



MUNICIPAL SOLID WASTE AGREEMENT

between

CITY OF LEBANON, NH

and

TOWN OF PLAINFIELD, NH

Agreement made this 4th day of August 2021 by and between the City of Lebanon, a municipal corporation existing in Lebanon, the County of Grafton, and State of New Hampshire (CITY), and the Town of Plainfield, NH a municipal corporation existing in County of Sullivan, and State New Hampshire as follows:

WHEREAS, the CITY presently owns and operates a solid waste landfill facility (FACILITY) located off Route 12A in West Lebanon, New Hampshire; and

WHEREAS, there is sufficient capacity in the FACILITY to allow the continued use by other towns for disposal of Acceptable Waste; and

WHEREAS, the CITY is willing to provide this service to such towns.

NOW THEREFORE, in consideration of the mutual promises and undertakings of the parties as set forth below, it is AGREED:

1. ACCEPTANCE AND DISPOSAL OF WASTE

The CITY shall only accept and dispose of Acceptable Waste generated by the residents and property owners of the TOWN in accordance with the terms and conditions and limitations as set forth in this Agreement.

Acceptable Waste includes Residential Refuse, Commercial Refuse, Bulky Waste, Construction and Demolition Debris, Yard Waste and Brush, and Recyclables. All terms are as defined in the Code of the City of Lebanon, Chapter 97, Landfill Regulations, as may be amended from time to time.

Unacceptable Waste is as defined in the Code of the City of Lebanon, Chapter 97, Landfill Regulations, as may be amended from time to time.

Hazardous Waste is as defined in the Code of the City of Lebanon, Chapter 97, Landfill Regulations and NH RSA 147-A, both as may be amended from time to time.

If any governmental entity having jurisdiction shall determine that any substances which are not, as of the date of this Agreement, considered harmful or of a toxic nature or dangerous, are determined to be harmful, toxic or dangerous, such substances shall thereafter be deemed Hazardous Waste.

2. FACILITY OPERATION:

The CITY shall be responsible for the operation of the FACILITY in accordance with applicable State and Federal laws, rules, and regulations.

- A. Compliance with City Code Chapter 97: There is presently in effect in the CITY, Lebanon Code Chapter 97, "Landfill Regulations", which governs and regulates the operation of the FACILITY, attached here as Appendix A. All persons using the FACILITY, including the TOWN, are bound by Chapter 97. Chapter 97 may be modified by the CITY from time to time, and such modifications to Chapter 97 shall apply through the term of this agreement. TOWN will be given 90 days notification of any proposed changes to Chapter 97. If the terms of a modification to Chapter 97 substantively conflict with the terms of this Agreement, the terms of Chapter 97 as amended, or its successor, shall govern.

3. PERMIT REQUIRED:

All users (TOWNS, residents, commercial generator/waste haulers, private businesses, and others) of the FACILITY are required to obtain a permit. Permit procedures are as provided in City Code Chapter 97.

Residents of TOWNS with signed agreements for disposal at the FACILITY may ONLY deliver Acceptable Waste directly to the FACILITY if the TOWN has opted to allow its residents to obtain individual permits. Otherwise, residents of said TOWN will be expected to use the facility (transfer station) provided by the TOWN, and the TOWN will have it delivered to the FACILITY, or residents will have to contract with a commercial waste hauler.

- The Town of Plainfield opts to allow its residents to obtain individual permits through their own Town Clerk (acting as agent for the CITY) and to dispose of Acceptable Waste directly to the Lebanon Solid Waste Facility.
- The Town of Plainfield opts to allow its residents to obtain individual permits directly from the CITY through an online portal and to dispose of Acceptable Waste directly to the Lebanon Solid Waste Facility.
- The Town of Plainfield opts NOT to allow residents to obtain individual permits.

If individual residents are not permitted to dispose directly to the FACILITY, the TOWN shall be considered the permitted user and shall have the obligation to have all Acceptable Waste which the TOWN controls (and for which the TOWN pays) delivered to the FACILITY.

4. DELIVERY OF WASTE:

- A. Certified Waste Transporters: Any commercial generator/waste hauler as outlined in Chapter 97, in good standing with respect to payment of tipping fees and other requirements of this Agreement and Chapter 97, and delivering Acceptable Waste reported to be generated within TOWNS having entered into a Solid Waste Agreement with the CITY shall be deemed by the CITY to be a certified waste transporter.
- B. Weights and Measure: All Acceptable Waste generated within the Town and that is delivered to the FACILITY by permitted commercial generator/waste haulers shall be weighed by the CITY. The CITY shall operate and maintain motor truck scales at the FACILITY, calibrated to the accuracy required by applicable State regulations. The weight record shall contain the gross weight, tare weight (empty truck weight), net weight, date and time of transaction, vehicle identification and town of origin. The CITY shall provide written confirmation of the weight record in accordance with NH Department of Agriculture – Weights and Measure.

