



RESOLUTION

APPROVING A THREE-YEAR AGREEMENT WITH RESOURCE
MANAGEMENT, INC. FOR BIOSOLIDS RECYCLING SERVICES

CITY OF NASHUA

In the Year Two Thousand and Ten

RESOLVED by the Board of Aldermen of the City of Nashua that the attached three-year contract with Resource Management Inc. for biosolids recycling services is hereby approved. The funding source for FY11 will be Account # 802-59225-8500-8900 "Sludge Disposal".

LEGISLATIVE YEAR 2010

R-10-36

RESOLUTION:

PURPOSE:

Approving a three-year agreement with Resource Management, Inc. to provide biosolids recycling services

SPONSOR(S):

Mayor Donnalee Lozeau

**COMMITTEE
ASSIGNMENT:**

FISCAL NOTE:

The estimated annual cost of this contract is \$536,064.

ANALYSIS

This resolution would approve a three-year contract with Resource Management, Inc. to provide biosolids recycling services. The funding source for FY11 will be Account # 802-59225-8500-8900 "Sludge Disposal". This resolution should be referred to the Board of Public Works.

NRO § 5-74, B states that a contract that extends from the current fiscal year into succeeding fiscal year(s) in which no funds have been appropriated nor otherwise designated for this purpose shall be approved by the full Board of Aldermen before the contract shall become binding on the City.

**Approved as to account
structure, numbers and
amount:**

Financial Services Division

By:

Kasey Marie

Approved as to form:

Office of Corporation Counsel

By:

Dowling Clarke

Date:

July 2, 2010



Resource Management Inc.

Amendment #1

to the

Agreement to Provide Biosolids Recycling Services

between the City of Nashua

and

Resource Management, Inc.

The *Agreement to Provide Biosolids Recycling Services between the City of Nashua and Resource Management, Inc.* (formerly known as White Mountain Resource Management, Inc.), dated July 1, 2001, is hereby amended as attested to by the signatures of both parties on this document Amendment #1. This Amendment #1 shall be in effect for the term commencing July 1, 2010.

The following terms and conditions are amended to the original terms and conditions of the Biosolids Recycling Agreement ("Agreement") as follows:

Section 4.1 Pricing Provisions of the Agreement shall be amended as follows:

Replace text in Section 4.1 with the following:

4.1 "For the biosolids recycling services to be provided by RMI pursuant to this Agreement, Nashua agrees to pay RMI an all-in recycling fee of \$55.84 per wet ton of biosolids recycled from WWTF. It is understood that this recycling fee is based upon the current regulatory requirements in place in the State of New Hampshire at the time of signature of this Agreement. Any significant changes to the regulations governing the beneficial use of biosolids at the local, state or federal level shall be cause for re-negotiation of the scope of services and the recycling fee."

In Witness Whereof, The Amendment #1 has been executed on behalf of the undersigned parties by their respective representative thereunto duly authorized, as of the date of final signature written below.

CITY OF NASHUA

RESOURCE MANAGEMENT, INC.

Its: _____

Its: President _____

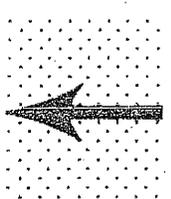
Witness

Witness

Date: _____

Date: _____

**Agreement to Provide
Biosolids Recycling Services
between
the City of Nashua, New Hampshire
and
White Mountain Resource Management, Inc.**



This agreement for biosolids recycling services (the "Agreement") entered into this 1st day of July 2001 is made by and between The City of Nashua (hereinafter "Nashua") having its address at 229 Main Street, Nashua, New Hampshire and operating a wastewater treatment facility located on Sawmill Road in Nashua, New Hampshire (hereinafter the "WWTF"); and White Mountain Resource Management, Inc. (hereinafter "RMI"), a New Hampshire corporation with a place of business at Route 175; Holderness, New Hampshire; and

Now, therefore, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Nashua and RMI agree as follows:

Section 1. Basis of the Agreement

- 1.1 Nashua and RMI enter into an Agreement under which RMI will provide services of managing, handling, and transporting 100% of the biosolids produced at the WWTF, provided the biosolids meet the quality criteria for biosolids recycling specified in the New Hampshire Department of Environmental Services' (hereinafter "NH-DES") Code of Administrative Rules Env-Ws 800 Sludge Management.
- 1.2 Nashua shall be responsible for analysis of the biosolids to comply with the provisions of the NH-DES Env-Ws 800 Sludge Management Rules. Data and records from WWTF shall be forwarded to RMI as necessary.
- 1.3 It is understood that biosolids produced at the WWTF that do not meet the quality standards for beneficial utilization in the NH-DES Env-Ws 800 Sludge Management Rules may need to be sent to landfill for disposal or other appropriate disposal outlets. Biosolids that does not meet the NH-DES Env-Ws 800 Sludge Management Rules shall be deemed non-standard sludge.

