

Request for Proposals
Transfer Operations and Disposal Contract
Town of Salem, NH
September 2017
RFP (2017-026)

ADDENDUM No. 1

9/15/17

QUESTIONS: *Answers in bold italic*

1. Could we obtain a copy of the current contract?
Attachment A below
2. Could we obtain a copy of the facility permit?
Attachment B below
3. Would the Town accept alternate bids?
No
4. Does the tipping floor need to be completely cleaned up every night?
Reference Section 2-7
5. Two convenience clauses in RFP – page 2 section 3 and page 9 section 16. We do not mind lack of performance terminations; it is hard to make capital investments with the Town can cancel at any time.
Reference Section B: General Conditions, 15 and 16
6. Are the recyclables accepted at the facility only residential or commercial too?
Residential only
7. If additional sites are requested by Town – could you provide approximate size or volume?
This would be limited to toters only at recreational areas
8. Do any of the Municipal Locations listed require more than 1xweek service?
Generally speaking the majority of locations are 1xweek. However some of the athletic parks require more than that during the playing season whereas during the winter they are closed.
9. Would it be possible to get a one week extension?
No – The Town is currently preparing budget therefore it is important that we receive the bids according to date in RFP.

CORRECTION: SECTION 3-4 Measurement and Payment

Strike: *“In addition the Town shall receive a revenue share of 50% of the #8 news value over \$80/ton.”*

Replace with: *“In addition the Town shall receive a revenue share of 50% of the SRP#56 news value over \$80/ton.”*

DEFINITION: *SRP#56 – Sorted Residential Papers 56*

ATTACHMENT A

TOWN OF SALEM, NEW HAMPSHIRE

AND

WASTE MANAGEMENT OF NEW HAMPSHIRE, INC.

***TRANSFER STATION OPERATIONS, LOADING AND HAULING AND
SOLID WASTE DISPOSAL AGREEMENT***

AGREEMENT entered into this 28th day of JUN, 2012, by and between the Town of Salem, New Hampshire having its site in Salem, New Hampshire (hereinafter referred to as "Town" and Waste Management of New Hampshire, Inc., a corporation with its principal place of business at 4 Liberty Lane West, Hampton, New Hampshire, 03842 (hereinafter referred to as the "COMPANY").

SERVICES PROVIDED

Company shall provide services in accordance with the Request for Proposals issued by the Town, and the Proposal submitted by the COMPANY for: 1) the Town of Salem Transfer Station Operations, Loading and Hauling Contract; and 2) The Town of Salem Solid Waste Disposal Contract

The requirements of the contract, including the scope of work, and terms of the Contract are defined by following documents, which are incorporated by reference:

- Town of Salem, Documents and Specifications for Transfer Station Operations, Loading and Hauling Contract, Town of Salem, NH, Dated April 18, 2012 (hereinafter "Transfer Station Documents and Specifications").
- Addendum #1 to the Transfer Station Operations, Loading and Hauling Contract Documents and Specifications, Dated May 4, 2012
- Town of Salem, Documents and Specifications for Solid Waste Disposal Services Contract, Town of Salem, NH, Dated April 18, 2012 (hereinafter "Solid Waste Disposal Documents and Specifications").
- Waste Management of New Hampshire, Inc. Transfer Station Operations Loading and Hauling Proposal to Town of Salem, Dated May 10, 2012
- Waste Management of New Hampshire, Inc. Solid Waste Disposal Services Proposal to Town of Salem, Dated May 10, 2012

If there are conflicts between the "Documents and Specifications" and the Proposal submitted by the Company, the terms of the Documents and Specifications shall govern. If there are conflicts between any other documents and this Agreement, this Agreement shall govern.

