents.
- CONTRACTOR:** The company designated under this agreement to perform the work in accordance herewith, referred to herein as "Contractor," "he," "him," or "it."
- DEPARTMENT:** The Newburyport Health Department- Sustainability Office.
- DIRECTOR:** The Recycling and Energy Coordinator and/or Health Agent, acting directly or through an authorized representative, provided such representative is acting within the scope of his or her delegated authority
- HAZARDOUS WASTE OR HAZARDOUS MATERIAL:** (i) any waste identified as a hazardous waste in 40 CFR Part 261 or in any applicable state or local hazardous waste regulatory program; (ii) any waste that is mixed with a listed Hazardous Waste as regulated in 40 CFR Part 261.3(a)(2)(iv) or any applicable state or local hazardous waste regulatory program; (iii) any waste containing polychlorinated biphenyls in concentrations that are subject to regulation under the federal Toxic Substances Control Act; (iv) any waste containing radioactivity at levels that are subject to regulation under federal, state, or local law; or (v) any other waste that is regulated as a hazardous waste by any applicable federal, state, or local statutory or common laws, regulations, rules, or ordinances.
- MAYORS OFFICE:** The Office of the Mayor for City of Newburyport.
- MUNICIPALITY:** The City of Newburyport, Massachusetts, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts.
- OWNER:** The City of Newburyport, Massachusetts as applicable.
- RECYCLABLE MATERIALS:** Municipal recycling material as may be defined by the Massachusetts Department of Environmental Protection, and shall mean newspaper, mixed paper, junk mail, cardboard, green, brown, and clear glass containers; bottles and jars, number one through seven (#1-7) plastic containers, aluminum and steel cans, and metal food containers.

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

SURETY:

The Company issuing the bonds required of the Contractor under the terms of this Contract.

TON:

A short ton of two thousand (2,000) pounds.

UNACCEPTABLE SOLID WASTE or UNACCEPTABLE WASTE: Waste banned by Massachusetts Department of Environmental Protection. Any waste other than Acceptable Waste.

UNCONTROLLABLE CIRCUMSTANCES: Any act or event, other than an increase in the cost of Contractor's performance of its obligations under this Contract or a change in Contractor's financial condition, that has or will have a material adverse effect on the Contractor's rights or obligations under this Agreement, but only to the extent such act or event is (1) beyond the reasonable control of Contractor; and (2) not the result of any fault, negligence or misconduct of the Contractor. Such acts or events may include, but shall not be limited to, the following:

- (i) an act of God, epidemic, landslide, lightning, earthquake, fire, explosion, storm, flood, or civil disturbance, strike, lockout, work slowdown, or similar industrial or labor action or any other similar occurrence;
- (ii) the order and/or judgment of any federal, state, local or foreign court, administrative agency or governmental officer or body after the date hereof;
- (iii) suspension, termination, interruption or failure of renewal, through no fault of Contractor, of any permits, license, consent, authorization or approval essential to the operation, ownership and possession of the Facility;
- (iv) adoption, promulgation, modification of or change in interpretation after the date hereof of any federal, state, local or foreign rule or law, regulation or ordinance, by the relevant federal, state, local or foreign authority, to the extent that the effect of such change cannot be reasonably accommodated and such change results in a material adverse effect on the rights or obligations of the Contractor;
- (v) the failure, through no fault of Contractor, of the community in which the Facility is situated or the appropriate federal or state agencies or public or private utilities having operational jurisdiction over the Facility to provide reasonably adequate utilities, sewerage and water lines to the Facility required for the operation of the Facility, provided they are essential to the operation of the Facility. Contractor represents that it has taken reasonable steps to inform itself regarding the existing utilities, sewerage and water lines serving or that will serve the Facility and that, as of the date of this Contract, to the knowledge of Contractor, the existing utilities, sewerage and water lines are adequate for the performance of the work under this Contract.

WORK:

The Work shall mean the services to be performed by the Contractor under the Contract, including, but not limited to, the furnishing of all materials, labor, tools, vehicles, equipment and incidentals, and everything else required of the Contractor under, and reasonably inferable from, the terms of this Contract, provided that the words "as permitted," "as required," "as approved" or words of like effect shall mean that the direction, permission, approval or requirement of the Director is intended, unless otherwise provided herein. The words "necessary," "suitable," "equal" or like words shall mean necessary, suitable or equal in the reasonable opinion of the Municipality.

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

2. Term of Contract

The Contract shall commence work on July 1, 2013 and the Work shall continue through June 30, 2018.

The Municipality and the Contractor may by mutual consent, renew the Contract for two (2) additional one (1) year terms. The renewal option shall be exercised by mutual consent, in writing within ninety (90) days of the expiration date of this Contract.

3. Services to be provided

A. Solid Waste Disposal

This contract and the pricing hereunder, are not based upon and do not require an annual guaranteed tonnage from the Municipality. Wheelabrator North Andover, Inc. and its parent company Waste Management Company shall not impose a charge, fee, or penalty upon the Municipality due to any reduction of solid waste tonnage received from the Municipality for the life of this contract.

To the extent that a beneficial reuse of specific waste stream items is or becomes available, the Municipality may divert such items for such beneficial reuse, including collection thereof by an alternate contractor, notwithstanding any provision of this Contract to the contrary.

The Contractor shall provide to the Municipality all labor, services, equipment, vehicles and material required for five-days-per-week (Monday through Friday) receipt of Acceptable Solid Waste, as defined herein, and generated within the Municipality. In the event there is a weekday holiday, the drop-off schedule will be advanced one day (e.g. Monday pick-up will be on Tuesday, Friday pickup will be on Saturday). No drop-offs will be made on the following legal holidays:

New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. The Municipality reserves the right to add holidays at its discretion. In this case holiday schedule pickup will be implemented.

The Contractor understands and agrees that the Accepted Solid Waste received pursuant to this Contract shall be disposed of in compliance with all applicable laws, rules, regulations and permit requirements.

B. Transportation/Drop Off

All Acceptable Solid Waste collected for the Municipality, the disposal of which is controlled by the Municipality, shall be transported to the Contractor, at the Facility, by a vendor chosen by and contracted with the Municipality (hereinafter referred to as the "Collection and Transportation Vendor" or "Vendor"). Deliveries shall be made between the hours of 7:00AM and 5:00PM Monday through Friday, and in the event of a weekday holiday, 6:00AM to 5:00PM on Saturday.

