

City of Portsmouth  
Portsmouth, New Hampshire  
**Public Works Department**  
RFP #11-09  
REQUEST FOR PROPOSAL

**Invitation:**

The City of Portsmouth is requesting written proposals from qualified firms for Household Hazardous Waste Collection Services for at least two collection events; one to be held in the Fall of 2008 and the other to be held in the Spring of 2009 on dates to be determined no later than 60 days prior to the events. Interested contractors are invited to submit proposals.

Sealed proposals, plainly marked with “Household Hazardous Waste Collection Services RFP # 11-09” on the outside of the mailing envelope as well as the sealed envelope, addressed to the Finance/Purchasing Department, City Hall, 1 Junkins Avenue, Portsmouth, New Hampshire, 03801, will be accepted until September 15, 2008 at 2:00 p.m.

Specifications for the proposal may be obtained from the Finance/Purchasing Department on the third floor at the above address. **Please continue below for the complete Request for Proposal.**

The City of Portsmouth reserves the right to reject any or all proposals, to waive technical or legal deficiencies, and to accept any proposal that it may deem to be in the best interest of the City.

RFP results may be obtained subsequent to the City’s execution of a contract with a vendor by contacting the City’s Finance Department at City Hall. If you have any questions please contact the Purchasing Coordinator at the following number: (603) 610-7227.

**SUBMITTAL REQUIREMENTS**

1. Contractor Description. Provide a description and history of the Contractor emphasizing the Contractor's resources and expertise in the area(s) relevant to this RFP. Contractor shall identify corporate headquarters and any local or regional office providing services, indicating place and date of organization. In addition, identify:
  - i. Person(s) who has/have decision-making authority for the Contractor; and
  - ii. Person(s) who will be the primary contact person with the City.

For each person identified, please provide a resume or summary of relevant employment and educational background and each person must disclose any managing or majority interest in any other company or entity in the waste management industry and the nature of the interest.

Please also provide a summary of minimum qualifications of employees hired to coordinate and work during the actual household hazardous waste collection event. Provide details of licenses or certification and details of annual refresher training, if any.

Provide *all* relevant certificates certifying Contractor is legally competent to collect, transport, store and dispose of hazardous waste. If hazardous waste is transported or managed at facilities located outside the State of New Hampshire, relevant EPA and/or other State certificates shall also be submitted.

The City reserves the right to request additional information regarding the Contractor and its officers, employees, principles, partners and majority shareholders as it deems necessary to make a decision in the best interests of the City. Failure of any Contractor to comply with the above and with such additional requests may result in disqualification.

References: Contractor shall also provide the name, title, locations and phone number of at least three (3) persons who can substantiate the relevant experience claimed.

Statement of Commitment: Contractor shall state its willingness to: (1) perform the Scope of Service as described in Attachment I and (2) enter into and perform a Service Agreement with the terms and conditions substantially as set forth in Attachment II.

**Contractor shall provide technical and educational assistance compatible with the City's household hazardous waste collection program.** A summary of the type of educational material; how the education and/or the material may be imparted and disseminated to the targeted audience shall be detailed. The educational component of this RFP shall be listed separately (broken out) from the collection and disposal cost proposal.

**The Contractor is invited to make recommendations to modify the Scope of Services if, based on its experience, there are improvements to be made to the practice outlined therein.** For example, establishing a temporary storage site and providing quarterly collection services. The Contractor should, however, state whether or not it is willing to fulfill the Scope of Services as presently envisioned.

Statement of Cooperation. Contractor shall state its understanding that the City of Portsmouth has applied and been awarded grant funds available from the New Hampshire Department of Environmental Services (NH DES) and will make reasonable efforts to cooperate in meeting all the terms and conditions of NH DES. (To the extent the City of Portsmouth is aware of the existing terms and conditions of those grant funds, those conditions are included as Exhibit A to the Service Agreement.)

Statement of Price: The Contractor shall state the price for services as follows:

Set Up Fee (if any): Contractor shall state separately the site set up fee, that is in addition to the volume fees listed below.

Volume Fees: Contractor shall use the Proposal Price Form to list prices, container types and sizes. Contractor may add groupings and should propose fee structure for disposing of other hazardous waste. **Contractor shall state clearly which of the classifications will be consolidated and which will be lab packed.** It is expected that the contractor

awarded this bid will bill the City according to this price list, categories of waste, container types and sizes. If unit of pricing is other than clearly defined, Contractor shall state clearly the equivalent capacity for comparison purposes.

Contractor shall clearly list any stipulations or qualifications regarding pricing or material breakdown.

The City of Portsmouth may elect not to accept a certain grouping based on the proposals received.

Contractor must be prepared to keep a current and running dollar charge so that the City Coordinator can determine a cut off time or cut off number of vehicles before the proposed closing time.