In accordance with the foregoing, the company agrees to perform all obligations, requirements, duties and services contained in the Transfer Station Documents and Specifications and the Solid Waste Disposal Documents and Specifications both dated April 18, 2012 and in the Addendum No. 1 dated May 4, 2012. Without limiting the generality of the foregoing the COMPANY will perform its services in accordance with those specifications and project requirements set forth in Section C, entitled Specifications and Project Requirements of the Transfer Station Documents and Specifications and the obligations and services contained in Section C, entitled Specifications and Project Requirement in the Solid Waste Disposal Documents and

Specifications (both dated April 18, 2012), and in Addendum #1 to Transfer Station Operations, Loading and Hauling Contract Documents and Specifications, dated May 4, 2012, and all the obligations, requirements, duties, services and definitions set forth in those documents are incorporated herein by reference as if they were fully set forth herein.

FEES AND BILLING

The fees for the first year of the contract through 2012 will be as outlined in this section. The rates will be adjusted annually beginning January 1, 2013 in accordance with inflation adjustments as provided in the general terms and conditions below.

Base Contract – The Town will pay fees for operations, transfer and disposal as summarized below:

- Bid Item 1, Disposal Contract - Disposal of Solid Waste: \$64.50/ton
- Bid Item 1A - Loading and Hauling Solid Waste and Transfer Station Operations: \$15.00/ton
- Bid Item 2-Loading, Hauling Processing and Disposal of Single Stream Recyclables: \$35.00/ton
- Bid Item 3 - Loading, Hauling and Processing of Bulky Metals: \$0.00/ton
- Bid Item 6 - Loading Hauling, Processing and Disposal of Recyclable Electronics: \$400.00/ton

Revenue Sharing - The Company will also pay to the Town Revenue Sharing of Single Stream Recyclables and Bulky Metals as summarized below:

- Bid Item 2 - Single Stream Recyclables: 50% revenue share of #8 newspaper pricing over \$80.00/ton based on the Official Board Market's Yellow Sheet publication – New England Region
- Bid Item 3 - Bulky Metals: 100% revenue share of American Metal Market Index (number 2 bundles Boston Region) pricing minus \$70.00/ton. The Company shall not pay a revenue share of less than \$100.00/ton for bulky metals.

Bid Alternates - The following alternate items are not part of the initial work but shall be provided by the Company, at the Town's option, with 60 days written notice:

- Alternate Bid Item 4 - Loading, Hauling, Processing and Disposal of Construction/Demolition Debris: \$80.00/ton
- Alternate Bid Item 5 - Deduct to Contract Price for Town Provided Inspection Operator: Credit of \$2.00/ton

GENERAL TERMS AND CONDITIONS

1. Definitions

Bulky Waste or Bulky Metals – includes large items with weights or volumes greater than those allowed for individual household-type containers. Bulky waste includes, but is not limited to, automobile parts (fenders, seats, and other parts not exceeding four hundred (400) pounds), furniture and non-recyclable toys, appliances (refrigerators, air conditioners, ranges, stoves, washers and dryers, and water heaters) etc. Freon and gasoline is to be removed and managed/disposed by the Company.

Commingled Recyclable Material(s)/Single Stream Recyclable Material(s) – reusable waste separated from solid waste for the purpose of recycling. Includes, but is not limited to paper, plastics, aluminum and tin containers, newspapers, magazines, cardboard, glass.

Department – the Department of Public Works or any department designated by the Town to administer the provisions of this Contract.

Disposal Site or Facility – any place at which solid waste or other wastes are disposed of by incineration, landfilling, composting or any other method, and which has been approved by the applicable state, and/or municipality and all other applicable local, state and federal agencies.

Hazardous Waste – any chemical, compound, mixture, substance or article which is designated by the United States Environmental Protection Agency or appropriate agency of the State to be “hazardous” as that term is defined by or pursuant to Federal, State, or Town laws and regulations.

Municipal Solid Waste or MSW---non-hazardous solid waste normally collected from residents and households and light industrial and commercial establishments within the Town of Salem.

Recyclable Electronics - refers to electronic products that are discarded by consumers. These include a wide range of items, such as:

- televisions and computer monitors
- computers and computer peripherals (e.g., monitors and keyboards)
- audio and stereo equipment
- VCRs and DVD players
- video cameras
- telephones, cellular phones and other wireless devices
- fax and copy machines
- video game consoles

The list of specific recyclable electronic wastes to be accepted at the facility shall be maintained by the Town and Company based on disposal requirements at the disposal facility.