The Municipality, through its agreement with its Collection and Transportation Vendor, shall require that such vendor deliver Acceptable Waste in a clean, orderly and safe manner, including, without limitation, in a manner such that the Acceptable Waste will not be spilled (other than on the tipping floor) or blown on the site of the Facility. If, through no fault of Contractor, Acceptable Waste is so spilled or blown because the Collection and Transportation Vendor failed to take reasonable steps to prevent such spillage and blowing, the Municipality shall, upon written request of Contractor together with evidence of negligence of the Collection and Transportation Vendor, direct its Collection and Transportation Vendor to collect and remove such spilled or blown Acceptable Waste, and if the Vendor fails to do so, the Municipality shall direct the Collection and Transportation Vendor to reimburse Contractor for reasonable and necessary costs of such clean-up incurred

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

and paid by Contractor. The vehicles shall have the capability of dumping directly into a waste pit, and bear the name and contact information of the Vendor and other markings so deemed appropriate by the Municipality.

Contractor shall have the right upon reasonable advance written notice to the Municipality to designate certain highway routes within the vicinity of the Facility to be used by the Municipality to deliver Acceptable Waste to the Facility if and to the extent such designation is required of Contractor by the City of Andover, the location of the Facility. The Municipality shall use only those designated routes to the Facility.

Contractor shall have the right without any liability to the Municipality to refuse, provided such refusal is reasonable, deliveries of:

- (i) Unacceptable Solid Waste;
- (ii) any waste delivered by or on behalf of the Municipality not at least substantially in conformity with the terms of this Agreement; or
- (iii) any other Acceptable Waste which Contractor is unable to accept as the result of an Uncontrollable Circumstance.

Upon written request from Contractor, the Municipality shall remove, at its sole cost, any Unacceptable Solid Waste delivered by Municipality to the Facility and, if Municipality fails to do so within a reasonable period of time, the Municipality shall, upon additional written notice from Contractor, reimburse Contractor for the reasonable and necessary costs incurred and paid by Contractor in removing and disposing (and, if necessary, storing) of such Unacceptable Solid Waste. The Municipality shall not be obligated to pay a Tipping Fee for the Unacceptable Solid Waste.

The Contractor shall receive and accept title to all solid waste and recyclable material upon its acceptance at the Facility.

C. Proper Equipment

All equipment used to deliver Acceptable Waste to the Facility shall be maintained in efficient and safe and good condition.

If equipment does not contain proper safety devices and/or is being operated in an unsafe manner, the Contractor shall immediately notify the Collection and Transportation Vendor **and** the Municipality. The Municipality shall direct the Vendor to correct the unsafe condition, including the removal and replacement of any unsafe equipment or operators, and to replace any unsafe equipment or operator with equipment or an operator capable of performing the scope safely and properly to the reasonable satisfaction of the Contractor and the Municipality.

D. Weather Conditions

Contractor represents that it is familiar with all weather conditions prevailing in this area and will provide proper equipment and sufficient labor to perform Work under the Contract.

E. Licenses and Permits

The Contractor shall obtain and assume all cost for all Local, State and/or Federal licenses and permits that are or may become necessary for receipt and disposal of Acceptable Solid Waste at the Facility as required under this Contract.

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

The Contractor and Municipality shall, and the Municipality shall request its Collection and Transportation Vendor to comply with all federal, state and local laws, regulations, rules, ordinances applicable to it in the performance of its obligations under this Agreement.

The Municipality has, and will renew or maintain in full force and effect, all permits, licenses or permissions or registrations with, or the consent of, governmental authorities necessary in the performance of its obligations under this Agreement, except if and where Contractor is, by this Agreement, required to obtain, renew and/or maintain any such permits, licenses, permissions or registrations.

F. Compliance with Regulations

At all times the Facility shall be operated in compliance with all applicable Federal and State and local laws, rules and regulations, and codes. The Contractor is responsible for compliance with any and all regulations regarding the proper disposal of Acceptable Waste at the Facility.

The delivery of Acceptable Waste to the Facility by or on behalf of the Municipality shall be conducted in compliance with all applicable Federal and State and local laws, rules and regulations, and regulations.

G. Mercury Program

The Municipality shall participate in the Contractor's Mercury Removal Program, as described in Appendix B, at no additional cost to the Municipality. The cost of the Contract is inclusive of this program and the Municipality shall have the option each year to participate in any or all of the activities described in the Mercury Removal Program.

4. Municipality's Contracts With Other Firms

Contractor understands and acknowledges that Municipality is, or will be, under contract with other firms regarding the collection and disposal of solid waste. Contractor agrees that it shall take all reasonable steps to cooperate, and harmonize its work, with such other firms for the safe and efficient collection, transportation and disposal of Municipality's waste. Contractor understands and acknowledges that its failure to comply with the provisions of this Section 3 and the other terms of this Contract may result in claims for damages being asserted by such other firms against Municipality. Contractor agrees to indemnify Municipality for any and all such claims, including any attorneys' fees incurred by Municipality in connection therewith, arising out of Contractor's failure to comply with this Section 3 and the other terms of this Contract.

5. Contractor's General Obligations

A. Performance of Work

The Contractor shall perform all Work and furnish all labor, materials, vehicles, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this Contract. Said work shall be performed within the time herein specified, in accordance with the provisions of this Contract and specifications and in accordance with the directions of the Municipality as given from time to time during the progress of the Work.

B. Personnel and Performance

The Contractor shall furnish personnel for all services rendered under this Contract, including supervisory, clerical, and working personnel. Contractor shall furnish such number of qualified personnel as may at any

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

time be necessary to accomplish the Work in accordance with the terms of this Contract. All such personnel must be qualified to perform and capable of performing their assigned work. The Contractor shall provide the Municipality with the name and direct contact information, including email address and direct company phone number, of a designated Supervisor. In the event of a change, the Contractor shall notify the Municipality immediately in writing.

All employees (excluding administrative staff) must be OSHA certified.

C. Performance of Contractor

The Contractor shall give personal attention constantly to the faithful prosecution of the Work, shall keep the same under direct control, and shall neither legally nor equitably assign any of its rights or obligations under this Contract, including, but not limited to, its right or claims to any monies payable under this Contract, without the advance written consent of the Municipality, which shall not be unreasonably withheld.

The Contractor shall be responsible for the acts and omissions of subcontractors, and of any and all persons directly or indirectly employed by Contractor in connection with the Work.

The Contractor shall not assign by power of attorney or otherwise, or subcontract out the Work encompassed by this Contract.

D. Equal Opportunity Employment Requirements

The Contractor shall not discriminate against any of its employee or an applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex, age, or national origin.

