

AMENDED AND RESTATED  
WALDOBORO/FRIENDSHIP/CUSHING  
MUNICIPAL SERVICES AGREEMENT  
FOR SOLID WASTE DISPOSAL FACILITIES

This amended and restated Municipal Services Agreement is made and entered into on the SIXTEENTH day of August, 2012 by and among the Inhabitants of the Towns of Waldoboro, Friendship, and Cushing, each of which is a municipal corporation organized under the laws of the State of Maine.

WHEREAS Waldoboro, Cushing and Friendship made and entered into a Municipal Services Agreement dated January 24, 1989; and

WHEREAS Section 8.3 of the Municipal Services Agreement permits the parties to amend it with the approval of their respective legislative bodies and a majority of their municipal officers; and

WHEREAS Waldoboro, Cushing and Friendship wish to amend and restate the Municipal Services Agreement pursuant to the terms of this Amended and Restated Waldoboro/Friendship/Cushing Municipal Services Agreement; and

WHEREAS Waldoboro, Cushing and Friendship have determined that entering into this Agreement will continue to facilitate a more efficient use of their resources and will be to their mutual advantage;

NOW THEREFORE, the Towns of Waldoboro, Cushing and Friendship, jointly and severally, for and in consideration of the mutual promises and agreements hereinafter stated and of the performance of those promises and agreements, do hereby promise and agree as follows:

1. **PURPOSE:** This Agreement provides for the disposal at the Waldoboro Solid Waste Transfer Station and Inert Landfill of Solid Wastes generated within Waldoboro, Friendship and Cushing.
2. **DEFINITIONS:** Terms defined in the Waldoboro Solid Waste Disposal and Required Recycling Ordinance (the "Waldoboro Ordinance") dated August 16, 2012 have the same meaning when used in this Agreement. The Waldoboro Ordinance is attached to this Agreement for reference purposes, only.
3. **ORGANIZATION AND ADMINISTRATION**
  - 3.1. **Administration:** Waldoboro shall administer this Agreement in full and continuous consultation with the Transfer Station Committee and the Select Boards of each of the Partners.
  - 3.2. **Responsibilities of the Partners:**
    - 3.2.1. Solid Waste Disposal. Permitted Users of the Partners shall dispose of all

of their Solid Waste under the terms and conditions of this Agreement and the Waldoboro Ordinance.

3.2.2. Transfer Station. Waldoboro, shall own, construct, operate, manage, maintain, repair, replace, and finance the Transfer Station and Landfill and shall obtain and keep current all necessary permits from the Maine Department of Environmental Protection. Waldoboro shall purchase or lease and maintain the necessary equipment; employ Transfer Station personnel; engage haulers; pay tipping fees; and do all other things that are incidental to or necessary for the operation of the Transfer Station.

3.2.3. Landfill. Waldoboro may, from time-to-time, construct, maintain, and de-commission Landfills to accommodate Demolition Debris. Such Landfills shall be located within Waldoboro or, with the consent of the select board and legislative body of the respective town, within one of the Partners. Alternatively, Waldoboro, instead of placing Construction and Demolition Debris in the Landfill, may on behalf of itself and the Partners and upon recommendation of the Transfer Station Committee, arrange and pay for its transport and lawful disposal to an alternative location.

3.2.4. Recycling Programs. Waldoboro may, in accordance with the terms of the Waldoboro Ordinance, implement recycling programs, which require the separation of Recyclables from other Solid Waste. All Permitted Users shall be required to participate in such recycling programs.

3.3. **Transfer Station Committee**: The Waldoboro Ordinance establishes a Transfer Station Committee, which shall hold monthly public meetings at the Waldoboro Town Office. The purpose of the Committee is to ensure close cooperation among Waldoboro and the Partners concerning the affairs of the Transfer Station Committee, the Transfer Station, the Landfill, Penobscot Energy Recovery Corporation (PERC), and the Municipal Review Committee (MRC). The responsibilities of the Committee are set forth in the Waldoboro Ordinance. Waldoboro and the Partners hereby commit to appoint their members to the Committee and to participate fully and at all times in the meetings and affairs and responsibilities of the Committee.