Technical and Educational Assistance Fee: **Contractor shall provide technical and educational assistance compatible with the City's sustainability initiatives.** The City of Portsmouth has a longstanding commitment to the principles of sustainability, which includes, reducing negative impacts on our natural resources. To that end, Contractor is invited to participate with the City in educating its residents about hazardous waste, how to reduce the use of hazardous materials; how hazardous waste is properly disposed of; and what the Contractor is doing to provide for the safest means of disposal.

The target audience for the educational information/material is the general public/the residents of Portsmouth, Newington and Greenland. Most likely the educational information will be most effective if targeted to the adult regarding information about minimizing hazardous waste and/or how hazardous waste is properly handled and disposed. A proposed summary of the type of educational material; how the education and/or the material may be imparted and disseminated to the targeted audience shall be detailed.

Technical and educational assistance from the Contractor may be directly provided by the Contractor or by the Contractor's public relations firm (in house or consultant). It is expected that the Contractor will work in conjunction with the City's designated representative in producing and distributing the public relations/educational material.

The technical and educational assistance fee of this RFP shall be listed separately (broken out) from the collection and disposal cost proposal.

## **SELECTION CRITERIA**

All responsive proposals shall be reviewed. Each proposal will be evaluated based upon: qualifications, experience, price and references. The City shall undertake such investigation of proposed contractors as it deems necessary to verify qualifications, experience and references. Failure to execute any requested releases of information may result in disqualification. The City

shall make its selection within 60 days of the proposal submission deadline. The City reserves the right to interview prospective candidates.

The City of Portsmouth reserves the right to reject any and all proposals, to waive technical or legal deficiencies, to accept any proposals that are deemed to be in the best interest of the City, and to negotiate collateral terms and conditions of any proposal leading to acceptance and final execution of a Service Agreement, (sample Service Agreement set forth as Attachment II).

### Proposal Price Form

GROUP	PRICE PER UNIT	TOTAL PRICE
SITE SET UP FEE, IF ANY		
Oil Paint (7) Flex Bins*		
Resins & Adhesives (6) 55 Gallon Drum		
Organic Liquids (5) 55 Gallon Drum		
Lab pack Chemicals for Incineration (3) 55 Gallon Drum (1) 30 Gallon Drum (1) 5 Gallon Drum		
Lab pack Chemicals for Treatment (5) 55 Gallon Drum (1) 30 Gallon Drum (1) 5 Gallon Drum		
Mercury (1) 5 Gallon Drum		
Aerosols (3) 55 Gallon Drums		
Lab pack Reactives (1) 5 Gallon Drum Per pound rate		

Penta/Dioxin Waste (1) 16 Gallon Drum Per pound rate		
Lithium Batteries (1) 5 Gallon Drum		

\* Contractor shall supply prices for all drum sizes and minimum per pound rate if any.

Volumes above are based on the City's most recent HHW collection event (Spring '07). For comparison purposes, 1 flex bin equals 4-55 gallon drums. Quantities may increase or decrease.

Other Wastes: Contractor shall be required to accept only those wastes for transportation and disposal that are Household Hazardous Wastes as defined in New Hampshire Hazardous Waste Rules Env-Ws 100 Chapter "Definitions" in accord with the prices proposed above. Due to the regulations and the varied characteristics of the waste being collected and disposed, however, not all hazardous waste items can be listed. Further, instances may arise where the Contractor may misidentify a household hazardous waste in the first instance and/or a secondary characteristic is identified after the hazardous waste has been accepted. In order to provide participating residents with practical hazardous waste disposal services, manage the disposal cost for the City, and allow for legitimate cost effective service from the Contractor, Contractor shall provide a pricing structure for those items that may be brought to a household hazardous waste event, i.e. compressed gas cylinder (non-propane), picric acid, ethers, asbestos, etc. and not covered by the above pricing. For example, Contractor may propose a markup of a certain percentage based on the cost of disposal.

Other Wastes:

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Technical & Educational Assistance		
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Provide description of technical and educational assistance:

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## ATTACHMENT I

### SCOPE OF SERVICES

#### Work Plan

#### Household Hazardous Waste Collection

The following plan describes how the City of Portsmouth and the Contractor have handled the household hazardous waste collection activities in the past on the collection day. Contractor shall provide technical assistance compatible with the collection program outlined below. In addition, Contractor may propose an alternate collection and disposal program. The City is interested in making improvements to its program, i.e. enhanced service to residents and cost savings to the City. Contractor's alternate proposal shall clearly detail material flow and all costs itemized.

