

Bid# 7981
Contract# BC-22-7981

**Contract for Services
Terms and Conditions**

**Barnstable County
3195 Main Street
Barnstable, MA 02630**

THIS AGREEMENT is made this 22 day of June, 20 22 by and between
Win Waste Innovations (New England Recycling) 90 Arboretum Dr #300, Portsmouth, NH 03801
(Contractor's Legal Name and Address)

(hereinafter referred to as Contractor), and Barnstable County (hereinafter referred to as County and collectively as the "Parties").

The Contract for Services Terms and Conditions and any agreed upon changes thereto included in any Contract Amendments shall take precedence over any additional or conflicting terms and conditions as may be included in any other document attached hereto.

NOW THEREFORE, the County and the Contractor do mutually agree as follows:

1. **Employment of Contractor.** The Contractor hereby agrees to perform the services hereinafter set forth in the Scope of Services. Contractor hereby agrees to hold the County harmless from any claims regarding worker's compensation benefits, unemployment compensation benefits, retirement benefits, or any other benefit normally attributable to the status of "employee" and Contractor specifically agrees to pay for all damages incurred by the County or Town, including costs, benefits, and reasonable attorney fees in the event the Contractor files such claim.

2. **Scope of Services.** The contractor shall perform the scope of services set forth in

Per Attachment A consisting of 2 pages included herein

3. **Contract Amendments.** The following amendments to the Contract have been executed by duly authorized representatives of the Parties and are attached hereto and incorporated herein:

4. **Time of Performance.**

7/1/22
Start Date

6/30/23
End Date

5. **Responsible County Official:** The County Official and Department exercising managerial and budgetary control for this Contract shall be: Per Attachment A

6. Payment:

- A. The County shall compensate the Contractor for the services rendered at the rate of \$ varies per attachment B (e.g., hour, week, quarterly, project, etc.).
- B. In no event shall the Contractor be reimbursed for time other than that spent providing the described service(s).
- C. Payment will be made upon submittal and approval of the Contractor's Invoice(s) that is (are) received Monthly____, Quarterly____, Other____ (specify)_____.
- D. Reimbursement for Travel and Other Contractor Expenses:
- All travel and meals are part of this Contract. No reimbursement will be made.
 - Contractor will be reimbursed for pre-approved travel in an amount not to exceed \$_____. Copies of receipts must be submitted. Any expense claimed by the Contractor for which there is no supporting documentation shall be disallowed.
 - Contractor will be reimbursed for OTHER expenses in an amount not to exceed \$_____.
 - OTHER Expenses shall be limited to: _____.
Copies of receipts must be submitted. Any expense claimed by the Contractor for which there is no supporting documentation shall be disallowed.
- E. The total of all payments made against this Contract shall not exceed: \$ N/A

Upon acceptance of the Contractor's invoice, payment will be made within thirty (30) days. If an invoice is not accepted by the County within fifteen (15) days, it shall be returned to the Contractor with a written explanation for the rejection. At the end of each County fiscal year Contractor must submit any outstanding invoices for services performed or delivered during the fiscal year (July 1-June 30) to the County no later than July 31st of the year when the services were performed. Contractors shall submit invoices within sixty (60) days of completing the work.

7. Certification. Contractor certifies under the pains and penalties of perjury that pursuant to Mass .Gen. Laws ch.62C, §49A, that the Contractor has filed all state tax returns, paid all taxes and complied with all applicable laws relating to taxes; and that pursuant to Mass. Gen. Laws ch.151A, §19A(b), has complied with all laws of the Commonwealth relating to contributions and payment in lieu of contributions to the Employment Security System; and, if applicable, with all laws of the Commonwealth relating to Worker's Compensation, Mass. Gen. Laws ch.152 and payment of wages, Mass. Gen. Laws ch. 149, § 148. Pursuant to federal law, Contractor shall verify the immigration status of all workers assigned to the contract without engaging in unlawful discrimination;

8. Termination or Suspension of Contract for Cause. If through any sufficient cause, the Contractor or the County shall fail to fulfill or perform its duties and obligations under this Contract, or if either party shall violate or breach any of the provisions of this Contract, either party shall thereupon have the right to terminate or suspend this Contract, by giving written notice to the other party of such termination or suspension and specifying the effective date thereof. Such notice shall be given at least fifteen (15) calendar days before such effective date.

