

Town of Swampscott



Request for Quotes

17-03

Solid Waste and Recyclable Material Collection and Transportation Solid Waste Disposal Recyclable Material Processing

August 16, 2016

PROPOSALS DUE:

Wednesday, August 31, 2016, 11:00 AM

Late Proposals Will Be Rejected

DELIVER COMPLETED SUBMISSIONS TO:

Whitney Haskell, Swampscott Purchasing Agent
c/o Salem City Hall
93 Washington Street, 2nd floor
Salem, MA 01970
978-619-5695
whaskell@Salem.com

17-03
Cover Sheet

PLEASE PRINT OR TYPE:

Name of Bidder:	Contact Individual:			
Address:				
#	Street	City/Town	State	Zip Code
Phone:	Alternate Phone:			
Email Address:	Social Security/Federal Tax Identification Number:			
Authorized Signature: _____				

17-03 Checklist

Submissions:

Please Check:

- Completed Cover Sheet
- Checklist (this sheet)
- 5% Bid Deposit
- Bid Form(s)
- Certifications
- Reference Form
- List of proposed Vehicles and Equipment
- Financial Statement
- Proposed Implementation Schedule
- List of any
- Acknowledgement of Addenda: _____ (*if applicable*)
(#s)

**Town of Swampscott
Price Sheet 1**

Description: Weekly (on a 5 day schedule) Curbside Collection of Municipal Solid Waste and Transportation to Covanta's Transfer Station, 247 Commercial Street St, Lynn, MA. and Weekly (on a 5 day schedule) Curbside Collection of Dual Stream Recycling and Transportation to Caraustar Recycled Fibers, 53 Jefferson Ave, Salem, MA. Eight (8) weeks of Curbside Collection of Leaf and Yard Waste and two (2) weeks of Curbside Collection of Christmas Trees and Transportation to a composting facility of the Proposer's Choice.

Collection Price (Lump sum per year)

\$ _____ for Year 1 (anticipated to be October 2, 2016 through June 30, 2017)

\$ _____ for Year 2 (anticipated to be July 1, 2017 through June 30, 2017)

\$ _____ for Year 3 (anticipated to be July 1, 2018 through June 30, 2019)

\$ _____ **Total**

\$ _____ if Option Year 1 (anticipated to be July 1, 2019 through June 30, 2020)

\$ _____ if Option Year 2 (anticipated to be July 1, 2020 through June 30, 2021)

Proposer's Name: _____

**Town of Swampscott
Price Sheet 2**

Description: Weekly (on a 5 day schedule) Curbside Collection of Municipal Solid Waste and Transportation to Covanta's Transfer Station, 247 Commercial Street St, Lynn, MA. and Weekly (on a 5 day schedule) Curbside Collection of Dual/Single Stream Recycling and Transportation to Recycling Processing Facility of the Proposer's Choice. Eight (8) weeks of Curbside Collection of Leaf and Yard Waste and two (2) weeks of Curbside Collection of Christmas Trees and Transportation to a composting facility of the Proposer's Choice.

Collection Price (Lump sum per year)

\$ _____ for Year 1 (anticipated to be October 2, 2016 through June 30, 2017)

\$ _____ for Year 2 (anticipated to be July 1, 2017 through June 30, 2017)

\$ _____ for Year 3 (anticipated to be July 1, 2018 through June 30, 2019)

\$ _____ **Total**

\$ _____ if Option Year 1 (anticipated to be July 1, 2019 through June 30, 2020)

\$ _____ if Option Year 2 (anticipated to be July 1, 2020 through June 30, 2021)

Recycling Material Processing: For this proposal, the Delivery Point would be:

Name and Address of Facility: _____

Operator of Facility: _____

Please indicate whether it would be dual or single stream recycling collection:

_____ **Dual** _____ **Single**

Recycling Processing: Floor / Rebate per ton (\$0 floor required). Town will never pay

PRICE PER TON:

\$ _____ for length of contract

Proposer's Name: _____

17-03
Certifications

A. CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

(Signature of authorized individual submitting proposal)

(Printed Name)

(Name of Bidder (if different than name))

(Date)

B. TAX COMPLIANCE

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

(Signature of authorized individual submitting proposal)

(Printed Name)

(Name of Bidder (if different than name))

(Federal Tax Identification or Social Security Number)

(Date)

C. CERTIFICATE OF CORPORATE AUTHORITY

I, _____ certify that I am the _____ of the corporation named as Bidder in the Bid included herein, that _____, who signed said Bid on behalf of the Bidder was then _____ of said corporation, that I know his signature, that his signature thereon is genuine and that said Bid was duly signed, sealed and executed for and in behalf of said corporation by authority of its governing body.

(Corporate Seal)

(Secretary-Clerk)

(Signature of authorized individual submitting proposal)

(Printed Name)

(Name of Bidder (if different than name))

(Date)

D. CERTIFICATION REGARDING PAYMENT OF PREVAILING WAGE

The undersigned Proposer hereby certifies, under the pains and penalties of perjury, that the foregoing bid is based upon the payment to laborers employed on the project of wages in an amount no less than the applicable prevailing wage rates established for the project by the Massachusetts Department of Labor and Workforce Development. The undersigned Proposer agrees to indemnify the awarding authority for, from and against any loss, expenses, damages, action or claims, including any expense incurred in connection with any delay or stoppage of the project work, arising out of or as a result of (1) the failure of the said bid to be based upon the payment of the said applicable prevailing wage rates, or (2) the failure of the Proposer, if selected as the Proposer, to pay laborers employed on the project the said applicable prevailing wages.

(Signature of authorized individual submitting proposal)

(Printed Name)

(Name of Bidder (if different than name))

(Date)

17-03
Reference Form

Please provide the name, email address, telephone number, and point of contact for at least three references, for work performed within the past two years, of a similar scope.

1. Organization/Company:

Contact Name: _____
Contact Title: _____
Email Address: _____
Street Address: _____
City, State, Zip Code: _____
Telephone Number: () _____

2. Organization/Company:

Contact Name: _____
Contact Title: _____
Email Address: _____
Street Address: _____
City, State, Zip Code: _____
Telephone Number: () _____

3. Organization/Company:

Contact Name: _____
Contact Title: _____
Email Address: _____
Street Address: _____
City, State, Zip Code: _____
Telephone Number: () _____

Part 1. General Information

1.1 SUMMARY

The Town of Swampscott ('Town') is requesting proposals to provide municipal solid waste and recyclable material collection and transportation, solid waste disposal and recyclable material processing for a term of three (3) years, commencing October 2, 2016-June 30, 2019.

1.2 BACKGROUND INFORMATION

The Town currently contracts to provide weekly solid waste and recycling collection services for 4,521 households, Town Facilities and Schools, 3 non-profit companies, and approximately 15 small downtown businesses on a five day a week schedule. In calendar year (hereinafter "CY") 2014 the Town collected approximately 3,936 tons of solid waste, and approximately 1,363 tons of dual stream recyclable materials. There are currently 50 miles of road in the Town of Swampscott, which occupies an area of 6.7 square miles.

"Curbside Service Recipients" as set forth in **Attachment 1** are allowed to put out up to two (2) 35 gallon bags / barrels or one (1) 65-gallon barrel / cart of trash per week, not to exceed 50 pounds per container and one burnable bulky waste item per week. \$2 overthrow stickers for those needing additional trash capacity, may be purchased at the Health Department.

Swampscott Trash Tonnage

	2016	2015	2014	2013	2012	2011	2010	2009	2008
Jan	319.96	299.62	284.50	329.82	339.32	365.75	366.43	370.52	468.28
Feb	306.97	238.30	250.76	258.72	289.07	329.60	319.47	326.53	369.05
Mar	298.75	290.11	275.18	285.02	317.17	400.58	422.52	381.63	377.76
Apr	395.66	340.25	337.48	328.19	330.04	383.02	434.66	422.34	467.78
May	308.70	352.25	348.30	352.02	366.20	413.08	403.79	429.95	477.41
Jun	412.71	376.51	341.90	363.28	373.93	474.15	435.14	452.88	469.86
Jul	342.20	367.82	376.43	374.29	355.96	401.82	491.01	480.40	501.49
Aug		338.32	317.79	345.69	375.82	451.08	380.62	415.27	445.03
Sep		378.06	373.88	326.69	322.29	419.39	462.87	440.40	453.86
Oct		314.70	347.58	319.89	345.15	611.32	402.39	417.98	442.98
Nov		363.52	309.32	311.67	349.45	373.23	428.78	385.69	399.04
Dec		362.01	372.97	337.37	316.00	352.69	400.02	451.05	449.88
Total	2385	4021.47	3936.09	3932.65	4080.40	4975.71	4947.70	4974.64	5322.42

The Schools and Municipal Facilities, as set forth in **Attachment 2**, are served with dumpsters for solid waste collection. Recyclable materials are collected from Schools and Municipal Facilities using wheeled carts and/or dumpsters. Dumpsters and wheeled carts are to be provided by the Proposer.

Solid waste will be collected and transported to either a Town contracted “Disposal Facility” or a “Disposal Facility” of the Proposer’s choice, which shall be determined by the Town in its sole discretion and meeting all state and federal regulations, and recyclable material will be collected and transported to either North Shore Recycled Fibers in Salem or to a permitted Recycling Processing Facility of the Proposer’s choice which shall be determined by Town in its sole discretion.

1.3 APPLICABLE LAW

Per Massachusetts General Laws, Chapter 30B, s 1 (b) (30), as restated, amended, replaced, 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 Town reserves the right to offer contracts to anyone other than the lowest price bid applicant and to negotiate contract prices with any applicant. The Town also reserves the right to reject any and all proposals or to require modifications of any proposal it deems, in its sole and absolute discretion, highly advantageous if it is in its best interest to so do, and to cancel this procurement at any time. The Town of Swampscott is utilizing this format so that all proposals can be reviewed on an equal footing and so that a direct comparison can be made between all proposals.

1.4 APPROVAL

Any contract that may result from the procurement shall be subject to the approval of the Town of Swampscott.

1.5 INCORPORATION BY REFERENCE

All requirements, specifications, terms and conditions described in this RFQ shall be incorporated by reference into any contract that may result.

1.6 TAXATION

Purchases made by the Town are exempt from the payment of Federal excise tax and the payment of Commonwealth of Massachusetts sales tax and any such taxes must not be included in the bid pricing.

Copies of the Town’s tax exempt paperwork shall be available upon request of the selected contractor.