The Contractor shall take steps to ensure that its employees are treated fairly during employment without regard to their race, color, religion, sex, age or national origin. Such action shall include, but not be limited to the following activities: *EMPLOYMENT, PROMOTING, DEMOTING, or TRANSFERAL, RECRUITMENT or RECRUITMENT ADVERTISING, LAYOFF or TERMINATION, RATES of PAY or OTHER FORMS of COMPENSATION, SELECTION for TRAINING, INCLUDING APPRENTICESHIP.*

The Contractor shall be prepared to sign an Affirmative Action Affidavit at the time of contract execution. The Contractor will comply with all requirements under applicable laws with respect to Minority/Women Business Enterprise programs.

The Contractor shall at all times observe and comply with all Federal, State and Local laws, by-laws, ordinances, and regulations in any matter which affects the conduct of the work or applies to its employees under contract. Similarly, the Contractor shall comply with all orders or decrees which have been promulgated or enacted by any other legal body or tribunal having the authority or jurisdiction over the work, materials, its employees, or the contract.

6. Compliance with Terms of the Contract

The Contractor shall observe, comply with, and be subject to all terms, conditions; requirements and limitations of the Contract and specifications set forth therein, and shall do, carry on, and complete the entire Work to the reasonable satisfaction of the Municipality.

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

7. Acknowledgement of Acts for Agents, Employees and Subcontractors

The Contractor acknowledges and agrees that he is an Independent Contractor, and that he is and shall be responsible for all his acts and omissions and all the acts and omissions of his agents, employees and subcontractors hereunder.

8. Knowledge of Laws/Notice of Inconsistencies to the Municipality

The Contractor shall keep himself fully informed of all Federal, State, and Local laws, ordinances, regulations and policies affecting in any manner those engaged or employed in the Work, or the materials used in the Work, or in any way affecting the conduct of the Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same, and conform to and abide by the same. If any discrepancy or inconsistency is discovered by the Contractor between the Contract for this Work and any such law, ordinance, regulation, policy, order or decree, he shall forthwith report the same to the Municipality in writing. The Contractor shall at all times observe and comply with, and shall cause all his agents and employees to observe and comply with, all such existing and future laws, ordinances, regulations, policies, orders and decrees, and Contractor assumes the risk for changes in laws, regulations and policies that affect the Work or costs of fulfilling this contract. The Contractor shall defend and indemnify the Municipality and their officers, agents and employees for, from and against any damages, expenses, including attorneys' fees, claim or liability arising from or based on the violation of any such law, ordinance, regulation, policy, order or decree, whether by himself or his agents, employees or subcontractors.

9. Proper Licenses and Permits

The Contractor shall secure, at its own expense, all necessary permits and licenses and comply with all local, State, and Federal codes and regulations necessary for the receipt and disposal of Acceptable Waste at the Facility. The Contractor must provide and pay for all vehicles, materials, equipment, labor, tools, temporary construction of every nature, changes, levies, fees, or other expenses incurred and all other services and facilities of every nature whatsoever for his performance of the Contract within the specified time, and required for the receipt and disposal of Acceptable Waste at the Facility.

10. Work to be Prosecuted

The Contractor agrees that it shall prosecute the Work regularly, diligently, and without interruption.

11. Reports, Records and Data

A. Solid Waste Reporting

The Contractor shall utilize and maintain motor truck scales to weigh all vehicles delivering Acceptable Solid Waste to the Facility in accordance with applicable laws. Each vehicle delivering Acceptable Solid Waste shall be weighed at the Contractor's facility, and the gross weight, tare weight, date and time of delivery and truck identification shall be indicated on a weight record. The Contractor shall provide the Municipality with a monthly written report of the daily tonnage delivered and disposed under this Contract.

The Contractor shall keep detailed daily records of solid waste accepted, and the Municipality shall have the right to inspect the same at all reasonable times. The records shall show the type (regular solid waste, bulky items, yard waste, etc.) and weight of materials accepted under this Contract, and all other information customarily recorded for work of the kind required by this Contract.

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

Notwithstanding anything to the contrary in this Contract, if and to the extent the Contractor is eligible, by the terms of this Contract, for reimbursement or payment from the Municipality of any costs, expenses or fees, the Contractor shall first substantiate, to the City's reasonable satisfaction, and through original invoices and other data, any and all such costs, expenses and fees as a condition precedent to reimbursement or payment.

12. Protection of Health and Safety

Contractor shall comply with all Federal, State and Local laws and regulations, including without limitation the United States Department of Labor Occupational Safety and Health Act and all amendments thereto, applicable to the operation of the Facility and the Work, and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from Work, arising out of and in the course of employment on the Work under this Contract. The Contractor alone shall be responsible for any damages, losses and expenses that may result from its failure to properly construct, maintain and/or operate the Facility.

13. Insurance

A. Contractor Insurance Requirements:

During the term of this Agreement, Contractor shall keep in force the following minimum insurance coverages on an occurrence basis with insurance companies rated "A-" or better by A.M. Best rating service:

<u>Coverages</u>	<u>Limits of Liability</u>		
Workers' Compensation Insurance	Statutory		
Employers' Liability Insurance	Per Occurrence	\$1,000,000	
Commercial General Liability Insurance, including contractual and products/completed operations	Per Occurrence	\$1,000,000	
	General Aggregate	\$2,000,000	
Comprehensive Automobile Liability Insurance, including non-owned and hired vehicle coverage		For bodily injury and property damage	
	Per Occurrence	\$1,000,000	
Excess Umbrella	Per Occurrence	\$4,000,000	
Pollution Liability Aggregate	Per Occurrence	\$1,000,000	General
		\$2,000,000	

The commercial general liability and excess umbrella insurance policies maintained by the Contractor shall be specifically endorsed to provide coverage for any contractual liability accepted by the Contractor in this Agreement. In addition, the commercial general liability and excess umbrella policies shall be endorsed with, and the certificates of insurance required hereunder shall contain, language clearly identifying the Municipality as a certificate holder under, **and as an additional insured, on those policies.**

Upon execution of this Agreement and prior to commencement of the services contemplated herein, the Contractor shall furnish the Municipality with certificates of insurance indicating that the insurance required by this Agreement has been procured. The certificates of insurance provided by the Contractor and Municipality shall also contain the following express obligation:

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

“In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days’ prior written notice will be given the certificate holder.”

