

# **TOWN OF MANCHESTER BY THE SEA, MASSACHUSETTS**

## **REQUEST FOR PROPOSALS FOR CONSTRUCTION, OPERATION, AND MAINTENANCE OF THE NORTH SHORE REGIONAL COMPOST FACILITY**

**ISSUED MAY 2021**

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**REQUEST FOR PROPOSALS**  
**TOWN OF MANCHESTER-BY-SEA, MA**  
**CONSTRUCTION, OPERATION AND MAINTENANCE of**  
**NORTH SHORE REGIONAL COMPOST FACILITY**  
**ISSUED MAY 2021**

**General**

Proposals for the construction, operations, and maintenance of the North Shore Regional Compost Facility (NSRCF) will be received at the Town Hall located at 10 Central Street, Manchester-by-the-Sea (MBtS), MA 01944 until Thursday, June 10, 2021 at 2:00 P.M. local time. Technical Proposals will be reviewed and scored separately by the evaluation committee followed by the price proposals.

The NSRCF project is located at the site of the Town's active transfer station and closed municipal solid waste landfill at a Town-owned property located at 201 Pine Street in MBtS. The Town is making the site (201 Pine Street) available for interested parties to construct, operate and maintain a Regional Compost Facility. The estimated initial food waste capacity of the facility is 30-tons per week . Additional food waste capacity would only be allowable with prior approval of DEP and the Town. Food waste combined with other organics (yard waste, leaves, brush etc.), will make approximately 120-tons per week. The finished compost product, and all byproducts, is to become the property of the Operator for sale at their sole discretion.

Proposers shall include in their Price Proposal a Bid Security, made payable to the Town of Manchester by the Sea, in the form of a Certified Check, Treasurer's or Cashier's Check, Postal Money Order, or Bid Bond, in the amount of five percent (5%) of the Total Price Proposed for the Construction portion only. The Successful Proposer's Bid Security will be forfeited as liquidated damages in the case that the Successful Proposer fails or refuses to execute the Agreement for the solicited goods and services within ten (10) business days after the Successful Proposer receives the executable copies of the Agreement.

The Bid Security of any Proposer whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the seventh (7th) day after the effective date of the Agreement between Owner and Proposer.

NOTE: Due to the ongoing COVID 19 pandemic, Town Hall is closed to the public. Proposers are advised to make arrangements to get proposals in on time. Late proposals will not be considered. Proposals may be mailed to the above address Attention Chuck Dam – DPW room #6. Alternatively, hand delivered bids can be brought to town hall by making an appointment, upon arrival call DPW office at 978-526-1242 and a representative from the town will receive the proposal at the rear entrance to the building.

**The Project includes the following Work:**

**Construction**

The project construction, as detailed in the design drawings and specifications included in Appendix A, includes but is not limited to: construction of a 65' x 150' fabric roof structure supported on a 6-foot tall cast-in-place push wall, in slab compost aeration, biofilter systems, electrical and instrumentation work, stormwater improvements, relocation of a recyclables compactor, and installation of gravels

including a 2-acre pad on the landfill. Gravels and geotextiles are proposed to be installed over a geomembrane cap that is overlain by 20 to 24 inches of soil. In some locations, excavation to the geomembrane with installation of drainage geocomposite and replacement of soils over the cap is required. The work also includes general site work including excavation, ledge removal, soil stockpiling and filling, demolition, erosion control, loaming and seeding, and general site restoration. The Contractor will be required to protect the landfill cap at all times during construction and operations and be responsible for any repairs. Please refer to the Post-Closure Use Permit for the site which has been enclosed as Appendix B.

The Town will continue to operate the transfer station during construction but will reduce the days that it is open to from twice a week to once per week (Saturdays 10am to 3PM). The Proposer will need to coordinate their construction schedule to accommodate Town transfer station operations on Saturdays, including maintaining access to transfer station areas and scheduling the compactor relocation such that disruptions to transfer station operations are limited. The operator will take over transfer station duties upon commencement of compost operations.

The project has received approval from the MBtS Conservation Commission and MassDEP for wetland buffer impacts. The Order of Conditions must be followed and is enclosed as an Appendix C to the Contract Documents. A Post-Closure Use Permit from MassDEP for performing construction and operations activities on the landfill is included in Appendix B. The Contractor shall comply with the requirements of all permits and applicable state and federal guidelines.

The Town will waive all local building permit fees however the Proposer is required to receive all local building permits required.

### Operations

The selected Proposer will operate and maintain the compost facility and transfer station operations for a 20-year term. The proposer must offer weekly curbside pickup of food waste throughout the Town as part of its services (anticipated to coincide with solid waste and recycling curbside program provided under separate contract). In 2019 the Town collected between 5-6 tons per week of food waste with approximately 25-30% participation rate (~550 bins/week). The Town expects participation to grow with the ultimate goal being 100% participation. Collection from other Towns is at the discretion of the Operator based on available capacity. The Operator is responsible for all aspects of the Compost operation including: collection and/or deliveries including collection containers to residents, outside equipment, processing, site and equipment maintenance, O&M activities, resale and/or other end users and sale of finished compost. Electricity and other associated utility costs for the compost facility and operations will be the responsibility of the Operator.

As part of the Project, the Operator is expected to take over operations of the town Transfer Station currently located on site. The transfer station is open to Town residents Wednesdays and Saturdays. The Operator will also be responsible for staffing (min 1 attendant) the transfer station during open hours to monitor for compliance with the Town's use and regulations of the transfer station. Details of the current transfer station operation are on the Town website, and Proposers are encouraged to visit the site during the specified hours of operation. The Town will remain responsible for contracting and disposal fees (including hauling to disposal facilities) associated with the transfer station operations, e.g. municipal solid waste (MSW), recycling, compactor equipment maintenance. The

operator is expected to make the site available to the Town or its Contractors as needed in these efforts. Miscellaneous maintenance of the site (e.g. mowing, plowing etc.) shall be included in the Proposal.

## **Proposal**

Owner anticipates that the Project's total construction price will be approximately \$1,350,000. The Proposer understands that NO Town funds or separate grant funds will be made available for the construction of this Project. The proposer shall stipulate terms of the operation agreement in their proposal to account for the operations, maintenance and construction costs over the course of the 20-year agreement. The Town expects to enter into a 20-year operations agreement as part of this proposal. Proposer shall provide an anticipated construction schedule assuming a contract date of June 30, 2021 thru commissioning of the compost facility.

Town Minimum requirements:

- At a minimum, the proposer must offer weekly curbside pickup of food waste throughout the Town as part of its services.
- Staffing (min 1 attendant) the transfer station during open hours to monitor for compliance with the Town's use and regulations of the transfer station.

The Proposer will be required to complete final design of the compost facility including final building dimensions and layout, aeration system, biofilter system, electrical components and instrumentation. Requirements for these systems and proposed layout are provided on the Construction Drawings and in the project's Technical Specifications in Appendix A. Should the proposer deviate from the designs proposed, a PE in the Commonwealth of MA will be required to stamp any and all revised design drawings and obtain DEP approval.

## **Obtaining the Proposal Documents**

Electronic copies of the Proposal documents may be requested by contacting Adam Sandahl of CMA Engineers at (603) 303-1115 or [asandahl@cmaengineers.com](mailto:asandahl@cmaengineers.com). CMA Engineers will act as the Issuing Office for this project. Hard Copies of the documents will not be provided by the Issuing Office. Electronic documents will be posted on the Town Website. Neither Owner nor Engineer will be responsible for full or partial sets of Bidding Documents, including addenda, if any, obtained from sources other than the Issuing Office.

## **Pre-bid Conference**

A **prebid conference** will be held on Tuesday May 25, 2021 at 10:00am EST at 201 Pine St, MBTS

## **Instructions to Proposers**

Upon the proposer's receipt of Notice of Intent to Award, Proposer shall present to the Town a 100% Performance Bond and a 100% Payment Bond issued by a surety company licensed by the Massachusetts Division of Insurance, and Certificates of Insurance complying with the requirements listed in the General Conditions. The Performance Bond shall be conditioned on the prompt delivery, completion, and satisfactory operation of all components supplied, in accordance with the requirements of this RFP and of the executed Contract. The Payment Bond shall be conditioned on the prompt payment of all supplies used or employed in performance of the contract work. These bonds are intended to cover the Construction portion of the project only. No assignment, modification or change of the contract, or change

in the contract work, or any extension of time for the completion of the work, may release the surety on the bonds. The bonds shall be subject to approval as to sufficiency and form by the Town. The Owner reserves the right to waive any informalities in any or all proposals, to reject any or all proposals, or accept any proposal submitted for the project, as deemed by the Owner to be in its best interests based upon qualifications, experience, demonstrated ability to perform, cost, and other factors deemed by the Owner to bear on the successful outcome of the Contract.

**This Advertisement is issued by:**

Owner: **Town of Manchester-by-the-Sea, MA**

By: **Charles Dam**

Title: **Public Works Director**

Date: **May 10, 2021**

## **SPECIAL CONDITIONS FOR CONSTRUCTION**

### **I. COMMENCEMENT OF WORK**

The Contractor shall be prepared to commence work no later than the date indicated in the Notice to Proceed.

