

TOWN OF LIMERICK WASTE HAULING AGREEMENT

THIS AGREEMENT is made this 22 day of November, 2021, by and between the INHABITANTS OF THE TOWN OF LIMERICK, a municipality and body politic and corporate having a place of business in the County of York, State of Maine (hereinafter the "Town"), and

Mellen and Sons Disposal Services a Maine corporation with a mailing address of P O Box 105 East Parsonsfield ME 04047 hereinafter "Contractor").

WITNESSETH:

WHEREAS, the Town is required under Maine law to provide for the safe and efficient disposal of municipal solid waste generated within the Town; and

WHEREAS, the Town is under a contractual obligation to deliver the municipal solid waste generated within its boundaries to the disposal facility located on Blueberry Road in Portland, Maine (hereinafter, the "Facility"); and

WHEREAS, on March 12, 2021, the voters at the annual Town Meeting authorized the Town to enter into a contract for solid waste hauling services; and

WHEREAS, the Town did advertise for proposals by a Request for Proposals for Solid Waste Hauling Services (the "Request for Proposals"); and

WHEREAS, Contractor is in the business of waste hauling and did submit a proposal for such work (the "Proposal"); and

WHEREAS, the Town has determined that Contractor has the ability to provide services required by the Request for Proposals;

NOW THEREFORE, after due consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. SCOPE OF WORK.

Contractor shall perform curbside collection of all residential and small business municipal solid waste generated in the Town and shall deliver for disposal to the Facility all waste that is acceptable at the Facility, defined as "Municipal Waste" in that certain Waste Handling Agreement between the Town and ecomaine dated March 26, 2018 ("WHA") on file in the Selectmen's office. Contractor shall furnish any and all materials, supplies, equipment, vehicles, facilities and labor required to provide all of those services set forth in the Request for Proposals the 3-page General Bid Specifications a copy of which is attached hereto as Exhibit 1 and Exhibit 2 the Contractor's written bid. Contractor hereby acknowledges receipt of the Request for Proposals and the General Bid Specifications, which is hereby incorporated herein and made part of this Agreement by

accordance with Contractor's Proposal, a copy of which is attached hereto as Exhibit 2 and which is hereby incorporated by reference, except as otherwise modified by this Agreement. Where there is a conflict between the terms of this Agreement and Contractor's Proposal, this Agreement shall control.

2. INDEPENDENT CONTRACTOR.

Throughout the performance of the contract you are acting in an independent capacity and not as an officer, employee or agent of the Town of Limerick. Additional personnel needed by you to fulfill your duties under the contract shall be employed or retained by you, and you are solely responsible for complying with all applicable state and federal laws including but not limited to workers compensation law, employment security law and minimum wage law. As an independent contractor, you are also responsible for maintaining your vehicles and equipment in a safe and legal condition. You are to provide adequate back-up equipment and personnel to assure weekly collection of waste and material if the primary equipment breaks down or you need additional personnel.

3. MUNICIPAL WASTE COLLECTION.

Contractor shall provide collection services for all Municipal Waste as set forth in the General Bid Specifications Request for Proposals and Contractor's Proposal, and in accordance with Section VI of the Town's Solid Waste Flow Control Ordinance, a copy of which is on file at the town clerk's office and as may be amended from time to time. Contractor shall provide the following collection services:

A. Contractor shall provide weekly, curbside pickup of residential and small business Municipal Waste on all public and private roads in the Town, and shall serve each residence or business in the Town at least once aweek.

B. Contractor shall not collect any "white goods," any waste that is otherwise defined as "Unacceptable Waste" in the Waste Handling Agreement (WHA), or waste that does not comply with the requirements of Section 5.3 of the Town's Solid Waste Flow Control Ordinance.