Part 2. Instructions to Proposers

2.1 REQUIREMENTS AND SUBMISSIONS

Below please find a description of the requirements and submissions that must be included as part of a bid. Bids must be sealed and marked as noted.

2.1.1 BID FORM

Every proposal must include a completed 'Bid Form'. See attached. All material, equipment and labor is F.O.B. Town of Swampscott.

2.1.2 NON-COLLUSION

Every proposal must include a certification of good faith, certifying that the bid was made in good faith and without collusion or fraud. See 'Non-Collusion Form' attached.

2.1.3 TAX COMPLIANCE

Every proposal must include a written certification that the bidder has complied with all state laws relating to taxes, reporting of employees and contractors, and child support. See 'Tax Compliance Form' attached.

2.1.4 CORPORATE BIDDER

If the proposal is being submitted by a corporation, the bid must include a certification that the individual submitting the bid has been authorized to bind the corporation. See 'Certificate of Corporate Authority' attached.

2.1.5 REFERENCE FORM

Every proposal must be accompanied by at least three (3) professional references.

2.1.6 BID DEPOSIT

Each bid must be accompanied by a deposit equal to five percent (5%) of the amount of the bid. The bid deposit may be in the form of a certified treasurer's or cashier's check payable to the Town of Swampscott from a responsible bank or trust company; cash; or a bid bond.

2.1.7 PREVAILING WAGE

Wages for this project are subject to the prevailing wage rates as set by the Department of Labor Standards. A copy of the prevailing wage rates for this project is included in the Invitation for Bids, along with a Payroll Record Form and Statement of Compliance.

In the event that the option to renew is exercised, an updated prevailing wage rate sheet will be sent to the Contractor along with the contract amendment letter.

Certified Weekly Payroll documents shall be sent to the Office of the Purchasing Agent, 120 Washington Street, 3rd Floor, Salem, MA 01970. Payroll records must be sent three (3) business days after the close of the previous work week. See 'Certification Regarding Payment of Prevailing Wage Rates' attached.

2.1.8 LIST OF VEHICLES AND EQUIPMENT

Proposals must contain a list of proposed vehicles and equipment to be used under this contract.

2.1.9 FINANCIAL STATEMENT

Proposals must contain proposer's most recent financial statement.

2.1.10 PROPOSED IMPLEMENTATION SCHEDULE

Proposals must include a proposed implementation schedule.

2.2 PROPOSAL DELIVERY

Below please find a description of the manner in which sealed bids must be submitted.

2.2.1 DUE DATE AND TIME

Bids shall be received by the Office of the Purchasing Agent on or before 11:00 AM, Wednesday, August 31, 2016.

Any bid received after that time shall be rejected as non-responsive.

2.2.2 ADDRESS

Sealed bids shall be delivered to the Office of the Purchasing Agent, 93 Washington Street, 2nd Floor, Salem MA 01970.

2.2.3 HOURS OF OPERATION

Bids must be delivered during the normal hours of operation of the City of Salem:

Monday-Wednesday: 8:00 AM-4:00 PM

Thursday: 8:00 AM-7:00 PM

Friday: 8:00 AM-12:00 PM

2.2.4 COPIES

Bidders must submit one (1) original and one (1) copy of the bid.

2.2.5 LABELING

The outside of the envelope containing the sealed bid must be labeled with 1) the bid number 2) the bid opening date and time and 3) the name of the bidder.

2.3 SIGNATURES

A bid must be signed as follows: 1) if the bidder is an individual, by her/him personally; 2) if the bidder is a partnership, by the name of the partnership, followed by the signature of each general partner; and 3) if the bidder is a corporation, by the authorized officer, whose signature must be attested to by the clerk/secretary of the corporation, and with the corporate seal affixed.

2.4 QUESTIONS, CHANGES, MODIFICATIONS AND WITHDRAWALS

2.4.1 QUESTIONS/REQUESTS FOR CLARIFICATION

Questions concerning this RFQ must be submitted in writing to: Whitney Haskell at whaskell@saalem.com at least five (5) days prior to the bid opening date. Written responses will be mailed to all bidders on record as having picked up the Invitation for Bids.

2.4.2 CHANGES

If any changes are made to this RFQ, addenda will be issued. Addenda will be posted in the Office of the Purchasing Agent, on the website and e-mailed to all bidders on record as having picked up the RFQ.

2.4.3 MODIFICATIONS AND WITHDRAWALS

A proposer may correct, modify, or withdraw a proposal by written notice received by the City of Salem prior to the time and date set for bid opening.

Modifications must be submitted in a sealed envelope clearly labeled "Modification No. ___" to the address listed in part one of this section. Each modification must be numbered in sequence, and must reference the Invitation for Bids.

2.5 UNFORESEEN OFFICE CLOSURES

If, at the time of the scheduled due date, 93 Washington Street, 2nd Floor, Salem, MA 01970, is closed due to uncontrolled events such as fire, snow, ice, wind, or building evacuation, the due date will be postponed until 2:00 PM on the next normal business day. Bids will be accepted until that date and time.

Part 3. Terms and Conditions

3.1 TERM OF AGREEMENT

Any contract that results from the procurement shall be for a term of three years, commencing on October 2, 2016 and terminating June 30, 2018.

3.4 INSURANCE REQUIREMENTS

The Contractor shall carry and continuously maintain until completion of this Agreement, insurance as specified below and in such form as shall protect the work covered by the Agreement, and the Town and its employees, agents and officials, from all claims and liability for damages for bodily injury, including accidental death, and for property damage, which may arise from operation under this Agreement. The Contractor covenants and agrees to hold the Town and its employees, agents and officials harmless from and against any and all loss or damage due to claims for personal injury and/or property damage arising from, or in connection with operations under the Agreement.

Except as otherwise stated, the amounts of such insurance shall be not less than:

(A) Commercial General Liability to be written on a “primary and non-contributory basis” favoring the Town in the following amounts:

\$2,000,000 Products/Completed Operations Aggregate Limit

\$2,000,000 General Aggregate (Other Than Products/Completed Operations)

\$1,000,000 on account of one occurrence and

\$1,000,000 Personal and Advertising Injury

(B) Automobile Liability (Owned-Non-Owned and Hired Automobiles and Vehicles):

\$1,000,000 each accident (Combined Single Limit)

(C) Commercial Umbrella:

\$5,000,000 Products and Completed Operations

\$5,000,000 General Aggregate

\$5,000,000 Any One Occurrence

(D) Employer’s Liability:

\$500,000 Each Accident

\$500,000 Each Employee Injury by Disease

\$500,000 Aggregate for Injury by Disease

(E) Workmen's Compensation Insurance including a "waiver of subrogation" favoring the Town in the following amounts:

-as required by the General Laws of the Commonwealth of Massachusetts.

(F) Pollution Liability and Contractor's Operations and Professional Services Environmental Insurance written on an "Occurrence" Policy Form on a primary, non-contributory basis favoring the Town in the following amounts:

\$5,000,000 Each Occurrence

\$5,000,000 Annual Aggregate

All policies shall be so written that the Town will be notified of cancellation or restrictive amendment at least thirty (30) days prior to the effective date of such cancellation or amendment. In the event any insurance carrier or Contractor's insurance agent will not provide such notice, Contractor shall covenant to notify the Town, accordingly, and any failure of which by the Contractor will be deemed a material breach of the Agreement pursuant to which the Town may terminate this Agreement. A certificate from the Contractor's insurance carrier showing at least the coverage and limits of liability specified above and expiration date shall be filed with the Town before operations are begun. Such certificates shall not merely name the types of policy provided, but shall specifically refer to the Agreement and shall state that such insurance is as required by the Agreement. The Contractor shall make no claims against the Town or its officers for any injury to any of his officers or employees or for damage to his trucks or equipment arising out of work contemplated by the Agreement. The certificate of insurance shall be delivered to the Town at least fifty (50) days prior to July 1 of each year that the Agreement is in force and effect. Failure to comply with the requirements of Agreement Article II, Section 15 shall be cause to terminate the Agreement by the Town.

All insurance required by this Agreement shall be obtained from insurance companies that are duly licensed or authorized to conduct business in the Commonwealth of Massachusetts to issue insurance policies for the limits and coverage's so required. The Town shall be named as an additionally insured party on all policies issued hereunder and the Town reserves the right unto itself throughout the Term to require the Contractor to obtain additional policies of insurance and/or coverage amounts as it deems in its sole and reasonable discretion.

3.5 LIQUIDATED DAMAGES

In addition to all of its other rights and remedies under the Agreement, at law or in equity, the Town shall be entitled to assess liquidated damages against the Contractor for its failure to perform the specified obligations described in the Agreement for collection and transportation of the Town's Solid Waste and Recyclable Material prior to the occurrence of a Contractor Event of Default as specified in Paragraph 15 of the Agreement and in the amounts specified in the

attached **Attachment 3**. The Contractor acknowledges and agrees that the Liquidated Damages provided herein this RFQ are not penalties but represent a fair measure of damages which will be sustained by the Town in the event the Contractor defaults on any of the specified obligations.

The Town shall have the right to withhold the amount of Liquidated Damages assessed by it from any payment owed to the Contractor as a credit or set-off of such amount.

3.6 MANUAL CURBSIDE COLLECTION OF SOLID WASTE/REFUSE

Subject to the provisions of Article II, Section 3 of the Agreement entitled “Compensation to the Contractor and Adjustments”, the lump sum price for this Item shall include the complete, annual cost to furnish all labor, materials, and equipment necessary to provide weekly manual refuse collection and transport to the Disposal Facility for disposal. This item shall include Curbside Pickup from all Curbside Service Recipients as set forth in **Attachment 1**. Also included in the Municipal Collection Program is Solid Waste collection from Municipal Facilities, Schools, three Non-Profit companies, and approximately 15 small downtown businesses as set forth in **Attachment 2**. Containers, dumpsters and services and the frequency of collection shall be provided as described in this RFQ, **Attachment 2** and the Agreement for Solid Waste collections under the Municipal Collection Program. The Town shall pay to the Contractor a fixed lump sum price in 1/12th monthly increments.