The construction contract is to be substantially completed within 150 calendar days of the start date of the Notice to Proceed. Final completion of the project will occur 30 calendar days after the substantial completion date.

### **II. SCHEDULE**

The following preliminary anticipated schedule has been established in order to ensure that work will be completed in the allotted contract time. This schedule will be confirmed at the time of execution of the contract and will be utilized as the basis for the Contractor's detailed construction schedule.

- Award of Contract: June 17, 2021
- Execution of Contract: June 23, 2021
- Start of Contract Time/Work: June 30, 2021
- Substantial Completion: December 17, 2021
- Final Completion: December 31, 2021

The dates indicated are subject to change.

Hours of construction shall be limited to Monday through Friday, 7:00 am to 5:00 pm. Work outside this time frame will not be allowed under normal circumstances, but may be allowed with approval by the Owner and Engineer. Holiday, Sunday and work after dark will not be permitted.

### **III. FINAL DESIGN**

The Contractor is to provide final design engineering of:

- Building Dimensions and layout
- Compost aeration system
- Biofilter System
- Site Electrical
- Instrumentation

Requirements for these systems are provided on the Construction Drawings and in the project's Technical Specifications. Should the proposer deviate from the design proposed, a PE in the Commonwealth of MA will be required to stamp any and all revised design drawings and obtain MassDEP approval.

### **IV. ORDER OF WORK**

A preliminary construction schedule showing the sequence and duration of the components of work and expected payment schedule shall be submitted by the Contractor prior to the

start of work. Such a schedule shall demonstrate how work will be sequenced and how substantial completion dates will be reached within the specified contract time. Additional detail shall be added, if necessary, during the first week of construction after review by the Engineer. The detailed construction schedule will also show submittal dates required for shop drawings, product data and samples, and product delivery dates.

Review by the Engineer of this schedule shall have no effect on the Contractor's responsibility to perform the work within the contract time. No permission for deviation granted shall excuse the delay of Substantial Completion, unless specifically addressed by Change Order.

The Contractor's schedule shall provide allowances for inclement weather and winter conditions typical for coastal Massachusetts.

V. CONSTRUCTION SEQUENCE

The progress of the work shall be scheduled and sequenced to coordinate required aspects of the work, maintain erosion control, maintain and minimize impact on existing transfer station operations, and to complete the work within the time specified. The work shall, in general, proceed according to the construction sequence indicated on the Construction Drawings.

VI. COORDINATION OF WORK WITH OTHER CONTRACTORS

The Town of Manchester-by-the-Sea operates as a solid waste transfer station that accepts residential waste and recyclables from Town residents. The Contractor shall fully coordinate their work with Town Public Works personnel.

The transfer station is expected to be open on Saturday 10AM to 3PM during construction. However, the Town will cease Wednesday operations during construction to allow the contractor full access to the site Monday thru Friday. Transfer Station maintenance activities will be scheduled with prior notification from the Owner.

VII. COORDINATION OF WORK WITH SUBCONTRACTORS

The Contractor is to fully coordinate the work of all subcontractors having a direct contract with the Contractor for performance of work associated with this Contract, including without limitation, surveyors, material supplies, and equipment suppliers.

The Contractor must coordinate schedules, delivery dates, staging area, trades and all other work according to these Specifications and the Construction Schedule.

VIII. QUALIFICATIONS OF CONTRACTOR

In submitting bid proposals, a Contractor represents that they have the requisite experience and capabilities to perform all aspects of the work, in full accordance with the design and specifications, and within the required project schedule.

IX. WORK ON LANDFILL

Gravels and geotextiles are proposed to be installed over a geomembrane cap that is overlain by 20 to 24 inches of soil. The Contractor must demonstrate that all equipment used for construction over the landfill is designated "Low Ground Pressure" or demonstrate by calculation that the loading of the equipment is less than 4.7 psi at the geomembrane surface. The Owner has received a Post-Closure Use Permit from MassDEP which will allow for construction and operation over the landfill cap. The Contractor is required to adhere to the conditions of the permit, which has been enclosed as Appendix B.

In accordance with Condition 9 of the MassDEP approval, any equipment operating on the grassed portion of the landfill (off the landfill access road) must demonstrate 7 psi ground pressure at the surface.

In anticipation of the use of a conveyor system to transfer composting material to the upper portion of the landfill, a portion of the project involves removal of an 8-foot swath of capping soils and exposing the flexible membrane liner (FML) to install foundation soils for a future conveyor system consisting of a drainage geocomposite, gravels, and stone armoring. This work must be reviewed and inspected by the engineer to document the condition of the FML. Any damage to the FML is the responsibility of the Contractor to repair, which may require a specialty subcontractor that is qualified to perform this type of work. Should a conveyor system not be utilized by the selected proposer then this work would not be required. Other work that involves removal of capping system soils includes the decommissioning of the passive gas vents on top, flat portion of the landfill. This work must also be completed under the supervision of the Engineer.

X. AS-BUILT AND SURVEY CONTROL

The Contractor shall control the layout and construction of all phases of the work. The Contractor shall review layout procedures with the Engineer. Engineer's review shall not relieve Contractor's responsibility for adequacy and sufficiency of survey. Survey control shall be overseen by a MA licensed land surveyor or MA licensed Professional Engineer.

The Contractor shall perform an as-built survey of the completed work, including a topographic survey of the completed site work, equipment, structures, piping, conduit, invert elevations of stormwater pipe and structures, rim elevation of stormwater pond outlet structure, limit of gravel, and other relevant site features. The scale of the drawings shall be no smaller than 1" = 40'. Survey shall be performed under the direction of and the drawings stamped by a MA licensed land surveyor or licensed Professional Engineer, and shall be supplied to Owner in the most current version of AutoCAD, or a version that is acceptable by the Engineer and Owner. Additional requirements are included in Sections 01051 and 01720.

XI. LIMITS OF WORK AND STAGING AREAS

The Contractor must confine their operations to the subject property. Machinery shall be operated with care to prevent damage to adjacent property and injury to people. The Contractor will be required to restore all areas damaged by their operations to equal or better

conditions at no extra cost to the Owner. The restoration will be subject to the approval of the Owner.

XII. SAMPLES AND TESTING

Contractor shall plan their operations to allow adequate time for laboratory tests of soil and rock, and to permit taking of field density tests during compaction. No materials will be placed without review by the Engineer. All material testing will be completed and paid for by the Contractor.

XIII. CONTRACTOR'S EMERGENCY SERVICE

The Contractor shall, at its own cost and expense, make proper arrangements, satisfactory to the Owner, to service emergencies or complaints which may occur at night, over the weekend, when the job is shut down, during the course of work, and/or during the one year correction period. The arrangements shall include provisions to receive complaints from residents received by the Owner and response back to the Owner and Engineer for corrective action as appropriate.

The Contractor shall take measures to control nuisance conditions including but not limited to dust, noise, and odor. Use of calcium chloride for dust control shall be prohibited.

If the Contractor does not meet the obligations to service emergencies or complaints, Owner may, without the obligation to do so, and without waiving the Contractor's default, make such arrangements, and the cost, as well as all damages, shall be charged to the Contractor.

XIV. REGULAR PROJECT MEETINGS

The Engineer will conduct regular Project Meetings at the job site approximately every other week with the Contractor throughout the construction period to enable orderly review of the progress of the Work and provide for a systematic discussion of problems. Meeting shall be held at the Owner's operations office on-site.

The persons designated by the Contractor to participate in these meetings shall have the authority required to commit the Contractor to solutions agreed upon at Project Meetings and be able to discuss historical and projected work in detail.

XV. SITE SECURITY

In addition to the Contractor's responsibilities noted in General Conditions, the Contractor shall be responsible for the security and maintenance of all Work prior to acceptance of the work by the Owner, including repair of damage which may occur prior to acceptance.

XVI. DEFINITIONS

The Owner of the project is the Town of Manchester-by-the-Sea, MA.

XVII. SUBSURFACE INFORMATION

Bidders are notified that the subsurface information presented herein was gathered for general design purposes and may or may not represent actual field conditions, especially between boring locations. The information cannot be construed as a representation of actual subsurface conditions. Actual conditions will vary. Copies of the boring logs are included in Appendix D of the technical specifications.

XVIII. LANDFILL CLOSURE PLANS

The landfill was capped in 1999. The Construction plans for this closure are provided in Appendix B for reference. This information is provided for reference only and is not necessarily representative of actual constructed conditions.

XIX. APPLICABLE PERMITS

The project has received approval from the MBtS Conservation Commission and MassDEP for wetland buffer impacts. The Order of Conditions must be followed and is enclosed as Appendix C. Gravels and geotextiles are proposed to be installed over a geomembrane cap that is overlain by 20 to 24 inches of soil. The bidder must demonstrate that all equipment used for construction over the landfill is designated "Low Ground Pressure" or demonstrate by calculation that the loading of the equipment is less than 4.7 psi at the geomembrane surface. A Post-Closure Use Permit has been received for this project, which is included in Appendix B. The Contractor is required to adhere to the conditions of this approval.