3.4. **Use of the Transfer Station and Landfill**: The Waldoboro Ordinance, as it or its Attachments may be amended from time-to-time, sets forth the rules and regulations governing the use of the Transfer Station and the Landfill. The Ordinance contains procedures by which Permitted Users who do not abide by the terms of the Ordinance may have their Transfer Station privileges suspended or revoked.

4. **FINANCE OF THE TRANSFER STATION AND LANDFILL**

4.1. **Allocation and Funding of Capital and Operating Costs**

4.1.1. Cost Allocations. Waldoboro shall pay for equipment acquisitions, improvements, operations, maintenance, repairs, administration, and all incidental items related to operation of the Transfer Station and Landfill. As of the beginning of each Waldoboro budget year, the Waldoboro Select Board shall allocate the total of the foregoing costs among the Partners pro rata in accordance with the proportion each Partner's population holds to the aggregate of the populations of the Partners. The calculations of the cost sharing percentages are set forth in Attachment I to this Agreement. The Transfer Station Committee shall update Attachment I every ten years or more often as it deems appropriate in light of prevailing population growth patterns, using United States Census Data in combination with annually up-dated local Partner and Waldoboro records.

4.1.2. Calculation and Estimate of Budgeted Costs. The Waldoboro Town Manager or his or her designee shall provide a written estimate to each Partner of its respective budgeted cost prior to the last day of January of each year, during Waldoboro's budget preparation season. The budgeted cost estimates shall be regarded as such and each Partner may use them for its own budgeting purposes. Waldoboro shall bill each Partner monthly in accordance with Section 4.2c, below.

4.1.3. Funding. Each Partner shall fund its budgeted costs in its own way, as determined by its respective select board or its legislative body. The failure of any Partner to appropriate sufficient funds to pay for the total amount billed for operating costs for a particular fiscal year shall not excuse the Partner from the responsibility to pay for its respective share of the costs in accordance with this Agreement.

4.2. **Financial Controls and Procedures:** Waldoboro shall account for all financial transactions relating to this Agreement and shall ensure:

4.2.1. The payment for operations, services and capital purchases, including but not limited to tipping fees, transportation costs, landfill services, recycling services, auditing costs, insurance costs, and all incidental costs;

4.2.2. The preparation of financial reports for the Transfer Station Committee, which shall be generated as a part of Waldoboro's budgeting process and on-going town operations;

4.2.3. The preparation of monthly billing statements for each Partner, which shall show budgeted costs, their method of determination and the amounts due and payable to Waldoboro. Waldoboro shall make the monthly billing statements available to the Partners no later than 5 days after the last day of each calendar month. Except as noted in Section 4.6 below, each Partner shall make 12 monthly payments in accordance with the Waldoboro's bills. Payments are due no later than the 10th day of each calendar month.

4.2.4. The completion of an annual audit of transactions relating to this Agreement and the issuance of an auditor's opinion concerning the fair and accurate presentation of the related transactions and the nature of the controls in place. The annual audit for purposes of this Agreement shall be included in the scope of work Waldoboro provides to its auditors each year for Waldoboro's annual audit. Waldoboro will provide a copy of the audit to the Partners.

4.3. **Transfer Station and Landfill Budgets:** Waldoboro's Town Manager shall provide copies of the initial Transfer Station/Landfill Budget for each succeeding fiscal year as soon as it has been drafted in a reasonably final form, subject to consultations between the Transfer Station Committee and Waldoboro's Town Manager. The form of Waldoboro's Transfer Station Budget, with each line item it contains, is set forth substantially in the form of Attachment II. The Transfer Station Committee may recommend changes to Attachment II, and the Waldoboro Select Board may accept such recommendations in its sole discretion after consulting with the Waldoboro Town Manager, the Finance Director, and the Select Board Chairmen of each of the other Partners. The Waldoboro Select Board Chairman shall immediately inform each of the other Partners of any changes to Attachment II.

4.4. **Fiscal Year of the Transfer Station and Landfill:** The fiscal year of the Transfer Station shall coincide with Waldoboro's fiscal year.