#### Material Flow

On the day of the collection event, Contractor shall set up at the City's designated drop-off site. Contractor shall post signs directing participants to the reception area. City representative(s) shall meet the incoming vehicle and elicit general information from the participant (e.g. town of residence, types of wastes). The participant then drives to the collection area where the waste material shall be removed from the vehicle and taken to the handling tables by Contractor representatives. **At this point the Contractor takes custody of the waste, known and unknown.** Once all waste material is removed, the participant shall be directed towards the exit.

At the time the waste is removed from the participant's vehicle by representatives of the Contractor and handed over the "hot line," the Contractor shall segregate known wastes from unknown wastes. Separate tables shall be used. Known waste shall be transferred from its table to one of the three repackaging tables: solvents, corrosives and pesticides and/or poisons. The Contractor's personnel shall man the tables, repackage the waste as necessary, record information about those wastes for manifest purposes and containerize the wastes in appropriate drums. The wastes shall be packaged on-site so that they may be properly disposed of, e.g., as lab packs, etc. All paints accepted shall be bulked on site.

Unknown wastes shall be transferred from the collection table to the analysis area by the Contractor. The Contractor shall conduct such chemical analysis on these wastes as Contractor deems necessary to determine appropriate classification. Following classification, those wastes shall then be packaged at the collection site for transportation to an authorized hazardous waste facility.

All consolidation containers shall be filled prior to sealing. Once a container, i.e. a drum, has been filled with waste, it shall be properly closed and transferred to the box trailer for temporary storage (to be transported from the collection site by the end of the collection work day). Manifests shall be initiated by the Contractor. Upon completion of the collections at the end of the day, the vehicle shall transport the wastes to an authorized storage, treatment and/or disposal facility. No drums shall leave the Site until they are properly manifested and packaged.



## **Personnel Requirements/Duties**

Reception Area: City personnel shall be present at the reception area. Their task shall be to compile the initial information, screen participants, and direct vehicle traffic to the proper location.

Collection Area: Contractor personnel shall be present at the collection area. They shall unload the waste material from the vehicles. They shall then transfer the wastes to the "known" and "unknown" tables as appropriate.

The Contractor's Project Manager shall supervise and assist with the off loading of the wastes. If questions or disputes regarding wastes to be disposed of arise, the City Coordinator shall be consulted as soon as possible.

In summary, the total minimum numbers of Contractor personnel required are as follows:

- 2 Safety Office/Chemists
- 5 Recovery Technicians

One of the above personnel shall also be designated the on-site Company's Safety Officer.

Problem resolution: All contract problems shall be resolved between the Project Manager for the Contractor and the designated City Representative.

Equipment: To facilitate traffic movement of participants and assure swift flow and repackaging of wastes, the Contractor shall provide the following equipment:

### Collection Area:

- Tables (8' X 4') – a minimum of 3
- Polyethylene - to underlie the tables
- 5 Chairs

### Handling Area:

- Tables (8' X 4') - a minimum of 3
- Polyethylene - To underlie and cover the tables
- 3 Chairs

### Analytical Area:

- Lab Trailer, Lab Station with cover or other chemical analysis work station

### Miscellaneous:

- Box Trailer w/ power tailgate
- Eyewash unit
- Banner tape

Rack truck  
 Decontamination buckets  
 Portable Shower  
 Fire extinguishers

Expendable Supplies (for Contractor)

Tyvek suits  
 Soda ash  
 Half face respirators w/ organic vapor cartridges  
 Pesticide cartridges  
 Gloves - surgical and butyl nitrile  
 Boots  
 Labels - DOT warning, hazardous  
 DOT approved containers  
 Vermiculite or speedi dry for lab pack  
 Speedi dry for spills  
 Logging sheets  
 Eyewash  
 Pencils and pens  
 Clipboards  
 Decontamination liquids

**Site Safety, Spill Response and Emergency Evacuation Plan**

**The Contractor shall be responsible for ensuring safety at the site during the household hazardous waste collection event.**

It is extremely important that in the handling of household hazardous wastes, extreme caution be taken to prevent any accidents, spills or fires. With unprotected citizens on or near the Site serious consequences could result from any mishap. The Contractor's Safety Officer shall therefore be required to implement a safety plan at a minimum as described herein and provide assurances that all Contractor and City personnel are familiar with the safety precautions, spill cleanup procedures, and evacuation steps. The Contractor's Safety Officer is also responsible for notifying and coordinating spill, release or fire response with the local on-scene fire department and the City Coordinator.

For the purpose of assigning levels of personal protection, each collection site will be divided into three distinct sections, each requiring specific personal protection and safety requirements.