The project will also be completed in accordance with a US EPA National Pollutant Discharge Elimination System (NPDES) Permit for stormwater discharge associated with the construction activities (Construction General Permit or CGP). The Contractor will be responsible for submitting a Notice of Intent for coverage under the CGP and coordinating with the Town to comply with applicable provisions of the permit. Additionally, the Contractor will be required to develop a stormwater pollution prevention plan (SWPPP) for the project that is in compliance with the CGP.

The Contractor will be required to obtain a BWP SW46 Recycling, Composting or Conversion (RCC) Operation permit with MassDEP, pursuant to 310 CMR 16.05 including any applicable fees, prior to operating the facility. The Contractor will also be required to complete any required permitting in compliance with 314 CMR 18.00 Industrial Wastewater Holding Tank and Container Construction, Operation, and Record Requirements for proposed wastewater, process, or holding tanks.

The Contractor will be responsible for any permitting of a conveyor system, which will include the preparation and submittal of a category BWP SW45 Any Facility-Presumptive Approval application pursuant to 310 CMR 19.029 to MassDEP. The bid package includes the design of the conveyor foundation system, which requires removal of capping system components and installation of concrete footings to support a future conveyor. Any conveyor will need to be evaluated against the design of the foundation system by a qualified engineer for adequacy.

XXII. SITE SAFETY AND CONTINGENCY WORK PLAN

A DRAFT Site Safety and Contingency Work Plan (SSACWP) is provided as Specification Section 13001 of these Contract Documents for the Contractor to use as a template in the development of their Health and Safety Plan (Plan) In accordance with Condition 6 of the MassDEP Post Closure Use Permit (enclosed as Appendix B), the Plan will require approval from MassDEP-NERO prior to the start of work. The purpose of the plan is to assess specific site hazards which may be encountered during the project, to provide safety procedures which will reduce personnel exposure to hazardous conditions, and to outline emergency response procedures. The Contractor is to follow the requirements of the plan through the duration of the project.

The Plan shall include protocols for monitoring for landfill gas. Handheld meters shall have the capability of monitoring for methane (and %LEL), hydrogen sulfide, oxygen, carbon dioxide, and volatile organic compounds. The Contractor is responsible for providing qualified personnel that are trained to use and calibrate the meter(s) in accordance with manufacturer and industry standards. The meter(s) shall be on-site throughout construction.

XXIII. PREVAILING WAGE LAW

This project is subject to the requirements of the Massachusetts Prevailing Wage Law which requires prevailing wage rates for public works projects. Documentation of these wages must accompany payment applications for this project.

XXIV. ON SITE CELL TOWER AND UTILITIES

It is the responsibility of the Contractor to coordinate all operations with the on-site cell tower (Crown Castle – 800 788-7011) and affected overhead utilities. Contractor shall work with the cell tower operator and utilities to ensure that appropriate measures are in place to protect the existing infrastructure. The Contractor is responsible for damage to the cell tower and utility infrastructure. The Contractor shall include costs to raise the utilities to provide a minimum 20-foot clearance under compost operations areas.

XXV. OPERATIONS AND MAINTENANCE REQUIREMENTS

The Contractor will be required to develop an Operations and Maintenance manual for the facility, including operations for the transfer station and compost facility. The transfer station Facility Management Plan and the MassDEP Post-Closure Use Permit are enclosed as part of this RFP for reference. The O&M plan shall include appropriate references to these documents, specifically, the requirements for protection of the landfill cap as approved by MassDEP.

XXVI. MassDEP CAP INSPECTION AND REPAIR

As part of the MassDEP Post Closure Use Permit approval, the Town is required to complete a detailed inspection of the landfill capping system and complete any necessary repairs prior to construction. See Condition 7 of the MassDEP approval in Appendix B. The landfill inspection will be completed by the Town's Engineer prior to construction. The Town may choose, at its option, to issue a change order to the contract for the Contractor to complete any needed repair work, which may include removal and replacement of capping soils and repair of the 40-mil HDPE geomembrane liner, which will require the procurement of a qualified liner installer. If required, this work may delay the start of construction, which would be covered under said change order.

END OF SECTION

### Section 3

#### MINIMUM EVALUATION CRITERIA

**PROPOSERS SHALL INITIAL THE APPROPRIATE ENTRY FOR EACH CRITERION AND INCLUDE THIS SHEET IN THE TECHNICAL PROPOSAL SUBMITTAL. THESE ARE "PASS-FAIL" CRITERIA - PROPOSALS WHICH DO NOT MEET ALL OF THESE CRITERIA WILL NOT BE REVIEWED.**

1. Proposer has listed in the Technical Proposal any litigation, with appropriate explanation, against their firm, or litigation with appropriate explanation of any sub-contractors intended to be used on this project.

YES \_\_\_\_\_ NO \_\_\_\_\_

2. Proposer is authorized to do business in the Commonwealth of Massachusetts, including compliance as needed with the provisions of Mass. G.L. Ch. 30, Sec. 39L (this section is available on-line at <http://www.mass.gov/legis/laws/mgl/30-39l.htm>), and will provide to Owner a copy of the associated Certificate of the State Secretary prior to entering into an Agreement with the Town of Manchester.

YES \_\_\_\_\_ NO \_\_\_\_\_

3. Proposer has, or is able to obtain, the insurance coverage and bonds specified in this RFP.

YES \_\_\_\_\_ NO \_\_\_\_\_

4. Proposer will provide and operate a facility and appurtenances capable of processing a minimum 30-ton per week of regional food waste.

YES \_\_\_\_\_ NO \_\_\_\_\_

5. The Proposer has at least three years' experience with operating a food waste curbside pickup program and municipal compost site.

YES \_\_\_\_\_ NO \_\_\_\_\_

6. The Proposer (or proposal team member) has experience in municipal horizontal or vertical construction projects valuing at least \$1.35 million dollars in the past year and five such projects in the last five years.

YES \_\_\_\_\_ NO \_\_\_\_\_

**Section 4**

**TECHNICAL PROPOSAL SUBMITTAL FORM**

1. The undersigned Proposer proposes and agrees, if the Proposal is accepted, to enter into an Agreement with OWNER, to complete all Work as specified or indicated in the Contract Documents for the Total Price Proposed, during the Contract Period as defined in the Request for Proposals, and in accordance with the Contract Documents.
  
2. Proposer accepts all of the terms and conditions of the RFP **or has clearly identified any exceptions taken and any impacts to the price proposal presented.** This Proposal will remain open for thirty (30) days after the date of receipt of proposals. Proposer will sign the Agreement and submit other documents (e.g., Bonds, Insurance Certificates) required by the Contract Documents within the time periods stated in RFP.
  
3. Proposer has examined the entire Request for Proposals (RFP) and the following addenda, receipt of which is hereby acknowledged:

Date

Number

4. Checklist. The following items **shall be included** in the Technical Proposal submittal, which shall be **separately sealed from the Price Proposal**:

- This Technical Proposal Submittal Form
- Certificate of Non-Collusion
- Certificate of Tax Compliance
- Clerk Certificate
- Copy of RFP Section 3, Minimum Evaluation Criteria, with each item initialed by the person signing this Technical Proposal Submittal Form
- List of Projects and References,
- List of Exceptions (if any) to the Town’s RFP, Section 1-6
- List of Exceptions (if any) to the Town’s Construction Documents (Appendix A)
- Proposer’s Technical Proposal, which must include a narrative describing the Proposers competency in executing the Work for the duration of both Construction and Operations, including clearly identifying the role and relationship of any subcontractors; any differentiating characteristics or value additions the Town may want to consider as part of their proposal; and any other information to enable Town’s evaluation of Proposer’s compliance with the Minimum Evaluation Criteria (RFP Section 3); and **information** to enable Town’s review in accordance with the Comparative Evaluation Criteria at the end of this section. The comparative evaluation criteria is provided for informational purposes only, to illustrate the Towns thought process in comparing proposals. It does not need to be returned with the proposal.

5. Communications concerning this Proposal shall be addressed to:

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

Proposer's Contact Person: \_\_\_\_\_

SUBMITTED on \_\_\_\_\_, 2021.

By \_\_\_\_\_  
(Corporation Name)

\_\_\_\_\_  
(State of Incorporation)

By \_\_\_\_\_  
(Name of person authorized to sign, and Signature)

(Corporate Seal)

Attest: \_\_\_\_\_  
(Secretary)

Business address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_

## CERTIFICATE OF NON-COLLUSION

The undersigned certifies under the penalties of perjury that this proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business partnership, corporation, union, committee, club or other organization, entity or group of individuals.

\_\_\_\_\_  
Signature of person submitting contract/proposal

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Business

**CERTIFICATE OF TAX COMPLIANCE**

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

\_\_\_\_\_  
Social Security Number or  
Federal Identification Number

\_\_\_\_\_  
Signature of Individual or  
Corporate Name

\_\_\_\_\_  
Corporate Officer  
(if applicable)

**CLERK CERTIFICATE  
AUTHORIZATION TO SIGN CONTRACT**

At a duly authorized meeting of the Board of Trustees/Directors of the

\_\_\_\_\_ held on  
**Name of Organization**

\_\_\_\_\_ at which all the Trustees/Directors were present and waived  
**Date**

notice, it was VOTED, that \_\_\_\_\_,  
**Name** **Officer**

of this organization, is authorized to execute contract in the name and behalf of said organization, and affix its corporate seal thereto; and such execution of any contract or obligation in this organization's name on its behalf by such \_\_\_\_\_  
**Officer**  
under the seal of the organization shall be valid and binding upon this organization.