Section 2. Services to be Performed

- 2.1 To manage the biosolids produced by WWTF, RMI shall pursue and put in place a range of utilization outlets suitable for the biosolids. These utilization outlets may encompass a variety of options including, but not limited to agricultural land application, topsoil manufacturing, reclamation of disturbed soils, and landfill closure projects.
- 2.2 To recycle the biosolids, RMI shall provide a variety of services including, but not limited to, the following:
 - 2.2.a. Conduct a program of managing, handling, transporting, and recycling that complies with all federal, state, and local laws and applicable rules and regulations.
 - 2.2.b. Complete permitting activities, including but not limited to obtaining necessary permits and performing permit compliance activities, necessary to carry out the purposes of this Agreement, and to comply with federal, state and local laws.
 - 2.2.c. Provide two (2) containers for hauling biosolids. The containers shall be watertight and have secure tarp systems.
 - 2.2.d. Coordinate and manage the logistics of trucking, delivery and final use of biosolids at utilization sites.
 - 2.2.e. Once the Nashua WWTF loads the biosolids into RMI's container, RMI shall transport the biosolids from the Nashua WWTF to the utilization site(s) with RMI trucks and containers.
- 2.3. If directed by Nashua, RMI agrees to divert up to a maximum of 3,000 wet tons of biosolids per contract year to the Town of Merrimack, New Hampshire composting facility. RMI's responsibilities for this outlet shall be limited only to transport of the biosolids.
- 2.4 In addition to its responsibilities of managing, handling, transporting and delivering biosolids to utilization sites, at Nashua's request and upon terms acceptable to Nashua, RMI may provide additional services to Nashua not included herein. Payment for any such additional services shall be independent of the provisions specified in Section 4.
- 2.5 Nothing herein shall require RMI to violate the terms of any governmental permit, or to utilize or dispose of biosolids other than in full conformity with such laws and regulations governing the utilization and disposal of biosolids as may be in effect from time to time. RMI agrees to use its best efforts to diligently pursue its responsibilities under this Agreement, but shall not be responsible for delays caused by Force Majeure events beyond its control as defined in the Agreement.

Section 3. Biosolids Quantity

The terms set forth herein are based upon the expectation that Nashua produces a total of approximately 13,000 wet tons of biosolids annually. It is understood that RMI will annually recycle 100% of the biosolids in a beneficial utilization program, regardless of actual amount produced. It also is understood that the actual amount of biosolids generated by Nashua may differ from this amount, and may be more or less due to changes in production and operations at the WWTF or Force Majeure events.

Section 4. Pricing Provisions

- 4.1 For the biosolids recycling services to be provided by RMI pursuant to this Agreement, Nashua agrees to pay RMI an all-in recycling fee of \$39.50 per wet ton of biosolids recycled from WWTF. It is understood that this recycling fee is based upon the current regulatory requirements in place in the State of New Hampshire at the time of signature of this Agreement. Any significant changes to the regulations governing the beneficial use of biosolids at the local, state or federal level shall be cause for re-negotiation of the scope of services and the recycling fee.
- 4.2 For RMI trucking services for a maximum of 3,000 wet tons annually of Nashua biosolids hauled from the WWTF to the Town of Merrimack composting facility located at 36 Mast Road in Merrimack, New Hampshire, Nashua agrees to pay RMI \$9.50 per wet ton. RMI shall not be responsible for any other fees associated with this outlet.
- 4.3 For non-standard sludge sent to alternative outlets, Nashua agrees to reimburse RMI for the full amount of all payments actually made by RMI to dispose of non-standard sludge in a reasonable manner, plus 15%, provided the payments made by RMI are approved in writing in advance by Nashua.
- 4.4 RMI shall be reimbursed for trucking services it provides for transporting non-standard sludge, or any other additional trucking services provided by RMI to Nashua, at a rate of \$75.00 per hour from point of origin to point of return.
- 4.5 RMI shall pay for site permit filing fees and soil samples, at no cost to Nashua.
- 4.6 Nashua agrees to reimburse RMI for any additional out-of-pocket fees as may be required by authorized regulatory agencies at cost plus 15%, provided Nashua approved the service in writing, in advance. This shall include, but not be limited to analytical testing fees for biosolids, and regulatory fee requirements.
- 4.7 The pricing provisions in Section 4 shall be increased by 3.5% annually on the commencement date of the Agreement.