9. Termination for Convenience of County. The County shall have the right to discontinue the work of the Contractor and cancel this contract by written notice to the Contractor of such termination and specifying the effective date of such termination. In the event of such termination or suspension of this Contract, the Contractor shall be entitled to just and equitable compensation for satisfactory work completed, for services performed and for reimbursable expenses necessarily incurred in the performance of this Contract up to and including the date of termination or suspension.

10. **Non-Discrimination in Employment and Affirmative Action.** The Contractor shall take affirmative action to ensure that qualified applicants and employees are treated without regard to age, race, color, religion, sex, marital status, sexual orientation, national origin, disability, or Vietnam Era Veteran status. The Contractor agrees to comply with all applicable Federal and State statutes, rules and regulations prohibiting discrimination in employment including but not limited to: Title VII of the Civil Rights Act of 1964, as amended; Massachusetts General Laws Chapter 1518§(1); the Americans with Disabilities Act of 1990; and all relevant administrative orders and executive orders including Executive Order 11246.

11. **Subcontracting.** None of the services to be provided to the County pursuant to this Contract shall be subcontracted or delegated in whole or in part to any other organization, association, individual, corporation, partnership or other such entity without the prior written approval of the County. No subcontract or delegation shall relieve or discharge the Contractor from any obligation or liability under this Contract except as specifically set forth in the instrument of approval. If this Contract is funded in whole or in part with federal funds, Contractor further agrees to comply with the provisions of the Office of Management and Budget Circular A-110, as amended, with respect to taking affirmative steps to utilize the services of small and minority firms, women's business enterprises and labor surplus area firms. All subcontracts shall be in writing and shall contain provisions which are functionally identical to, and consistent with, the provisions of this Contract. The County shall have the right to obtain a copy of the subcontract upon request.

12. **Interest of Members of County and Others.** No officer, member or employee of the County, and no member of its governing body of the locality or localities in which the Project is situated or being carried out who exercises any functions or responsibility in the review or approval of the undertaking or carrying out of the Project, shall participate in any decision relating to this Contract which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly financially interested or has any personal or pecuniary interest, direct or indirect, in this Contract or the proceeds thereof.

13. **Conflict of Interest.** Contractor acknowledges that it may be subject to the Massachusetts Conflict of Interest statute, Mass. Gen. Laws ch. 268A, and to that extent, Contractor agrees to comply with all requirements of the statute in the performance of this Contract.

14. **Assignability.** The Contractor shall not assign any interest in this Contract and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the County thereto; provided, however that claims for money due or to become due the Contractor from the County under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the County.

15. **Recordkeeping, Audit, and Inspection of Records.** The Contractor shall maintain books, records, and other compilations of data pertaining to the requirements of the Contract to the extent and in such detail as shall properly substantiate claims for payment under the Contract. All such records shall be kept for a period of seven (7) years or for such longer period as is specified herein. All retention periods start on the first day after final payment under this Contract. If any litigation, claim, negotiation, audit or other action involving the records is commenced prior to the expiration of the applicable retention period, all records shall be retained until completion of the action and resolution of all issues resulting therefrom, or until the end of the applicable retention period, whichever is later. If this contract is funded in whole or in part with state or federal funds, the state or federal grantor agency, the County or any of its duly authorized representatives or designees, shall have the right at reasonable times and upon reasonable notice, to examine and copy, at reasonable expense, the books, records and other compilations of data of the Contractor which pertain to the provisions and requirements of this Contract. Such access shall include on-site audits, review and copying of records.

16. **Findings Confidential.** Any reports, information, data, etc., given to or prepared or assembled by the Contractor under this Contract which the County requests to be kept as confidential shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.