I hereby certify that I am the clerk of the \_\_\_\_\_  
**Name of Organization**

and that \_\_\_\_\_ is the duly elected \_\_\_\_\_  
**Type name** **Officer**

of said organization, and that the above vote has not been amended or rescinded and remains in full force and effect as of this date.

**Corporate Seal Here:  
(if no seal, print "none")**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Type Name**

\_\_\_\_\_  
**Title**



**2A. References (considered only for the Operator)**

**Satisfactory customer references for operating a municipal compost facility in the last ten years:**

references at facilities processing greater than 30-ton per week	HA
references at facilities processing approximately 20 to 30-tons per week	A
references at facilities processing less than 20-tons per week	NA
No references for processing municipal compost facilities	U

**2B. References (considered only for the Construction Building Contractor)**

**Satisfactory customer references for Municipal vertical or horizontal construction projects:**

5 or more references for projects greater than \$1.35M value in the past 5 years	HA
1 to 5 projects greater than \$1.35M value in the past 5 years	A
Project references less than \$1.35M in value	NA
No municipal building experience	U

**4. Compliance with Town Specifications**

Technical Proposal fully compliant with specifications, with enhancements that increase value to the Town	HA
Technical Proposal fully compliant with specifications, or has exceptions that do not diminish value to the Town	A
Technical Proposal not fully compliant with specifications	NA
Information in Technical Proposal does not allow full assessment of compliance	U

**5. Curbside collection**

**It is expected that the Town curbside Food Waste Collection Program participation rate will go up over the term of the operations contract. The Operator intends to:**

Provide curbside pickup service to all Manchester residents who want it for the duration of the contract	HA
Provide curbside pickup service to only those already in the curbside program	A
Increase fees corresponding to participation regardless of capacity	NA
No curb side collection of food scraps is considered as part of proposal	U

**Section 5**

**PRICE PROPOSAL FORM**

*This form is to be included only in the Contractor's Price Proposal and is not to be included in the Technical Proposal.*

1. The undersigned Proposer proposes and agrees, if the Proposal is accepted, to enter into an Agreement with OWNER, to complete all Work as specified or indicated in the Contract Documents for the Total Price Proposed during the Contract Period of 20-years being as defined in the Invitation, and in accordance with the Contract Documents.
  
2. Proposer will complete all the Work assigned for the annual payment as entered in this Price Proposal Form.
  
3. Materials and services furnished as part of this contract are exempt from the Massachusetts Sales and Use Tax. All proposals submitted should take this factor into consideration and be calculated accordingly.
  
4. The Price Proposal Form shall be completed in ink or by typing. The price proposed for each item shall be stated in words and figures. Discrepancies between unit prices and the total amounts for that item shall be resolved in favor of the unit prices. Discrepancies between words and figures shall be resolved in favor of words. Discrepancies between an indicated sum and the correct sum shall be resolved in favor of the correct sum.
  
5. **Checklist. The following items shall be included in the Price Proposal**, which shall be separately sealed from the Technical Proposal as described in the RFP:
  - This Price Proposal Form, filled out.
  - Bid Security, as described in the RFP.
  - Additional price information or sample calculations as required to support the Price Proposal (if any)

SUBMITTED on \_\_\_\_\_, 2021.

By \_\_\_\_\_  
(Corporation Name)

\_\_\_\_\_  
(State of Incorporation)

By \_\_\_\_\_  
(Name of person authorized to sign, and Signature)

(Corporate Seal)

Attest: \_\_\_\_\_  
(Secretary)

Business address: \_\_\_\_\_  
\_\_\_\_\_

Phone No.: \_\_\_\_\_

Email Address: \_\_\_\_\_

**CONSTRUCTION OF REGIONAL COMPOST FACILITY**

<u>Item No.</u>	<u>Estimated Quantity</u>	<u>Brief Description of Items With Unit Price in Words</u>	<u>Unit Price in Figures</u>	<u>Amount in Figures</u>
1.1	Lump Sum	Furnish and install all components of the regional compost facility, as shown on the Contract Plans and Specification provided in the Request for Proposal Documents in its entirety.		

**Total Construction Cost of the Regional Compost Facility\* (Item 1.1)**

\_\_\_\_\_ (in words)

\$\_\_\_\_\_ (in figures)

**\* This information is to be submitted for informational purposes only. The Town is currently not contemplating contributing funds to the construction of this project. An agreed upon schedule of values for the construction portion of the Contract will be submitted in accordance the construction documents in Appendix A, for informational purposes only. The Operations portion of the contract will be appropriated annually for the duration of the Contract and paid in monthly installments starting after the facility is Substantially Complete and accepting food waste from the Town.**

**ANNUAL OPERATION AND MAINTENANCE CONTRACT RATES (years)\*\***

<u>Item No.</u>	<u>Estimated Quantity</u>	<u>Brief Description of Items With Unit Price in Words</u>	<u>Unit Price in Figures</u>	<u>Amount in Figures</u>
2.1	5 years	Operations Contract years 1-5  _____	\$ _____	\$ _____
		Per year		
2.2	5 years	Operations Contract years 6-10  _____	\$ _____	\$ _____
		Per year		
2.3	5 years	Operations Contract years 11-15  _____	\$ _____	\$ _____
		Per year		
2.4	5 years	Operations Contract years 16-20  _____	\$ _____	\$ _____
		Per year		

**\*\* The Proposer may include any proposed tipping fees and/or schedule for said fees, as well as all exclusions as an attachment to the price proposal. Anything not included in a list of exclusions but referenced in the RFP shall be assumed to be included in the above price. Price as shown above should be the base price for all services offered and detailed in the Technical Proposal including all town-wide curbside collection, maintenance, insurance, utilities, etc. A negative value would indicate a payment to the Town. The finished compost will become the property of the Operator; resale of the finished compost and all else incidental thereto is the responsibility of the Operator and not thought to be reflected in the price above.**

**SECTION 6**

**DRAFT AGREEMENT FOR THE CONSTRUCTION, OPERATION, AND  
MAINTENANCE OF THE NORTH SHORE REGIONAL COMPOST FACILITY**

**BY AND BETWEEN**

\_\_\_\_\_,

**AND**

**TOWN OF MANCHESTER-BY-THE-SEA, MASSACHUSETTS**

\_\_\_\_\_, 2021

## **AGREEMENT FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF THE NORTH SHORE REGIONAL COMPOST FACILITY**

This AGREEMENT FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF THE NORTH SHORE REGIONAL COMPOST FACILITY (this “Agreement”), dated as of the \_\_\_\_ day of \_\_\_\_, 2021 (the “Execution Date”), is made by and between \_\_\_\_\_, a \_\_\_\_\_ corporation with an address of \_\_\_\_\_ (“Contractor”), and Town of MANCHESTER-BY-THE-SEA, Massachusetts, acting by and through its Board of Selectmen, with an address of 10 Central Street, Manchester-by-the-Sea, MA 01944 (“Town”). All references herein to the “parties” or “Parties” shall mean the above-described Town and Contractor.

**WHEREAS**, the Town desires the construction and operation of the North Shore Regional Public Works Compost Facility (the “Facility”), to be located at the site of the Manchester landfill at 201 Pine Street, Manchester-by-the-Sea, Massachusetts 01944 by the Contractor; and

**WHEREAS**, the Facility will be owned by the Contractor and sited on Town-owned property, identified by Town records as Tax Map 63 Lot 7, with a total area of 31.65 acres and located in the Town’s Limited Commercial District, as described in Exhibit A (the “Site”); and

**WHEREAS**, the Town issued a Request for Proposals for the construction, operation and maintenance of the Facility, including a Scope of Services set out in Sections 1-6, all of which are incorporated herein by reference (“RFP”); and

**WHEREAS**, the Contractor submitted a proposal to the Town for the construction, operation and maintenance of the Facility pursuant to the RFP (“Proposal”), which is incorporated herein by reference; and

**WHEREAS**, the Town determined, based on its evaluation of the Proposal in accordance with the RFP, that the award of this Agreement to the Contractor was in the best interests of the Town; and

**WHEREAS**, the Manchester-by-the-Sea Town Meeting has voted to authorize the Board of Selectmen to execute this Agreement.

**NOW, THEREFORE**, in consideration of the representations, warranties, promises, covenants and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows.

### **1. DEFINITIONS**

For the purpose of this Agreement, the following words and phrases shall have the following meanings:

“Acceptance Date” means the date on which the Acceptance has occurred or is deemed to have occurred under Article IV.

“Acceptance Date Conditions” has the meaning specified in Section 4.2 hereof.

“Contract Documents” means this Agreement and appendices hereto, and the documents and materials referenced herein, including without limitations, the RFP, Contractor’s proposal submitted in response to the RFP and all appendices.

“Drawings and Specifications” means the construction drawings and technical specifications which include Shop Drawings, Product Data or Samples for the construction of the Facility.