C. Contractor shall provide two (2) 40-yard containers to be located, year-round, at the Limerick Transfer Station and Recycling Facility ("Transfer Station"). These containers shall be used for disposal of Municipal Waste only and Contractor shall haul the full containers, as needed, at no additional expense or hauling fees to the Town. Contractor shall maintain the containers in good, serviceable condition. The Town will inform Contractor each Sunday and Wednesday whether either or both containers need to be emptied. Contractor will empty the containers and return them to the Transfer Station by the following Wednesday, if so notified on a Sunday, or by the following Friday, if so notified on a Wednesday.

4. ROUTES AND COLLECTION SCHEDULES.

Contractor shall provide curbside pickup services to all residences and small businesses

located on public and private roads in the Town. If Contractor determines that the condition of a private road is not adequate for its vehicles to safely provide services under this Agreement the Contractor shall inform the Board of Selectmen to discontinue service on such street until the road becomes adequate and safe for travel.

Contractor shall provide the Town with a map of its collection route and a schedule for the day of picking up waste on those routes, and shall publish the collection route and schedule in the Shopping Guide prior to the effective date of the Agreement. Contractor shall only change the approved schedule and map after approval by the Board. If the Town approves changes to the map and schedule requested by Contractor, Contractor shall, at its own expense, send a notice of the change in schedule to the Shopping Guide.

Unless otherwise approved by the Board, the hours of collection shall start no earlier than 6:00 a.m. and shall be completed no later than 4:00 p.m. Normal pickup days shall be Monday through Friday, with one day being agreed on by both parties. Weekend collection shall only be allowed with the prior permission of the Board. Non-collection holidays are: New Year's Day, Thanksgiving Day, Fourth of July and Christmas Day.

In the event that a regularly scheduled collection is missed, except as set forth below, and a complaint received by either the Town or Contractor and it is determined that the missed pickup was not the result of the customer's failure to place materials curbside at the appropriate time, Contractor shall collect such materials within twenty-four (24) hours of Contractor's receipt of the complaint of the missed collection.

The above paragraph shall not apply to non-collection holidays or in the event of a serious storm during which the Town suspends collection services. Where collection services are not provided due to a holiday as provided herein, Contractor shall provide the collection services missed on a day approved by the Board of Selectmen. Any cancelled collection due to a holiday shall be collected over the following business day. Contractor shall provide notice of changes in collection days under this paragraph through notices in the Shopping Guide.

5. DISPOSAL FACILITIES.

All residential Municipal Waste collected under the terms of this Agreement shall be transported to ecomaine or other solid waste facility designated by the Town. The Town shall be responsible for the payment of all tipping fees for residential and small business Municipal Waste delivered to ecomaine or other designated solid waste facility.

6. TERM; AGREEMENT SUBJECT TO ANNUAL APPROPRIATION.

This Agreement shall have a three (3) year term commencing on January 1, 2022, and ending on December 31, 2024, unless sooner terminated as provided herein. Each year of this Agreement is subject to the appropriation by the Town Meeting of the funds required for payment hereunder. In the event that the Town Meeting fails to authorize such funding during any year of this Agreement, the Agreement shall terminate and become null and void at the end of the last year for which funding has been authorized, and neither party shall have any continuing rights under this Agreement. In addition to the foregoing, the parties may agree to terminate or amend this Agreement at any time by mutual, written consent.

7. CONTRACT PRICE; PRICE INCREASES.

Contractor agrees to collect and deliver to ecomaine all residential and small business Municipal Waste generated within the Town, and to provide all other services set forth in this Agreement, for a total price of Seven Hundred Twenty Thousand Dollars \$ 720,000.00 Dollars, Two Hundred Forty Thousand Dollars \$ 240,000.00 per year for each year of the term of this Agreement.

8. PAYMENT.

Contractor shall be paid \$20,000.00 Twenty Thousand Dollars a month beginning February 1, 2022 which is payment for the month of January 2022 , then monthly thereafter on or near the first of each month; subject to any deductions or claims resulting from Contractor's failure to perform work as required under this Agreement. No monthly invoice needs to be sent to the Contractor.