Section 5. Agreement Duration

The terms of the Agreement shall be deemed to have commenced on the date first written above (the "Commencement Date") and, unless terminated as provided elsewhere in the Agreement, shall expire six (6) years thereafter. RMI and Nashua may mutually agree to extend the Agreement pursuant to the terms of Section 6 hereof.

Section 6. Extension of the Term

Notwithstanding any other provision of this Agreement, the term of the Agreement shall be automatically extended for an additional three (3) year term at the end of the initial six-year term, unless either party provides written notice to terminate the Agreement to the other party no later than one hundred twenty (120) days prior to the end of the Agreement. Thereafter, the term of the Agreement shall continue to be extended every three years for three-year terms in the same manner.

Section 7. Biosolids Quality

- 7.1 In general, Nashua will provide RMI with biosolids that meet the land application biosolids quality requirements of the New Hampshire Department of Environmental Services.
- 7.2 The biosolids shall be stabilized to meet pathogen and vector attraction reduction requirements for class B standards, at a minimum. The biosolids shall be dewatered sufficiently to optimize stackability, and be consistent in physical characteristics.
- 7.3 If WWTF produces any non-standard sludge which does not meet the beneficial utilization requirements for land application of the NH-DES Env-Ws.800 Sludge Management Rules, Nashua will notify RMI as soon as practical so that if such non-standard sludge is unacceptable for the intended utilization purpose, the non-standard sludge can be withheld at the Nashua WWTF. Non-standard sludge can be disposed of at an approved alternative site by RMI, if necessary, in accordance with the terms set forth herein. Any contamination of the biosolids in any manner whatsoever shall be cause for notice to be given to RMI by Nashua as described above. Failure to give such notice within such time as to allow for the non-standard sludge to be withheld at WWTF shall cause Nashua to be liable to RMI for any and all damages suffered by RMI arising from the utilization of such non-standard sludge. If the WWTF produces non-standard sludge and does not notify RMI within such time as to allow for the non-standard sludge to be withheld at the WWTF, Nashua shall indemnify and hold RMI harmless from all damages, costs, and liabilities arising from utilization of the non-standard sludge unless such damages are caused by RMI. Nashua shall have the right to inspect all loads of biosolids in the possession of RMI to ensure that contamination of the biosolids does not occur while the biosolids are in the possession of or under the control of RMI. In a like manner, RMI shall hold Nashua harmless from all damages, costs, and liabilities arising from any such contamination of the biosolids by RMI, or if RMI recycles or disposes of non-standard sludge contaminated by Nashua in an

improper manner, after notification by Nashua to RMI that the sludge was non-standard.

- 7.4 In the event that RMI finds any load of biosolids provided by Nashua fails to meet the quality standards applicable to the utilization/disposal method previously agreed to by RMI and Nashua, RMI shall promptly notify Nashua. At its option, Nashua may (1) direct RMI to dispose or recycle the non-standard sludge at an approved alternative outlet or (2) assume direct responsibility for disposal of the non-standard sludge.
- 7.5 RMI and Nashua acknowledge that it is possible that biosolids generated at the WWTF may have value to third parties even if it is non-standard sludge and does not meet the quality standards for land application of the NH-DES Env-Ws 800 Sludge Management Rules. In this (these) instance(s) RMI and Nashua resolve to establish different biosolids quality standards pertaining to this (these) use(s). Once accomplished, these different biosolids quality standards shall govern for this (these) use(s).
- 7.6 Nothing set forth herein shall be construed as obligating RMI to handle any hazardous waste in any manner. It is expressly understood that RMI does not and shall not handle any waste defined as hazardous under either federal or state law; provided, however, that in the event that material handled by RMI pursuant to this Agreement shall become reclassified as hazardous waste by law or by regulation adopted by an agency of competent jurisdiction, RMI shall not be obligated to handle such material, but shall use its best efforts on behalf of Nashua to identify disposal options for such material.