3.7 MANUAL CURBSIDE RECYCLABLE MATERIAL COLLECTION

Subject to the provisions of Article II, Section 3 of the Agreement entitled “Compensation to the Contractor and Adjustments”, the lump sum price for this item shall, include the complete annual cost to furnish all labor, materials, and equipment necessary to provide collection of Recyclable Material, with transport to a Recycling Facility. This item shall include Curbside Pickup from all Curbside Service Recipients as set forth in **Attachment 1**. Also included in the Municipal Collection Program are Recyclable Material collections from Municipal Facilities, Schools, three Non-Profit companies, and approximately 15 small downtown businesses as set forth in **Attachment 2**. Recyclable Material collections from all Curbside Service Recipients and Municipal Facilities, Schools, three Non-Profit companies, and approximately 15 small downtown businesses shall be offered on a weekly (unless otherwise specified). Containers, dumpsters, roll off containers and services shall be provided as described in this RFQ and the Agreement for Recyclable Material collections under the Municipal Collection Program. Revenue (or loss) derived by the Contractor resulting in Recyclable Material collections and processing shall be that of the Contractor, except as expressly noted within the RFQ.

3.8 COLLECTION OF LEAF AND YARD WASTE, AND CHRISTMAS TREES

The Municipal Collection Program includes Seven (7) weeks of curbside collection of Leaf and Yard Waste and two (2) weeks of curbside collection of Christmas Trees from all Curbside Service Recipients with Transportation to a Composting Facility.

3.9 MISCELLANEOUS PROVISIONS

A. The Contractor acknowledges and agrees that it is responsible as an independent contractor for all operations under the Agreement and for all acts of employees, subcontractors and agents hereunder, and the Contractor shall, to the maximum extent permitted by law, indemnify and save harmless the Town of Swampscott its officers, agents and employees from and against any and all damages, liabilities, actions, suits, proceedings, claims demands, losses, costs and expenses (including reasonable attorney's fees) that may arise out of or in connection with the Work being performed or to be performed by the Contractor and all of Contractor's additional responsibilities and obligations under the Agreement, its employees, agents, sub-contractors or material men. The existence of insurance shall in no way limit the scope of this indemnification. The Contractor further agrees to reimburse the Town of Swampscott for damage to its property caused by the Contractor, its employees, agents, sub-contractors or material-men, including damages caused by his, it's or their use of faulty, defective or unsuitable material, vehicles or equipment ,unless the damage is caused by the Town of Swampscott's gross negligence or willful misconduct.

B. The Contractor shall not discriminate against any customer, employee or applicant for employment because of race, color, religion, sex, sexual orientation, handicap, or national origin. The Contractor shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, handicap, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, age, handicap or national origin.

Part 3. Attachments

1. Curbside Service Recipients
2. Municipal Facilities and Schools
3. Liquidated Damages
4. Prevailing Wage Rates

Attachment 1
Curbside Recipients

	# of parcels	# of households
Single Family	3,445	3,445
Family Two	440	880
Family Three	60	120
Four Family	14	56
Multifamily Buildings– see separate listing below	3	20
Sub-Total	3,962	4,521
Downtown Small Businesses – estimated / geographic boundaries?	10-15 curbside pick-up using barrels/bags	15
Non-Profits – see separate listing	3	3
Total		4,539

Multifamily Buildings

Address	# of Households	How Served
145 Essex Street	7	Curbside pick-up
5 Stone Court	7	Curbside pick-up
6 Humphrey Street	6	Curbside pick-up
Total	20	

Non-Profits

Name	Address	Notes
Temple Chabad	44 Burrill Street	Curbside pick up on Phillips Street
First Congregational Church	40 Monument Avenue	1, 2yd Dumpster (rear lot)
Church of the Holy Name	60 Monument Avenue	Curbside pick up on Hardy Street

Vendor to provide trash dumpsters and recycling dumpsters / carts as needed.

Attachment 2
Municipal Facilities and Schools

Table 1- Municipal Facilities

Facility	Address	Solid Waste		Recycling	
		Dumpsters (qty, size)	Collection Days	Containers (qty, size)	Collection Days
Town Hall	22 Monument Avenue	1, 2 yd.	Tuesday	1, 6-8 yd.-for paper	1 / week
Police Department	531 Humphrey Street	1, 2 yd.	Wednesday	2 carts	Wednesday
Fire Department	76 Burrill Street	3, 60 gal	Tuesday	3 carts	Tuesday
Cemetery	Capen Road	2, 8 yd. 1, 6 yd.	M - W - F	Bags of comingled containers from parks collected by Town	M-W-F

Vendor to provide trash dumpsters and recycling dumpsters / carts as needed, unless noted .

Table 2- Schools

Facility	Address	Solid Waste		Recycling	
		Dumpsters (qty, size)	Collection Days	Containers (qty, size)	Collection Days
High School	Essex Street	1, 6-8 yd.	1 or as needed	1, 8-10 yd for paper, carts for comingled	1
Middle School	Forest Avenue	1, 6-8 yd.	1 or as needed	1, 8-10 yd for paper, carts for comingled	1
Clarke School	Middlesex Avenue	1, 6-8 yd.	1 or as needed	1, 8-10 yd for paper, carts for comingled	1
Hadley School	Redington Street	1, 6-8 yd.	1 or as needed	1, 8-10 yd for paper, carts for comingled	1
Stanley School	Whitman Road	1, 6-8 yd.	1 or as needed	1, 8-10 yd for paper, carts for comingled	1

-Vendor to provide trash dumpsters and recycling dumpsters / carts as needed.

-Frequency- High School: 5 days/week, Middle School: 5 days/week, Elementary Schools: 2 days/week.

Attachment 3
Liquidated Damages

- | | |
|--|-----------------------------------|
| 1. Failure to immediately pick up materials spilled during collection. | \$150 per occurrence |
| 2. Failure to promptly- within 2 hours - pick up waste spilled during haul in Town or outside Town boundaries if the Town receives a complaint of such spill. | \$500 per occurrence |
| 3. Failure to clean up areas after trash pick-up has been missed. | \$ 100 per occurrence |
| 4. Failure to empty dumpster as designated by contract. | \$ 100 per occurrence |
| 5. Failure to empty recycling carts as designated by contract. | \$ 50 per occurrence |
| 6. Willful mishandling of waste receptacles/receptacles or recycling containers. | \$ 25 per occurrence |
| 7. Failure to place waste / recycling receptacles in an upright position at approximately the same location upon emptying or failure to place recycling bins upside-down at approximately the same location upon emptying. | \$ 25 per occurrence |
| 8. Placement of receptacles, recycling bins, or lids such that they obstruct roads, driveways, or mailboxes. | \$50 per occurrence |
| 9. Failure to repair or replace barrels, carts and bins damaged by Contractor at its sole cost and expense within seventy-two (72) hours of receiving notice from the Director of Public Health or Town Administrator. | \$50 per occurrence |
| 10. Following notice of complaint, failure to collect waste from a specific location on the same day as the regular collection Route or by 9:00 a.m. of the following day if so authorized by the Director of Public Health. | \$150 per occurrence |
| 11. Failure to collect appropriate materials properly set out from two (2) or more residents on the same day of the regular Collection Route, or by 9:00 a.m. of the following day if so authorized by Director of Public Health. | \$100 per occurrence |
| 12. Failure to collect from any single address more than one time in a given month or three times in a six-month period when the driver or Contractor is at fault. | \$100 per miss |
| 13. Continued violation of traffic laws, ordinance or regulation during collection and haul, after written notice to correct from the Town. | \$250 per occurrence |
| 14. Beginning any single collection route prior to 7:00 a.m. or finishing after 5:00 p.m. without the prior consent of the Town. | \$100 per day |
| 15. Use of unmarked or uninspected collection vehicles. | \$500 per occurrence |
| 16. Failure to clean vehicle or conveyances as provided for in this Contract. | \$150 per occurrence |
| 17. Failure or neglect to furnish (within 48 hours) a replacement container meeting the requirements of this Contract. | \$200 per container not furnished |
| 18. Collecting solid waste from receptacles that are over the trash limit. | \$50 per occurrence |
| 19. Failure to leave non-collection notices for trash that is over the limit. | \$50 per occurrence |
| 20. Failure to leave non-collection notices for unacceptable trash. | \$50 per occurrence |
| 21. Failure to leave non-collection notices for trash comingled with recycling or for unacceptable recycling. | \$50 per occurrence |
| 22. Disposing of as trash, those recyclable materials appropriately set out for recycling. | \$5,000 per truckload |
| 23. Disposing of as trash, leaf and yard waste material appropriately set out for compost collection. | \$5,000 per truckload |
| 24. Failure to report truck breakdown or accident within 30 minutes. | \$100 per occurrence |
| 25. Failure to maintain sufficient back-up and auxiliary collection vehicles and equipment for immediate use to ensure uninterrupted collection service in the full and efficient performance of the Work in the event of any frontline vehicle and equipment failure during the Term of this Agreement. | \$250 per occurrence |
| 26. Failure to increase or change, at Contractor's sole cost and expense, the number and types of vehicles and equipment necessary to maximize efficiency in full performance of the Work within sixty (60) days of order from the Town. | \$250 per occurrence |
| 27. Failure to have a small truck available to get down tight streets and to be available within twenty-four (24) hours. | \$250 per occurrence |

- | | |
|--|----------------------------------|
| 28. Failure to maintain direct phone links between the Town and the lead trash and recycling drivers, as well as Managing Agent. And also failure to maintain direct phone or radio contact between all vehicles servicing the Town. | \$250 per occurrence |
| 29. Failure or neglect to furnish a schedule or revised schedule of collection and disposal. | \$1,000 per occurrence |
| 30. Commingling materials collected under this Contract with materials not collected under this contract, even if the Town will not be billed. | \$500 per occurrence |
| 31. Delivering any waste other than as described in this Contract to disposal sites that will be billed to the Town. | \$5,000 per ton |
| 32. Failure to submit weight slips with monthly invoice, if applicable. | \$50 per missing slip |
| 33. Failure to submit Daily Log as prescribed in this contract | \$50 per occurrence |
| 34. Submitting weight slips for materials not collected through this Contract. | \$5,000 per occurrence |
| 35. Failure to correct billing error within one week after notification by Town. | \$100 per occurrence |
| 36. Failure to provide prevailing wage rate information as required under this Contract. | \$500 per incident |
| 37. Failure to adequately maintain 1-800 or local phone service for Curbside Service Recipients. | \$250 per 4 hours out of service |
| 38. Use of collection vehicle marked "Town of Swampscott " for the collection and/or haul of waste other than provided for under the provision of this Contract. | \$5,000 per occurrence |
| 39. Failure to provide disposal facilities in accordance with this Contract. | \$150% of per ton disposal fee |