Solid Waste – Any and all putrescible and non putrescible waste generated at a residential unit. Including animals or portions thereof equal to or less than then (10) pounds in weight that have expired from any cause, except those slaughtered or killed for human use or consumption, every accumulation of waste (animal, vegetable and/or other matter) that results from the preparation, processing, consumption, dealing in, handling, packing, canning, storage, transportation, decay or decomposition of meats, fish, fowl, birds, fruits, grains or other animal or vegetable waste matter which is likely to attract flies or rodents), yard waste, sawdust, printed matter, paper, pasteboard, rags, used and discarded clothing and shoes, and any and all other waste materials, useless, unwanted, or discarded materials with insufficient liquid content to be free flowing that results from domestic, industrial, commercial, agricultural, governmental and community operations which require proper storage, collection, transportation and disposal to prevent environmental pollution inimical to public health, safety and welfare. Solid waste does not include sewage, earth or material used to fill land in accordance with construction codes, mining residues, slag, or dissolved or suspended solids in industrial waste effluents which are not acceptable for disposal in sanitary sewage treatment systems.

Special Wastes –Solid Waste that requires special handling under applicable State, Federal and/or local laws and regulations and those wastes that are defined as Special Waste under Exhibit 1.

Special Wastes (Defined by Company) – See Attached Exhibit 1

State – State of New Hampshire

Town – Town of Salem

Yard Waste – means all vegetative matter resulting from residential landscaping or maintenance, including all waste wood, wood products, Christmas trees, bushes and shrubbery, tree trimmings, grass, clippings, leaves, flowers, dead plants, weeds, leaves, dead trees or branches thereof, chips, shavings, sawdust and straw. Stumps and brush and trees over 4” in diameter are not disposed at the Transfer Station.

2. Warranties

The COMPANY warranties and guarantees to the Town that all work and services will be of good quality, responsive, and in accordance with the requirements of the Contract documents and in accordance with any federal, state or local licenses, permits, and applicable regulations and laws. All unsatisfactory, faulty, or defective work or services, and all work or services not conforming to the requirements of the Contract, applicable local, state and federal regulations and laws shall be corrected by the COMPANY at no cost to the Town.

3. Administration

The Contract shall be executed between the Town and the COMPANY. The Contract shall be administered on behalf of the Town by the Director of the Department of Public Works, 21 Cross Street, Salem, New Hampshire 03079, phone: 603-890-2150. The Director is responsible for interpreting terms, conditions, specifications, or other provisions of the Contract.

The COMPANY shall exert full control over the actions of all employees and other persons with respect to the use and preservation of property and existing facilities. The COMPANY shall exclude from the Company’s work areas all persons who have no purpose there, and shall require all persons on the sites to observe the same safety regulations as the COMPANY requires of its employees.

The Company is responsible for ensuring the Transfer Station building is secured at the close of each working day. The Town shall have access to the Transfer Station at all times.

4. Audit of Records

The Town shall be entitled to audit records as requested by the Town which are reasonably related to amounts charged under the Contract. COMPANY and its subcontractors shall maintain all records and other evidence pertaining to amounts invoiced the Town and shall make such records available at their respective offices at all reasonable times during the Contract agreement period and for five (5) years from date of final payment under the Contract Agreement, for inspection by the Town, and copies thereof shall be furnished, if requested, within 60 days, by the Town.

5. Record Retention

The COMPANY shall maintain all records in relation to this Contract for a period of at least five (5) years after the end of the Contract period.

6. Record Ownership

All records, reports, documents, or other material related to this Contract and/or obtained or prepared by the COMPANY in connection with the performance of the services contracted for herein shall become the property of the Town of Salem, and shall, upon request, be returned by the COMPANY to the Town of Salem, within 60 days, at the COMPANY's expense, at termination or expiration of the Contract.