17. **Publication, Reproduction and Use of Material.** No material produced in whole or in part under this Contract shall be subject to copyright in the United States or in any other country. The County shall have the unrestricted authority to publish, disclose, distribute, and otherwise use, in whole or in part, any reports, data or other materials prepared under this Contract.

18. **Political Activity Prohibited.** None of the services to be provided by the Contractor shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

19. **Anti-Boycott Warranty.** During the term of this Contract, neither the Contractor nor any "affiliated company" as hereafter defined, shall participate in or cooperate with an international boycott, as defined in Section 999 (b) (3) and (4) of the Internal Revenue Code of 1954, as amended by the Tax Reform Act of 1986, or engage in conduct declared to be unlawful by Sections 2 and 3 of Chapter 151E, Massachusetts General Laws. As used herein, an "affiliated company" shall be any business entity of which at least 51% of the ownership interested is directly or indirectly owned by the Contractor or by a person or persons or business entity or entities which directly or indirectly own at least 51% of the ownership interests of the Contractor.

20. **Choice of Law.** This Contract shall be construed under and governed by the laws of the Commonwealth of Massachusetts. The Contractor and the agents thereof, agree to bring any federal or state legal proceedings arising under this Contract, in which the County are a party, in a court of competent jurisdiction within the Commonwealth of Massachusetts. This paragraph shall not be construed to limit any rights a party may have to intervene in any action, wherever pending, in which the other is a party. All parties to this contract and covenant agree that any disputes be litigated in the District or Superior courts in Barnstable County.

21. **Force Majeure.** Neither party shall be liable to the other nor be deemed to be in breach of this Contract for failure or delay in rendering performance arising out of causes factually beyond its control and without its fault or negligence. Such causes may include but are not limited to: acts of God or the public enemy, wars, fires, floods, epidemics, strikes, or unusually severe weather. Dates or times of performance shall be extended to the extent of delays excused by this section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.

22. **Indemnification.** To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the County, its elected or duly appointed officers, and employees against liability, losses, damages or expenses (including reasonable legal expenses) resulting from any claim based upon to the extent caused by breach of this contract or negligent acts, errors or omissions or willful misconduct of the Contractor, its employees or its agents in providing its service(s) to the County pursuant to the Contract. After prompt notification of a claim by the County, the Contractor shall have an opportunity to participate in the defense of such claim and any negotiated settlement agreement or judgment. The County shall not be liable for any costs incurred by the Contractor arising under this paragraph. Any indemnification of the Contractor shall be subject to appropriation and applicable law. Notwithstanding the foregoing, Contractor has no obligation to defend or pay indemnitee defense costs incurred prior to a final determination of liability or to pay any amount that exceeds the proportionate share of Contractor's finally determined percentage of liability as determined by a court of competent jurisdiction.

23. **Compliance with Laws.** The Contractor shall promptly comply with all applicable laws, rules, regulations, ordinances, orders and requirements of the Commonwealth and any state or federal governmental authority relating to the delivery of the services described in this Contract subject to section 18 above. Unless otherwise provided by law, the Contractor shall promptly pay all fines, penalties and damages that may arise out of or are imposed because of the Contractor's failure to comply with the provisions of this section and, shall indemnify the County against any liability incurred as a result of a violation of this section. If the Contractor receives federal funds pursuant to this Contract, Contractor understands and agrees to comply with all requirements outlined in the Office of Management & Budget Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR Part 200 subpart A-F)

24. **Tax Exempt Status.** The County is exempt from federal excise, state, and local taxes; therefore, sales to the County are exempt from Massachusetts sales and use taxes. If the County should become subject to any such taxes during the term of this Contract, the County shall reimburse the Contractor for any cost or expense incurred. Any other taxes imposed on the Contractor on account of this Contract shall be borne solely by the Contractor.