1. Waste Handling Area - This area encompasses all "active" areas of the waste collection site, i.e. locations where waste materials are being examined, analyzed, packaged and/or opened. The Waste Handling Area encompasses those areas where **the waste becomes the responsibility of the Contractor**, i.e. known and unknown waste stations, drum packing stations and the analytical station. The Contractor shall provide Level C personal

protective equipment for persons working within this area. Level C protective equipment includes:

Half face air purifying respirator with organic vapor or pesticide cartridges  
 Chemical protective coveralls, i.e. Tyvek suits  
 Gloves, inner (surgical)  
 Gloves, outer chemical protective  
 Boots, chemical protective  
 Full face shields

2. Collection Area - These are locations within the collection site where wastes are being accepted from homeowners, and wastes are being presented to the Contractor for packaging and/or analysis. It will be the responsibility of the Contractor to provide protective equipment for personnel working in this area. Such individuals will be provided with Level D personal protective equipment which is defined as:

Coveralls, cotton or Tyvek suits (waste receiving area)  
 Gloves  
 Boots or safety shoes  
 Safety glasses (when handling wastes)  
 Air purifying respirator (readily available)

3. Clean Area - The City Coordinator shall designate a location at the Site as a "clean area". It is only within this area that City personnel and contractual personnel will be allowed to take breaks and/or eat meals. There will be absolutely no smoking permitted during the hours of operation anywhere on the Site. The area will be located away and upwind of receiving and packaging areas. All personnel shall remove protective equipment and wash before entering this area.

### **Safety Procedures**

It is the responsibility of the Contractor's safety officer to enforce at a minimum the following practices. The Contractor shall adopt additional safety measures as may be required by law or as deemed appropriate by the Contractor to ensure a safe program.

1. Eating, drinking, chewing gum or tobacco, smoking or any practice that increases the probability of hand to mouth transfer and ingestion of material is prohibited in any area where the possibility of contamination exists.
2. Hands and face must be thoroughly washed upon leaving the work area and before eating, drinking or before any other activity takes place.
3. The entire body should be thoroughly washed whenever emergency decontamination procedures for outer garments are in effect. The washing should occur as soon as possible after the final wearing of protective garments.

4. No excessive facial hair that interferes with a satisfactory fit of the mask to face seal will be allowed on personnel required to wear respiratory protective equipment.
5. Unnecessary contact with contaminated or suspected contaminated surfaces should be avoided. Whenever possible, avoid walking through puddles, mud and other discolored surfaces, kneeling on ground, leaning, sitting or placement of equipment on drums, containers, vehicles and the ground.
6. Medically prescribed drugs by personnel on response operations where the potential for absorption, inhalation or ingestion of toxic substances exists should only be used after consultation with a qualified physician. Alcoholic beverage intake is prohibited.

### **Spill Response and Evacuation Procedures**

The Contractor's safety officer and other contractual personnel shall be responsible for coordinating the rapid response and thorough cleanups of all spills that may occur at the collection site. The Contractor shall follow a recommended and accepted response and cleanup procedures such as those outlined in Hazardous Materials [2000] Emergency Response Guidebook - UDDOT and Sax's Dangerous Properties of Industrial Materials, 3 Vol. Set, (Current Ed.). All spill cleanup material shall be handled and disposed of properly as hazardous wastes.

In the event of a spill, release or fire, the evacuation plan as established during the morning safety meeting shall be effected. Predetermined evacuation routes are to be developed by the Contractor's designated Safety Officer after consultation with the City Coordinator. As necessary, the Fire Department may amend the plan during a response. Contractor, City Coordinator and Fire Department will work in conjunction to determine appropriate response.

Contractor may propose an alternate Site Safety, Spill Response and Emergency Evacuation Plan for approval. If Contractor proposes an alternate plan, it shall be submitted to the City's designated representative no later than 30 days prior to the collection event.

## ATTACHMENT II

### SERVICE AGREEMENT

This agreement entered into this \_\_\_\_ day of \_\_\_\_\_ 2008 by and between the City of Portsmouth, NH (the "City"), a municipal corporation with a principal place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801 and \_\_\_\_\_ ("Contractor") with a principal place of business at \_\_\_\_\_

In consideration of the mutual covenants contained herein, the City and the Contractor agree as follows:

1. Scope of Services. Contractor shall be responsible for operating two collection events for household hazardous waste collection: one in the Fall of 2008 and the other to be held in the Spring of 2009. The Contractor shall provide the scope of services as outlined in Attachment I to the City of Portsmouth's Request for Proposal #11-09. The Contractor and City's mutual responsibilities for the collection events are further described below:

The Contractor shall provide an employee or agent of the Contractor (the "Site Chemist") trained in the identification and handling of all hazardous and acutely hazardous waste as defined by State and Federal laws and regulations (collectively "wastes"), and such additional employees or agents and such materials and equipment as are necessary to handle, contain, label, load, and transport for reuse, recycling or disposal the wastes out of the City in a manner conforming to State and Federal laws and regulations.