4.5. **Guaranteed Annual Tonnage (GAT) Shortfall Penalty:** In the event PERC assesses a GAT shortfall penalty, each Partner's share of the assessment shall be calculated using the percentages set forth in Attachment I. Partners shall pay their share of the assessed GAT penalty to Waldoboro within 30 days of receiving Waldoboro's bill. If the Waldoboro Town Manager is aware of an impending GAT shortage, he or she shall consult timely with the Transfer Station Committee and the Select Boards of the Partners.

5. **TRANSFER STATION AND LANDFILL ASSETS: REAL AND PERSONAL PROPERTY:** Waldoboro shall manage and control all real, intangible and personal Transfer Station and Landfill property. For physical assets, Waldoboro shall maintain an accounting, by

asset (grouped appropriately), of the date of purchase, serial number (where applicable), date put into service, and estimated useful life, with an indication of the expected year of replacement. All developments and subsequent improvements shall remain under the ownership of Waldoboro. Any and all assets remaining at the time this Agreement is either terminated or not renewed or not succeeded by another agreement shall remain the property of Waldoboro. Notwithstanding the foregoing, Waldoboro shall return to each Partner that Partner's proportionate share of funds remaining in any reserve accounts except the Landfill Closing Reserve Account. Landfill Closing Reserve Account funds shall remain the property of Waldoboro and shall be used for their intended purpose.

6. **TRANSFER STATION PERSONNEL:**

- 6.1. **Personnel are Waldoboro Employees:** Waldoboro shall employ whomever it deems necessary to operate the Transfer Station, the Landfill and this Agreement. All such employees shall be employees of the Town of Waldoboro and subject only to Waldoboro's direction. The Town of Waldoboro shall be solely responsible for compliance with all federal and state laws and regulations related to the Transfer Station and Landfill employees.
- 6.2. **Compensation:** Waldoboro shall determine the compensation and benefits for its Transfer Station and Landfill employees.
- 6.3. **Rules Pertaining to Transfer Station Personnel:** Waldoboro shall establish rules and regulations, which govern its employees in the performance and evaluation of their duties, including job descriptions and grievance procedures. The Transfer Station Committee shall review and recommend Transfer Station and Landfill-related job descriptions to the Waldoboro Select Board, which shall have sole and final authority to approve them.

7. **REMEDIES:**

- 7.1. **Breaches and Default:** In the event one of the Partners shall fail to perform any of its obligations under this Agreement, including the timely payment of monies due and owing, the Transfer Station Committee or the Select Board of the Town of Waldoboro may give notice by registered mail that such Partner is in breach. The notice shall provide up to 30 days from the date of the notice for the party in breach to remedy it. If the breach is not remedied within the period stated in the notice, the Transfer Station Committee or the Waldoboro Select Board may declare the Partner who breached this Agreement to be in default and, upon consultation with the Boards of Selectmen of the remaining Partner(s), immediately take steps to assert the rights of the remaining Partner(s). The Town of Waldoboro Board of Selectmen shall direct any legal action authorized, and may pursue any remedy available at law for the breach of this Agreement.

Upon agreement of the Town of Waldoboro Board of Selectmen and the Partner accused of breach, questions regarding any claimed breach may be submitted to binding arbitration.

7.2. **Withdrawal from this Agreement:** A Partner may withdraw from this Agreement subject to the following provisions:

7.2.1. The withdrawing Partner must give written notice of its intent to withdraw no less than six months prior to the end of the Transfer Station's fiscal year.

7.2.2. In the event a Partner withdraws from this Agreement without giving sufficient notice as set forth above, the withdrawing Partner shall pay the Town of Waldoboro a withdrawal penalty equal to its calculated share of six months' of estimated operating costs, which shall commence accruing on the effective date of withdrawal.

7.2.3. Waldoboro shall pay to the withdrawing Partner the share of cumulative balances held in Transfer Station and Landfill reserve accounts that is attributable to the withdrawing Partner, provided however, that Waldoboro may use such amounts to offset against any withdrawal penalties due from the withdrawing Partner pursuant to Section 7.2b of this Agreement and/or any monthly payments for operating costs that remain due and owing as of the date of withdrawal. Waldoboro shall not be obligated to refund any balances held in the Landfill Closing Reserve and such balances shall not be deemed to constitute payment of any withdrawal penalties that may be due.