9. INSURANCE.

Contractor shall maintain the following insurance coverages for the duration of the Agreement, a copy of all policies herein shall be filed annually with the Town of Limerick naming the Town as additional insured:

Public Liability Insurance (or Commercial General Liability) in the amount of not less than One Million Dollars (\$1,000,000.00), combined single limit, for either bodily injury by accident or bodily injury by disease, with aggregate Occurrence coverage in an amount of no less than Two Million Dollars (\$2,000,000.00) to protect Contractor and the Town from claims and damages that may arise from operations under this Agreement, whether such operations be by Contractor or by anyone directly or indirectly employed by Contractor. A copy of all insurance policies herein shall be filed annually with the Town of Limerick naming the Town as additional insured.

Automobile Liability Insurance in the amount of not less than One Million Dollars (\$1,000,000.00), combined single limit per accident and not less than Two Million Dollars (\$2,000,000.00) in aggregate, to protect Contractor and the Town from claims and damages that may arise from operations under this Agreement, whether such operations be by Contractor or by anyone directly or indirectly employed by Contractor.

Workers' Compensation Insurance in amounts required by Maine law and Employer's Liability Insurance, as necessary, as required by Maine law.

Pollution Liability Insurance in the amount of not less than One Million Dollars (\$1,000,000.00), combined single limit per accident, to protect Contractor and the Town from claims and damages that may arise from operations under this Agreement, whether such operations be by Contractor or by anyone directly or indirectly employed by Contractor.

Deductible Amount. Contractor will reimburse the Town and hold it harmless from the cost of any losses for which Contractor is responsible and to which a deductible amount may apply. The deductible amount in any insurance policy required under this section shall not exceed Twenty-Five Thousand Dollars (\$25,000.00) without the prior written consent of the Town.

All such insurance policies shall name the Town and its officers, agents and employees as additional insureds, except that for purposes of Workers' Compensation insurance, Contractor instead may provide a written waiver of subrogation rights against the Town, as permitted by Maine law. All

insurance policies shall be issued by companies authorized to do business under the laws of the State of Maine, shall be in form satisfactory to the Town and shall contain a provision prohibiting cancellation except upon at least ten (10) days' prior written notice to the Town and shall contain a complete waiver by the insurer of subrogation against the Town. All such insurance policies will be primary in the event of a loss arising from Contractor's performance and shall provide that where there is more than one insured, the policy will operate, except for the limits of liability, as if there were a separate policy covering each insured. Contractor shall not commence Work under the Agreement until it has obtained all insurance coverages required under this subparagraph and any insurance policies have been approved by the Town. All such insurance policies shall have a retroactive date which is the earlier of the date of the Agreement between the parties or Contractor's commencement of services hereunder.

B. INDEMNIFICATION.

Contractor shall defend, indemnify, and hold harmless the Town from and against any claim, demand, loss and costs, including reasonable attorney's fees, arising out of bodily injury or property damage to, or the death of, any person, including, but not limited to, any subcontractor, supplier, employee, agent, representative or invitee of the Town, Contractor, or any subcontractors or suppliers, to the extent such injury, damage or death arises out of or results in any manner from (i) Contractor's failure to comply with the terms of this Agreement, including, but not limited to, all warranties provided hereunder, or (ii) the fault of, or any act of negligence, or willful misconduct, by Contractor, Contractor's subcontractors, Contractor's suppliers, or of anyone acting under its or their direction or control, or on its or their behalf in connection with or incidental to the performance of this Agreement. Contractor's indemnity and hold harmless obligation shall not apply to liability to the extent caused by the fault, negligence or willful misconduct of the Town. Any indemnification of the Town and any limitation of the Town's liability shall to the same extent apply to the Town's officers, employees, agents, contractors, and affiliated companies, and the directors, officers, employees, agents and contractors thereof.