The City shall provide a representative of the City (the "City Coordinator") duly authorized to carry out the duties specified throughout this agreement. The City shall also provide a sufficient number of appropriate solid waste containers at the Site to handle all non-hazardous waste and trash generated at the Site, at its own cost.

**Contractor shall be required to accept only those wastes that are Household Hazardous Wastes as defined in New Hampshire Hazardous Waste Rules Env-Ws 100 Chapter "Definitions".**

Contractor shall transport from the City all waste which it has accepted at the Site to appropriately licensed hazardous waste facilities for legal reuse, recycling or/and proper disposal.

Transporter(s) are to be licensed and fully insured to transport such wastes.

2. Time of Performance. The City of Portsmouth shall notify Contractor in writing of the dates of collection at least 60 days in advance of such collection. In the event of inclement weather on the date specified by the City, the City Coordinator, in conjunction with the

Contractor, may delay its performance hereunder to a future date. The Contractor agrees that re-scheduled date will be within 30 days of the originally scheduled date.

3. Venue for Collection Events. The Department of Public Works, 680 Peverly Hill Road shall be the site for the collection events (the Site).
4. Contract Price. In exchange for the services provided by the Contractor, the City shall pay to the Contractor the set up fees (if any) and disposal costs based on unit pricing according to the Contractor's Proposal, the terms of which are incorporated herein by reference. The City shall pay for only those wastes actually collected and disposed by Contractor.
5. Conditions of Payment. The City shall not pay the Contractor until
  - (1) the City has received copies of all Project manifest forms signed by the operator of the permitted hazardous waste facility or facilities to which the project's collected hazardous wastes were delivered for reuse, recycling or disposal; and
  - (2) the City has reviewed the Contractor's collection, handling, transportation, storage, treatment, recycling and disposal of hazardous waste for compliance with applicable state and federal requirements.
6. Conditions for Grant Funds. Attached as Exhibit A to the Agreement are those conditions required of the Contractor by the New Hampshire Department of Environmental Services for receipt of Grant funds. Contractor agrees to meet the requirements set forth in Exhibit A.
7. Right to Reject. Contractor reserves the right to reject any waste that does not qualify as Household Hazardous Waste or that would be illegal or otherwise inappropriate to transport or dispose of.
8. Certification and Licensing. Contractor shall certify on the day of collection it has a valid Environmental Protection Agency identification number for generation of hazardous and acutely hazardous wastes. Contractor shall ascertain that the transportation company utilized at the Site shall have the following:
  - a. Valid driving licenses appropriate to the vehicle classification.
  - b. A valid license from the EPA, NH Department of Environmental Services and other States the hazardous waste and acutely hazardous waste will be either transported, temporarily stored and/or disposed for handling.
  - c. Applicable a valid license for treating, recycling and/or disposing of hazardous and acutely hazardous waste.
  - d. Written certification that the Contractor is in compliance with all State and Federal codes and licenses necessary to legally transport wastes.

9. Insurance. The Contractor shall purchase and maintain through completion of the work comprehensive general liability and automobile and truck liability insurance as will protect the Contractor from all claims and liabilities for damages for bodily injury and, including accidental death, and for property damage, which may arise from operations under this contract whether such operation by the Contractor or by anyone directly or indirectly employed by the Contractor. Such coverage shall be in the amount of at least 2 MILLION for each occurrence and general aggregate. Contractor shall also maintain such additional insurance as may be required by the State of New Hampshire for hazardous waste transporters.

All liability policies shall include the City of Portsmouth, New Hampshire as named Additional Insured and identify the certificate holder as follows: City of Portsmouth, Attn.: Legal Department, 1 Junkins Avenue, Portsmouth, New Hampshire 03801. The Contractor's insurance shall be primary in the event of a loss. The Additional Insured endorsement must include language specifically stating that the entity is to be covered for all activities performed by, or on behalf of, the Contractor, including the City of Portsmouth's general supervision of the Contractor. Written notice shall be given to the City of Portsmouth, NH at least thirty (30) days prior to cancellation or non-renewal of such insurance coverage.

As evidence of insurance coverage, the City may, in lieu of actual policies, accept official written statements from the insurance company certifying that all the insurance policies specified below are in force for the specified period. **The Contractor shall submit evidence of insurance to the City at the time of execution of this Agreement.**

10. Indemnification. Contractor shall indemnify, hold harmless and defend the City, its agents, employees, officers and volunteers from and against any and all liabilities, claims, penalties, fines, forfeitures, suits, administrative proceedings and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorneys' fees) which may be alleged against the City, or which the City may incur, become responsible for, or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation or alleged violation of governmental laws, regulations or orders caused by or resulting from the negligent acts or omission of any employees or agents of the Contractor, or from the failure or inadequacy of any equipment of the Contractor or that of its agent(s).

