

# **SAMPLE CONTRACT**

## **FORM OF: SLUDGE HAULING AND DISPOSAL CONTRACT**

This Contract, made this XXth day of November in the year Two Thousand and Twenty-One, between **Business Name**, hereinafter called the CONTRACTOR, and the **TOWN of Montague**, acting by its Selectboard, hereinafter called the TOWN.

**WHEREAS**, the TOWN wishes to hire a qualified and responsible sludge cake hauler to meet the sludge cake disposal needs of its Water Pollution Control Facility (WPCF);

**NOW, THEREFORE**, in consideration of the mutual promises and benefits of this Contract, the TOWN and CONTRACTOR agree as follows:

### **1. Employment of the CONTRACTOR**

The CONTRACTOR agrees to haul and properly dispose of sludge cake from the TOWN's WPCF. Said commitment is contingent upon the appropriation of sufficient funds by the TOWN to support the employment of the CONTRACTOR under the terms of this Contract.

### **2. Scope of Services**

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

- a. The CONTRACTOR shall provide all vehicles and equipment necessary to transport sludge cake from the TOWN to an appropriate end-disposal site determined by the CONTRACTOR. All vehicles and equipment shall be kept in good repair and maintained at the expense of the CONTRACTOR.
- b. The CONTRACTOR shall provide employees who are licensed to drive commercial vehicles and who are knowledgeable and experienced in transporting sludge cake from treatment facilities to disposal facilities.
- c. The CONTRACTOR shall obtain all necessary permits to service this Contract. The CONTRACTOR shall pay all expenses associated with obtaining valid permits to operate for the life of this Contract.
- d. The CONTRACTOR shall transport sludge cake under the terms and prices of this Contract only from the Montague WPCF as authorized by the TOWN through its WPCF Superintendent or assigned designee.
- e. The CONTRACTOR shall ensure that all sludge cake hauled under this Contract is contained and enclosed at all times such that leaking and spilling are prevented.

- f. The CONTRACTOR will arrange a pick up schedule for sludge cake with the TOWN's WPCF Superintendent so that collection vehicles are on site at the best possible time for the TOWN.
- g. The CONTRACTOR will use safe driving, loading, and unloading practices while on and off the WPCF site. If necessary, the CONTRACTOR will be issued keys to gates which are locked at the scheduled pick up and drop off times. Access to the sites shall be solely for the purpose of collecting sludge from the facility, except at the request for other services by the TOWN and agreed upon by the CONTRACTOR.
- h. The CONTRACTOR shall comply at all times with federal, state, and local laws, regulations, and ordinances which affect the work to be performed under this Contract, including, but not limited to laws, regulations, and ordinances for motor vehicles, worker health and safety, transporting sludge, and disposal of sludge.
- i. The CONTRACTOR will be financially responsible for any damage to municipal equipment or property which is a result of an accident or negligence on behalf of the CONTRACTOR or its employees.

### **3. Participating Facility and Availability of Funds**

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

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

### **4. Hauling and Collection Equipment**

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

In the event of equipment failure, the CONTRACTOR shall, within 24 hours, repair the equipment or provide a replacement to ensure that the removal of the sludge cake is not delayed in excess of a 24-hour period. If the CONTRACTOR is unable to provide for the removal of the sludge cake within 24 hours, the TOWN has the right to make alternate arrangements, including hiring another hauler. The costs incurred by the TOWN in excess of the CONTRACTOR's bid cost will be billed to the CONTRACTOR as an offset under Section 23 of this Contract.

## **5. Material Conformity**

The TOWN represents that, to the best of its knowledge, the sludge cake from its WPCF materially conforms to all federal, state, and local regulations regarding sludge cake to be disposed of in sanitary landfills or incinerators, with the exception of water content. At the request of the CONTRACTOR, the WPCF Superintendent shall furnish a TCLP analysis or other analyses to determine the composition of the sludge cake, but not more frequently than once every twelve months.

## **6. Title to Sludge**

Title to the sludge shall remain with the TOWN until the sludge is loaded on to the CONTRACTOR's vehicle, at which time, title to the sludge and all risks and responsibilities therefore shall be transferred and borne by the CONTRACTOR.

Waste that is determined to be hazardous shall not be loaded onto the CONTRACTOR's truck(s) for removal and disposal. In the event that said hazardous waste is loaded onto the CONTRACTOR's truck(s), title to said waste shall not pass to the CONTRACTOR but shall remain with the municipality and the facility generating said hazardous waste. Further, the CONTRACTOR is authorized to make arrangements for the lawful disposition of said hazardous waste after approval is granted from the TOWN. The TOWN shall pay for any and all reasonable costs associated with the transportation, treatment and disposal of said hazardous waste as invoiced by a certified hazardous waste hauling and disposal CONTRACTOR. In addition, the CONTRACTOR shall receive compensation to cover reasonable costs associated with cleaning and restoring said equipment to a suitable condition.