7. Content of Contract/Order of Precedence

In the event of a conflict among documents, the order of precedence which shall govern is as follows: 1) the final Contract; 2) the Request for Proposal (RFP) and Addendum #1 and 3) the COMPANY's proposal.

8. Contract Changes

No additional changes, enhancements, or modifications to this Contract shall be made without the prior written approval of the Town of Salem. Changes to the Contract include any change in: compensation (except for adjustments of CPI, defined herein); beginning/ending date of the Contract; scope of work; and/or change through the assignment of Contract process. Any such changes, once approved, will result in the issuance of a written amendment to the Contract.

9. Force Majeure

The COMPANY or Town of Salem shall be exempted from performance under the Contract for any period that the COMPANY or Town of Salem is prevented from performing any services in whole or in part as a result of an act of God or terrorism, severe weather, strike, war, civil disturbance, epidemic or court or governmental order, provided the COMPANY or Town of Salem has prudently and promptly acted to take any and all corrective steps that the COMPANY or Town of Salem can promptly perform. Subject to this provision, such performance shall not be considered cause or grounds for termination for the Contract.

10. Taxes

The COMPANY shall pay off all taxes associated with this work. The Town will make no additional payments to cover the taxes, or increases in taxes.

11. Licenses, Permits, Regulations and Inspections

The transfer station is to be operated in full conformance with the NHDES regulations and in accordance with the requirements of the transfer station Solid Waste Facility Permit. In the event of a discrepancy between the regulations and permit, the more stringent requirements shall apply, without exception. In particular all operators shall be certified operators and have the appropriate level of training and licenses required for a Level 4 facility as defined by the New Hampshire Department of Environmental Services.

The COMPANY shall be responsible for adhering to all licenses, permits and regulations required. The COMPANY shall obtain all permits and licenses required to perform the work and fulfill the requirements of the Contract. Copies of required licenses must be provided to the Town of Salem and kept on site at scale house.

The COMPANY, through the term of the Contract, shall promptly (within 5 working days) send copies of all correspondence, related to work in this contract, sent or delivered and received from any agency of the State of New Hampshire or Federal Government to the Town. In addition, verbal citation of violation by any agency or verbal indication of citation of violation by any agency shall be immediately (within 24-hours) documented and transmitted to the Town and followed with a written explanation.

The COMPANY shall comply with all applicable regulatory requirements. The COMPANY shall perform regular inspections to ensure operations are performed in accordance with facility permits, regulations, and the Contract. The COMPANY shall maintain facility records to assist the Town in completion of reporting requirements to the New Hampshire Department of Environmental Services. The COMPANY shall, at no cost to the Town, accommodate inspections and tests by the Town, State, Federal, or other regulatory agencies to verify compliance with laws, regulations or the Contract. Absent an emergency situation, Town shall provide twenty four hours notice for inspection of any disposal facilities owned by the COMPANY.

The Town, its duly authorized representative, or consultant shall have access to the work areas at all times during working hours. The COMPANY shall arrange for access of the above, when the Transfer Station site is closed.

12. Right-of-Way

The Town has the rights to the land at the Transfer Station. The COMPANY shall not enter or occupy any private property outside the limits of right-of way, unless the COMPANY has obtained proper legal access, and has furnished proof thereof to the Town prior to the act. The COMPANY shall limit his use of the Transfer Station for purposes related to this Contract. Other uses of the site must be approved in writing by the Town prior to occurring. The COMPANY shall not be allowed to store any equipment that is not related to the operation of the Contract.

13. Start Date of Contract

This Contract shall be effective upon the execution by both parties and the performance of such Contract is expected to begin on July 2, 2012.

14. Term of Contract

The contract will be for a term of five (5) years, six (6) months to December 31, 2017. The Town of Salem will have the option to renew the contract for an additional 5 years, under the same terms, cost and conditions.