25. **Headings, Interpretation and Severability.** The headings used herein are for reference and convenience only and shall not be a factor in the interpretation of the Contract. If any provision of this Contract is declared or found to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision. The remainder of the Contract shall be enforced to the fullest extent permitted by law.

26. **Waiver of Liability.** The Contractor hereby covenants and agrees to waive any and all claims against Barnstable County and release Barnstable County from any liability for Contractor's negligent actions in performing of the Scope of Services.

27. **Amendments.** The County may, from time to time, require changes in the Scope of Services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor costs, which are mutually agreed upon by the County and the Contractor, shall be incorporated in written amendments to this Contract.

28. **Entire Agreement.** The Parties understand and agree that this Contract and its attachments or amendments (if any) constitute the entire understanding between the Parties and supersede all other verbal and written agreements and negotiations by the Parties relating to the services under this Contract.

29. **Notice.** Unless otherwise specified, any notice hereunder shall be in writing addressed to the persons and addresses indicated below (Name, postal address, phone, email address):

To the County: Jennifer Frates, 3195 Main Street, Barnstable, MA 02630

508-375-6637 jennifer.frates@barnstablecounty.org

To the Contractor: Gregory Peschel 90 Arboretum Dr #300, Portsmouth, NH 03801

508-802-8081 gpeschel@win-waste.com

Employees of Barnstable County shall not be held personally or contractually liable by or to the Contractor under any term or provision of this Contract or because of any breach thereof. This Contract is not binding until signed by an authorized County official.

IN WITNESS WHEREOF, the County and Contractor have executed this Agreement this date: 6/29/2022

FOR THE COUNTY:

BARNSTABLE COUNTY:

DocuSigned by:
Shirley Lyons
CC780D50A9064FE...

WIN Waste Innovations
(New England Recycling)

FOR THE CONTRACTOR:

DocuSigned by:
Bruce Stanas
4508657A68AD472...

6/28/2022

Date

Attachment A Service Specifications

Disposal of Construction, Demolition, and other wastes not acceptable at MSW facilities, from the Towns within the County to a DEP approved site for the period of July 1, 2022 through June 30, 2023, with the option to renew for two additional one-year periods.

General Information and Bid Submission Requirements

Under Massachusetts General Laws, Chapter 30B, section 1 (b)(30), a contract for the collection, transportation, receipt, processing or disposal of solid waste, recyclable or compostable materials is exempt from the public bid laws of the Commonwealth of Massachusetts. As such the Towns, at their discretion will select the firm that it believes offers the best all-round package for these services. The Towns are utilizing this format in order for all interested firms to provide a proposal based on equal footing so that a more direct comparison can be made among proposals.

This contract is subject to the availability and appropriation of funds. The towns shall cancel this contract if funds are not appropriated or otherwise made available to support continuation of performance during any contract period.

Purchase Description/Scope of Services

The bidder will provide minimum 40 cubic yard containers as requested by each town, to dispose of construction and demolition (C & D) material and other wastes not acceptable at MSW facilities (excluding hazardous and biohazard wastes) at the Town Transfer Stations. The contractor shall provide 100CY trailers to the Town of Yarmouth. Town employees will load all materials into the Contractor provided containers for disposal at a DEP approved site, by the successful bidder. The Contractor shall provide containers in the appropriate number to keep less than ten tons of material on the disposal pad for said C & D and other unacceptable material.

Contractors shall be responsible for examining the machinery and methods used by each town to load containers. The Contractor must base their bid – and the type of containers provided - on existing site conditions including the loading height of Town equipment. Contractors may request records of container weights from towns.

Towns may provide access for the contractor to switch containers outside of normal work hours provided the town can move and weigh the containers at the town's scale during normal work hours. No container shall be removed from the site without being weighed at the town scale. The option of allowing access to premises outside of normal work hours will be solely at the discretion of the Town.