## **7. Spillage of Materials**

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

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

## **8. Schedules and Safety**

Pick up schedules will be arranged with the TOWN's WPCF Superintendent or his designee to ensure that collection vehicles are on site at the best possible times. In the event that a scheduled

haul cannot be made or will be made later in the day than planned, the CONTRACTOR shall notify the facility by phone as early as it is known. If the CONTRACTOR repeatedly fails to notify the facility of scheduling delays, the TOWN may assess a financial penalty against the CONTRACTOR. If the CONTRACTOR repeatedly delays the hauling of sludge cake, the TOWN may assess a financial penalty and/or hire another hauler to perform the service at the CONTRACTOR's expense and/or consider this failure to perform and grounds for termination of the contract.

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

**9. Permits, Licenses and Fees**

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

**10. Compliance with Laws**

The CONTRACTOR shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances, orders and decrees pertaining to the delivery, treatment, and transport of sludge cake, including without limitation the rules and regulations of the Massachusetts Department of Environmental Protection which are now in force or may be promulgated during the term of this Contract.

**11. Insurance**

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

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

<b>Coverage</b>	<b>Limits of Liability</b>
Workers Compensation	Statutory
Employers Liability	\$1,000,000
Bodily Injury Liability	\$1,000,000 each occurrence
(except automobile)	\$3,000,000 aggregate
Property Damage Liability	\$1,000,000 each occurrence
(except automobile)	\$3,000,000 aggregate
Automobile Bodily Injury Liability	\$3,000,000 each occurrence

Automobile Property Damage	\$1,000,000 each occurrence
Excess Umbrella Liability	\$5,000,000 each occurrence

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

**12. Sub-CONTRACTORS**

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

**13. Indemnification**

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

**14. Assignment**

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

**15. Conflict of Interest**

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

**16. Liability of Public Officials**

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

**17. Non-Discrimination**

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

**18. Term**

This Contract shall be for a term of two and a half years (2.5) years, beginning January 1, 2022 and ending June 30, 2025. The TOWN, at its sole discretion, may negotiate with the CONTRACTOR for renewal of this Contract at terms agreeable to both the TOWN and the CONTRACTOR for a period not to exceed an additional three (3) years.

**19. Payment**

The WPCF agrees to pay the CONTRACTOR for its services in accordance with the price and terms of payment set forth in the attachments to this Contract. If an account is over ninety (90) days past due, the CONTRACTOR may: (a) suspend service until payment in full is made without breaching or terminating or otherwise affecting the remaining terms of this Contract; or (b) terminate this Contract, according to the provisions in Section 24 of this Contract.

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

**20. Failure to Perform**

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

**21. Right to Remedy**

In the event the CONTRACTOR is unable to perform any part of the service described herein for reasons other than those described in Section 22 of this Contract, the CONTRACTOR shall have the right to remedy the TOWN complaint within 48 hours (excluding Sundays and holidays) without breach of this Contract. The TOWN shall notify the CONTRACTOR in writing of any service complaint and allow the CONTRACTOR the reasonable right to cure without

termination or breach of this Contract. If the TOWN's complaint is of such a nature that it can be reasonably cured or remedied within 48 hours (excluding Sundays and holidays) and the CONTRACTOR is unable to cure or remedy the TOWN's complaint after proper notice (except for the reasons set forth in Number 20 of this Contract), the TOWN shall have the right to terminate this Contract according to the provisions of Section 22 of this Contract. The CONTRACTOR shall be liable for any excess costs incurred by the TOWN to remedy the incident(s).

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

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

## **22. Termination**

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

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

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

## **23. Right of Off Set**

If the TOWN incurs expenses and/or damages as a direct result of the CONTRACTOR's improper performance of the Contract, or the CONTRACTOR fails to perform under the Contract, the TOWN has the right to reduce any monthly payment by the amount, hereinafter referred to as the "off-set," of incurred expenses and/or damages on a pro rata basis for each day of non-performance. The TOWN shall hold the off-set in escrow and shall notify the CONTRACTOR in writing, within five (5) business days, of the specific reasons for and the amount of any such off-set. If the CONTRACTOR does not object to the off-set, in writing and with specific reasons, within fifteen (15) business days, the CONTRACTOR will be deemed to have waived any right or claim to the

off-set. If the CONTRACTOR does object with reasons to the off-set, the TOWN shall hold the off-set in escrow until the dispute is settled pursuant to the terms of this Contract.

**24. Modifications**

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

**25. Severability**

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

**26. Notices**

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

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

Contact Name  
Business Name  
Street Address  
City, State, ZIP

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

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

**29. Entire Understanding**

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

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

IN WITNESS WHEREOF, the TOWN and **Business Name** have executed this Contract as of the date first written above.

Town of Montague Selectboard

Company

\_\_\_\_\_  
Selectboard Chair

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Selectboard Member

\_\_\_\_\_  
Title

\_\_\_\_\_  
Selectboard Member

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date