Attachment 4
Prevailing Wage Rates



**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
DEPARTMENT OF LABOR STANDARDS**

Prevailing Wage Rates

**As determined by the Director under the provisions of the
Massachusetts General Laws, Chapter 149, Sections 26 to 27H**

RONALD L. WALKER, II
Secretary

CHARLES D. BAKER
Governor

KARYN E. POLITO
Lt. Governor

Awarding Authority: City of Salem
Contract Number: 15-14 **City/Town:** SWAMPSCOTT
Description of Work: Solid Waste and Recyclable Materials Collection and Transportation.
Job Location: Various

Information about Prevailing Wage Schedules for Awarding Authorities and Contractors

- This wage schedule applies only to the specific project referenced at the top of this page and uniquely identified by the “Wage Request Number” on all pages of this schedule.
- An Awarding Authority must request an updated wage schedule from the Department of Labor Standards (“DLS”) if it has not opened bids or selected a contractor within 90 days of the date of issuance of the wage schedule. For CM AT RISK projects (bid pursuant to G.L. c.149A), the earlier of: (a) the execution date of the GMP Amendment, or (b) the bid for the first construction scope of work must be within 90-days of the wage schedule issuance date.
- The wage schedule shall be incorporated in any advertisement or call for bids for the project as required by M.G.L. c. 149, § 27. The wage schedule shall be made a part of the contract awarded for the project. The wage schedule must be posted in a conspicuous place at the work site for the life of the project in accordance with M.G.L. c. 149 § 27. The wages listed on the wage schedule must be paid to employees performing construction work on the project whether they are employed by the prime contractor, a filed sub-bidder, or any sub-contractor.
- All apprentices working on the project are required to be registered with the Massachusetts Division of Apprentice Standards (DAS). Apprentice must keep his/her apprentice identification card on his/her person during all work hours on the project. An apprentice registered with DAS may be paid the lower apprentice wage rate at the applicable step as provided on the prevailing wage schedule. **If an apprentice rate is not listed on the prevailing wage schedule for the trade in which an apprentice is registered with the DAS, the apprentice must be paid the journeyworker's rate for the trade.**
- The wage rates will remain in effect for the duration of the project, except in the case of multi-year public construction projects. For construction projects lasting longer than one year, awarding authorities must request an updated wage schedule. Awarding authorities are required to request these updates no later than two weeks before the anniversary of the date the contract was executed by the awarding authority and the general contractor. For multi-year CM AT RISK projects, awarding authority must request an annual update no later than two weeks before the anniversary date, determined as the earlier of: (a) the execution date of the GMP Amendment, or (b) the execution date of the first amendment to permit procurement of construction services. Contractors are required to obtain the wage schedules from awarding authorities, and to pay no less than these rates to covered workers. The annual update requirement is not applicable to 27F “rental of equipment” contracts.
- Every contractor or subcontractor which performs construction work on the project is required to submit weekly payroll reports and a Statement of Compliance directly to the awarding authority by mail or email and keep them on file for three years. Each weekly payroll report must contain: the employee’s name, address, occupational classification, hours worked, and wages paid. Do not submit weekly payroll reports to DLS. A sample of a payroll reporting form may be obtained at <http://www.mass.gov/dols/pw>.
- Contractors with questions about the wage rates or classifications included on the wage schedule have an affirmative obligation to inquire with DLS at (617) 626-6953.
- Employees not receiving the prevailing wage rate set forth on the wage schedule may report the violation to the Fair Labor Division of the office of the Attorney General at (617) 727-3465.
- Failure of a contractor or subcontractor to pay the prevailing wage rates listed on the wage schedule to all employees who perform construction work on the project is a violation of the law and subjects the contractor or subcontractor to civil and criminal penalties.

Classification	Effective Date	Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
Trash/Recycle						
Driver	07/01/2015	\$21.48	\$6.76	\$0.00	\$0.00	\$28.24
{SWAMPSCOTT}	01/01/2016	\$21.75	\$6.76	\$0.00	\$0.00	\$28.51
	07/01/2016	\$21.97	\$6.76	\$0.00	\$0.00	\$28.73
	01/01/2017	\$22.24	\$6.76	\$0.00	\$0.00	\$29.00
	01/01/2018	\$23.00	\$6.76	\$0.00	\$0.00	\$29.76
	01/01/2019	\$23.89	\$6.76	\$0.00	\$0.00	\$30.65
Laborer						
Laborer	07/01/2015	\$19.09	\$6.76	\$0.00	\$0.00	\$25.85
{SWAMPSCOTT}	01/01/2016	\$19.33	\$6.76	\$0.00	\$0.00	\$26.09
	07/01/2016	\$19.52	\$6.76	\$0.00	\$0.00	\$26.28
	01/01/2017	\$19.76	\$6.76	\$0.00	\$0.00	\$26.52
	01/01/2018	\$20.23	\$6.76	\$0.00	\$0.00	\$26.99
	01/01/2019	\$20.98	\$6.76	\$0.00	\$0.00	\$27.74
	01/01/2020	\$21.79	\$6.76	\$0.00	\$0.00	\$28.55

Additional Apprentices Information:

Minimum wage rates for apprentices employed on public works projects are listed above as a percentage of the pre-determined hourly wage rate established by the Commissioner under the provisions of the M.G.L. c. 149, ss. 26-27D. Apprentices ratios are established by the Division of Apprenticeship Training pursuant to M.G.L. c. 23, ss. 11E-11L.

All apprentices must be registered with the Division of Apprenticeship Training in accordance with M.G.L. c. 23, ss. 11E-11L.

All steps are six months (1000 hours.)

Ratios are expressed in allowable number of apprentices to journeymen or fraction thereof, unless otherwise specified.

** Multiple ratios are listed in the comment field.

*** APP to JM; 1:1, 2:2, 2:3, 3:4, 4:4, 4:5, 4:6, 5:7, 6:7, 6:8, 6:9, 7:10, 8:10, 8:11, 8:12, 9:13, 10:13, 10:14, etc.

**** APP to JM; 1:1, 1:2, 2:3, 2:4, 3:5, 4:6, 4:7, 5:8, 6:9, 6:10, 7:11, 8:12, 8:13, 9:14, 10:15, 10:16, etc.

Part 4. Model Agreement

**TOWN OF SWAMPSCOTT
AGREEMENT FOR
CURBSIDE SOLID WASTE AND RECYCLABLE MATERIALS
COLLECTION AND Transportation
SOLID WASTE DISPOSAL
RECYCLABLE MATERIAL PROCESSING**

THIS AGREEMENT made as of this ____ day of _____, 2016 by and between the **TOWN of SWAMPSCOTT**, a municipal corporation duly organized under the laws of Massachusetts and having a usual place of business at Town Offices, 22 Monument Avenue, Swampscott, Essex County, Massachusetts 01907, (the “Town”), and <**ENTITY, ORGANIZATION TYPE AND ORGANIZATION JURISDICTION**> principally located at <ADDRESS, CITY, STATE, ZIP> (the “Contractor”). The Town and the Contractor are also a “Party” to this Agreement when referred to individually and are also “Parties” when referred to collectively).

RECITALS:

WHEREAS, the Town issued a request for proposals for curbside collection of solid waste and recyclable material services on XXXXx entitled “XXXXXXX (the “RFQ”); and

WHEREAS, Contractor responded to the RFQ by its submission of a “Technical Proposal” dated _____, 20____ and a “Pricing Proposal” dated _____, 20____ (collectively, the “Proposal”) which was (**modified and, as modified**) accepted by the Town; and

WHEREAS, the Proposal provides for, among other things, provision of curbside collection services for municipal solid waste and recyclables to the Town and to residents of the Town; and

WHEREAS, the Parties desire to enter into a curbside collection agreement for solid waste and recycling collection services pursuant to the RFQ and the Proposal as maybe otherwise modified hereby this Agreement for a term of up to three (3) years, issued in one (1) year increments, **commencing July 1, 2015**, as may be extended, upon the terms and conditions contained in this Agreement; and

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by the Parties, both the Town and the Contractor agree that: (i) the above Recitals are true and accurate and are incorporated herein this Agreement and made a part hereof and (ii) the Parties further agree as follows:

**ARTICLE I
DEFINITIONS**

Agreement shall include this Agreement, and any attachments, exhibits, schedules and appendices and the RFP, the Proposal, the Contractor’s performance bond all of which are

incorporated by reference and are made a part of this Agreement. This Agreement constitutes the entire agreement between the parties concerning the Work, and constitutes the entire agreement of the Parties. To the extent this Agreement conflicts with the terms and provisions of the RFP and the Proposal are inconsistent or otherwise are in conflict, the terms and provisions of this Agreement shall prevail.

Bag shall mean plastic sacks designed to store solid waste with sufficient wall strength to maintain physical integrity when lifted by the top. Volume shall not exceed 30 gallons and total weight of a bag and its contents shall not exceed 50 lbs. Where the plural, "Bags", is used, it shall have the same meaning as the singular.

Board of Health shall mean the Town of Swampscott Board of Health, the Director or his/her designee.

Burnable Bulky Waste shall mean non-metallic waste which is difficult to manage, and includes, without limitation, mattresses, box-springs, couches, furniture, carpeting and the like.

Commencement Date shall mean, July 1, 2015, the date upon which the Contractor commences the Work pursuant to this Agreement.

Composting Facility shall mean a depository under contract with the Contractor for Leaf and Yard Waste licensed, permitted or approved by all governmental bodies and agencies having jurisdiction and requiring such licenses, permits or approvals to receive Leaf and Yard Waste from eligible Curbside Service Recipients located within the Town for processing and/or final disposal.

Construction and Demolition Debris shall mean non-hazardous solid wastes, free of asbestos, generated from the construction and/or demolition buildings, structures and roadways including, without limitation, metal, gravel, asphalt, brick, concrete, building materials, lumber, sheetrock, plaster, brick, mortar, concrete and insulation.

Container shall mean a receptacle constructed of plastic, metal, or fiberglass, having handles or construction to provide adequate strength for lifting and having a tight fitting lid not exceeding a volume of 35 gallons. The mouth of the container for curbside collection of solid waste shall have a diameter greater than or equal to that of the base. The weight of the container and its contents shall not exceed 50 lbs.

Contractor shall mean the company or corporation receiving this Agreement to include its agents, representatives, employees, contractors, subcontractors, successors and/or assigns and the Managing Agent.