C. VEHICLES.

All vehicles used by Contractor in the performance of services under this Agreement shall be licensed in the State of Maine and shall be operated by drivers with the required State of Maine driver's licenses. Each vehicle shall comply with all applicable state, local and federal regulations, as well as with all applicable requirements of ecomaine or other solid waste facility designated by the Town. Contractor shall maintain its vehicles and equipment in good repair and in a safe, sanitary condition, and shall provide adequate back-up equipment and personnel to assure weekly collection of waste and material if the primary equipment breaks down. Each vehicle shall contain Contractor's name and telephone number. Each vehicle used for curbside pickup of Municipal Waste shall have appropriate equipment for the cleanup of waste that may be spilled or scattered during the process of collection, and Contractor shall be responsible for immediately cleaning up any spillage caused by Contractor's equipment or handling of waste. Each vehicle shall be secured in such a manner as to prevent littering or leaking of fluids. For the purpose of customer service all issues if any shall be directed to the Contractor.

D. PERMITS AND LICENSES.

Contractor shall be responsible for the cost, acquisition and maintenance of all permits and licenses necessary for the performance of work under this Agreement.

E. CUSTOMER SERVICE.

Contractor shall provide the Town with a list of the qualified personnel who will be supervising

the collection route for the Town under this Agreement. Contractor shall provide an appropriate level of customer service as required by this Agreement, including a telephone number at which Contractor may be reached during normal working hours to effectively deal with complaints and problems relating to this Agreement. Contractor shall be responsible for the prompt and appropriate resolution of customer complaints, whether relayed from the Town or directly from customers.

F. TERMINATION FOR CAUSE.

Without prejudice to any other right or remedy, the Town may terminate this Agreement at anytime for cause by providing Contractor with seven (7) days' written notice of termination. For purposes of this Agreement, cause includes, but is not limited to: (i) Contractor's failure to perform according to any of the terms or conditions of this Agreement in the time and manner specified; (ii) the adjudication of Contractor as bankrupt; (iii) the making of a general assignment by Contractor for the benefit of its creditors; (iv) the appointment of a receiver because of Contractor's insolvency; (v) Contractor's persistent or repeated refusal or failure, except for cases in which extension of time is provided, to supply enough properly skilled workers or proper materials, vehicles or equipment to perform the work required under this Agreement; (vi) Contractor's failure to comply with federal, State or local statutes, laws, codes, rules, regulations, orders or ordinances; (vii) and Contractor's substantial violation of the provisions of this Agreement.

The Town may also terminate this Agreement at any time for cause if Contractor subcontracts any services required under this Agreement without the Town's prior approval, or if Contractor merges with or is sold to any other corporation, partnership, sole proprietorship, person or entity without the prior written approval of the Town. In the event of any termination for cause under this paragraph, Contractor shall not be entitled to any further payment under this Agreement from the date of receipt of said notice, and the Town may deduct and withhold from payment an amount necessary to engage a substitute contractor to complete the work covered by this Agreement, as well as any incidental or consequential damages sustained by the Town as a result of Contractor's breach.

G. NOTICES.

Any notices required under the terms of this Agreement shall be sent via United States mail, first class, return receipt requested, to the following:

TOWN:	Town of Limerick 55 Washington Street Limerick, ME 04048
CONTRACTOR:	Mellen and Son Disposal P O Box 105 East Parsonsfield, ME 04047

H. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS.

Contractor shall be responsible for compliance with all applicable local, State and federal

laws and regulations, including but not limited to worker's compensation laws, employment security laws, minimum wage laws, and the Town's Solid Waste Flow Control Ordinance, as may be amended from time to time. Contractor shall also be responsible for compliance with ecomaine's rules and regulations and the terms of the Waste Handling Agreement between the Town of Limerick and ecomaine, a copy of which is available in the Selectmen's office and is hereby incorporated by reference. In the event that the Town designates an alternative disposal facility, Contractor shall be responsible for compliance with the terms of any agreement between the Town and the alternative disposal facility and any rules or regulations promulgated by the alternative disposal facility.

I. ENTIRE AGREEMENT/AMENDMENTS/CONFLICTS.

This Agreement and its Exhibits represent and contain the entire agreement between the parties. Any amendments to this Agreement shall be in writing and shall be signed by each party hereto. Where there is a conflict between any provision of this Agreement and any of the Exhibits, this Agreement shall prevail.