15. Termination - The Town may terminate the Contract for cause based upon the failure of the COMPANY to comply with the terms and/or conditions of the Contract; provided that the Town shall give the COMPANY written notice specifying the COMPANY'S failure. If within ten (10) days after receipt of such notice, the COMPANY shall not have either corrected such failure or thereafter proceeded diligently to complete such correction, then the Town may, at its option, place the COMPANY in default and the Contract shall terminate on the date specified in such notice whereupon the COMPANY will be paid only for work properly completed prior to termination less any damages or costs to the Town arising from the COMPANY'S operations or as a result of termination. Said payment, if any, will be COMPANY'S sole and exclusive remedy. The COMPANY may exercise any rights available to it under New Hampshire Law to terminate for cause upon the failure of the Town to comply with the terms and conditions of this Contract; provided that the COMPANY shall give the Town written notice specifying the Town's failure.

16. Termination - Voluntary Town Termination

The Town may terminate the Transfer Station Operations, Loading and Hauling portions of this Contract at any time for its own convenience by giving sixty (60) days written notice to the COMPANY. Reasons for termination by the Town could include, but are not limited to, changes to operations at the transfer station/recycling facility, changes to collection methods (i.e. curbside collection), the unavailability of funds pursuant to Section 26, or other factors as the Town determines in its best interest. The COMPANY shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily as its exclusive remedy in the event of voluntary Town termination. Should the Town terminate the Contract under this voluntary termination clause within the first two years of the initial Contract period, the Town will reimburse the COMPANY for reasonable expenses for start up costs.

17. Non-Discrimination

The COMPANY shall not discriminate against any person because of race, sex, age, creed, religion or national origin, or any other reason prohibited under federal or state law.

18. Insurance and Indemnification

The COMPANY shall not commence work under this Contract until it has obtained all insurance required by these specifications and provided the Town with a certificate of insurance for all required insurance. The insurance requirements, indemnity provisions, and waiver provisions for all work or services for the Town of Salem shall be as follows:

Worker's Compensation	Per Statute	
General Liability		
Personal/Bodily Injury	\$ 1,000,000	per incident
	\$ 2,000,000	aggregate
Property Damage	\$ 1,000,000	per incident
	\$ 2,000,000	aggregate
Automobile Liability	\$ 1,000,000	per person
	\$ 2,000,000	each accident

The COMPANY shall name the Town of Salem, its boards, officers, agents and employees as named insured in any and all required insurance policies. The COMPANY shall not cancel any required insurance policies. The COMPANY shall not modify or replace any required insurance without thirty (30) days prior written notice to the Town.

The COMPANY agrees to indemnify and hold harmless the Town and its officers, agents and employees from and against any and all claims including but not limited to any and all claims for personal injury, death, and/or property damage which may in any way arise out of or occur during the COMPANY'S performance of services under the Contract, whether such services be performed by the COMPANY or anyone directly or indirectly employed by the COMPANY or any other person or company retained in any way by the COMPANY to carry on all or a portion of the services necessary to abide by the terms of the Contract.

19. Performance and Payment Bonds

In order to insure the faithful performance of each and every condition, stipulation, and requirement of the Contract and to indemnify and save harmless the Town from any and all damages, either directly or indirectly, arising out of any failure to perform same, the COMPANY shall furnish and maintain a Performance Bond and Payment Bond in the full amount of the Contract price.

Performance and Payment Bonds, in the forms approved by the Town must be furnished simultaneously with the delivery of the executed Contract by the COMPANY.

- a) All bonds submitted as Bid Security shall be executed by one or more surety companies legally authorized to do business in the State of New Hampshire. Such surety or sureties shall be satisfactory to the Town of Salem.
- b) All required Bonds shall be executed on behalf of the surety or sureties in such a manner as shall legally bind the surety or sureties. If the execution is by an attorney-in-fact, a power of attorney evidencing the authority of such attorney shall be attached to the Bond. Such power of attorney shall bear the same date as the Bond to which it is attached. The surety or sureties are not State of New Hampshire corporations, the power of attorney must evidence the fact that the attorney-in-fact is a resident of New Hampshire.
- c) All Bonds shall be executed by the COMPANY as principal in the manner required for execution of the BONDS.

20. Subcontracts

The COMPANY shall assume responsibility for all items and services offered in its proposal whether or not it produces or provides them. The Town shall consider the COMPANY to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the Contract.