CRT (Cathode Ray Tube) shall mean an intact glass tube used to provide the visual display in televisions, and including, televisions (including all flat screen models such as LCD and plasma screen models), computer monitors, laptop computers and certain scientific instruments such as oscilloscopes as that term is defined in 310 CMR 30.010 and further used in 310 CMR 30.000 et seq.

Curbside Pickup shall mean the collection of the Solid Waste and Recyclable Material by manual Curbside Collection, defined below, placed at the curb by eligible “Curbside Service Recipients”.

Curbside Pickup Route shall mean that route established by the Town pursuant to which the Contractor shall conduct Curbside Pickup which route may be adjusted or modified by the Town, at its sole discretion or with Contractor by mutual consent, from time to time throughout the Term of this Agreement.

Curbside Service Recipients shall mean all eligible households, including all 1 to 4 family dwellings, 3 multifamily buildings; and 3, non-profit companies and approximately 15 small businesses located downtown, as detailed on **Appendix A** .

Director of Public Health shall mean the Director of the Town’s Health Department or his/her designee.

Disposal Facility shall mean a Solid Waste depository including but not limited to sanitary landfills, transfer stations, incinerators and waste processing and/or separation centers licensed, permitted or approved by all governmental bodies and agencies having jurisdiction and requiring such licenses, permits or approvals to receive Solid Waste from the Town of Swampscott, its Municipal Facilities, and Schools and eligible Curbside Service Recipients located within the Town for processing and/or final disposal. Currently, the Disposal Facility is located at _____.

Dual Stream Recycling shall mean the method of collecting Recyclable Material in which Curbside Service Recipients separate recyclable fiber (mixed paper and cardboard) from recyclable containers (plastic, metal and glass containers) for recycling collection.

Effective Date shall mean the date upon which this Agreement is executed.

Force Majeure shall mean any event or condition having a material and adverse effect upon the Contractor's or the Town's ability to perform pursuant to this Agreement if such event or condition is beyond the reasonable control and not the result of willful or negligent action or lack of reasonable diligence of the parties relying thereon as justification for not performing any obligation or complying with any condition required of such party under this Agreement. "Force Majeure" events or conditions may include but are not restricted to events of the following kinds: an act of God, an act of war, insurrection, riot or civil disturbance, fire, explosion, flood, epidemics, unusually severe and extraordinary weather conditions, acts of government or regulatory authorities, and strikes or lockouts which affect, impact or impede the Contractor's or the Town's operations.

Hazardous Waste or Hazardous Materials (as such terms may be used interchangeably) shall mean and include, without limitation, asbestos, flammable materials, explosives, radioactive or nuclear substances, polychlorinated biphenyls, other carcinogens, oil and other petroleum products, radon gas, urea formaldehyde, chemicals, gases, solvents, pollutants or contaminants

that could be a detriment or pose a danger to the environment or to the health or safety of any person, and any other hazardous or toxic materials, wastes and substances which are defined, determined or identified as such in any past, present or future federal, state or local laws, by-laws, rules, regulations, codes or ordinances or any judicial or administrative interpretation thereof including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.), the Public Health Service Act (42 U.S.C. §300(f) et seq.), the Pollution Prevention Act (42 U.S.C. §13101 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §136 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), the Federal Clean Water Act (33 U.S.C. §1251 et seq.), the Federal Clean Air Act (42 U.S.C. §7401 et seq.), the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Massachusetts General Laws c.21E; and the Massachusetts Hazardous Waste Management Act, Massachusetts General Laws c.21C.

Holiday shall mean Sundays in addition to: New Year's Day, Martin Luther King Day, President's Day, Patriot's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Thanksgiving Day, Veteran's Day and Christmas and such other days as agreed to in writing as between the Parties hereto.

Household shall mean the owners and/or occupants of each Residential Unit.

Large Container shall mean a receptacle into which Solid Waste contained in a maximum of two (2) Bags shall be placed and which shall be constructed of plastic, metal, or fiberglass, having handles or construction to provide adequate strength for lifting and having a tight fitting lid exceeding a volume of 35 gallons but not to exceed a volume of 65 gallons. The mouth of the container for curbside collection of solid waste shall have a diameter greater than or equal to that of the base.

Leaf and Yard Waste shall mean deciduous and coniferous seasonal disposition including, leaves, grass and hedge clippings and tree trimmings, vine cuttings, garden materials and brush not to exceed more than one (1) inch in diameter.

Managing Agent shall mean a supervisory, management level person within Contractor's organization and designated by the Contractor upon whom all notices may be served by the Town or upon whom complaints may be served or given by the Town or any Town resident. Service of such notice or complaint upon the Managing Agent shall always constitute service upon the Contractor.

Manual Curbside Collection shall mean the accepted method of collecting refuse and recyclables by no mechanical means.

Metal shall mean all scrap metals excluding curbside Recyclable Material.

Municipal Collection Program shall mean a program, whether by means of manual or automated Curbside Collection that collects Solid Waste and Recyclable Material, by means of

Dual Stream Recycling or Single Stream Recycling, from all Municipal Facilities, Schools, and Curbside Service Recipients.

Municipal Facilities shall mean the municipal locations, as listed in **Appendix B**, contained herein.

OSHA shall mean the Occupational Safety and Health Administration of the United States Government.

Overthrow Sticker shall mean a sticker, designed and printed by the Town, made available for purchase by the Public Health Department to be affixed by a Curbside Service Recipient, to a Bag exceeding the Trash Limit.

Prevailing Wage Rates shall mean wage rates for workers paid at the rates established by the Executive Office of Labor and Workforce Development, Division of Occupational Safety in accordance with G.L. c. 149, § 27.

Proposal shall mean Contractor's response to the RFP via its "Non-Price/Technical Proposal" dated _____, 20____ and a subsequent "Pricing Proposal" dated _____, 20____ as **(modified and)** accepted by the Town attached hereto as **Appendix C**.

RFP shall mean the Town's request for proposals for curbside collection of Refuse and recyclables services issued as of March 11, 2015 entitled "Request for Proposals, Curbside Collection and Transportation of Solid Waste, Yard Waste and Recyclable Materials" attached hereto as **Appendix D**.

Recyclable Material shall mean material that has the potential to be recycled, reclaimed, or used again and which is not commingled with non-recyclable Solid Waste or contaminated by toxic materials as per 310 CMR 19.006 and is generated and collected from Municipal Facilities, Schools and Curbside Service Recipients under the Municipal Collection Program.

Recycling Processing Facility shall mean the facility where the Recyclable Material described in this Agreement shall be taken by the Contractor for processing and marketing. Facility must be licensed, permitted or approved by all governmental bodies and agencies having jurisdiction and requiring such licenses, permits or approvals to receive Recyclable Material from the Town of Swampscott, its Curbside Service Recipients, Municipal Facilities and Schools located within the Town. Currently, the Processing Facility is located at _____, Massachusetts.

Refuse/Rubbish shall mean Solid Waste, not including Recyclable Material.

Residential Unit shall mean a dwelling within the corporate limits of the Town owned or occupied by a person or group of persons comprising not more than four (4) families, unless specified on Appendix A. A residential unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto. An apartment structure, whether of

single or multi-level construction, consisting of four (4) or less contiguous or separate Residential Units and bordering an accepted street or private street or street that was planned for future acceptance by the Town, shall be treated as a Residential Unit.

Schools shall mean the schools listed in Appendix B attached hereto. Pick up shall not occur prior to 7:00 AM or after 5:00 PM without prior approval of the Director of Public Health. During the school year, collection may not occur within one-half (1/2) hour of arrival or dismissal time.

Single Stream Recycling shall mean the method of collecting Recyclable Material by use of a single container where all Recyclable Material is placed.

Solid Waste shall mean useless, unwanted or discarded solid or liquid material, as per 310 CMR 19.006. The term "liquid" refers to the liquid materials incidental to disposal of such useless, unwanted or discarded materials. Specifically excluded from the definition of Solid Waste are: (i) Unacceptable Waste; (ii) any Recyclable Material; (iii) dead animals; (iv) household, basement, attic or garage cleanouts pursuant to which a Town resident or property owner must independently contract, at his/her/its sole cost and expense to complete the cleanout in compliance with all applicable federal, state and local laws, codes, bylaws and regulations; (v) Construction and Demolition Debris; (vi) CRT's; (vii) Leaf and Yard Waste; (viii) White Goods; (ix) "Waste Ban Materials" as defined by 310 CMR 19.012 and subsequent amendments during the Term of this Agreement; and (x) automobile parts, including, without limitation, batteries, engines and auto-body parts.

Term shall mean a term of three (3) years all issued in one (1) year increments, **commencing July 1, 2015**, as may be further extended, upon the terms and conditions contained in this Agreement.

Town shall mean the Town of Swampscott.

Town Administrator shall mean the Town Administrator or his/her Agent.

Trash Limit shall mean two (2) Bags or two (2) Containers not to exceed 70 gallons in total and, in any event, each not exceeding 50 lbs. in total or not to exceed 65 gallons when placed in one (1) Large Container. Curbside Service Recipients will be allowed to place two (2) Bags, two (2) Containers, or one (1) Large Container at curbside, plus one Burnable Bulky Waste item per week.

Unacceptable Waste shall mean all hazardous material or waste as defined in 310 CMR 19.000, those items covered under the mercury disposal prohibition pursuant to 310 CMR 76.00, all Solid Waste rejected from the Disposal Facility, ineligible commercial garbage, Refuse/Rubbish, Construction and Demolition Debris, ash from heating plants, wood and coal stoves, stones, rocks, automobile parts, used tires and waste oils, pesticides and sewage wastes.

White Goods shall mean ovens, stoves, refrigerators, water coolers, bubblers, dishwashers, clothes dryers, washing machines, freezers, air conditioners, dehumidifiers, hot water heaters,

space heaters, microwaves and any items containing pressurized Freon. White Goods shall be classified as either Freon containing or non-Freon containing types.

Work shall mean all obligations of the Contractor described in this Agreement including, without limitation, performance of the Municipal Collection Program, including, without limitation, the weekly collection and removal and transport to the Disposal Facility of Solid Waste and weekly collection and processing of Dual / Single Stream Recycling Materials and transport to the Processing Facility and leaf and yard waste collection as prescribed herein and transport to the Compost Facility all at rates charged to the Town as set forth in the “Pricing Schedule” attached hereto as **Appendix E** all in compliance with all applicable Federal, State and Local laws, codes, bylaws and regulations as determined by the Director of Public Health.