11. Right to Reject. The City will use its best efforts to assure that all wastes approved by the City Coordinator are the Household Wastes of City residents and/or legitimate customers of the program. Contractor, in conjunction with the City Coordinator, shall reserve the right to reject any wastes that appear to be other than household wastes.

12. Title. **Title to all wastes accepted by the Contractor at the Site shall pass directly from the residents of the City and other designated customers of the collection program to the Contractor.**

13. Contractor's Status. Contractor shall perform this agreement as an independent contractor, and as such, shall have and maintain complete control over all its employees, agents and operations. Neither the Contractor nor its agents nor anyone employed by it shall be,

represent, act, purport to act or be deemed to be the agent, representative, employee or servant of the City. The City and City Coordinator shall not be, represent, act, purport to act or be deemed the agent, representative, employee or servant of the Contractor.

14. Contractor as Sole Generator. For purposes of the State and Federal laws and regulations, Contractor shall be deemed sole "generator" of all hazardous wastes accepted by the Contractor at the Site.

15. Contractor Responsible for Safety. The Contractor is solely responsible for ensuring safety at the site during the course of the collection event and for complying with all federal, state and local regulations. Should at any time operations deviate from the Site Safety, Spill Response and Emergency Evacuation Plan, the Contractor shall notify the Solid Waste Coordinator as soon as they become aware and remedy the situation.

16. Record Keeping. Contractor shall keep, for a period not less than seven years, detailed accounts of all expenses incurred in connection with the services, including but not limited to, costs of administration, transportation, insurance, telephone calls, and clerical materials and services. Such accounts shall be supported by receipts, invoices, bills and other similar documents.

17. Extension of Agreement. The parties may by mutual agreement elect to extend this contract annually at the original price. The extension may be up to a total period of two years for four additional collection events: Fall of 2009, Spring of 2010, Fall 2010, and Spring 2011. The City shall provide written notice of election to extend no later than June of each subsequent year.

18. Miscellaneous.

Neither this agreement nor any rights or obligations of the Contractor hereunder shall be assigned by the Contractor, nor shall the Contractor subcontract any of its obligations hereunder without the prior written consent of the City.

Any waiver by either party or a breach of any provision or condition of this agreement shall not be construed or decreed to be to be a waiver of any other provision or condition of this agreement, nor a waiver of a subsequent breach of the same provision or condition, unless such waiver be expressed in writing by the party to be found.

No modification of this agreement shall be binding on the Contractor or the City unless stated in writing and signed by both parties.

This agreement shall be interpreted in accordance with the laws of the State of New Hampshire.

Venue for any dispute shall be in a court of competent jurisdiction in the State of New Hampshire.



The Contractor warrants that it understands the currently known or suspected hazards which are presented to persons, property and the environment by collection, transport, treatment and disposal of wastes. The Contractor further warrants that it shall perform all services under this contract in a safe, efficient, expeditious and lawful manner using industry accepted practices in full compliance with all applicable New Hampshire and Federal laws and regulations. In witness whereof, the parties hereto have executed this agreement under seal by their duly authorized representatives

**For the City of Portsmouth, NH:**

**For the Contractor:**

By: \_\_\_\_\_  
John P. Bohenko, City Manager

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**  
**List of Services**

1. The Grantee shall conduct the collection portion of its Project for: Greenland, Newington and Portsmouth at 680 Peverly Road, Portsmouth in accordance with the terms and conditions of a contract which incorporates, at a minimum, all of the provisions set forth in Section 3 below between the Grantee and its contracted permitted hazardous waste transporter (the contractor). For purposes of this agreement, the contractor shall mean the primary contractor and the Subcontractor means all additional contractors that the contractor hires for participating in the Project.
2. The Grantee shall spend its grant monies solely for the purpose of paying the Project's contractor and/or for paying the expenses associated with conducting the Project's educational component, as required under the NH Hazardous Waste Rules Env-Wm 1003.07.
3. The Grantee shall enter into a contract with its contractor that includes, as a minimum, the following provisions:
  - a. That the contractor shall handle all household hazardous wastes collected at the project site as hazardous wastes, and shall comply with all state and federal laws and regulations governing hazardous waste, including but not limited to, the provisions of RSA 147-A and Chapter Env-Wm 100 through Chapter Env-Wm 1000 involving hazardous waste safety standards, transportation requirements, and requirements for proper generation, treatment, storage, and disposal of hazardous wastes. Said requirements shall include RSA 147-A, Chapter Env-Wm 100 through Chapter Env-Wm 1000, and those of the state(s) through which and to which the waste has been sent;
  - b. That the contractor must act as the generator of the hazardous wastes that it collects at the project site and that the contractor must sign the Project's manifest forms as such generator;
  - c. That the contractor must have all necessary permits and licenses to handle and transport hazardous wastes in New Hampshire and other states associated with the conduct of the project;
  - d. That the contractor may not assign or subcontract any of the duties to be performed under the contract without prior written approval by the Grantee and by the Division. Further, that any additional Subcontractor must also have all necessary permits and licenses to carry out the functions that are the subject of the subcontract;

## EXHIBIT A

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hold harmless the Grantee, the State, their officers and employees, from and against any and all claims, liabilities, or penalties asserted against the Grantee, the State, their officers and employees, by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Grantee, its Subcontractor, the State, or any persons participating in the Project. Nothing in this agreement shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this agreement.