J. ASSIGNMENT.

Neither party shall assign this Agreement without the written consent of the other, except as provided below. Contractor shall not assign any monies due or to become due to it hereunder without the written consent of the Board of Selectmen. Contractor also shall not subcontract any services required under this Agreement, shall not merge with or be sold to any other corporation, partnership, sole proprietorship, or person without the prior written approval of the Town.

K. DISPUTES.

Except as otherwise agreed by the parties in writing, all disputes, claims, counterclaims and other matters in question between Contractor and Town arising out of or relating to this Agreement shall be decided by a Maine court of competent jurisdiction. This Agreement is made and shall be construed under the laws of the State of Maine. Except as otherwise expressly agreed by the parties, exclusive venue for any such civil action shall be in Maine.

L. NON-WAIVER.

Failure of a party to this Agreement to enforce a provision of this Agreement shall not constitute a waiver of the right to enforce any subsequent breach of that provision or any other provision of the Agreement.

M. SEVERABILITY.

If any provision of this Agreement is held to be invalid, such invalidity shall not affect the remaining provisions of this Agreement.

IN WITNESS WHEREOF, the said INHABITANTS OF THE TOWN OF LIMERICK has

caused this Agreement to be signed and sealed by its Board of Selectmen, hereunto duly authorized, and CONTRACTOR has caused this Agreement to be signed and sealed its Board of Selectmen, the day and date first above written.

**INHABITANTS OF THE TOWN OF
LIMERICK**

Board of Selectmen

Dotie Richard
Witness to All

John Medici
John Medici, Chairman

Wendy Thorne
Wendy Thorne

Wade Andrews
Wade Andrews

Dave Gibson
Dave Gibson

Witness Dotie Richard

CONTRACTOR

Print Name Steven Mellen
Steve Mellen
Contractor / Authorized Representative

EXHIBIT 1 – 3 Pages
TOWN OF LIMERICK
GENERAL BID SPECIFICATIONS FOR DOOR TO DOOR
PICKUP AND TRANSPORT

SUBJECT: The contract is for the door to door pickup of combustible trash originating in Limerick, and for the transportation of the same to Ecomaine 65 Blueberry Road, Portland, Maine, for a period of three (3) years, commencing on January 1, 2022 and ending December 31, 2024, under the following terms and conditions.

INDEPENDENT CONTRACTOR: Throughout the performance of the contract you are acting in an independent capacity and not as an officer, employee or agent of the Town of Limerick. Additional personnel needed by you to fulfill your duties under the contract shall be employed or retained by you, and you are solely responsible for complying with all applicable state and federal laws including but not limited to workers compensation law, employment security law and minimum wage law. As an independent contractor, you are also responsible for maintaining your vehicles and equipment in a safe and legal condition. You are to provide adequate back-up equipment and personnel to assure weekly collection of waste and material if the primary equipment breaks down or you need additional personnel.

DUTIES:

A. Contractor must pick up from the side of all roads, both private and public, in the Town of Limerick, all combustible trash mixed residential and small business refuse and transport same to Ecomaine.

B. Each residence in Limerick must be served at least once a week.

C. Contractor shall not collect any white goods and any other waste that is otherwise defined as “unacceptable waste” at Ecomaine or waste that does not comply with the Town’s Solid Waste Flow Control Ordinance.

D. Contractor shall furnish such equipment as is necessary to perform the work herein described to the satisfaction of the Town of Limerick’s Board of Selectmen.

E. The names of those qualified personnel who will be supervising the collection route will be given to the Town. The Contractor will provide a telephone number and or cell phone number where Town residents may contact him/her during normal working hours to effectively deal with complaints and problems relating to this contract.

F. In the event of spillage from Contractor’s equipment or handling, the contractor shall immediately clean up the litter. All waste or material spilled or loose due to animals or vandalism prior to collection shall be the responsibility of the household resident for clean up.