Payment will be at a fixed price per ton for all Construction & Demolition and other unacceptable wastes (excluding hazardous and biohazard wastes). There shall be no separate charges. The Towns are currently keeping bulky items, mattresses, etc. separate. **If the Contractor provides adequate containers, Towns can keep the current sorting situation in place in attempt to segregate bulky items rather than mixing these items with the C&D.** In no way will the Towns be obligated to ensure that bulky item containers shall be free of all C&D

Bidders are to indicate on the bid form where they are disposing of the disposing of the waste. Towns are to be notified immediately if there is a change is disposal location.

Information and estimates for each town are listed herein.

Equipment

The contractor shall provide all equipment for the purpose of disposal of Construction & Demolition and other unacceptable Waste. The contractor shall keep the equipment in good working order at all times and shall have the capability of providing backup equipment on short notice in the event of primary equipment failure. The contractor shall have and maintain for the term of this agreement, all permits and licenses for the equipment, as may be required by law in order to fulfill the operational intent of this agreement. The Contractor shall maintain insurance for equipment while on site. The contractor shall register, inspect, insure and maintain trailers used at the Barnstable and Yarmouth sites.

Prosecution of Work

The contractor shall be required to provide labor and equipment within 24 hours upon a call from the Town for pickup, as may be determined by the Town's representative in accordance with the disposal demand rate and all off loading requirements. Response must be within 24 hours.

Emergency Contacts

The Contractor shall maintain a 24-hour, 7-day a week telephone service and a local facility to handle emergency requirements. A list of personnel and their telephone numbers shall be submitted to the Town.

Estimated Solid Waste Quantities

It is estimated that the total tonnage of Construction & Demolition and other unacceptable wastes are contained in the Appendix

Approximately one-third of the total trips are concentrated in the months of June, July and August. These are estimates, however. The Town shall not be held to any minimum quantities. Recent records of quantities are listed in the table below:

Transfer Station Information

Brewster Recycling Center, 201 Run Hill Road, Brewster, MA 02631

Contact: Griffin Ryder, (508) 896-3212

Approximately 350 tons per year

Type of container: 40CY container, average weight 8 tons per container

Schedule: Open Thursday-Monday 8:00-3:00, pick up requests on Tuesday and Thursday are on an on call basis an require scale coordination.

Dennis Transfer Station, 100 Theophilus F. Smith Road, South Dennis, MA 02660

Approximately 1,200 tons per year

Average weight per can 7 tons/40 cy compactor can

Contact: Chad Contonio 508-760-6230

Schedule: Wednesday to Sunday 8:00 a.m. –4:00p.m.,

40-42 cubic yard containers

Vendor shall have the ability to provide scale tickets with Gross, Tare and net weights to town within a 48-hour period for promptness of payment.

Yarmouth Transfer Station, 606 Forest Road, South Yarmouth

Contact: Roby Whitehouse, (508) 775-2516

Approximately 15,000 tons per year

Vendor shall have the ability to supply & deliver to 6 (100 cy trailers) during months: MAY – SEPT

Vendor shall have the ability to change out up to 4 trailers within 48-hour period

Vendor shall have the ability to provide trailer delivery Monday-Friday

100 cy trailer, average weight 22 tons per container

Schedule: Open 7 days/week, Minus Holidays, 7:30 – 3:30PM (Early and/or late entrance available)

Attachment B

Responses

Success: All data is valid!

Status	Bid/No Bid Decision	#	Item	Quantity Required	Numeric	Numeric	Numeric	Total Cost
					Price Per Ton Year 1	Price Per Ton Year 2	Price Per Ton Year 3	
Not Bidding	No Bid	#0-1	Brewster	1				-
Not Bidding	No Bid	#0-2	Dennis	1				-
Success: All values provided	Bid	#0-3	Yarmouth	1	\$ 138.00	\$ 144.90	\$ 152.15	\$ 138.00
Success: All values provided	Bid	#0-4	Barnstable	1	\$ 150.60	\$ 158.15	\$ 166.05	\$ 150.60
Not Bidding	No Bid	#0-5	Chatham	1				-
Not Bidding	No Bid	#0-6	Wellfleet	1				-