4. The Grantee shall conduct public education activities regarding household hazardous waste in accordance with the provisions of RSA 147-B:6, I-a and Section Env-Wm 1003.07. Said activities shall include those set forth in the Grantee's application for Grant Monies, as approved by the Division.
5. The Grantee shall keep a count of persons participating in the Project and to conduct a questionnaire of said persons incorporating, at a minimum, the questions set forth on the Participant Exit Survey.
6. The Grantee shall conduct the collection portion of its project on or before the date shown in paragraph (1.) of Exhibit A. Failure to do so may result in termination of this agreement.
7. The Grantee shall allow the Division to have access to and conduct any monitoring of the Project deemed necessary by the Division to ensure its compliance with the terms of the contract and with state and federal statutes and regulations.

4. EFFECTIVE DATE; COMPLETION OF PROJECT.

4.1. This Agreement, and all obligations of the parties hereunder, shall become effective on the date in block 1.5 or on the date of approval of this Agreement by the Governor and Council of the State of New Hampshire whichever is later (hereinafter referred to as "the effective date").

4.2. Except as otherwise specifically provided for herein, the Project, including all reports required by this Agreement, shall be completed in ITS entirety prior to the date in block 1.6 (hereinafter referred to as "the Completion Date").

5. GRANT AMOUNT; LIMITATION ON AMOUNT; VOUCHERS; PAYMENT.

5.1. The Grant Amount is identified and more particularly described in EXHIBIT B, attached hereto.

5.2. The manner of, and schedule of payment shall be as set forth in EXHIBIT B.

5.3. In accordance with the provisions set forth in EXHIBIT B, and in consideration of the satisfactory performance of the Project, as determined by the State, and as limited by subparagraph 5.5 of these general provisions, the State shall pay the Grantee the Grant Amount. The State shall withhold from the amount otherwise payable to the Grantee under this subparagraph 5.3 those sums required, or permitted, to be withheld pursuant to N.H. RSA 80:7 through 7-c.

5.4. The payment by the State of the Grant amount shall be the only, and the complete payment to the Grantee for all expenses, of whatever nature, incurred by the Grantee in the performance hereof, and shall be the only, and the complete, compensation to the Grantee for the Project. The State shall have no liabilities to the Grantee other than the Grant Amount.

5.5. Notwithstanding anything in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made, hereunder exceed the Grant limitation set forth in block 1.8 of these general provisions.

6. COMPLIANCE BY GRANTEE WITH LAWS AND REGULATIONS. In connection with the performance of the Project, the Grantee shall comply with all statutes, laws, regulations, and orders of federal, state, county, or municipal authorities, which shall impose any obligations, or duty upon the Grantee, including the acquisition of any and all necessary permits.

7. RECORDS AND ACCOUNTS.

7.1. Between the Effective Date and the date three (3) years after the Completion Date the Grantee shall keep detailed accounts of all expenses incurred in connection with the Project, including, but not limited to, costs of administration, transportation, insurance, telephone calls, and clerical materials and services. Such accounts shall be supported by receipts, invoices, bills and other similar documents.

7.2. Between the Effective Date and the date three (3) years after the Completion Date, at any time during the Grantee's normal business hours, and as often as the State shall demand, the Grantee shall make available to the State all records pertaining to matters covered by this Agreement. The Grantee shall permit the State to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, data (as that term is hereinafter defined), and other information relating to all matters covered by this Agreement. As used in this paragraph, "Grantee" includes all persons, natural or fictional, affiliated with, controlled by, or under common ownership with, the entity identified as the Grantee in block 1.3 of these general provisions.

8. PERSONNEL.

8.1. The Grantee shall, at its own expense, provide all personnel necessary to perform the Project. The Grantee warrants that all personnel engaged in the Project shall be qualified to perform such Project, and shall be properly licensed and authorized to perform such Project under all applicable laws.

8.2. The Grantee shall not hire, and it shall not permit any subcontractor, sub grantee, or other person, firm or corporation with whom it is engaged in a combined effort to perform the Project, to hire any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.