B. Municipality’s Collection and Transportation Vendor Insurance Requirements

Municipality agrees that it shall require its Collection and Transportation Vendor to maintain the following minimum insurance with insurance companies rated “B+” or better by A.M. Best rating service:

<u>Coverages</u>	<u>Limits of Liability</u>	
Workers' Compensation Insurance	Statutory	
Employers' Liability Insurance	Per Occurrence	\$1,000,000
Commercial General Liability Insurance, including contractual and products/completed operations	Per Occurrence	\$1,000,000
	General Aggregate	\$2,000,000
Comprehensive Automobile Liability Insurance, including non-owned and hired vehicle coverage	For bodily injury and property damage Per Occurrence	\$1,000,000
Excess Umbrella	Per Occurrence	\$2,000,000

Municipality shall also require that its Collection and Transportation Vendor’s commercial general liability and excess umbrella policies be endorsed with, and the certificates of insurance required hereunder contain, language identifying Wheelabrator North Andover, Inc., as a certificate holder under, and as an additional insured on, those policies. Municipality shall deliver to Contractor, or require that its Collection and Transportation Vendor deliver to Contractor, copies of such endorsement to Contractor prior to the delivery of Acceptable Solid Waste to the Facility by such Collection and Transportation Vendor.

Municipality shall also require that its Collection and Transportation Vendor furnish certificates of insurance indicating that the insurance required by this paragraph 7B has been procured by the Vendor, and that the certificates of insurance contain the following express obligation:

“In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days’ prior written notice will be given the certificate holder.”

14. Uncontrollable Circumstances

Contractor is excused for failure or delay in performance of any Work required herein if such failure or delay is the direct result of an Uncontrollable Circumstance. This provision shall not, however, relieve Contractor from using all reasonable efforts to overcome or remove such Uncontrollable Circumstance. Contractor shall give prompt written notice of such failure or delay to the Municipality. Contractor shall attempt to remedy with all reasonable dispatch the cause or causes constituting the Uncontrollable Circumstance; however, the settlement of strikes, lockouts and other industrial disturbances or of any legal actions or administrative proceedings shall be entirely in the reasonable discretion of Contractor, and it shall not be required to make settlement of strikes, lockouts, and other industrial disturbances or legal actions or administrative proceedings when such settlement is unfavorable, in the reasonable judgment of Contractor.

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

**15. Payment; Acceptance of Final Payment Constitutes Release of Municipality;
Subject to Appropriation**

A. Payment

The Municipality agrees to pay and the Contractor agrees to accept a tipping fee, set and adjusted annually as indicated in Appendix A, for each Ton of Acceptable Solid Waste delivered to and accepted by the Contractor, as full compensation for performing and completing the Work contemplated by this Contract.

The tipping fee shall be paid within 30 (thirty) days of the Municipality's receipt of a proper monthly invoice and accompanying materials, as described below, that includes the total tons of material delivered for the month, fee per ton, and total monthly fee (tons X fee = total fee). The invoice shall also include the daily tonnage report of Acceptable Solid Waste delivered and accepted by the Contractor for the month invoiced.

The tipping fee includes any and all Federal Social Security and Manufacture, Excise, State Unemployment, Sales, Use and Income Taxes imposed in connection with all of the labor performed and services, materials and equipment furnished under this Contract.

In the event that funds are not appropriated or otherwise made available by the Municipality to support the continued performance of this Contract after the first year of this agreement, the Municipality shall terminate this Contract without further liability to Contractor for future payments hereunder. Contractor shall be entitled to payment for services rendered hereunder prior to the end of the agreement year for which funds were appropriated and available.

The Municipality shall make payments to the Contractor only.

B. Withholding Payment

The Municipality may keep any monies which would otherwise be payable at any time hereunder and apply the same, or as much as may be deemed by the Municipality as reasonably necessary, to pay any costs, expenses, including attorneys' fees, losses or damages incurred and sustained by the Municipality, its officers, agents, employees or servants, and resulting from Contractor's acts and omissions or willful misconduct, or any material breach of this Contract. Any monies kept hereunder shall be deemed not due and payable to the Contractor until final disposition of any such costs, expenses, losses or damages, and not then if such disposition consumes all such monies, or if there exists any other lawful reason for continued withholding of any such monies.

C. Faithful Payment

So long as the Contractor shall faithfully do everything required of him by this Contract, the Municipality shall pay the Contractor each month, the tipping fee due for each ton of material delivered to and accepted by the Contractor as stated herein, after deducting from the total amount thereof the amount of any claims, expenses, or losses that the Municipality may deem proper to retain as provided aforesaid.

D. Final Payment

The acceptance by the Contractor of final payment shall be and shall operate as a release to the Municipality of all claims and all liability to the Contractor for all things done or furnished in connection with the work and for every act and neglect of the Municipality and others relating to or arising out of this Work.

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

E. Final Estimate

A Final Estimate shall be provided by the Contractor to the Municipality. Such Final Estimate shall be certified by the Contractor to the effect that all just and lawful bills against the Contractor for labor, materials, and expendable equipment covered by the estimate have been paid in full, and that the amount stated as due the Contractor for payment is full compensation for all work done under the terms of the Contract, including orders for Extra Work, and all damages, losses and expenses incurred by the Contractor in doing the Work, and that the Contractor waives all rights to claim or receive any further compensation in addition to that provided in the Final Estimate.

16. Additional Equipment

If the Contractor fails to supply sufficient equipment and manpower to dispose solid waste each day, then Contractor is required to provide additional equipment to perform the required Work at its own expense.

17. Failure to Perform Work

If, other than as a result of Uncontrollable Circumstances, the Contractor fails or refuses to accept delivery of Acceptable Solid Waste, per the terms of this Contract, the Municipality may, without prior notice to Contractor, invoke any remedy available to it under this Contract and at law to address that failure, including, but not limited to, engaging another contractor to perform the obligations of the Contractor, or disposing of materials by any means, and all reasonable costs and expenses incurred thereby will be deducted from amounts payable to the Contractor:

If the Contractor refuses to accept any Acceptable Solid Waste in violation of the terms and conditions of this Contract, then the Municipality may elect to engage another contractor to perform the required work. Costs incurred by Municipality in engaging another contractor shall be deducted from the monthly amount of monies due the Contractor.

18. Default.

In the event that, other than if the result of an Uncontrollable Circumstance, the Contractor does not perform the Work and maintain all operations in accordance with all applicable laws and regulations; and such failure continues for twenty-four hours or more, the Municipality may, after notice to Contractor, engage another contractor, or elect to conduct disposal of waste by any means, and the cost of such contractor or disposal will be deducted from amounts otherwise payable to Contractor, in addition to any other right or remedy available to the Municipality under this Contract and at law.