Section 8. Biosolids Removal

- 8.1 Biosolids removal operations conducted by RMI shall not cause undue interruption in the WWTF operations.
- 8.2 WWTF shall be responsible for loading biosolids into RMI containers for transport. Nashua shall load containers to a capacity not less than 35 yards per load. The biosolids shall be evenly distributed by Nashua in the container.
- 8.3 RMI shall weigh each load of biosolids and provide record of the weight slips to Nashua.
- 8.4 In order to assist RMI in scheduling work crews, WWTF will devote its best efforts to provide RMI with advanced notification of equipment failures or other circumstances which may impact the normal schedule.

Section 9. Cancellation Under Special Circumstances

- 9.1 In the event that the utilization of biosolids, as provided for in this Agreement, is prohibited by a federal, state, or local regulatory agency with appropriate jurisdiction at any time during the term of this Agreement, this Agreement shall remain in full force

and effect; provided, however, that if RMI cannot find utilization or disposal techniques which can be provided to WWTF for equal or less than the pricing in Section 4, either Nashua or RMI may terminate this Agreement upon thirty (30) days written notice.

- 9.2 If RMI fails to provide satisfactory service as provided in Section 2, Nashua will provide written notification of such failure. If after thirty (30) days from notification, RMI has not corrected such failure, Nashua may cancel or terminate this agreement.

Section 10. Payment

- 10.1 Services provided by RMI shall be billed to Nashua on a monthly basis in arrears by RMI and paid by Nashua within 30 days from date of invoice with a 1% discount available if invoice is paid within 10 days from date of invoice. Payment shall be based on weight slips provided by RMI and individual delivery records.
- 10.2 Late charges will be applied to any overdue balances at a rate of 18% per annum.
- 10.3 If payment becomes delinquent and the account is placed for collection, Nashua agrees to pay all reasonable charges for collection, including attorney fees, for such payments as Nashua accepts responsibility or a court of competent jurisdiction or arbitrator appointed pursuant to § 14 of this Agreement ultimately finds Nashua liable.

Section 11. Indemnification

- 11.1 Nashua shall defend, indemnify and hold harmless RMI, its agents, officers, directors, and employees from and against all claims, damages, losses, or actions brought against RMI which are caused by Nashua, its agents, officers, directors, and employees pursuant to this Agreement.
- 11.2 RMI shall defend, indemnify and hold harmless Nashua, its agents, officers, directors, and employees from and against all claims, damages, losses or actions brought against Nashua which are caused by RMI, its agents, officers, directors, and employees pursuant to this Agreement. RMI's defense, indemnity and hold harmless obligations shall specifically extend to any claims, damages, losses or actions arising out of or pursuant to RMI's breach of its obligations; and to all obligations and actions of all discrete outlets selected by RMI pursuant to this Agreement. As long as Nashua has met all of its obligations under this Agreement (including meeting then-applicable land application biosolids quality requirements), RMI shall defend, indemnify and hold harmless Nashua, its agents, officers, directors, and employees from and against all claims, damages, losses or actions brought against Nashua due to any use of the biosolids occurring after RMI has removed the biosolids from the WWTF.
- 11.3 The indemnities granted in this section and in Section 7 shall survive the termination of this Agreement, whether said termination occurs due to the passage of time or otherwise.

Section 12. Insurance

- 12.1 RMI shall continuously carry with a reputable insurance company or companies the following insurance:
- 12.1.a. Worker's Compensation and Occupational Disease Insurance in such amounts as may be required by law.
 - 12.1.b. Bodily injury and property damage liability including, without limitation, comprehensive general liability (including blanket contractual liability), comprehensive automobile liability and employer's liability, (hereinafter collectively "Liability Insurance").
- 12.2 The Liability Insurance obtained by RMI shall include provisions or endorsements naming Nashua as an additional named insured and stating that the carrier of the policy shall neither cancel the policy nor reduce the liability limits thereof without first giving thirty (30) days prior written notice to RMI and Nashua.
- 12.3 Initial limits of liability (per occurrence) under the Agreement shall be as follows:
- 12.3.a. General liability \$1,000,000; aggregate \$2,000,000
 - 12.3.b. Automobile liability \$1,000,000 combined single limit
 - 12.3.c. Employer's liability Statutory
- 12.4 A certificate in form satisfactory to Nashua certifying to the issuance of such insurance from RMI insurer regarding the coverage provided by such insurance, shall be furnished to Nashua prior to commencing work under this Agreement, and upon reasonable request thereafter.