The COMPANY shall serve as the single prime COMPANY for all work performed pursuant to the Contract. That prime COMPANY shall be responsible for all deliverables. This general requirement notwithstanding, the COMPANY may enter into subcontractor arrangements. The COMPANY may submit a proposal which identifies subcontract(s) with others, provided that the COMPANY acknowledges total responsibility for the entire Contract.

The COMPANY shall not award any work to any subcontractor without prior written approval of the Town, which approval will not be given until the COMPANY submits to the Town a written statement concerning the proposed award to the subcontractor(s), which statement shall contain such information as the Town may require.

If such consent is given, the COMPANY will be permitted to sublet a portion of the work, but shall perform with the COMPANY'S own organization work amounting to at least 50 percent (50%) of the total Contract cost. An approved subcontractor shall not subcontract any portion of its authorized work.

If the COMPANY shall sublet any part of this Contract, the COMPANY shall be as fully responsible to the Town for the acts and omissions of its subcontractor, and of any persons either directly or indirectly employed by its subcontractor, as the COMPANY is for the acts and omissions of the persons directly employed by the CONTRACT himself. Information required of the COMPANY, is also required for each subcontractor and the subcontractor must agree to be bound by the terms of the Contract. The prime COMPANY shall assume total responsibility for compliance.

21. Assignment

Neither party to this Contract shall assign or sublet its entire interest in this Contract without written consent of the other, nor shall the COMPANY assign any monies due or to become due to him under this Contract without previous written consent of the Town, nor without the consent of the Surety unless the Surety has waived its right to the notice of assignment.

22. Basis and Method of Payment

For the services required under the Terms of the Contract, the fees shall not exceed the unit cost amounts stated in the Bid Form which is incorporated herein by reference.

The service fees provided by the COMPANY shall include all labor, equipment, collection, hauling, operation, disposal, and other related services and costs delineated in the Contract documents. There will be no adjustment in cost due to increases or decreases in disposal quantities, tipping fees, labor rates or transportation costs, except as provided by the Consumer Price Index (CPI) adjustment described in the following Section .

23. Inflation Adjustment

All unit prices bid on the form shall be applicable throughout 2012. All bid prices shall be adjusted for inflation each year thereafter.

The bid price for the Transfer Station Operations, Loading and Hauling Services in calendar year 2013 shall be adjusted by 50 percent of the increase in the CPI-All Urban Consumers, Northeast Urban Index between July to October 2012. A Similar increase will be made for the 2014 calendar year using 50 percent of the increase in the CPI- All Urban Consumers, Northeast Urban Index between October 2012 and October 2013 and so on for each successive Contract calendar year.

The inflation adjustment for the Solid Waste Disposal Services bid shall be of the format described above, using 100% of the CPI- All Urban Consumers, Northeast Urban Index.

24. COMPANY's Billing to Town

The COMPANY shall bill the Town for services rendered within ten (10) days following the end of the month, and the Town shall pay the COMPANY within approximately thirty (30) days from the receipt of billing. Such billing and payment shall be based on the price rates and schedules set forth in the Bid Form. The COMPANY shall submit a monthly report with each month's billing. The monthly report shall include a volume of each material handled. The accuracy of the information contained in the monthly report shall be attested by the COMPANY. The report format shall be subject to reasonable modification by the Town.

In the event of a dispute on any portion of the bill, the Town of Salem shall pay the amount not in dispute when due, and shall, within fourteen (14) days, notify the COMPANY in writing of the dispute. The notice shall identify the disputed bill, state the amount of the dispute and a description of the basis for such a dispute.

25. Ownership

Title to solid waste, commingled recyclables, C/D waste, bulky metals, recyclable electronics, and all waste managed under this Contract, shall pass to the COMPANY when placed in the collection equipment or dropped off at the Transfer Station.