“Force Majeure” shall mean those items outside of either party’s control, including (but not necessarily limited to):

- (a) acts of God (but not including reasonably anticipated weather conditions for the geographic area of the Facility);
- (b) fire, flood and earthquakes;
- (c) the failure of any appropriate governmental agency or private utility to provide and maintain utilities;
- (d) pandemic;
- (e) the preemption, confiscation, diversion, destruction, or other interference in possession or performance or delivery or supply of materials or services by, on behalf of, or with Town of a governmental body in connection with a declared or asserted public emergency or any condemnation or other taking by eminent domain or similar action of any portion of the Facility;

None of the following acts, events, or conditions shall constitute Force Majeure:

- (a) general economic conditions, interest or inflation rate fluctuations, commodity prices or changes in prices, or currency or exchange rate fluctuations;
- (b) changes in the financial condition of the Contractor, the Guarantor, or any of their affiliates or subcontractors;
- (c) union work rules which increase the Contractor’s operating costs;
- (d) any impact of prevailing wage laws on the Contractor’s costs;
- (e) the consequences of Contractor error, including any errors of affiliates or subcontractors;
- (f) failure of any subcontractor or supplier to furnish labor, services, materials or equipment on the dates as agreed;
- (g) strikes, work stoppages or labor disputes of Contractor’s employees;
- (h) failure of equipment owned or leased by the Contractor (unless caused by Force Majeure);
- (i) litigation against the Contractor or an affiliate or subcontractor;
- (j) any unknown subsurface conditions existing at the Site and Transfer Station sites which adversely affects the ability of the Contractor to construct the Facility, which could have been discovered with reasonable diligence by the Contractor on or before the Proposal due date; or
- (k) The cost to comply with any permits or approvals issued by any governmental body for the design, construction, or operation of the Facility.

“Governmental Authority” shall mean all agencies, authorities, boards, bodies, commissions, courts, instrumentalities, legislatures and offices of any municipal, local, state or federal governmental unit or subdivision.

“Hazardous Waste” shall mean any pollutant, contaminant, chemical, industrial, toxic or other waste that constitutes hazardous waste as defined pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 9601 *et seq.*, or M.G.L. c. 21E, or any regulations adopted hereunder at 310 C.M.R. 30.00.

“MADEP” shall mean the Massachusetts Department of Environmental Protection.

“Municipal Solid Waste or (MSW)” shall have the meaning in the Massachusetts department of Environmental protection Solid Waste Regulations.

“Permit” shall mean any and all permits, licenses, certificates, consents, registrations or other approvals required by any Governmental Authority to construct, operate, use, maintain, expand or close the entirety or any portion of the Facility, including without limitation all renewals and modifications thereof.

“Substantial completion” shall mean the date certified by the Town when construction is sufficiently complete, in accordance with the Contract Documents, so the Town may occupy the Facility, or designated portion(s) thereof, for the use for which it is intended.

“Ton(s)” shall mean 2,000 pounds or the volume equivalent.

## **2. CONDITIONS PRECEDENT**

2.1 Effectiveness of the Agreement. The Parties agree that the provisions of this Agreement shall become effective upon execution of the Agreement (the “Effective Date”).

## **3. CONSTRUCTION OF FACILITY**

3.1 The Contractor shall, at its sole cost and expense, furnish all labor, materials, equipment and insurance to perform all work required for the Facility known as the North Shore Regional Compost Facility, in strict accordance with the Contract Documents and all related Drawings and Specifications (the “Work”). The said Documents, Specifications, Drawings and any general or supplemental conditions that are included in as part of the Request for Proposal and incorporated herein by reference and are made a part of this Agreement. Contractor is solely responsible for complying with any terms and conditions related to the Public Funds in the event available. In the event that such Public Funds are not available, or Contractor fails to comply with any terms and conditions related thereto, the Contractor is fully responsible for all Work without any further contribution on the part of the Town.

3.2 It is agreed that time is of the essence of this Agreement. The Contractor shall commence and prosecute the work under this Agreement upon execution hereof and shall complete achieve Substantial Completion on or before \_\_\_\_\_.

- A. Time as Essential Condition: It is understood and agreed that the commencement of and substantial completion of the work are essential conditions of this Agreement. It is further agreed that time is of the essence for each and every portion of the Contract Documents wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract Documents any additional time is allowed for the completion of any work, the new time fixed by such extension shall be of the essence of this Agreement. It is understood and agreed that the times for the completion of the Work are reasonable, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.
- B. Progress and Completion: Contractor shall commence work promptly upon execution of this Agreement and shall prosecute and complete the Work regularly, diligently and uninterruptedly at such a rate of progress as will insure Substantial Completion within \_\_\_ calendar days after the Effective Date, and will be completed and ready for final payment in accordance within \_\_\_ calendar days after the Effective Date.
- C. Liquidated Damages: It is expressly agreed between the Contractor and the Town that the Contractor will be responsible for all damages which may arise due to the Contractor's failure to substantially complete the work within the above specified time. If the Contractor shall neglect, fail or refuse to complete the work within the specified number of days, or any extension thereof authorized by the Town, Contractor agrees, as a part of the consideration for the execution of this Contract by the Town, to pay the Town the amount specified herein, not as a penalty, but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day, excluding Saturdays, Sundays and legal Holidays, that the Contractor shall be in default of Substantial completion after the date specified in the Agreement. Due to the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Town would in such event sustain, said amount is agreed to be the amount of damages which the Town would sustain, and said amount shall be retained from time to time by the Town from current periodic estimates. The amount of liquidated damages shall be \$1,000.00 per day.
- 3.3 Direction of the Work: The Contractor shall supervise and direct the Work, using his best skills and attention which shall not be less than such state of skill and attention generally rendered by the contracting profession for Facility's similar to the Facility in scope, difficulty and location. The Contractor shall maintain adequate supervisory personnel at the Site during the performance of the Work. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement.
- 3.4 Responsibility for the Work: The Contractor shall be responsible to the Town for the acts and omissions of his employees, subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor. This obligation shall also extend to the presence on the Site of suppliers of materials or equipment, their employees, contractors, and agents engaged in the work.

- 3.5 The Contractor shall not be relieved from his obligations to perform the construction of the Facility in accordance with the Contract Documents either by the activities or duties of the Town in its administration of the Agreement, or by inspections, tests or approvals required or performed by persons other than the Contractor.
- 3.6 Permits and Fees: Unless otherwise expressly provided, the Contractor shall secure and pay for all permits and fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Agreement and which are legally required at the time the bids are received, and the same shall at all times be the property of the Town and shall be delivered to the Town upon completion of the Facility.
- 3.7 Notices, Compliance With Laws: The Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work. The Contractor shall provide the Town with reproductions of all permits, licenses and receipts for any fees paid. The Town represents that it has disclosed to the Contractor all orders and requirements known to the Town of any public authority particular to this Agreement.
- 3.8 If the Contractor observes that any of the Contract Documents are at variance with applicable laws, statutes, codes and regulations in any respect, he shall promptly notify the Town in writing, and any necessary changes shall be accomplished by appropriate modification.
- 3.9 If the Contractor performs any Work which he knows or should know is contrary to such laws, ordinances, rules and regulations, and without such notice to the Town, he shall assume full responsibility therefor and shall bear all costs attributable thereto.
- 3.10 In the performance of the Work, the Contractor shall comply with all applicable federal, state and local laws and regulations including those relating to workplace and employee safety. The Contractor shall notify the Town immediately of any conditions at the place of the work which violate said laws and regulations and shall take prompt action to correct and eliminate any such violations.
- 3.11 Facility Superintendent: The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Site at all times during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.
- 3.12 Progress Schedule: The Contractor, immediately after being awarded the Contract, shall prepare and submit for the Town's information an estimated progress schedule for the Work. The progress schedule shall be related to the entire Facility to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

3.13 Drawings, Specifications and Submittals:

A. The Contractor shall maintain at the Site for the Town one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, and "As-Built" Drawings and Specifications in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be delivered to the Town upon completion of the Work.

B. By approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

C. The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Town's approval of Shop Drawings, Product Data or Samples unless the Contractor has specifically informed the Town in writing of such deviation at the time of submission and the Town has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Town's approval thereof.

D. The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Town on previous submittals.

3.14 No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Town. All such portions of the Work shall be in accordance with approved submittals.

3.15 Protection of the Work and Town's Property: The Contractor shall at all times safely guard the Town's property, including without limitation the Site, from injury or loss in connection with this Agreement. He shall at all times safely guard and protect his own work, and that of adjacent property from damage. The Contractor shall replace or make good any such damage, loss or injury. The Contractor shall clean the work area and restore it to its original condition upon completion of the work.

3.16 Quality of the Work: The Contractor shall perform the work in a good, workmanlike manner. The Contractor hereby guarantees that the entire work constructed by him under the Agreement will meet fully all requirements thereof as to quality of workmanship and materials. The Contractor hereby agrees to make at his own expense any repairs or replacements made necessary by defects in materials or workmanship supplied to him that become evident within one (1) year after the Acceptance Date and as otherwise required by this Agreement, and to restore to full compliance with the requirements set

forth herein any part of the work constructed hereunder, which during said period is found to be deficient with respect to any provisions of the Contract Documents. The Contractor also agrees to hold the Town harmless from claims of any kind arising from damage due to said defects. The Contractor shall make all repairs and replacements promptly upon receipt of written orders for same from the Town. If the Contractor fails to make the repairs and replacements promptly, the Town may do the work and the Contractor shall be liable to the Town for the cost thereof.