A. Default; Municipality's Right to Terminate; Damages

- 1) The following shall constitute events of default by the Municipality:
 - a. the failure of the Municipality, after receipt of written notice from Contractor that payment has not been made, to make any payment required to be made to Contractor under this

Agreement within thirty (30) days after receipt of written notice from Contractor that such amount is due;

CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL

- b. the failure of the Municipality, after receipt of written notice of default from Contractor, to perform any of its other obligations under this Agreement, and which failure is not cured within sixty (60) days, or, if a cure is not reasonably possible within such 60-day period, the failure of the Municipality, after receipt of such written notice, to commence and diligently pursue a cure to completion; or
 - c. in the event the Municipality shall make an assignment for the benefit of creditors, file a voluntary petition in bankruptcy, be adjudicated a bankrupt or insolvent, file any petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, file any answer admitting or not contesting the material allegations of a petition filed against it in any such proceeding or seek or consent to or acquiesce in the appointment of any trustee, liquidator or receiver of it or of all or any substantial part of the properties of it.
- 2) The following shall constitute events of default by Contractor:
- a. the failure of Contractor, after receipt of written notice of default from Municipality, to perform any of its material obligations under this Agreement, and which failure is not cured within sixty (60) days, or, if a cure is not reasonably possible within such 60-day period, the failure of Contractor, after receipt of such written notice, to commence and diligently pursue a cure to completion or
 - b. in the event Contractor shall make an assignment for the benefit of creditors, file a voluntary petition in bankruptcy, be adjudicated a bankrupt or insolvent, file any petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, file any answer admitting or not contesting the material allegations of a petition filed against it in any such proceeding or seek or consent to or acquiesce in the appointment of any trustee, liquidator or receiver of it or of all or any substantial part of the properties of it.
- 3) Upon the occurrence of an event of default, the party not in default may terminate this Agreement by written notice to the defaulting party.
- 4) Any obligation to pay any fixed sum of money that may have accrued and be due and payable hereunder, and the obligations of the Municipality contained in Section 8 hereof, and any indemnification obligations of the Contractor contained in this Contract, shall survive the termination or expiration of this Agreement.

Notwithstanding anything to the contrary herein, in the event this Contract is terminated by the Municipality, the Municipality may, in addition to any other rights and remedies available to it under this Contract and at law, perform and complete the Work by any means necessary, and charge all costs and expenses of doing so to the Contractor, including, but not limited to, costs for labor and equipment, and reasonable attorneys' fees.

19. Retainage for Claims

The Municipality may, after the final completion of the Work, retain out of the moneys due to the Contractor under this Contract such sum of money as may, in the reasonable judgment of the Municipality, be required to cover the payment of claims arising from, and payable by the Contractor under, the provisions of the Contract

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

but remaining unsatisfied. Contractor shall be entitled to a reasonably detailed statement of any retainage by the Municipality thirty (30) days of requesting same.

20. Suspension of Work; Abandonment of Work

Should the Work be prevented or enjoined from proceeding either before or after the start of performance of this Contract by reason of any litigation or other reason beyond the control of the Municipality, the Contractor shall not be entitled to make or assert any claims for damage by reason thereof.

Notwithstanding anything to the contrary in this Contract, the Municipality may notify the Contractor by written order to discontinue all Work, or any part thereof, and may terminate this Contract if:

- (a) The Contractor abandons the Work, or any part thereof;
- (b) The Contractor sublets the Contract or any part thereof without the advance written consent of the Owner;
- (c) The Contractor assigns its rights or obligations, or any claim it may have, under the Contract to any person without the advance written consent of the Municipality; or
- (d) The Contractor, in the reasonable opinion of the Municipality, has failed to perform the Work at the rate of progress specified in the Contract, or the Work or part thereof is unnecessarily or unreasonably delayed, or the Contractor has materially violated any of the provisions of this Contract, or

Thereupon, the Contractor shall discontinue such Work or such part thereof as the Municipality may designate, and the Municipality may, by Contract or otherwise, as it may determine, complete the Work, or such part thereof, and charge the entire expense of so completing the Work or part thereof, including any attorneys' fees, to the Contractor.

Notwithstanding anything to the contrary herein, the Municipality reserves the right to, at all times and for any reason, call upon Contractor's Surety to perform and complete the Work.

All expenses charged under this provision shall be deducted and paid by the Municipality out of any moneys then due or to become due to the Contractor under this Contract, or any part thereof. Notwithstanding anything to the contrary in this Contract, in performing the Work or other services under this provision or any other provision in this Contract, the Municipality shall not be held to obtain the lowest cost for the performance of such Work and services. In case the expenses so charged to the Contractor do not exceed amounts otherwise payable to Contractor, the Contractor shall be entitled to receive the difference, provided there exists no other lawful reason for continued withholding of such amounts, and in the case such expenses shall exceed the amount so charged, the Contractor shall promptly pay the amount of the excess to the Municipality.

21. Claims for Extra Work

No claim for Extra Work or cost shall be allowed unless the same was done pursuant to a written order of the Municipality issued before such work has begun, and a written claim for such work-and presented with the first

estimate after the Extra Work is done. The Contractor shall furnish satisfactory bills, payrolls and vouchers covering all items of cost and, when requested by the Municipality, shall provide the Municipality access to all other information reasonably relating thereto, including, but not limited to, Contractor's financial and accounting data pertaining to the claim.

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

22. Subcontracting or Assignment of Contract

The Contractor shall give his direct attention constantly to the faithful prosecution of the Work, shall keep the same under his direct control. Other than in connection with a sale of all or substantially all of Contractor's assets, the Contractor shall not assign or subcontract the Work, or any part thereof, without the prior written consent of the Municipality (not to be unreasonably withheld). The Contractor shall not either legally assign any of the monies payable under this Contract, or any claim thereon, without the previous written consent of the Municipality. The Contractor shall be responsible for the acts and omissions of his subcontractors, if any and of all persons directly or indirectly employed by him or them in connection with the Work.

This Agreement may not be assigned by the Municipality without the prior written consent of Contractor, which shall not be unreasonably withheld

23. Performance Bond and Guarantee

The Contractor shall furnish a Performance Bond in the penal sum of the greater of 100 percent of the annual Contract sum or Fifty Thousand Dollars (\$50,000). The bond shall be from a bonding company licensed by the Massachusetts Division of Insurance and reasonably satisfactory to the Municipality.