26. Availability of Funds

The issuance and subsequent continuance of the Contract is contingent upon the appropriation of funds to fulfill the requirements of the Contract by the Salem Board of Selectmen and the Town's annual budget process. If the Town fails to appropriate sufficient monies to execute the Contract, or if such appropriation is reduced to prevent the total appropriation for a subsequent year of the Contract, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the start or continuation of the Contract, the Contract shall not be executed or it shall terminate without further expense or liability to the Town whatsoever on the date of the beginning of the first fiscal year for which funds are not appropriated.

27. Waste Materials

During the term of this Agreement, the Town will provide to the COMPANY any and all of the Bulky Waste or Bulky Metals, Recyclable Electronics, Commingled Recyclables, Solid Waste and Municipal Solid Waste generated within the Town which is collected through the Town's transfer station and/or residential collection program with the following exceptions: Hazardous Waste; , Special Waste; liquid wastes; infectious and hospital wastes (except garbage); septage, white goods (managed separately); Yard Wastes are managed by the Town. Construction/Demolition debris waste may be included during the term of the Agreement at Town's option. .

The COMPANY may at any time refuse to accept for disposal any material, substance or property which in the judgment of the COMPANY is harmful, unhealthy, unsafe (all as defined in Exhibit 1 for hazardous and unacceptable wastes) or is in violation of any federal, state, or local statute, regulation, or rule applicable to the site. At the time of refusal, the identity of the rejected waste material and the reason for the rejection will be communicated to the Town in writing.

28. Company's Disposal Facility Requirements

The Company's primary disposal facility shall be Turnkey Landfill in Rochester, New Hampshire, and alternative disposal facilities are Wheelabrator Waste-to-Energy Facilities located in North Andover, Massachusetts and Concord NH. The requirements in this Section shall apply to the primary and secondary disposal facilities (referenced as 'disposal facility(ies)' herein).

29. Independent Contractor

The COMPANY is and shall perform this Agreement as an independent contractor and as such, shall have and maintain complete control over all its employees, agent and operations. Neither the COMPANY or anyone employed by it shall be, represent, act, purport to act, or be deemed to be the agent, representative, employee, or servant of the Town.

30. Inspections

The Town shall have the right to inspect and obtain copies of all written licenses, permits, and approvals issued by any federal, state or local government entity or agency to the COMPANY which are applicable to the performance of this Agreement and to inspect the disposal facility and its operations for compliance with applicable federal, state, and local laws, regulations, and rules specifically pertaining to solid waste disposal. Such inspections are encouraged by the COMPANY. Town shall provide COMPANY three business days prior written notice for such inspection related to facilities owned by the COMPANY.

31. Notices

During the term of this Agreement and any extension thereof and until otherwise notified by the other party, all notices sent or required to be sent hereunder shall be by registered mail, postage prepaid, addressed as follows, and shall be deemed given when delivered for mailing to a United States Post Office so addressed:

To Town: Town Manager
 Town of Salem, New Hampshire
 33 Geremonty Drive
 Salem, NH 03079

To COMPANY: Waste Management of New Hampshire, Inc.
 4 Liberty Lane West
 Hampton, NH 03842
 Attention: Legal Counsel

32. Dispute Resolution

(a) In the event any claim, controversy or dispute arises between the COMPANY and the Town, the Town and the COMPANY shall undertake in good faith to resolve the dispute.

(b) If COMPANY and the Town cannot resolve the dispute within a two (2) week period of time after written notice, the Town or the COMPANY may, following the two (2) week period, by written notice to the other party hereto, commence an action in a court or administrative agency with jurisdiction. This provision shall not constrict either party, when necessary from seeking immediate injunctive or other relief prior to the expiration of the above-referenced two (2) week period. The parties agree that prior to seeking such injunctive or other relief, that they will provide to the opposing party not less than forty-eight (48) hours notice of their intentions. Moreover, should the claim, controversy or dispute constitute a default as defined herein, then the parties may, in lieu of, or in addition to judicial action, choose to terminate the contract pursuant to the provisions for termination herein.