The CITY shall maintain daily records of the total tonnage of Acceptable Waste, which shall be the basis for billing and payment. Within ten (10) days after request by TOWN, the CITY shall provide written confirmation of the month, net weight, hauler, and reported origin of Acceptable Waste by municipality.

- C. Temporary Shutdown: If, for any reason, the FACILITY is shut down temporarily and the CITY is unable to accept waste from the TOWN, the CITY shall give notice to the TOWN as to the reason for the shutdown and the expected duration. The CITY shall use its best efforts to return the FACILITY to active service as soon as possible. During the shutdown, temporary alternative disposal options may be made by the TOWN to dispose of Acceptable Wastes. After the FACILITY has been placed back into service, the TOWN shall reengage disposal services with the City. The CITY will cooperate with the Town by extending operating hours if necessary for a reasonable length of time in light of the length of the service interruption once the FACILITY is back in service. The CITY shall neither be liable for alternate waste disposal during any shutdown, nor for any costs incurred by TOWN because of such shutdown.

5. INSPECTION OF WASTE:

The CITY may inspect the contents of any vehicle delivering waste to the FACILITY to determine its composition, point of origin, and conformance with the terms and conditions of this Agreement. Any vehicle found to be delivering Unacceptable Waste, Hazardous Waste, or solid waste from a municipality without a disposal agreement with the CITY shall be required to reload the waste and remove it from the FACILITY without cost to the CITY. In addition to removal of the solid waste, the vehicle operator may be subject to fines or penalties as provided in Chapter 97.

6. COST OF SERVICE:

The cost of service for disposal shall be based on the full cost of ownership and operation of the Lebanon FACILITY, including repayment of all FACILITY related capital, operating and management costs; closure and long-term maintenance set asides in accordance with NHDES requirements; funding of capital reserve accounts for equipment replacement; costs incurred for future expansion activities; and all other costs of FACILITY ownership and operation incurred by the City of Lebanon. The maximum cost of service is to be calculated annually based on the total costs as outlined above divided by all tons (commercial and municipal) anticipated to be received in the next contract year.

The CITY is required by State of NH DES to set aside funds for the closure of the Lebanon FACILITY. These “closure funds” are established on a per ton basis and is part of the cost of service paid for disposal at the Lebanon FACILITY.

For waste or recyclable items delivered by permitted TOWNS or commercial generators/waste haulers, cost of service shall be based on the actual tons of municipal solid waste delivered at the current rate per ton as specified by Chapter 97, Fees, “MSW-Commercial.”

For waste delivered directly by residents of the TOWN, payments will be made using “punch cards,” or by other means established by the City payable at the rate per ton or set amounts as specified by Chapter 97, Fees, “MSW-Residential.”

7. TERM:

- A. This Agreement shall be in effect until such time as either the TOWN or the CITY gives written notice of termination to the other party at least one (1) year in advance of such termination. The minimum term shall extend through the completion of Phase II-C, unless this Agreement is terminated by either the CITY or the TOWN one (1) year prior to the filling to completion of Phase II-C. It is the initial intent of both the CITY and the TOWN to provide for long-term solid waste disposal through the completion of Phase II of the FACILITY. The term may be

extended to a possible future Phase III expansion if agreed to in writing by both parties.

- B. Non-Compete Clause: The TOWN hereby agrees not to contract with an alternate solid waste disposal facility; except (i) as provided in Section 7(D), (ii) in the event of a temporary shutdown as described in Section 4(C), or (iii) to provide for the new construction of a solid waste disposal facility (such as a transfer station to move Acceptable Waste, that would otherwise be disposed of in the Lebanon landfill) that will directly compete with the FACILITY, during the effective term of this Agreement without proper written notices as provided in paragraph A above. If the TOWN takes either such action, this Agreement may be terminated with no notice by the CITY, and the CITY shall be compensated by the TOWN for any consequential damages to the CITY directly or indirectly caused by the TOWN'S breach of this non-compete agreement.
- C. Termination of this Agreement by CITY for Default: The CITY shall have the right to terminate this Agreement with the TOWN in the event that the TOWN does not comply with the terms and conditions herein, including compliance with Chapter 97. Prior to such termination, the CITY shall give notice to the TOWN in writing as to any and all terms and conditions breached, and the TOWN shall have thirty (30) days after receipt of the notice to cure such breach by complying with such terms and conditions. If the CITY in its sole discretion determines that the TOWN has failed to remedy such defects and breach and comply with the terms and conditions herein, the CITY shall have the right to terminate this Agreement by giving written notice to the Chairman of the Board of Selectmen of the TOWN. Such termination shall be effective upon receipt of this notice.
- D. Planning by TOWN for Alternate Facility: The TOWN shall provide the CITY with at least two (2) years notice of any planned switch to an alternate waste disposal facility or the construction by TOWN of a new solid waste landfill facility; provided, however, that this Agreement shall not terminate automatically at the end of said two (2) year period unless the TOWN or the CITY has provided the required one (1) year termination notice.
- E. Termination of this Agreement by TOWN: The TOWN shall have the right to terminate this Agreement with the CITY. The TOWN shall give the CITY ONE (1) year's notice, in writing. Written notice shall be directed to the Lebanon City Manager and the termination shall be effective one year after receipt of the notification.
- F. The CITY shall provide to the TOWN, annually thirty (30) days of the end of each calendar year during the term of this Agreement, an estimate of the life remaining in the active phase of the FACILITY based on an annually updated topographic survey, and the prior year's tonnage.