The Contractor must submit to the Municipality an original of the Performance Bond and valid power of attorney indicating the signatory for the surety is authorized to sign the bond. Any renewal bond shall be delivered to the Municipality at least thirty (30) days prior to expiration of the existing bond. Failure to deliver the renewal bond shall be cause for the Municipality to either cancel the Contract or withhold payments to be made hereunder.

24. Damages, Suits and Claims; Indemnification

No officer, official, agent or employee of the Municipality shall be held personally responsible for any liability arising under the Contract. The Contractor shall indemnify, defend and hold harmless the Municipality, its Mayor and Municipal Councilors, its Department of Public Works, and all of its and their officers, agents and employees, for, from and against all suits, damages, costs, losses, expenses, including attorneys' fees, claims and liability of every name and nature arising out of or in consequence of (i) the negligence or intentional misconduct of the Contractor, its agents, employees, and (ii) any breach of this Agreement by Contractor, its agents and employees; and the Contractor shall and does hereby assume and agrees to pay for the defense of all such claims demands, suits and proceedings brought against the Municipality by a third party. Notwithstanding anything to the contrary in this provision or this Contract, this indemnification obligation of the Contractor is in addition to any other right or remedy available to the Municipality under this Contract and at law.

The Contractor agrees to indemnify and hold the Municipality harmless from all and claims, liens, demands or bills for labor and/or materials furnished or delivered in the performance of this Contract, and agrees also to indemnify the Municipality against all loss, damage or cost, legal or otherwise, ensuing from the same, including attorneys' fees.

The Contractor also shall be responsible for paying any fines assessed to the Municipality for the Contractor's failure (other than as a result of Uncontrollable Circumstances) to provide required services under this Contract.

Municipality shall require that its Collection and Transportation Vendor agree, in its contract with Municipality, to indemnify, defend and hold harmless the Contractor, its officers, agents and employees against all suits,

CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL

claims or liability from and on account of any injuries to persons or damage to property or nuisances or trespasses, and specifically including death or injuries, arising out of the negligence or intentional misconduct of the collection and transportation Vendor, its agents, employees and subcontractors, in connection with the delivery of Acceptable Solid Waste to the Facility by the Collection and Transportation Vendor .

In the event that the Municipality is sued or becomes subject to administrative action because the Contractor has failed to properly process or dispose of the Municipality's solid waste or recyclable material, full restitution will be made to the Town for all expenses, fees, fines or other costs or charges incurred.

25. Representations

A. Representations of the Municipality

The Municipality makes the following representation as the basis for the undertakings on the part of the Contractor under this Contract:

- 1) The Municipality is a municipal corporation and political subdivision of the Commonwealth.
- 2) The Municipality has power and legal authority to enter into this Contract, to carry out the transactions contemplated by this Contract, and to perform its obligations in accordance with terms of this Contract.
- 3) The Municipality makes no representation or guarantee as to the quality of Solid Waste or other materials that may be delivered and/or accepted by Contractor pursuant to this Contract.

B. Representations of the Contractor

The Contractor makes the following representation as the basis for the undertaking on the part of the Municipality under this Contract:

- 1) The Contractor is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts, and is in the business of providing Solid Waste Services.
- 2) The Contractor has the authority and legal capacity to enter into this Contract and perform its obligation hereunder in accordance with the terms of this Contract.

Each party may change the address to which notices shall be sent by filing written notice thereof with the other party.

26. Applicable Law

This Contract shall be construed in accordance with the laws of the Commonwealth of Massachusetts. Each of the parties, to the extent that it may lawfully do so, hereby consents to the jurisdiction of the courts of the Commonwealth and the United States District Court for the District of Massachusetts, as well as to the jurisdiction of all courts from which an appeal may be taken from such courts, for the purpose of any suit, action or other proceeding arising out of any of its obligations arising hereunder or with respect to the transactions contemplated hereby and the adjudication of any disputes arising hereunder, and expressly waives any and all objections which it may have as to the venue in any such courts.

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

27. Discrepancies, Errors and Omissions

The provisions of this Contract are intended to be explanatory of the Work to be done and of each other, but should any discrepancies or errors appear or any omissions be made, they shall be called to the attention of the Municipality and shall be subject to his correction and interpretation, thereby defining and fulfilling the intent of this Contract.

28. Provisions Required By Law Deemed Inserted

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and through mistakes or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall be forthwith physically amended to make such insertion or correction.

29. Severability

If any provision of this Contract is held invalid or unenforceable, such provisions shall be modified consistent with the original intent of the parties so as to be enforceable and the remainder of the Contract shall remain in full forces and effect.

If any section, paragraph, clause or provision of this Contract shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Contract shall be unaffected by such adjudication and all of the remaining provisions of this Contract shall remain in full force and effect as though such section, paragraph, clause or provision, or any part thereof adjudicated to be invalid had not been included herein, unless such remaining provisions, standing alone, are incomplete and incapable of being executed in accordance with intent of the parties to this Contract.

Any provision of this Contract which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, but shall remain effective in any other jurisdiction where such provision is not prohibited, unenforceable or unauthorized.

30. Amendment of Contract

This Contract may not be amended except in writing executed in the same manner as the Contract itself and delivered by the parties hereto. It is contemplated by both parties that amendment of this Contract may be necessary during the term of this Contract.

31. Beneficiaries

The parties intend that there shall not be any third party beneficiaries to this Contract.

32. Interpretation and Rules of Construction

References herein to articles and paragraph numbers shall refer to articles and paragraphs in this Contract unless reference to another document is clearly stated and shall be solely for the convenience of reference and shall not affect the meaning or the construction, interpretation or effect of this Contract. The words "here", "hereby", and "hereof" and such general terms of reference as may be utilized in this Contract shall refer and pertain to this Contract as a whole, including any exhibits, attachments, schedules or annexed material forming part of this

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

Contract and referenced in it. All exhibits attached hereto are incorporated herein by reference but to the extent of a conflict between an exhibit and the Contract, the terms of this Contract shall govern. The singular of any term defined in this Contract shall encompass the plural, and the singular, unless the context clearly indicates otherwise.

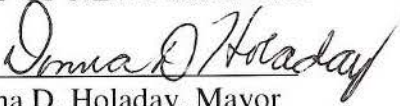
33. Entire Agreement

This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

The parties hereto indicate their approval of this Contract by their authorization signatures below.