(c) The parties agree that, to the extent available, they shall use alternative dispute resolution mechanisms (excluding arbitration) for disputes arising from the alteration of disposal fees or the implementation of any disposal fees. The parties may, if they so choose, use such alternative dispute resolution to resolve other potential disputes; however, the parties agree that alternative dispute resolution shall not be the sole source of resolving non-fee issues and the parties do not waive their rights to see judicial resolution of disputes related to non-fee issues.

33. Form of Consent

All consents of any kind required under this Agreement shall be in writing. Whenever, under this Agreement, the Town is authorized to give consent, such consent may be given and shall be conclusively evidenced by the authorized representative of the Town (the Town Manager) giving such consent in writing. Whenever under the terms of this Agreement, the COMPANY is authorized to give its consent such consent may be given and shall be conclusively evidenced by writing certified by a duly authorized representative of the Company (the New England Market Area Manager _____ or his or her authorized representative).

Comment [pds1]: To be filled in by WM

34. Assignment

The COMPANY may not assign this Agreement without the written consent of the Town. The Town may not assign the Agreement.

35. Amendment

This Agreement may be amended from time to time by written agreement duly authorized and executed by the parties hereto.

36. Governing Law

This Agreement shall be governed and construed under and pursuant to the laws of the State of New Hampshire.

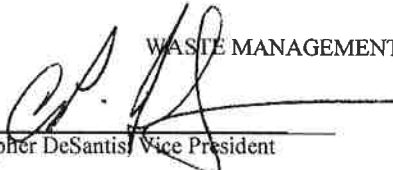
37. Miscellaneous

If any provision of this Agreement, or any portion of such provision, or the application thereof to any circumstances or person is held invalid, the remainder of this Agreement, or the remainder of such provision, and the application thereof to other persons or circumstances shall not be affected thereby.

38. Entire Agreement


This Agreement constitutes the entire Agreement and understanding between the Town and the COMPANY, and it shall not be considered modified, altered, changed, or amended in any respect unless in writing and signed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the
28th Day of JUNE, 2010.




Christopher DeSantis, Vice President

WASTE MANAGEMENT OF NEW HAMPSHIRE, INC.




Witness



Keith Hickey, Town Manager

TOWN OF SALEM, NEW HAMPSHIRE



Witness



SOLID WASTE MANAGEMENT FACILITY LIMITED PERMIT FOR EXISTING FACILITY

as authorized by the
NH Department of Environmental Services, Waste Management Division (Department)
pursuant to RSA 149-M and Part Env-Wm 316.06 of the New Hampshire Solid Waste Rules

I. **PERMIT/FACILITY IDENTIFICATION:**

Permit No.: DES-SW-LP-95-002

Facility Type: Collection/Storage/Transfer

Service Type: Limited Public

Facility Name: Salem Transfer Station/Recycling Facility


Facility Location: Shannon Road, Salem, NH

Permittee: Town of Salem

Facility Description: Transfer Station & Recycling Facility for mixed municipal solid waste and separated recyclables that are generated within the Town of Salem

II. **TERMS AND CONDITIONS:** The permittee shall comply with the requirements of RSA 149-M the New Hampshire Solid Waste Rules (Rules) and the attached terms and conditions, as amended.

III. **AUTHORIZATION:** Pursuant to RSA Chapter 149-M:10 and Parts Env-Wm 304 and 316 of the Rules, this permit is hereby issued to the permittee as identified in Section I above to continue operating the solid waste management facility identified in Section I above pursuant to the requirements of Section II above. **BY EXERCISING ANY RIGHTS UNDER THIS PERMIT, THE PERMITTEE HAS AGREED TO ALL TERMS AND CONDITIONS OF THE PERMIT, AS ATTACHED HEREWITH.** Failure to comply with these terms and conditions could result in civil or criminal penalties, suspension or revocation of the permit. No liability is incurred by the State of New Hampshire by reason of any approval of this solid waste facility. Approval by the Department is based on plans and specifications supplied by the applicant. No warranty/ guarantee is intended or implied by reason of any advice given by the Department or its staff.


Philip J. O'Brien, Ph.D., Director
Waste Management Division

September 1, 1995
Date