- 3.17 Warranty: The Contractor guarantees to Town that all materials incorporated into the work will be new unless otherwise specified or agreed. Upon the Acceptance Date, the Contractor shall deliver to the Town copies of all manufacturers' warranties, together with such endorsements or assignments as are necessary to ensure to the Town the full rights and benefits of such warranties.
- 3.18 All information given in the Contract Documents relating to subsurface and other conditions, natural phenomena, existing pipes, and other structures is from the best sources at present available to the Town. All such information is furnished only for the information and convenience of the Contractor and is not guaranteed.

It is agreed and understood that the Town does not warrant or guarantee that the subsurface or other conditions, natural phenomena, existing pipes, or other structures encountered during construction will be the same as those indicated in the Contract Documents.

Contractor has familiarized himself with the nature and extent of the Contract Documents, work, locality, and with all local conditions and federal, state, and local laws, rules, ordinances, and regulations that in any manner may affect costs, progress, or performance of the work. Contractor has made, or has caused to be made, examinations, investigations, and tests and studies of such reports and related data in addition to those referred to in the paragraph above as he deems necessary for the performance of the Work in accordance with the Contract Documents; and no additional examinations, tests, investigations, reports, and similar data are or will be required by the Contractor for such purposes.

Contractor has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the Contract Documents. Contractor has given the Town written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents, and the resolution thereof by the Town is acceptable to the Contractor.

It is further agreed and understood that the Contractor shall not use or be entitled to use any of the information made available to him or obtained in any examination made by him in any manner as a basis of or ground for any claim or demand against the Town, arising from or by reason of any variance which may exist between the information made available and the actual subsurface conditions or other conditions or structures actually

encountered during the construction work, except as may otherwise be expressly provided for in the Contract Documents.

- 3.19 Wage Rate: When work is performed using State or Local funds, Contractor shall pay Prevailing Wage Rates as determined by the Commissioner of the Department of Labor and Workforce Development under the provisions of Massachusetts General Laws, Chapter 149, Section 26 to 27G, as amended, apply to the Facility. It is the responsibility of the Contractor to provide the Town with certified payrolls and to comply.

#### **4. ACCEPTANCE**

4.1 The Contractor shall give the Town at least 30 days prior written notice of the expected date of Substantial Completion and of commencement of start-up operations at the Facility in preparation for conducting the acceptance tests, such testing to be mutually agreed to in writing (“Acceptance Test”).

4.2 The following conditions shall constitute the “Acceptance Date Conditions,” each of which must be satisfied in all material respects by the Contractor in order for an Acceptance Date to occur, and each of which must be and remain satisfied as of the Acceptance Date:

- A. The Contractor shall demonstrate that Substantial Completion has occurred;
- B. Contractor shall have obtained and delivered to the Town, the Operation Performance Bond as required by Section 19 hereof;
- C. Required Operation Period Insurance. The Contractor shall have submitted to the Town certificates of insurance for all required operational Insurance;
- D. Operating Governmental Approvals. All applicable Governmental Authority approvals required under applicable law which are necessary for the continued routine operation of the Facility shall have been duly obtained by the Contractor and shall be in full force and effect. Copies of all such Governmental Authority approvals, to the extent not in the Town’s possession, certified by the Contractor shall have been delivered to the Town;
- E. Equipment Warranties and Manuals. The Contractor shall be in possession of, and shall have delivered to the Town, copies of the warranties of machinery, equipment, fixtures and vehicles constituting a part of such Facility, together with copies of all related operating manuals supplied by the equipment supplier.

4.3 Acceptance Date. The “Acceptance Date” shall be the day on which all Acceptance Date Conditions have been achieved for the Facility as determined by the Town.

4.4. Non-concurrence. If the Town determines that it does not concur with such certification, the Town shall immediately send written notice to the Contractor of the basis for its disagreement. In the event of any such non-concurrence by the Town, either party may elect to refer the dispute to pursuant to Section 21 hereof. The parties acknowledge and agree that any decision rendered by the Mediator as to whether any Acceptance has occurred shall be non-binding. Acceptance shall not be deemed to have been achieved unless the applicable Acceptance Test, conducted in a unified and continuous manner, demonstrates that all of the

applicable Acceptance Date Conditions have been met. In the event the Contractor, in conducting the Acceptance Test, does not successfully meet the Acceptance Date Conditions, the Town shall have the right, in its sole discretion, to permit the Contractor to re-test such Facility for compliance.

4.5 No Acceptance Waiver or Release. Unless other provisions of this Agreement specifically provide to the contrary, none of the following, without limitation, shall be construed as the Town's acceptance of any construction of the Facility which is defective, incomplete, or otherwise not in compliance with this Agreement, as the Town's release of the Contractor from any obligation under this Agreement, as the Town's extension of the Contractor's time for performance, as an estoppel against the Town, or as the Town's acceptance of any claim by the Contractor:

A. The Town's payment to the Contractor or any other person with respect to the Plant;

B. The Town's review or acceptance of any drawings, submissions, punch lists, other documents, certifications (other than certificates relating to completion or Acceptance, or Work of the Contractor or any subcontractor);

C. The Town's review of (or failure to prohibit) any construction applications, means, methods, techniques, sequences, or procedures for the Work;

D. The Town's entry at any time on the Site (including any area in which the Work is being performed);

E. Any inspection, testing, or approval of any Work (whether finished or in progress) by the Town or any other person;

F. The failure of the Town or any Town consultant to respond in writing to any notice or other communication of the Contractor; or

G. Any other exercise of rights or failure to exercise rights by the Town hereunder.

4.6 All costs for design, construction, permitting, start-up, testing for Acceptance, and any operations prior to the Acceptance Date, including costs for labor, materials, chemicals and utilities, shall be borne by the Contractor without reimbursement by the Town.

## **5. OPERATION AND MAINTENANCE OF FACILITY**

5.1 Exclusive Use. Commencing on the Acceptance Date, the parties agree that Contractor shall own the Facility in fee and hereby grants Contractor the exclusive right to occupy, operate and use, as further set forth herein, the Facility and continuing during the Term of this Agreement, including without limitation, the following.

a) The exclusive right to take possession of, occupy and have exclusive use of the Facility and the Site.

b) The exclusive franchise, license and privilege to manage MSW and compostable materials, and to otherwise operate and maintain the Facility, as described in the Request for Proposal, with the full right to accept such material from any source, including but not limited to any person or entity other than the Town or the residents of the Town. In connection with the forgoing, the parties acknowledge that Contractor shall have all right to and shall own all revenue generated from any MSW or compostable material delivered to the Facility.

c) The use of any Permits that have been issued in the name of the Contractor or the Town and are required for Contractor to operate the Facility and fulfill its obligations under this Agreement.

### 5.3. Inspection.

a) Contractor expressly agrees that Town officials, as designated by the Director of Public Works, may visit the Facility during regular operating hours. All visits or inspections shall be conducted in such a manner so as not to interfere with Contractor's operations and in compliance with all reasonable safety rules adopted by Contractor. This Section shall not be in derogation of the right of any public official to carry out any public duty in accordance with any applicable laws, including but not limited to Board of Health officials and authorized agents acting under Chapter 111 of the Massachusetts General Laws, or otherwise.

b) During the Term of this Agreement, the Town shall have the right at any time to install, at its sole cost and expense, any video electronic device, including cameras, to monitor the operation of the Facility.

5.4 Tipping Fee. Beginning on the seventh (7<sup>th</sup>) anniversary of the Acceptance Date and for the duration of the Term of this Agreement, the Contractor shall pay to the Town, an annual tipping fee to be calculated as follows:

<INSERT Calculations for Tipping fee if applicable>

5.5 Late or Inadequate Payments. In the event that any payment is not made as required by this Agreement, interest shall accrue on such late payment at the annual rate of ten percent (10%) on the unpaid balance from the first day of the delinquency until payment has been made in full.

## 6. OBLIGATIONS OF THE TOWN

6.1 Cooperation. The Town shall execute at Contractor's request all documents consistent with the purposes of this Agreement and that are reasonably necessary to obtain any Permits required for the operation, Closure or performance of Post-Closure Activities by Contractor at the Site.

## 7. USE AND COMPLIANCE WITH LAW

7.1 The Facility shall be kept by Contractor in substantial order and repair outside and inside at its sole cost and expense. Contractor shall, at its sole cost and expense, perform all O&M Work in compliance with the Permits and with all orders, regulations, rules and requirements of every kind and nature, now and hereinafter in effect, of all Governmental Authorities having the power to enact, adopt, impose or require the same whether they be usual or unusual, ordinary or extraordinary or whether they or any of them relate to environmental requirements or otherwise.

7.2 Contractor shall be obligated to comply with the terms of this Agreement in addition to the requirements of any applicable Permits. To the extent that this Agreement imposes obligations on Contractor that are more stringent than those under any applicable Permit, or that are more favorable to the Town, Contractor shall be obligated to comply with the terms of this Agreement in addition to the requirements imposed by such Permit.