8. LIABILITY AND INDEMNIFICATION:

The TOWN agrees to indemnify and hold harmless the CITY from and against any and all claims, expenses, and liabilities, including costs and attorney's fees which the CITY shall incur by virtue of any act or omission of the TOWN, its employees, agents, or licensees. The TOWN shall also be responsible for and shall indemnify and hold the CITY harmless from all claims, expenses, and liabilities arising in connection with the disposal of Unacceptable Waste including Hazardous Waste in the FACILITY by its employees, agents, or licensees or entity. Notwithstanding the foregoing, the Town's indemnification and liability obligations shall not apply if the Hazardous Waste is determined to have been deposited in the FACILITY during a period when the TOWN did not use the FACILITY or in a Phase or cell that was not receiving wastes during the term of this Agreement. This covenant shall continue notwithstanding the termination of the Agreement.

The CITY agrees to indemnify and hold harmless the TOWN from and against any and all claims, expenses, and liabilities, including costs and attorney's fees which the CITY shall incur by virtue of any gross negligence or willful misconduct of the CITY, its employees, agents, or licensees. The CITY shall also be responsible for and shall indemnify and hold the TOWN harmless from all claims, expenses, and liabilities arising in connection with the disposal of Unacceptable Waste including Hazardous Waste in the FACILITY to the extent due to the CITY's failure to comply with the terms of this Agreement, including, without limitation, failure to enforce Chapter 97 and/or the record keeping requirements of this Agreement.

9. EFFECTIVE DATE OF THIS AGREEMENT:

To the extent the TOWN has been disposing of its solid waste in the FACILITY prior to the signing of this Agreement, the TOWN agrees that the terms and conditions of this Agreement apply not only for the term as described in Section 7, but also for any prior use up to and including the date of this Agreement. This Agreement replaces all prior agreements between the CITY and the TOWN for disposal of Acceptable Waste at the FACILITY except for any provisions of such agreements that, by their terms, survive the termination of such agreements. For avoidance of doubt, this Agreement replaces the prior agreement between the City and the TOWN.

10. ACKNOWLEDGEMENT OF TOWN'S RESPONSIBILITIES:

- A. TOWN'S Obligation to Reduce Waste and Provide Reports: The TOWN must comply, and must document its compliance, with the requirements of NH RSA 149-M:2-I regarding waste reduction, and is required to take the following actions:
1. The TOWN must provide for, or document the existence of, an active public or private recycling program available to all residents and/or businesses in the municipality for the period during which waste generated within the TOWN is disposed at the FACILITY.
 2. As a condition precedent to disposing of solid waste generated within the TOWN in the FACILITY, the municipality must submit a brief report to the CITY describing the active recycling programs available to residents and providing a plan for meeting a 40 percent waste reduction goal.
 3. By no later than March 2 of each year, the TOWN shall provide to the CITY a summary of the tonnage of solid waste, which was recycled, reused, composted or source reduced in the previous calendar year.

Compliance with City Code Chapter 185, Welcoming Lebanon: If the TOWN opts to allow residents to obtain individual permits under Section 3 of this Agreement through their own TOWN Clerk, the Clerk of such TOWN shall receive training on use of the CITY's electronic system for the issuance of such permits. Said Clerk shall be appointed by the City Manager (or designee) to act as agent of the CITY solely for purposes of issuing FACILITY permits. When engaged in that function (but not otherwise), the Clerk will be considered an "agent" of the CITY as defined in City Code Chapter 185 and will comply with the applicable provisions of that Chapter. Violations of the provisions of this Chapter by such agent may result in the cancellation of this agreement at no cost or financial obligation of the CITY.

- B. The signing of this Agreement by the TOWN acknowledges the TOWN's responsibility for the TOWN's share of closure costs as described in paragraph 6 and the TOWN's pro rata share of

any expense incurred by the CITY as a result of liabilities arising from the operation of the FACILITY as described in paragraph 8.

CITY OF LEBANON, NH

by:

Signature

Title (Duly Authorized)

TOWN OF _____

by:

Signature

Title (Duly Authorized)

August 4th 2021