ARTICLE II AGREEMENT

1. **THE WORK.** The Contractor shall, at its own cost and expense, furnish all vehicles, materials, equipment and labor necessary, proper and convenient for the performance of its duties required by and/or reasonably inferable from this Agreement for full implementation of the Municipal Collection Program in full performance of the Work.

A. Solid Waste Services Collection.

The Contractor shall provide for the collection of Solid Waste from all Municipal Facilities, Schools and eligible Curbside Service Recipients within the corporate limits of the Town of Swampscott, in compliance with all applicable Federal, State and Local laws, codes, bylaws and regulations, disposal prohibitions and waste bans as determined by the Director of Public Health.

The Contractor shall **not** pick up as part of the regular Town Solid Waste stream the following:

- i. Solid Waste placed in Containers or Large Containers exceeding the Trash Limit.
- ii. Large Containers containing loose Solid Waste which is not placed in Bags.
- iii. Any Bag or Container that weighs more than 50 pounds.
- iv. More than two (2) Bags (except those with an Overthrow Sticker affixed as described below); two (2) Containers; or one (1) Large Container containing more than two (2) Bags per week.
- v. Construction and Demolition Debris.
- vi. More than one (1) Burnable Bulky Waste item per week.
- vii. Automobile parts, including, without limitation, batteries, engines and components, doors, body parts, tires and the like.
- viii. Waste Ban Materials as defined by 310 CMR 19.017 and subsequent amendments including, without limitation, visible recyclables, cardboard, paper, plastic, glass, metal and mercury bearing waste.
- ix. White Goods and Freon containing products.
- x. Unacceptable Waste.

Curbside Service Recipients may purchase, for a fee of \$2.00 each, an Overthrow Sticker from the Public Health Department, which must be affixed to a Bag in excess of the restrictions described above in Article II.1.A.iv. exceeding the Trash Limit. Excess Solid Waste for which an Overthrow Sticker may be purchased may only be placed in a Bag and may not be placed in a Container or Large Container.

B. Dual Stream Recycling/Single Stream Recycling Collection.

The Contractor shall provide for the collection of Recyclable Material from all Municipal Facilities, Schools and Curbside Service Recipients within the corporate limits of the Town of Swampscott, in compliance with all applicable Federal, State and Local laws, codes, bylaws and regulations, disposal prohibitions and waste bans as determined by the Director of Public Health.

The Contractor acknowledges and agrees that in the event a bona fide more advantageous opportunity to process and market Recyclable Material is presented to the Town, the Contractor shall re-negotiate prices accordingly resulting in an equitable adjustment in the Pricing Schedule.

Recyclable Materials to be collected shall include, without limitation:

- (i) Newspapers and advertisement inserts, magazines, catalogues;
- (ii) Telephone books, paperback books, and books (hard cover removed);
- (iii) Junk mail and envelopes (all types);
- (iv) Paper of all color, staples and paperclips may be attached;
- (v) Brown paper bags;
- (vi) Paperboard, such as cereal and shoeboxes;
- (vii) Corrugated cardboard;
- (viii) Glass bottles and jars of all colors;
- (ix) Plastic bottles and containers marked #1-#7;
- (x) Aluminum, such as cans, foil and trays;
- (xi) Metal: steel, tin, and empty aerosol cans, and lids; and
- (xii) Aseptic containers: coated-paper milk and juice cartons and drink boxes.

C. Leaf and Yard Waste, Christmas Tree Collection.

The Contractor shall provide seven (7) weeks of curbside collections of Leaf and Yard Waste and two (2) weeks of curbside collection of Christmas trees including composting. Leaf and Yard Waste shall be collected on Curbside Service Recipients' normal trash collection day on weeks mutually agreed upon with the Town and Contractor. Christmas Trees shall be collected two (2) weeks in January/February mutually agreed upon with the Town and Contractor.

D. Solid Waste and Recyclable Material Collections from Municipal Facilities and Schools.

The Contractor shall provide collection of Solid Waste and Recyclable Material for all Municipal Facilities and Schools. The Contractor shall be responsible for maintaining and repairing dumpsters and other appropriate collection containers, receptacles, roll-off containers and carts

in quantities and in sizes the sizes as set forth in Appendix B for the Municipal Facilities and Schools to allow for full performance of the Work at no additional cost to the Town.

The Contractor shall make collections of Solid Waste and Recyclable Material from each Municipal Facility and School at the frequency specified in Appendix B. This schedule shall not be changed without the prior written consent of the Director of Public Health.

At any time during the Term of this Agreement, the Town may, at its sole discretion, add or delete entirely, or in part, collections from any or all Municipal Facilities and Schools. No collection from any School shall occur before 7:00 AM or after 5:00 PM without prior approval of the Director of Public Health. During the school year, collection may not occur within one-half (1/2) hour of arrival or dismissal time.

All dumpsters and other appropriate collection containers, receptacles, roll-off containers and carts shall be kept in a neat, clean, and relatively odor-free condition. The Contractor, on an as needed basis, shall clean tops of the dumpsters and other appropriate collection containers, receptacles and carts. Any broken, damaged or missing dumpsters and other appropriate collection containers, receptacles, roll-off containers and carts must be repaired or replaced immediately. Contractor shall also wash or otherwise clean the dumpsters and other containers, receptacles and carts, if such condition arises at no additional cost to the Town. All containers are to be deodorized weekly and more frequently upon request of the Director of Public Health.

Any Solid Waste or Recyclable Material located within a four (4) foot radius of the dumpsters and other appropriate collection containers, receptacles, roll-off containers and carts located at the Municipal Facilities and Schools shall be considered Solid Waste or Recyclable Material to be collected under this Agreement.

The Contractor will take adequate precautions to protect all Town property (buildings, shrubs, lawn, pavement, vehicles, or other items or areas that are within Municipal Facilities and School boundaries) from any damage and will be responsible for all costs and expenses associated with the repair for any such damage caused either directly or indirectly by the Contractor, its employees, agents, contractors and subcontractors.

E. Solid Waste Disposal.

The Contractor shall transport to and unload all Solid Waste generated from Curbside Pickup under this Agreement to the Disposal Facility; or, any other disposal facility of equal or similar distance (within 25 miles of the Disposal Facility) as designated by the Town in its sole discretion.

In the event that the Disposal Facility is not available to accept Solid Waste, through an event of Force Majeure or otherwise, the Contractor shall transport the Solid Waste to alternate facilities at an additional, mutually agreeable cost to the Town for an alternative disposal facility located more than 25 miles from the Disposal Facility.

F. Recyclable Materials Processing.

The Contractor shall transport to and unload all Recyclable Material collected under this Agreement for the Term of this Agreement to the Processing Facility or otherwise as determined below in this Paragraph F.

Notwithstanding anything contained herein to the contrary, in the event that the Processing Facility is not available to accept the Recyclable Material, through an event of Force Majeure or otherwise, the Contractor shall transport the Recyclable Material to an alternate processing facility with written notice to the Town.

G. Weight Slips/Reporting/Monitoring

All of Contractor's collection vehicles used in performance of the Work shall also be equipped with cameras and recording equipment to monitor each residential Curbside Pickup load collected. The weight information between Solid Waste and Recyclable Material shall be monitored separately and maintained for the Municipal Collection Program and Solid Waste and Recyclable Materials collected from eligible Curbside Service Recipients shall be monitored separately from that collected from Municipal Facilities and Schools. The weight information between Solid Waste and Recyclable Material shall be monitored separately. Weight slips must be submitted to the Director of Public Health on a monthly basis within seven (7) days of the beginning of each month.

H. Holiday Collection.

When a scheduled collection day falls on a Holiday, there shall be no collection on that day. Collection for those days and all remaining days of the week shall occur one day later. The Holiday schedule shall be published by the Contractor in a calendar and other literature distributed annually as described below in Section 4.F. entitled "Outreach Sponsorship". All outreach sponsorship and printed materials and calendars must be prepared by the Contractor and approved by the Director of Public Health prior to printing and implementation. All published materials for this Agreement shall also contain the "24-Hour Hotline" and Contractor's e-mail access information.

I. Equipment.

(i) General:

The Contractor shall purchase and/or lease and maintain and repair all vehicles and equipment necessary to adequately and efficiently perform the Work and all obligations pursuant to this Agreement.

Prior to the Commencement Date, within twenty (20) days after July 1, annually thereafter and/or immediately upon any change to the Contractor's

vehicle/equipment line-up used in performance of the Work throughout the Term, the Contractor shall provide to the Director of Public Health, a list of all vehicles and equipment (including back-up vehicles and equipment) to be used by the Contractor in performance of the Work. The vehicle/equipment list shall contain, at a minimum, vehicle identification number, license number, make and model, model year, years in service, designation of front line or back-up), payload capacity, and date of purchase or initial lease.

All vehicles and equipment used in the collection and transportation of Solid Waste or Recyclable Material shall be of sufficient type, size and capacity to fully perform the Work at maximum efficiency. Collection vehicles shall, at all times, be equipped with working “smart” phones with email capability for immediate and direct contact by a vehicle operator with the Managing Agent and the Director of Public Health.

Small Collection Truck - The Contractor shall provide, at its sole cost and expense, in service of the Work, such collection vehicles as necessary to navigate Town streets which have become narrower due to any public safety, public works or weather related event.

If Contractor cannot complete the Work within the timeframes and/or schedules prescribed in this Agreement, the Town may order the Contractor to increase or change, at Contractor’s sole cost and expense, the number and types of vehicles and equipment necessary to maximize efficiency in full performance of the Work. If the Contractor fails to comply with such order within sixty (60) days of receipt, such failure shall constitute a breach of this Agreement and the Contractor shall pay, in the form of “Liquidated Damages”, referenced below in Section 13 of this Agreement, the sum of one hundred (\$100.00) dollars for each day that the Contractor fails to comply with such order with said Liquidated Damages to be imposed for each additional truck ordered by the Town, but not placed in service by the Contractor.

(ii) Back Up Vehicles and Equipment:

The Contractor shall maintain sufficient back-up and auxiliary collection vehicles and equipment for immediate use to ensure uninterrupted collection service in the full and efficient performance of the Work in the event of any frontline vehicle and equipment failure during the Term of this Agreement.

(iii) Vehicle Condition, Maintenance and Repair:

The Contractor shall maintain collection vehicles and equipment in a clean and sanitary condition and in good repair at all times. All parts and systems of the

collection equipment shall operate properly, be in good working order and be maintained in a satisfactory condition throughout the Term of this Agreement.