## **8. GENERAL POWERS**

8.1 In addition to the other powers granted to Contractor, it is expressly acknowledged that in the exercise of the ownership, dominion and control of the Facility, Contractor will be free to subcontract out O&M Work that it deems appropriate, subject to the approval of the Town, which such approval shall not be unreasonably withheld. The Contractor shall require that the subcontractors follow the provisions of this Agreement which shall be incorporated by reference into any subcontract. Contractor acknowledges and agrees that, notwithstanding such subcontracting, it shall remain primarily liable for its obligations under this Agreement.

## **9. RECORDS/AUDITS**

9.1 The acceptance by the Town of any payments under this Agreement shall be without prejudice to the Town's rights to an examination of Contractor's books and records from the operation of the Facility in order to verify the amount of MSW and compostable materials received at the Facility and the calculation of any such payments due to the Town.

9.2 Contractor shall, with each payment made hereunder by Contractor to the Town, deliver to the Town a written statement prepared and certified by Contractor, showing in detail the calculation of the respective payment. In addition, no later than thirty (30) days from the termination of each calendar year, Contractor shall submit an annual report providing a detailed accounting of the amount of Acceptable MSW and compostable material and other allowable materials received at the Facility during that calendar year.

9.3 Contractor shall keep accurate and true records, books, data and accounts, in compliance with generally accepted accounting principles, with respect to all MSW and compostable material and other allowable materials of whatever kind received at the Facility, including without limitation all original invoices and payment schedules relating to the operation of the Facility, all trucking records, weight slips, and any and all other documents pertaining to the amount of MSW and compostable material and other allowable materials received at the Facility per day.

9.4 The Town and its agents and auditors shall have the right at all reasonable times, to inspect and examine the accounts, records, books, contracts and other data concerning the gross volume of business conducted under this Agreement.

**10. REPRESENTATIONS AND WARRANTIES OF THE TOWN**

10.1 The Town represents and warrants to Contractor as follows.

a) The Town is a municipality in the Commonwealth of Massachusetts with full legal right, power and authority to enter into and to fully and timely perform its obligations under this Agreement.

b) The Town, acting through its Town Meeting, has the power to authorize the Board of Selectmen to execute and deliver this Agreement, and this Agreement constitutes a legal, valid and binding obligation of the Town, enforceable against the Town in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable, and such enforceability may also be subject to the exercise of judicial discretion in appropriate cases.

c) Neither the execution or the delivery by the Town of this Agreement nor the performance by the Town of its obligations in connection with the transactions contemplated hereby or the fulfillment by it of the terms and conditions hereof conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to it or materially conflicts with, violates or results in a breach of any term or condition of any order, judgment or decree or any agreement or instrument to which the Town is a party or by which the Town or any of its real or personal property are bound or constitutes a default.

d) No approval, authorization, order, consent, declaration, registration or filing with any Governmental Authority or referendum of voters which has not been obtained is required for the valid execution and delivery by the Town of this Agreement or the performance by the Town of its obligations hereunder.

e) There are no pending, or to the best of the Town's knowledge, threatened actions, suits or proceedings at law or in equity before or by any Governmental Authority against the Town in which an unfavorable decision, ruling or finding would materially adversely affect the performance by the Town of its obligations hereunder or other transactions contemplated hereby or that in any way would materially adversely affect the validity and enforceability of this Agreement.

**11. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR**

11.1 Contractor represents and warrants to the Town as follows.

a) Contractor is a corporation duly incorporated, validly existing and authorized to do business under the laws of the Commonwealth of Massachusetts with full legal right, power and authority to enter into and fully and timely perform its obligations under this Agreement. In the alternative, if Contractor is a foreign corporation, it has it has registered with

the Massachusetts Secretary of State pursuant to G.L. c. 156D, §15.03, and is duly authorized to transact business in the Commonwealth.

b) Contractor has duly authorized, executed and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation enforceable against Contractor in accordance with its terms.

c) Neither the execution or delivery by Contractor of this Agreement nor the performance by Contractor of its obligations in connection with the transactions contemplated hereby or the fulfillment of the terms and conditions hereof conflicts with, violates or results in a breach of any law or governmental regulation applicable to it or materially conflicts with, violates or results in a breach of any term or condition of any order, judgment or decree or any agreement or instrument to which Contractor is a party or which Contractor or any of its real or personal property are bound or constitutes a default thereunder.

d) No approval, authorization, order, consent, declaration, registration or filing with any Governmental Authority is required for the valid execution and delivery by Contractor of this Agreement.

e) There are no pending, or to the best of Contractor's knowledge, threatened actions, suits, administrative actions or proceedings at law or in equity before or by any Governmental Authority against Contractor in which an unfavorable decision, ruling or finding would materially and adversely affect the performance of Contractor of its obligations hereunder or any other transaction contemplated hereby or that in any way would materially adversely affect the validity or enforceability of this Agreement.

## **12. SURVIVAL OF WARRANTIES, REPRESENTATIONS AND COVENANTS**

12.1 All representations, warranties, promises, agreements, covenants and statements made herein or in any Exhibit annexed hereto or in any instruments or document delivered by or on behalf of any party pursuant to this Agreement shall extend for the duration of the Term of this Operating Agreement, as it may be extended, regardless of what investigations the parties may have made before or after the date of this Agreement, except those representations and warranties which are expressly waived in writing by the party benefiting therefrom. Nothing herein contained shall require that a party waive any representations and warranty.

## **13. INDEMNIFICATION**

13.1 Contractor's Obligation to Indemnify Town. Contractor agrees to defend, indemnify, hold harmless and discharge the Town from and against any and all claims, penalties or assessments arising from the Work, O&M Work or Contractor's use of the Facility. Contractor further agrees to indemnify and hold harmless the Town from and against any and all claims by third parties which the Town may suffer, incur, be responsible for or pay out as a result of bodily or personal injuries (including death) to any person, damage (including loss of use) to any property, including environmental remediation, clean up and related costs to the extent caused by or arising out of breach of any of the terms hereof by Contractor, or the willful misconduct or negligent acts or omissions of Contractor, its employees, subcontractors, assignees

or transferees in the performance of this Agreement. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

#### **14. DEFAULT; TERMINATION; EXPIRATION OF THE TERM**

##### **14.1 Termination by the Parties.**

a) If any of the following occurs, Contractor shall be in default under this Agreement, and the Town may, upon thirty (30) days prior written notice to Contractor and in compliance with the provisions of this Section, terminate this Agreement and require Contractor to vacate and surrender possession of the Site:

- i. any of Contractor's representations or warranties were not materially true and accurate when made, which materially and adversely affects the ability of the Town to perform any material obligation hereunder or to obtain the benefits set forth in this Agreement;
- ii. Contractor fails to pay any amount required to be paid hereunder within ten (10) days from its due date or fails to perform any material obligation;
- iii. Contractor fails to achieve the Acceptance Date in accordance with the terms this Agreement;
- iv. Contractor fails to fulfill its obligations herein in accordance with the terms of this Agreement, including the Work or O&M Work;
- v. Contractor files a voluntary petition, or there is filed against Contractor of an involuntary petition, in bankruptcy or insolvency or adjudication of bankruptcy or insolvency of Contractor, or the filing by Contractor of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy act, or any other present or future applicable federal, state, or other statute or law, or the assignment by Contractor for the benefit of creditors, or appointment of a Trustee, receiver, or liquidator of all or any part of the assets of Contractor, and within one hundred twenty (120) days after the commencement of any such proceeding against Contractor, such proceeding shall not have been dismissed, or if, within one hundred twenty (120) days after the appointment of any trustee, receiver, or liquidator of Contractor or of all or any part of Contractor's property, without the consent or acquiescence of Contractor, such appointment shall not have been vacated or otherwise discharged, or if any execution or attachment shall be issued against Contractor or any of Contractor's property pursuant to which the Property shall be taken or occupied or attempted to be taken or occupied;
- vi. Contractor fails to maintain any Insurance required under this Agreement.

b) If any of the following occurs, the Town shall be in default under this Agreement, and Contractor may, upon thirty (30) days prior written notice to the Town and in compliance with the provisions of this Section, terminate this Agreement if:

- i. any of the Town's representations or warranties were not materially true and accurate when made, which materially and adversely impairs Contractor's ability to perform any material obligation hereunder or to obtain the benefits of this Agreement; or
- ii. the Town fails to fulfill any material obligation under this Agreement.

c) This Agreement may be terminated by either party, upon giving the other party at least one hundred eighty (180) days prior written notice thereof by Contractor or the Town, if a Force Majeure event has caused the Facility to cease operation for a period of three hundred sixty five (365) days despite the use of all reasonable efforts to resume operations, or renders the Contractor or the Town unable to perform its respective material obligation under this Agreement.

14.2 Right of Non-Defaulting Party to Cure Breach. In the event of a breach of this Agreement, and upon thirty (30) days prior written notice to the breaching party, the non-breaching party may, but shall not be obliged to, cure such breach, provided that the non-defaulting party does not receive, within said thirty (30) day period, written notice from the defaulting party that it will itself cure the breach under Section 14.4 below. The non-defaulting party shall have the right to collect from the defaulting party the reasonable costs of curing the breach. The non-breaching party shall use its best efforts to employ an economically reasonable method of curing any such breach. If any breach occurs and is not cured in the manner allowed hereunder, then this Agreement shall continue in force and the non-breaching party shall, notwithstanding anything to the contrary herein, have the right to initiate dispute resolution.