7.2.4. In the event Waldoboro withdraws from this Agreement, Waldoboro must give 12 months advance written notice to the Partners. Waldoboro's withdrawal must take effect on the last day of Waldoboro's fiscal year.

7.2.5. The withdrawal of Waldoboro or a Partner shall not excuse Waldoboro or the Partner from paying its share of any costs or liabilities accrued prior to the effective date of withdrawal.

7.3. **Indemnifications and Insurance:**

7.3.1. Indemnification. The Partners shall deem any damages, losses, costs, expenses, or adjudicated claims, including legal costs, arising from the performance by any party or its agents, employees, officers, or officials of

his, her or their duties under this Agreement to be operational budgetary expenses pursuant to Section 4.3, and said costs shall be indemnified from Waldoboro's Transfer Station and Landfill Budget and apportioned in accordance with Attachment I. If such damages, losses, costs, expenses or adjudicated claims are the result of gross misconduct or gross negligence on the part of one or more Partners, such damages, losses, costs, expenses or adjudicated claims shall not be considered as an operational budgetary expense, shall not be indemnified and shall be the sole responsibility of the Partner(s) deemed by a court of law to be at fault. This indemnification shall survive the term of this Agreement and the withdrawal of any Partner from this Agreement, as related to claims arising from events or occurrences that took place during the effective period of this Agreement.


- 7.3.2. Insurance. Waldoboro shall provide, at its expense, general liability insurance and asset coverage for its normal town operations which include the operation of the Transfer Station and Landfill and coverages for gross misconduct and gross negligence, if available, provided however that the Partners shall share any incremental insurance costs directly attributable to the Transfer Station and Landfill in accordance with Attachment I.

## 8. **ADOPTION, AMENDMENT**

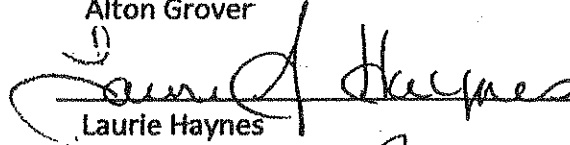
- 8.1. **Duration:** This Agreement shall continue in full force and effect until the termination of the disposal agreement with PERC or until the Town of Waldoboro or more than one other Partner withdraws from the Agreement pursuant to Section 7.2.
- 8.2. **Adoption:** This Agreement shall take effect upon completion of the following:
- 8.2.1. The Town of Waldoboro's approval of the Waldoboro Solid Waste Disposal and Required Recycling Ordinance, and
- 8.2.2. approval of this Agreement by the legislative bodies of all of the Partners.
- 8.3. **Amendment and Additional Parties:** Waldoboro and The Partners may amend this Agreement in the manner set forth in Section 8.2b. Waldoboro may admit additional parties to this Agreement subject to (i) the appropriate restatement of the Attachment I percentages and (ii) any necessary amendments to this Agreement approved in accordance with Section 8.2,

In witness whereof Waldoboro and the Partners, through their respective Select Boards, have executed this Agreement on this TWENTY FOURTH day of July, 2012.

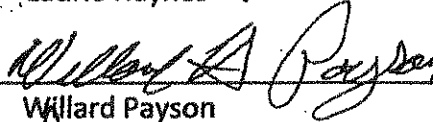
By Select Board, Town of Cushing:

  
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Alton Grover

  
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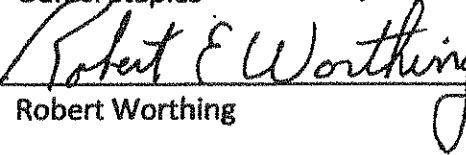
Laurie Haynes

  
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Willard Payson

  
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Daniel Staples

  
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Robert Worthing

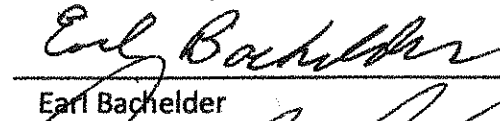
By Select Board, Town of Friendship:

  
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Elizabeth Dinsmore

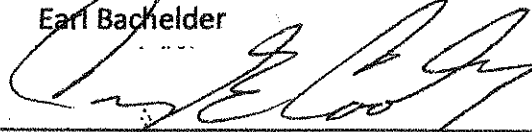
  
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Arthur Thompson

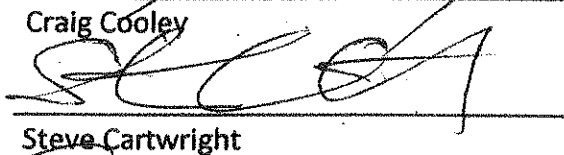
  
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Earl Bacheider

By Select Board, Town of Waldoboro:

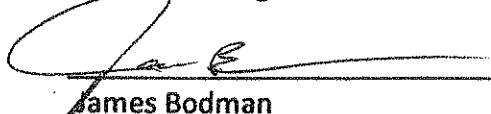
  
\_\_\_\_\_

Craig Cooley

  
\_\_\_\_\_

Steve Cartwright

Attest to all:

  
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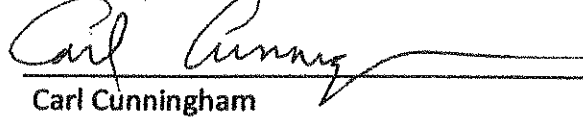
James Bodman

  
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John A. Spear, Town Manager

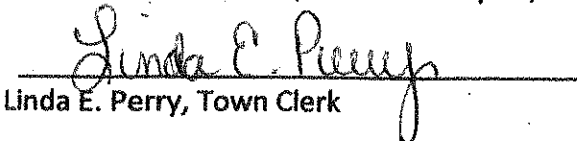
  
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Theodore Wooster

  
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Carl Cunningham

Attest: A true copy of a Municipal Services Agreement as certified to me by the Municipal Officers of Waldoboro, Maine on July 24, 2012.

  
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Linda E. Perry, Town Clerk



Attachment I

Allocation  
Of Waldoboro's and Each Partner's  
Financial Obligation

<u>Allocation Town</u>	<u>2010 Census</u>	<u>Percentage</u>
Cushing	1,534	19.77%
Friendship	1,152	14.84%
Waldoboro	<u>5,075</u>	<u>65.39%</u>
Aggregate	7,761	100.00%

Source: United States Census Data, 2010

Attachment II

Form of Waldoboro's  
Transfer Station Budget

<u>Account</u>	<u>Description</u>
4101	Regular Employees
4102	Part-time Employees
4103	Overtime/Holiday Pay
4111	Contract Personnel
4201	Health Insurance
4202	Group Life Insurance
4203	Social Security
4204	Maine State Retirement
4205	Medicare
4207	Workers' Compensation
4250	Property & Casualty Risk Pool
4301	Travel and Meeting Expense
4302	Membership Fees or Dues
4303	Training and Educational Materials
4304	Printing and Binding
4305	Postage and Mailing Services
4306	Advertising
4401	Telephone (832-7850 – 100%)
4402	Electricity
4501	Land Maintenance
4502	Transfer Station Building Maintenance
4503	Vehicle Maintenance
4505	Equipment Maintenance
4701	Professional Service
4721	Water Laboratory Services
4723	Licensing
4740	Tipping Fees (Penobscot Energy Recovery Company)
4741	Transportation Services
4743	Household Hazardous Wastes
4744	OBW, Tires and Scrap Metal Removal
4802	General Supplies
4806	Gasoline and Diesel Fuel
4842	Other Equipment

Transfer Station Budget Allocation

	Cushing	Friendship	Waldoboro	Total
Allocation Percent	19.77%	14.84%	65.39%	100.0%

Gross Budget:

Less:

*Estimated Revenues*

PERC Rebate

Dumping Fees

Permit Fees

Other Revenues

Use of Fund Balance

Use of Performance Credits

Add:

*Debt Service*

Interest  
Principal

Allocation to Landfill

Reserve

Allocation to Capital

Reserve Program

Other Allocations

Est. GAT Penalty

Net Allocation