All vehicles and equipment (including back-ups) used in the collection and transport of materials under this Agreement shall be functionally equivalent and compatible with new, state of the art, vehicles and equipment.

(iv) Vehicle Appearance & Signage:

All collection vehicles and equipment shall be in accordance with all applicable Federal, State and Local laws, codes, bylaws and regulations, including, without limitation, the Massachusetts Motor Vehicles Code, G.L. c. 89-90H. The Contractor's name, telephone number, vehicle number, and the Town of Swampscott shall be visibly displayed on both sides of all collection vehicles in letters and figures not less than three inches (3") high.

(v) Licenses and Registration:

The Contractor shall ensure that all vehicle and equipment operators shall maintain current licenses necessary in the conduct of the Work and the Contractor shall maintain, at all times, current motor vehicle registrations for all vehicles used in performance of the Work as required by all applicable laws, rules and regulations, including, without limitation, the Massachusetts Department of Motor Vehicles and the Massachusetts Department of Transportation.

(vi) Environment and Safety:

The Contractor is responsible for ensuring that all vehicles and equipment used in performance of the Work are compatible with all required emissions standards, are road worthy, are appropriate for its designated use in performance of the Work and are equipped with properly functioning, audible back-up alarms as required by applicable state law. The operator of such vehicles used in performance of the Work shall travel all roads and streets in accordance and in observance with all applicable traffic rules and regulations.

Bodies for the trucks used for the collection and transportation of Solid Waste shall be enclosed and shall, at all times, be watertight, readily cleanable and sanitary.

All vehicles and equipment used for the collection or hauling of Solid Waste and/or Recyclable Material shall be thoroughly cleaned and sprayed with such deodorizer as may be deemed necessary by the Town, at least once each week, or more frequently as otherwise determined by the Director of Public Health. All vehicles, conveyancers, containers, and all other equipment of whatever nature used by the Contractor in performance of the Work shall, at all times, be kept and maintained in a safe, clean and sanitary condition and shall be operable and in a

state of constant good repair. All vehicles, equipment and facilities used by the Contractor shall be subject to inspection for sanitation, safety, appearance, and subject to approval or rejection by the Director of Public Health at any time. The Contractor shall replace any such rejected vehicles and equipment as soon as reasonably possible and same shall not, under any circumstances, be deemed an event of Force Majeure pursuant to Section 15 below.

(vii) Full Service:

Contractor shall provide services in full performance of the Work to all Municipal Facilities, Schools and Curbside Service Recipients whether now or hereafter existing throughout the Term of this Agreement as designated by the Director of Public Health.

2. TERM OF AGREEMENT. The Contractor shall provide the Town with collection, disposal, and processing services in full performance of the Work and in accordance with all specifications set forth in this Agreement. The term of this Agreement will be for a **THREE (3) YEAR** term, in one (1) year increments, commencing as of **July 1, 2015**, being the Commencement Date (the "Term"). The Town may seek to extend the Agreement term beyond the original Term, at its sole option, but any extension of this Agreement by the Town beyond the three (3) year Term shall be subject to Town Meeting approval. The Agreement shall be subject to the availability and appropriation of funds. If the Town does not appropriate sufficient funds to support the continuation of the Agreement in any contract year during the Term, the Town shall be entitled to cancel the contract at its sole option.

The Town may also renegotiate any provisions of this Agreement after the earlier of the expiration or termination of the Term.

3. COMPENSATION TO THE CONTRACTOR AND ADJUSTMENTS.

A. The Town will pay and the Contractor will accept in full consideration for the performance of the Contractor's obligations incurred pursuant to this Agreement for Contractor's full performance of the Work the amounts stated in the attached Pricing Schedule attached hereto as Appendix E. Payments by the Town to the Contractor under this Agreement shall be made monthly and shall be invoiced by the Contractor to the Town in arrears, but no later than ten (10) business days after the last day of the calendar month. The Town will make all payments due to the Contractor under the terms of this Agreement within thirty (30) days of receiving a complete and accurate invoice from the Contractor.

Compensation for the disposal of Solid Waste and Recyclable Material shall be based, if applicable, on accurate and verifiable weight slips with all supporting materials submitted to the Town by the Contractor.

B. Included in the Town's monthly payments to the Contractor are certain set lump sum items as detailed in the attached Appendix E, Pricing Schedule which shall be based upon 1/12 of such annual lump sum payment for each applicable component as set forth in Appendix E.

Payments in whole or in part will be made for the faithful performance of this Agreement, less, any Liquidated Damages as further described below in Section 13 for noncompliance.

C. Notwithstanding anything contained herein to the contrary, the prices referenced in the attached Pricing Schedule shall include and not be in addition to the cost of transport of the Solid Waste to the Disposal Facility and of the Recyclable Material to the Processing Facility or to any alternative facilities necessary in accordance with the provisions of Sections 1.E. and 1.F. above in full performance of the Work.

D. In the event of any dispute as to any portion of any monthly or other invoice from the Contractor, the Town shall give written notice of the disputed portion to the Contractor within thirty (30) days of receipt of such invoice and the Town may withhold such amounts from payment to the Contractor accordingly. Such notice shall identify the disputed portion of the invoice, state the amount in dispute and set forth the grounds on which such dispute is based. "Town Events of Default", as described in Paragraph 19.B. below, shall not, under any circumstances, result from any failure to pay or any late payment incurred during the pendency of any dispute nor shall any Remedies for Town Events of Default as described below in Paragraph 19.D. accrue in favor of the Contractor accordingly. The Contractor shall give due consideration to such dispute, in good faith, and shall advise the Town with regard to its position relative thereto within twenty (20) days following receipt of such written notice. Upon final determination (whether by agreement, adjudication or otherwise) of the correct amount, any difference between such correct amount and such full amount shall be added to, subtracted from or otherwise reflected (in cases where the Town has deducted the disputed amount from payment and such deduction amount holds) in the monthly statement next submitted to the Town after such determination.

During the pendency of any dispute as to the amount owed, both the Town and the Contractor shall continue performing their respective obligations under this Agreement.

This Agreement is subject to the availability and appropriation of funds. The Town shall cancel this Agreement if funds are not appropriated or otherwise made available to support continuation of performance hereunder at any time during the Term and any extension of this Agreement in the same manner as provided in G.L. Chapter 30B, section 12 and Chapter 44, section 31.

4. CURBSIDE COLLECTION.

A. General

Curbside Pickup shall be conducted in such a manner so that Solid Waste and Recyclable Material are placed at a point no further than five (5) feet from the back of the curb. Except as otherwise provided hereunder, Curbside Pickup of these items placed more than five (5) feet from the back of the curb shall not be included in this Agreement. In areas where there are no curbs, Curbside Pickup shall refer to the collection of items placed no further than five (5) feet from the edge of a right of way.

Municipal Facilities and Schools receptacle collections shall be made at such Town pickup points designated by the Director of Public Health at his/her sole discretion, a list of which pickup points shall be provided to the Contractor prior to the Commencement Date and which may be altered, amended or modified by the Director of Public Health at any time throughout the Term of this Agreement.

Notwithstanding the foregoing, Solid Waste and Recyclable Material, Christmas Trees and Yard and Leaf Waste shall be set out in a manner that will not interfere with or endanger the movement of vehicles or pedestrians. When construction work is being performed in the Town or traveled right of way, Solid Waste and Recyclable Material Christmas trees and Yard and Leaf Waste shall be placed as close as practicable to an access point for Curbside Pickup. The Contractor shall, subject to the terms and provisions of this Agreement, collect all Solid Waste and Recyclable Material, Christmas Trees and Yard and Leaf Waste set out in this manner and at curbside, collection point or area designated by the Town in satisfactory fulfillment of the Municipal Collection Program.

B. Collection Routes.

Collection routes including, Curbside Collection Routes and routes for collection from Municipal Facilities, Schools and eligible Curbside Service Recipients for the Municipal Collection Program in full performance of the Work shall be established by the Town one (1) month prior to Commencement Date. All changes in or deviations from any routes and collections points including, without limitation, the Curbside Pickup Routes and schedules made by the Contractor in performance of the Work must be approved in writing from the Director of Public Health prior to implementation of the change. Five (5) route maps must be provided to the Town at least one (1) month prior to the Commencement Date in a format compatible with the Town's geographic information system ("GIS"). All collection routes including the Curbside Collection Routes and routes for collection from Municipal Facilities, Schools and eligible Curbside Service Recipients are subject to any existing and/or contemporaneous road restrictions/limitations which may occur from time to time throughout the Term, including, without limitation, designated one-way streets, road closures, detours, and emergencies. The Contractor shall make appropriate adjustments to the Work, accordingly, upon the existence and/or occurrence of road restrictions/limitations, including, without limitation, adjustments to Curbside Collection Routes and routes for collection from Municipal Facilities and, Schools.

The Contractor shall use best efforts to service the Municipal Collection Program in full performance of the Work in the same order each week throughout the Term of this Agreement. Contractor shall return for any missed pickups of Solid Waste and/or Recyclable Materials missed due to a change in time of collection that was not approved by the Director of Public Health.

Contractor shall notify all affected Curbside Service Recipients of all Town approved or Town requested alterations in routes or schedules.

C. Communication with Residents.

Any changes in the route, schedule, or collection of Solid Waste and/or Recyclable Materials made at Contractor's request shall be distributed by the Contractor in writing and in form as approved by the Director of Public Health at the Contractor's sole cost and expense by mail to all Curbside Service Recipients and by publication in in a newspaper of general circulation within the Town and also on the Town's public access cable television station, "Swampscott Access". Additionally, all communications with residents shall be in accordance with that set forth below in Section 4.E.

D. Care of Public and Private Property.

The Contractor shall use its best efforts to ensure it handles the carts, dumpsters, receptacles, Containers, and Large Containers with care so that they are not damaged. The Contractor shall use care in returning empty barrels, carts and bins to the curbside or off the edge of an adjacent and travelled right of way at approximately the same location. Containers, Large Containers, containers for collection of Recyclable Materials and any other barrels, carts and bins shall not be placed in driveways, in front of mailboxes or on paved portions of roadways. Under no circumstances are Containers, Large Containers, containers for collection of Recyclable Materials and any other barrels, carts and bins to be thrown or allowed to roll out into any right of way. Contractor shall be liable to repair or replace any Containers, Large Containers, containers for collection of Recyclable Materials and any other barrels, carts and bins damaged by Contractor at its sole cost and expense within seventy-two (72) hours of receiving notice from the Town Administrator or the Director of Public Health.