14.3 Cure. Neither party shall have the right to terminate this Agreement under this Section 14, except in the case of 14.1(a)(ii), unless the non-defaulting party gives notice to the defaulting party of such breach and (a) the defaulting party shall fail to cure the breach within ninety (90) days of receipt of written notice from the non-breaching party or (b) if the breach is such that it cannot be reasonably completed within said ninety (90) day period, the defaulting party shall fail to demonstrate within such cure period that it is actively and continuously pursuing a course of action which can reasonably be expected to lead to a curing of the breach (in which case the ninety (90) day period will be extended for so long as the breaching party is actively and continuously pursuing such a course); provided, however, that in the event of the failure of any party to this Agreement to pay the other party or parties any sum or amount required to be paid when due hereunder, cure shall consist of payment which will be made within forty-five (45) days of written demand from the non-breaching party.

14.4 Surrender and Removal. At the expiration or earlier termination of this Agreement, the Contractor shall peaceably and quietly quit and surrender to the Town the Site and discontinue operating the Facility and its other rights hereunder, without delay and the Contractor shall restore the Site to a condition that existed as of the Effective Date, reasonable wear and tear excepted, and remove any and all improvements and personal property thereon,

including without limitation the Facility, from the Site within ninety (90) days following such expiration or termination. Contractor will repair at its sole cost any damage to the Site caused by such removal. If such improvements shall not have been so removed within the ninety (90) day period, title to the improvements, including without limitation the Facility, will thereupon become vested in the Town. Contractor shall remain liable for any costs and liabilities incurred by the Town in securing a new contractor to perform Contractor's obligations under this Agreement.

**15. STRICT PERFORMANCE**

15.1 The failure of either party to insist on the strict performance of any of the terms, covenants and provisions of this Agreement or to exercise any option herein contained shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition, provision or option.

**16. INSURANCE**

16.1 Coverage Amounts. Commencing on the Effective Date, Contractor agrees to provide and maintain throughout the Term of this Agreement, and for so long as Contractor or anyone claiming by, through or under Contractor remains in occupancy of any portion of the Property, insurance coverage in the amount set forth below or such other amounts as the parties may agree upon from time to time:

<u>Coverage</u>	<u>Limits of Liability</u>
Workers' Compensation	Statutory
Employer's Liability	\$1,000,000.00
Personal/Bodily Injury Liability	\$3,000,000.00 Combined Single Limit
Property Damage Liability	\$3,000,000.00 Combined Single Limit
Automobile Bodily Injury	\$3,000,000.00 Combined Single Limit
Automobile Property Damage	\$3,000,000.00 Combined Single Limit
Excess Umbrella Liability	\$5,000,000.00 Each Occurrence
Professional Liability	\$1,000,000

16.2 Environmental Impairment. During the Term of this Agreement or for so long as Contractor or anyone claiming by and through Contractor remains in occupancy of any portion the Property, Contractor shall cause the Facility to be insured for third party environmental impairment under a per occurrence basis. The policy shall provide umbrella coverage of not less than \$5,000,000.00.

16.3 Certificates of Insurance. Insurance, and any renewals thereof, shall be evidenced by certificates of insurance issued or countersigned by a duly authorized representative of the issuer and delivered to the Town for its review prior to the execution of the Agreement or, in the case of a renewal, at least thirty days prior to the expiration of the then effective policy. The certificates of insurance shall name the Town and its designee(s) as an additional insured, provide for 30 days written notice to the Town of cancellation (except with respect to cancellation for non-payment of premiums to which a 10-day written notice shall be required), intent not to renew, or, to the extent that it would affect the Town or its rights or obligations under such policy or the Agreement, any reduction or change in its coverage by the insurance company.

16.4 Qualification of Insurance and Surety Company. The insurance and surety company providing coverages and the performance bond shall (1) have a rating of "A" or better in the latest revision of the A.M. Best Company's Insurance Report; (2) be listed in the United States Treasury Department's Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies"; and (3) hold a certificate of authority to transact surety business in the Commonwealth of Massachusetts.

## **17. ASSIGNMENT**

17.1 This Agreement shall be binding and inure to the benefit of Contractor and the Town, together with their respective successors and assigns. This Agreement may not be assigned or encumbered by any party without the written consent of the other party, not to be unreasonably conditioned, withheld or delayed. Notwithstanding the above, Contractor may, without the written consent of the Town, assign: (a) its rights and obligations to an affiliate of the Contractor, provided that the Affiliate signs a guaranty to secure the obligations of said affiliate; (b) its duties to subcontractors, provided that Contractor shall remain primarily responsible for performing all obligations under this Agreement;

## **18. INTENTIONALLY OMITTED**

## **19. PERFORMANCE BOND FOR LIQUIDATED DAMAGES**

19.1 Contractor, or its construction subcontractor, shall, prior to the commence of construction of the Facility, furnish an operations performance bond or letter of credit to secure the Contractor's performance of its obligations hereunder, including but not limited to all payments due under this Agreement in the amount, said bond to be in the amount of 100% of the Construction value shown in the Price Proposal. The performance bond is to be in a form acceptable to the Town. Contractor shall deliver the bond to the Town prior to the Effective Date and shall renew the bond annually as required so long as Contractor's obligations secured

thereby under this Agreement remain in effect. The amount of each renewal bond shall be increased by the CPI.

19.2 Limitation of Damages. No party shall be entitled to consequential, indirect special, punitive or treble damages as part of non-binding arbitration, other dispute resolution or litigation award.

**20. CUMULATIVE REMEDIES**

20.1 The specified remedies to which the Town may resort under the terms of this Agreement are cumulative and shall be in addition to, and not in substitution of, any other remedies or means of redress to which the Town may be lawfully entitled under this Agreement or in law or equity in case of any breach or threatened breach by Contractor of any provision or provisions of this Agreement.

**21. TERM**

21.1 The term of this Agreement shall commence as of the Effective Date and continue for a period of twenty (20) years commencing on the Acceptance Date and ending on the twentieth (20<sup>th</sup>) anniversary of said Acceptance Date, unless earlier terminated in accordance with this Agreement.

**22. CAPTIONS AND HEADINGS**

22.1 Captions and headings throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision or of the scope or intent of this Agreement nor in any way affect this Agreement.

**23. MODIFICATIONS**

23.1 This Agreement cannot be changed orally, but only by agreement in writing signed by the party against whom enforcement of the change, modification or discharge is sought or by its duly authorized agent.

**24. NOTICES**

24.1 All notices or other communications to be given hereunder shall be in writing and may be given by personal delivery, by Federal Express or by registered or certified United States mail, return receipt requested, properly addressed as follows:

To the Town: Gregory Federspiel  
Town Administrator  
Town Hall  
10 Central Street  
Manchester-by-the-Sea, MA 01944

With a copy to: Mark R. Reich, Esq.  
KP Law, P.C.  
101 Arch Street, 12<sup>th</sup> Floor  
Boston, MA 02110

To Contractor:

With a copy to:

**25. FORCE MAJEURE**

27.1 Force Majeure Event. If either party is rendered unable, wholly or in part, by an event of Force Majeure to carry out any material obligation under this Agreement, then, in addition to the other remedies provided to the parties in this Agreement, the affected obligation of such party may be suspended during the continuation of the event of Force Majeure, but for no longer a period, provided that such party shall use all reasonable efforts to perform all of its obligations under this Agreement to the extent possible, notwithstanding the occurrence of such event.

**26. SEVERABILITY**

26.1 In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein; provided, however, that it is the intention of the parties that in lieu of such term, clause or provision that is held to be invalid, illegal or unenforceable, there should be added by mutual agreement as a part of this Agreement a term, clause or provision as similar in terms and intent to such illegal, invalid or unenforceable term, clause or provision as may be possible, valid, legal and enforceable, and that the inability of the parties to add such a term, clause or provision shall be treated in the same manner as a Change in Law.

**27. ENTIRE AGREEMENT**

27.1 This Agreement constitutes the entire agreement between the Town and Contractor, and cancels and supersedes all prior negotiations, representations, understandings and agreements, either written or oral, between such parties with respect to the subject matter hereof. No changes, amendments, alterations, or modifications to this Agreement shall be effective unless in writing and signed by the parties hereto.

**28. COUNTERPARTS**

28.1 This Agreement may be executed in one or more counterparts, each of which will be considered an original.

**29. GOVERNING LAW AND DISPUTE RESOLUTION**

29.1 This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

29.2 The Contractor submits to the jurisdiction of any of the appropriate courts of the Commonwealth of Massachusetts for the adjudication of disputes arising out of this Agreement

**30. BINDING EFFECT**

30.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and/or assigns.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, each party acting through its duly authorized representative(s) has executed this Agreement under seal as of the date first set forth above.

TOWN OF MANCHESTER-BY-THE-SEA, MASSACHUSETTS

By Its Board of Selectmen

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date of Execution: \_\_\_\_\_

Contractor

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

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