Section 13. Successors and Assigns

This Agreement shall be binding on the successors and assigns of RMI and Nashua but shall not be assigned by either party except to an affiliated entity or for the purpose of obtaining financing without the written consent of the other party, which such consent shall not be unreasonably withheld or delayed. "Affiliated entity" as used herein shall mean an entity owned or controlled by the assigning party.

Section 14. Applicable Law

The construction, performance and validity of the Agreement shall be governed by the laws of the State of New Hampshire.

Section 15. Waiver

Unless otherwise specifically provided by the terms of the Agreement, no delay or failure to exercise a right resulting from any breach of the Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the party granting such waiver. If any representation, warranty or covenant contained in the Agreement is breached by any party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under the Agreement.

Section 16. Counterparts

The Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, or in separate counterparts.

Section 17. Notices

Any notices required hereunder shall be given in writing, by certified mail, postage prepaid or by a nationally recognized overnight delivery service, to the parties at the addresses set forth below. Any oral notice necessitated by time constraints shall be confirmed in the manner described above to the other party:

Notice to Nashua :

Central Purchasing
The City of Nashua
229 Main Street
Nashua, NH 03061

with copy to:

Nashua WWTF
Sawmill Road
Nashua, NH 03061

Notice to RMI:

Shelagh Connelly, President
White Mountain Resource Management, Inc
P.O. Box 1081
Ashland, NH 03217

For Overnight Delivery:

White Mountain Resource Management, Inc
Route 175
Holderness, NH 03245

Section 18. Force Majeure

- 18.1 Force Majeure shall mean any event which is beyond the reasonable control of, and without the fault of, the party claiming Force Majeure, including but not limited to: fire, flood, storm, acts of God, emergencies, accidental breakdown of the WWTF or RMI equipment, or acts or actions of government or court, sabotage, and civil insurrection.
- 18.2 In circumstances other than those defined in Section 9, any party claiming Force Majeure shall give written notice to the other party of the Force Majeure event

within seven (7) days thereof. Such party shall be excused from performance of its obligations hereunder for such time as was lost due to the Force Majeure, but not exceeding thirty (30) days, unless such party (a) has provided the other party within (30) days of the Force Majeure event a written plan describing the cause of the Force Majeure and the steps it is taking to cure the Force Majeure with its best efforts, and (b) diligently acts with its best efforts to cure such Force Majeure. Should such extended cure period last more than three (3) months, then the non-Force Majeure party at its option, may terminate this Agreement upon ninety (90) days written notice.

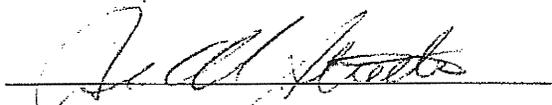
Section 19. Entire Agreement Modification

This Agreement constitutes the entire understanding between the parties, supersedes any and all previous understandings between the parties, and binds and inures to the benefit of the parties, their successors and assigns. No modifications to this Agreement shall be valid unless in writing and signed by both parties hereto.

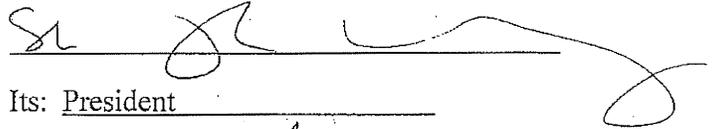
In Witness Whereof, The Agreement has been executed on behalf of the undersigned parties by their respective representative thereunto duly authorized, as of the date first written above.

THE CITY OF NASHUA

WHITE MOUNTAIN
RESOURCE MANAGEMENT, INC.



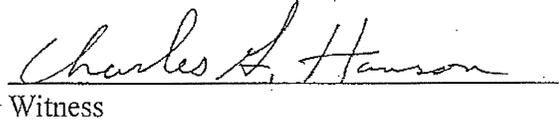
Its: Mayor



Its: President



Witness



Witness

5/17/01

Date

5/9/01

Date