Executed as a Seal Instrument this 22nd Day of July, 2013

CITY OF NEWBURYPORT


Donna D. Holaday, Mayor


AS TO AVAILABLE FUNDS
Chief Financial Officer

60 Pleasant Street
Newburyport, MA 01913


AS TO FORM
Kopelman & Paige, P.C.
101 Arch Street
12th Floor
Boston, MA 02110

CONTRACTOR




Print Name

Wheelabrator North Andover, Inc.
Regional Vice President
285 Holt Road
North Andover, MA 01845

**APPENDIX A
CONTRACT COST**

	Description							Option to Renew	Option to Renew
Escalator effective start date:		July 1, 2013	July 1, 2014	July 1, 2015	July 1, 2016	July 1, 2017	July 1, 2018	July 1, 2019	July 1, 2020
* Incentive	\$21,041.24								
Service		FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
Municipal Solid Waste Disposal Fee	Per ton ¹	\$61.00	\$62.22	\$63.46	\$64.73	\$66.03	\$67.35	\$68.70	

- * Cash Incentive is the equivalent of offering the new contract rate starting 1/1/13. The amount is equal to the current rate of \$69.40/ton minus the new rate of \$61/ton for the 5 year, multiplied by 6 months deliveries, or 5,000 tons.
- * Cash Incentive payable to City–Within **30 days of receipt of the signed amendment, WNA will pay the City of Newburyport a cash incentive of \$21,041.24. If at any time and for any reason the agreement is terminated prior to June 30, 2018, the City of Newburyport shall repay WNA within 30 days a pro-rata portion of the incentive based on the unfulfilled commitment, calculated as follows:

$$\frac{((60 \text{ Months} - \text{Actual Months Contract was Fulfilled}) / 60 \text{ Months}) \times \$4,000}{}$$

** At the discretion of the City of Newburyport, the incentive payment can be made in installments agreed upon by WNA and the City of Newburyport.

Notes:

1. A ton shall be defined as a “short ton” meaning 2,000 pounds.
2. Tonnage fee will be increased by the actual escalator table above.
3. The escalators shall take effect July 1 of each fiscal year contract.

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

CITY OF NEWBURYPORT

CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL

APPENDIX B MERCURY RECOVERY PROGRAM

1. Community based collection program/thermometer exchange

Each community has at least one and often two collection locations in the community. These locations are normally located at the Health Department and/or the Recycling Center on Crow Lane. A five-gallon plastic pail is at each location. Resident are encourage to bring items such as mercury thermometers, thermostats, switches, sphygmomanometers (blood pressure units) and other devices that contain mercury (Universal Waste) to these locations for safe disposal.

Each location is supplied with digital thermometers. When a resident brings in a mercury thermometer, they are given a new digital thermometer in exchange.

When the pail is full, the 800 number on the pail is called and the service provider, Enviro Safe, will come and pick up the pail and leave an empty.

2. School Clean Sweeps

Each school system is offered the Clean Sweeps Program in an effort to remove mercury and items containing mercury from the schools. Mercury items will be removed free of charge. Certain devices, such as lab thermometers, sphygmomanometers and barometers, will be replaced on a one to one basis.

3. Fluorescent Lamp Reimbursement Program

The fluorescent lamp reimbursement program is offered to each community. The program coordinator will assist the community in establishing a collection program for fluorescent lamps in the municipal buildings and schools. Some communities offer the program to small businesses and residents as well. All the bulbs are collected and shipped to a processor. The community is reimbursed 100% of the invoiced amount for the recycling of the fluorescent lamps.

Each community is offered an 8 foot by 10 foot storage shed for the storage of fluorescent lamps and other Universal Wastes. These sheds are valued at approximately \$2,300 each.

4. Button-Cell Battery Fund Raising Opportunity

Each community is offered a program for the collection of button-cell batteries. A local organization is identified. That group would place small collection boxes at appropriate locations in the community for the collection of button-cell batteries. Button-cell batteries are the small batteries commonly found in watches, hearing aides, cameras, etc. The local group will periodically collect the batteries from the collection sites and place them in the pail at the Health Department office. These batteries will be weighed when the pail is picked up and the group will received \$100 per pound, up to a maximum of \$500 in any calendar year.

CITY OF NEWBURYPORT

CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL

APPENDIX B

Continued

5. Thermostat Program

Each community is offered a program to notify contractors concerning the need to safely dispose of thermostats. This program is operated in conjunction with the Health and the Building Department. All costs of printing and mailing are covered by the program.

6. Bulk Collection

If a large quantity of elemental mercury is found in the City, the Mercury Recovery Program will remove the mercury free of charge.

7. Advertising

The Mercury Recovery Program conducts regional advertising on area radio stations such as WBZ and WEEI. Advertisements are also placed in the local newspapers promoting each community's specific program. Ads are also available in support of local Household Hazardous Waste Programs.

8. Additional Shed

Wheelabrator will supply an additional shed for each city for the use in collection and storage of mercury containing items or to be used during the Hazardous Waste Collection process. These sheds are supplied by Wheelabrator, used by the municipalities and replaced as needed by Wheelabrator.

CITY OF NEWBURYPORT

CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL

**APPENDIX C
INCENTIVE**

This Contract includes an incentive, a value added item to be provided to the Cities by Wheelabrator when awarded the contract.

One item listed is an incentive, with an explanation that the payment is based upon the prior year usage and will result in a reduction in the Cities' costs for that prior year, dating back to January 1, 2013, from the rate charged under the prior contract to the lower rate proposed in the proposal. Thus, a maximum payment of \$42,000 based on a five year contract is being offered, with the rebate to be paid as a lump sum upon contract execution.

Jan. 1, 2013 per ton rate = \$69.40
New Five yr. per ton rate = \$61.00

Difference = \$8.40 per ton

Newburyport:

Tons delivered from January 1, 2013 to June 30, 2013 = 2504.91 tons

Newburyport Total: \$21,041.24

CITY OF NEWBURYPORT

CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL

APPENDIX D

Hazardous Waste Clean Up Day

Wheelabrator will support one Hazardous Waste Clean Up Day in Newburyport each year for the duration of the contract. (Up to \$5000 per year). Advertising for this event will be included as part of the advertising for the Mercury Source Separation Program (see below).

From:

APPENDIX B

MERCURY RECOVERY PROGRAM

7. Advertising

The Mercury Recovery Program conducts regional advertising on area radio stations such as WBZ and WEEL. Advertisements are also placed in the local newspapers promoting each community's specific program. Ads are also available in support of local Household Hazardous Waste Programs.