G. The parties may agree in writing to terminate or amend this contract by mutual consent.

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**GENERAL BID SPECIFICATIONS FOR DOOR TO DOOR
PICKUP AND TRANSPORT**

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H. Contractor agrees to provide two (2), 40-yard containers; to be located at the Limerick Sanitation and Recycling Facility 86 Doles Ridge Road Limerick, ME. These containers will be for combustible household trash only and will be hauled to Ecomaine, as needed, at no additional expense or hauling fees to the Town of Limerick.

INSURANCE:

Public Liability Insurance or Commercial General Liability in the amount not less than One Million Dollars (\$1,000,000.00) combined single limit, for either bodily injury by accident or bodily injury by disease, with Aggregate Occurrence Coverage in an amount no less than Two Million Dollars (\$2,000,000.00) to protect Contractor and the Town from claims and damages that may arise from operations under this Agreement, whether such operations by Contractor or by anyone directly or indirectly employed by Contractor. A copy of all policies shall be filed annually with the Town of Limerick.

Automobile Liability Insurance in the amount of not less than One Million Dollars (\$1,000,000.00) combined single limit, for either bodily injury by accident or bodily injury by disease, with Aggregate Occurrence Coverage in an amount no less than Two Million Dollars (\$2,000,000.00) to protect Contractor and the Town from claims and damages that may arise from operations under this Agreement, whether such operations by Contractor or by anyone directly or indirectly employed by Contractor. A copy of all policies shall be filed annually with the Town of Limerick.

Pollution Liability Insurance in the amount not less than One Million Dollars (\$1,000,000.00) combined single limit per accident to protect the Contractor and the Town from claims and damages that may arise from operations under this Agreement, whether such operations by Contractor or by anyone directly or indirectly employed by Contractor. A copy of all policies shall be filed annually with the Town of Limerick.

Worker's Compensation Insurance in amounts required by Maine Law and Employer's Liability Insurance, as necessary, as required by Maine Law.

Deductible Amount. Contractor will reimburse the Town and hold harmless from the cost of any losses for which Contractor is responsible and to which a deductible amount may apply. The deductible amount of the insurance policy required under this section shall not exceed Twenty Five Thousand Dollars (\$25,000.00) without prior written consent of the Town.

PERFORMANCE: If the Contractor fails to perform according to any of the terms or conditions of the contract in the time and manner specified, such failure shall constitute a breach of the total

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contract. In the event of breach, the Board of Selectmen may deduct and withhold from the

**GENERAL BID SPECIFICATIONS FOR DOOR TO DOOR
PICKUP AND TRANSPORT**

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contract an amount, which shall equal compensating a substitute contractor to complete the work covered by this contract, as well as any incidental or consequential damages.

The Contractor may not assign, subcontract or otherwise transfer his rights or obligations pursuant to this agreement without the express written consent of the Town of Limerick's Board of Selectmen.

The Board of Selectmen for the Town of Limerick reserves the right to accept or reject any or all bids. The successful bidder must enter into a written contract within 30 days of the date of the bid acceptance by the Town of Limerick. Upon signing of the contract the Contractor must familiarize their self with the public and private roads within the town to be serviced prior to the starting date.

Please include with your bid two municipal references for town's or cities your company has provided service, if you have previously worked for Limerick in this capacity provide the dates.

**ALL SEALED BIDS MARKED "DOOR TO DOOR" ARE DUE IN THE 1ST FLOOR
SELECTMEN'S OFFICE 55 WASHINGTON STREET LIMERICK BY 4:30 PM ON
TUESDAY OCTOBER 12, 2021.**

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Exhibit 2

Mellen & Son Disposal Services
P.O. Box # 105 East Parsonsfield, Maine 04028
Office Phone # 1-207-625-7591 Office Fax # 1-207-625-7591

Limerick Bid Package
2022 - 2024
Door to Door Trash Pickup & Transportation

2022 \$ 240,000.00

2023 \$ 240,000.00

2024 \$ 240,000.00

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