8.3. The Grant Officer shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of this Agreement by the Grant Officer, and his/her decision on any dispute, shall be final.

9. DATA; RETENTION OF DATA; ACCESS.

9.1. As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2. Between the Effective Date and the Completion Date the Grantee shall grant to the State, or any person designated by it, unrestricted access to all data for examination, duplication, publication, translation, sale, disposal, or for any other purpose whatsoever.

9.3. No data shall be subject to copyright in the United States or any other country by anyone other than the State.

9.4. On and after the Effective Date all data, and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason, whichever shall first occur.

9.5. The State, and anyone it shall designate, shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, all data.

10. CONDITIONAL NATURE OR AGREEMENT

Notwithstanding anything in this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability or continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available or appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Grantee notice of such termination.

11. EVENT OF DEFAULT; REMEDIES.

11.1. Any one or more of the following acts or omissions of the Grantee shall constitute an event of default hereunder (hereinafter referred to as "Events of Default"):

- 11.1.1. failure to perform the Project satisfactorily or on schedule; or
- 11.1.2. failure to submit any report required hereunder; or
- 11.1.3. failure to maintain, or permit access to, the records required hereunder; or
- 11.1.4. failure to perform any of the other covenants and conditions of this Agreement.

11.2. Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

11.2.1. give the Grantee a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Grantee notice of termination; and

11.2.2. give the Grantee a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the Grant Amount which would otherwise accrue to the grantee during the period from the date of such

notice until such time as the State determines that the Grantee has cured the Event of Default shall never be paid to the Grantee; and

11.2.3. set off against any other obligation the State may owe to the Grantee any damages the State suffers by reason of any Event of Default; and

11.2.4. treat the agreement as breached and pursue any of its remedies at law or in equity, or both.

12. TERMINATION.

12.1. In the event of any early termination of this Agreement for any reason other than the completion of the Project, the Grantee shall deliver to the Grant Officer, not later than fifteen (15) days after the date of termination, a report (hereinafter referred to as the "Termination Report") describing in detail all Project Work performed, and the Grant Amount earned, to and including the date of termination.

12.2. In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a termination Report by the State shall entitle the Grantee to receive that portion of the Grant amount earned to and including the date of termination.

12.3. In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall in no event relieve the Grantee from any and all liability for damages sustained or incurred by the State as a result of the Grantee's breach of its obligations hereunder.

12.4. Notwithstanding anything in this Agreement to the contrary, either the State or, except where notice default has been given to the Grantee hereunder, the Grantee, may terminate this Agreement without cause upon thirty (30) days written notice.

13. CONFLICT OF INTEREST. No officer, member or employee of the Grantee, and no representative, officer or employee of the State of New Hampshire or of the governing body of the locality or localities in which the Project is to be performed, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of such Project, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested, nor shall he or she have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

14. GRANTEE'S RELATION TO THE STATE. In the performance of this Agreement the Grantee, its employees, and any subcontractor or sub grantee of the Grantee are in all respects independent contractors, and are neither agents nor employees of the State. Neither the Grantee nor any of its officers, employees, agents, members, subcontractors or sub grantees, shall have authority to bind the State nor are they entitled to any of the benefits, workmen's compensation or emoluments provided by the State to its employees.

15. ASSIGNMENT AND SUBCONTRACTS. The Grantee shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the Project Work shall be subcontracted or subgranted by the Grantee other than as set forth in Exhibit A without the prior written consent of the State.

16. INDEMNIFICATION. The Grantee shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Grantee or Subcontractor, or subgrantee or other agent of the Grantee. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this agreement.

17. INSURANCE AND BOND.

17.1. The Grantee shall, at its sole expense, obtain and maintain in force, or shall require any subcontractor, sub grantee or assignee performing Project work to obtain and maintain in force, both for the benefit of the State, the following insurance:

17.1.1 statutory workmen's compensation and employees liability insurance for all employees engaged in the performance of the Project and

17.1.2 comprehensive public liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than \$1,000,000 for bodily injury or death any one incident, and \$500,000 for property damage in any one incident; and

17.2 The policies described in subparagraph 18.1 of this paragraph shall be the standard form employed in the State of New Hampshire issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Each policy shall contain a clause prohibiting cancellation or modification of the policy earlier than ten (10) days after written notice thereof has been received by the State.

18. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event, or any subsequent Event. No express waiver of any Event of Default shall be deemed a waiver of any provisions hereof. No such failure or waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other default on the part of the Grantee.

19. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office address to the parties at the addresses first above given.

20. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire.

21. CONSTRUCTION OF AGREEMENT AND TERMS. This Agreement shall be construed in accordance with the law of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assignees. The captions and contents of the "subject" blank are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties hereto.

22. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

23. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.