CITY OF NEWBURYPORT

CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL

APPENDIX E

Sharps Collection Program

Wheelabrator will sponsor a sharps collection program in Newburyport. Wheelabrator will provide one kiosk per city and collect the sharps on an as needed basis. The cost of the Contract is inclusive of this program and the Municipality shall have the option each year to participate in this Program. Typically the kiosk will be located in a secure location at a local pharmacy, the fire station, the police station or the City's Health Department where it can be monitored. Location is to be determined and agreed upon by the Health Department and the Public Health Nurse.

CITY OF NEWBURYPORT

**CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL
APPENDIX F**

Educational Programs, Tours and Community Outreach

Educational Programs

Wheelabrator is the proud sponsor of the "Science Screen Report" video series. This video series is provided to schools in our contract communities. The Science Screen Report series is a resource for the schools to use to assist in the classroom. Each year a new set of DVD's is made and distributed to the schools. This year's series includes units on chemistry, electronics, radio astronomy, aeronautics, physics and energy. The DVD library continues to grow and the schools keep the DVD's and build their own library of resources. This program has received numerous awards and we get great feedback from schools that we serve.

This program will continue for age appropriate schools in Newburyport.

Tours

Wheelabrator provides facility tours to help educate our customers, schools and various groups on solid waste disposal issues. Tours are followed by a sometimes lively question and answer period where many solid waste concerns are discussed. Typically when people see our operation they are very impressed by the highly technical nature of the whole process. We can schedule tours to suit the needs of the cities, but typically they are held Tuesday through Thursday between 10 a.m. and 3 p.m.

Community Outreach

Wheelabrator also does community Outreach in each of our contract communities that include sponsoring local charitable organizations and earth day activities among others. In Amesbury, we have been active with the Chamber of Commerce and Youth Sports. In Newburyport we have been active with the Jeanne Geiger Crisis Center and Yankee Homecoming.

CITY OF NEWBURYPORT

CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL

APPENDIX G

Approximate Value Added for items listed above (Appendix A-F)

		1 X Cost	Annual	5 Year
1	Mercury Source Separation Program – Appendix B		\$5K	\$25K
2	Science Screen Report Videos (for Schools) – Appendix F		\$2K	\$10K
3	Hazardous Waste Cleanup Day – Appendix D		\$10K	\$50K
4	Facility Tours for Groups - at no cost – Appendix F			
5	Sharps Program – Appendix E	\$4K	\$2K	\$14K
6	Additional Shed for each City – Appendix B	\$5K		\$5K
7	Earth Day Cleanup Sponsors – Appendix F		\$2K	\$10K
8	Incentive - Appendix A & C	\$21,041.24		\$42K
9	Community Outreach Programs** - Appendix F		Varies	
	Totals	\$30,041	\$21K	*\$156K

*Corrected total from Wheelabrator Proposal

**Community Outreach Programs: See Appendix F

**AMENDMENT #1 TO CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

This Amendment #1 to the City of Newburyport Contract for Municipal Solid Waste Disposal is entered into as of June ~~21~~²⁹, 2018, by and between the City of Newburyport, Massachusetts, a political subdivision of the Commonwealth of Massachusetts (the "Municipality") and Wheelabrator North Andover, Inc., a Delaware corporation ("Wheelabrator").

WHEREAS, the Municipality and Wheelabrator are parties to that Contract for Municipal Solid Waste Disposal dated July 18, 2013 (the "Contract"); and

WHEREAS, the parties now wish to amend the Contract on the terms and conditions contained herein;

NOW THEREFORE, in consideration of the mutual promises set forth herein and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Capitalized Terms. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Contract.
2. Cover Page and Heading. The "July 1, 2013 through June 30, 2018" dates set forth on the cover page of the Contract and the subtitle on the page 1 of the Contract shall be amended and replaced with "July 1, 2013 through June 30, 2023."
3. Preamble. The June 30, 2018 expiration date in the preamble of the Contract shall be amended and replaced with June 30, 2023.
4. Section 2. Term of Contract. Section 2 of the Contract is hereby deleted in its entirety and replaced with the following:

The Contract shall commence work on July 1, 2013 and the Work shall continue through June 30, 2023.

The Municipality and the Contractor may by mutual consent renew the Contract for two (2) additional one (1) year terms. The renewal option shall be exercised by mutual consent, in writing within ninety (90) days of the expiration date of this Contract. The rate for each additional year will be subject to a 3.5% increase over the prior years' rate.

5. Section 15. A. Payment. The second paragraph of Section 15.A. of the Contract is hereby deleted in its entirety and replaced with the following:

The tipping fee shall be paid within thirty (30) days of the Municipality's receipt of a proper monthly invoice and accompanying materials, as described below that includes the total tons of material delivered for the monthly period, fee per ton, and total monthly fee (tons X fee= total fee). The invoice shall also include the daily tonnage report of Acceptable Solid Waste delivered and accepted by the Contractor for the monthly period invoiced.

6. Appendix A Contract Cost. Appendix A to the Contract is hereby deleted in its entirety and replaced by Appendix A attached hereto.

7. Appendix B Mercury is part of this contract attached hereto.
8. Appendix C Incentive. Appendix C to the Contract is hereby deleted in its entirety.
9. Appendix D HHW Clean-up Day is part of this contract attached hereto.
10. Appendix E Sharps is part of this contract attached hereto.
11. Appendix F Educational Programs, Tours and Community Outreach, Appendix F to the Contract is hereby deleted in its entirety.
12. No Other Changes. Except as specifically amended herein, the terms and conditions of the Agreement shall remain in full force and effect.

[Signature Page Follows]

WITNESS the execution hereof as of the date first above written.

~~WHEELABRATOR NORTH ANDOVER, INC.~~

By: _____

Name: *Bill Stagar*

Title: *Corp VP Fred Sen*

CITY OF NEWBURYPORT

By: _____

Name: *Donna D Holaday*

Title: *mayor*

Appendix A

Contract Cost

Year	Estimated Annual Tons	Tip Fee per Ton
7/1/2018-6/30/2019	5,000	\$67.35

Year	Estimated Annual Tons	Tip Fee per Ton
7/1/2019-6/30/2020	5,000	\$68.70

Year	Estimated Annual Tons	Tip Fee per Ton
7/1/2020-6/30/2021	5,000	\$71.25

Year	Estimated Annual Tons	Tip Fee per Ton
7/1/2021-6/30/2022	5,000	\$73.50

Year	Estimated Annual Tons	Tip Fee per Ton
7/1/2022-6/30/2023	5,000	\$75.75