The Contractor will take adequate precautions to protect all public and private property from any damage and the Contractor will be responsible for all costs and expenses necessary to repair any such damage caused by the Contractor accordingly. Any damage done to property by the Contractor, its employees, agents, contractors and subcontractors through or related to the performance of the Work shall be promptly repaired, replaced or paid for by the Contractor, or may be repaired and/or replaced by the Town with the cost deducted from any payment due the Contractor on the immediately following, monthly invoice.

E. Daily Contact and Managing Agent.

The Contractor shall provide a publicly published local telephone number to the Town Administrator, the Director of Public Health and each Service Recipient as of the Commencement Date. The Contractor shall designate Supervisory-level personnel capable of responding to and solving any complaints, including, without limitation those from each eligible Household, the Town Administrator, the Director of Public Health or any Town official concerning performance of the Work hereunder this Agreement. Contractor shall maintain and staff adequate, unrestricted and fully accessible telephone lines (i.e. no caller i.d. block, adequate lines to minimize busy signals, etc.) with all access voice mail capability from 7:00 a.m. to 5:00 p.m. each day of collection, or later if Contractor's personnel are still on the routes. Contractor shall also maintain a twenty-four (24) hour automated telephone line for receipt of complaints when not staffed outside of said hours and Contractor's email address all of which shall be monitored in such manner which ensures Contractor's response within five (5) hours but not more than twelve (12) hours of its transmission to Contractor. The telephone number and the

Contractor's e-mail address shall be published as a "24-Hour Hotline" on all calendars and other written materials to be furnished by the Contractor, as well as other information so that residents can properly log complaints.

The Contractor shall maintain a log of resident complaints and the manner in which they were resolved by Contractor to be submitted to the Director of Public Health prior to the close of each month throughout the Term of this Agreement.

Calls from residents or the Town shall be received in a courteous manner and Contractor shall resolve all complaints in an efficient and expeditious manner within all prescribed time-frames.

The Contractor shall also designate, in writing, prior to the Commencement Date, to the Director of Public Health the name of a Managing Agent upon whom all notices may be served by the Town. Service of such notice upon the Managing Agent shall always constitute service upon the Contractor. The Managing Agent shall oversee the collection, transport and, where applicable, disposal and processing of Solid Waste and/or Recyclable Material from the Town.

The Managing Agent shall contact the Public Works Department on a daily basis at 7:30 a.m. and again at 2:00 p.m. by telephone or email with regard to daily execution and performance of the Work.

All complaints shall be promptly investigated and then promptly responded to in writing by the Managing Agent on a complaint form established by the Contractor and approved by the Director of Public Health which form shall include the: (i) name of the complainant and the name of the person whom the Management Agent made contact with; (ii) designation of complainant (i.e. Household resident, Town official, etc.); (iii) time and date of complaint; (iv) brief description of the basis of complaint; (v) location of incident giving rise to the complaint; (v) the manner in which the complaint was resolved.

Upon determination by the Director of Public Health, the Contractor shall also provide a so-called "chase" vehicle that will inspect and follow each collection route daily to better assure quality control.

F. Outreach Sponsorship

The Contractor will, at its sole cost and expense, sponsor education and outreach efforts for Municipal Collection Program participation. At a minimum,

- (i) The Town shall develop an educational program, with the contractor, to update all residents on contract specifications. This program may include social media, cable television, flyers, newspaper articles, etc. The contractor shall provide a \$1,000 annual payment to the Town for these educational efforts. The Contractor or its Managing Agent, shall be actively involved in educating the public, including attending public meetings, working with the Town on various communication efforts each year of the contract to educate residents about the collection programs.

- (ii) The Contractor will work with the Town to engage Swampscott Public Schools (Faculty, Administration, students, Custodial staff) in increasing solid waste diversion. The Contractor or its Managing Agent, shall be actively involved and be available to attend meetings, participate in presentations, etc.
- (iii) The Contractor shall dispense basic, start-up and update literature to all residents about the Municipal Collection Program and Dual/Single Stream Recycling, including, without limitation, how, what and why to recycle and the "does and don't(s)" about Recyclable Material.
- (iv) The Contractor shall sponsor, annually, a program for residents' awareness of the Dual/Single Stream Recycling to encourage participation.
- (v) The Contractor shall develop and print for distribution in December for the following calendar year a Municipal Collection Program calendar indicating: (i) Christmas Trees and Leaf and Yard Waste (ii) the Holiday schedule and (iii) such other information determined appropriate by the Director of Public Health.

All outreach sponsorship and printed materials and calendars must be prepared by the Contractor and approved by the Director of Public Health prior to printing and implementation. All published materials for this Agreement shall also contain the "24-Hour Hotline" and Contractor's e-mail access information.

The Contractor will also sponsor, at its cost and expense, annual education and outreach efforts to Town residents for Municipal Collection Program participation and recycling, such as; participating in community events or educational presentations by Contractor's designated professionals qualified to present the benefits of the Municipal Collection Program to be conducted at Town Senior Centers, Town libraries, elementary schools and other Town venues as may be designated by the Town Administrator during each year of the Term of this Agreement. The Contractor shall coordinate, through the Director of Public Health, three (3) such events annually.

Additionally, the Town may implement a recycling incentive program for Town residents during the Term of this Agreement. The Town will provide reasonable notice to the Contractor of its election to implement such a program and the Contractor agrees to cooperate with the Town accordingly to implement and execute such program at the direction of the Town Administrator and/or the Director of Public Health.

Each year of the Contract, payable in December of each year of the contract, the Contractor shall provide one (1) \$1,000 scholarships that the Town appointed scholarship committee, which shall include a person designated by the Contractor, may award to a student entering or enrolled in an environmental science degree program.

G. Meeting Between Contractor and Town Official

The Contractor, through its Managing Agent, shall be available to meet with the Town Administrator, the Director of Public Health and/or any other designated Town official as needed to review performance of the Work and resident complaints and resolutions, including a list of all “Non-Collection Notices”, described below in Section 4.L left with each resident as such is the case. The Town may conduct an annual performance review prior to the end of each year of the Term of this Agreement.

H. Collection Schedule.

The Contractor shall schedule Curbside Pickup of Recyclable Material to coincide with the Curbside Pickup of Solid Waste such that Households will have Curbside Pickup on the same day of the week.

I. Collection Times.

No Solid Waste and Recyclable Material collections from Household residents shall occur before 7:00 AM or after 5:00 PM without prior approval from the Director of Public Health.

J. Routing Schedule.

The Contractor will schedule routes according to the Curbside Pickup Route and other routes in the most efficient manner to facilitate the complete performance of the Work and so that collection vehicles are not within ½ mile of each other on the same right of way.

K. Missed Pickups.

The Contractor shall be required to return for all missed pickups requested by the Town Administrator or Director of Public Health or other designated Town official or Service Recipient. The designated collection vehicle shall return to the address of the Service Recipient on the same day if reported to the Contractor between the hours of 7:00 a.m. and 4:00 p.m. via telephone, e-mail or the 24-hour Hotline, after which time such vehicle will return for the missed Curbside Pickup on the following day including a day that is a Holiday. The Contractor shall be required to conduct all missed Curbside Pickups at no extra cost to the Town.

Failure to conduct the Work as directed by the Town may result in the imposition of Liquidated Damages as provided below in Section 13 of this Agreement.

L. Non-Collection Notices.

The Contractor shall supply “Non-Collection Notices” designed by the Contractor and approved by the Director of Public Health. Notices must be approved before printing. All collection vehicle operators shall be provided with an adequate supply of the Non-Collection Notices and are required to leave Non-Collection Notices whenever Solid Waste and/or Recyclable Material is intentionally not collected according to the terms and provisions of this Agreement including those Curbside Service Recipients who exceed the Trash Limit without affixing, in a visible location on a Container, an Overthrow Sticker.

M. Improperly Prepared Materials.

Contractor's employees, contractors and subcontractors encountering improperly placed or prepared Solid Waste and/or Recyclable Material at Curbside Pickup by a Curbside Service Recipient shall follow the following procedure:

- (i) For the first occurrence by a Curbside Service Recipient within any calendar year during the Term of this Agreement, the Contractor shall complete a Town approved "Non-collection Notice" as further described above in Section 4.L., explaining the deficiency and the Contractor shall leave the Non-Collection Notice, along with improperly placed or prepared Solid Waste and/or Recyclable Material, at an easily accessible and identifiable location (e.g. taped to the front door, etc.) at the Household.
- (ii) Upon the second and ensuing occurrences by the same Curbside Service Recipient within any calendar year during the Term of this Agreement, the Contractor shall follow the step prescribed above in Paragraph M(i) and shall also notify the Director of Public Health of a persistent problem at that address of the Curbside Service Recipient.

N. Items Prohibited from Collection.

Subject to the provisions of Section 7 below, the Contractor shall not collect those items listed in Section 1.A. above except in the manner and as expressly provided for in this Agreement. The Contractor shall leave a Non-collection Notice explaining why such materials were not collected.

O. Mixing Recyclable Materials with Solid Waste.

Recyclable Material shall not be commingled with Solid Waste under any circumstances. Recyclable Material shall not be placed in with Solid Waste and Solid Waste shall not be placed in with Recyclable Material.

P. Cleanup on Route.

The Contractor shall pick up all blown, littered, and broken Solid Waste and/or Recyclable Material collected pursuant to this Agreement. Each collection vehicle shall carry, at all times, at least one (1) broom, shovel, and a hazardous materials spill kit.

Q. Spillage of Solid Waste or Recyclable Material.

If at any time, Solid Waste or Recyclable Material are spilled into a right of way, sidewalk, lawn, tree, or any private or public property by the Contractor, or the contents of a collection vehicle carrying Solid Waste or Recyclable Material are spilled/dumped onto a right of way, sidewalk and private or public property, the Contractor shall clean up the spilled/dumped matter

immediately before proceeding to the next place of collection, or make arrangements for the spillage to be cleaned up immediately.

R. Hazardous Waste Spills.

The Contractor must immediately report any spill of automotive fluids or other Hazardous Waste to the Swampscott Fire Dispatch Center at 781-595-4050 and to the Swampscott Public Works at 781-596-8860. The Contractor must also report Hazardous Waste spills to the Massachusetts Department of Environmental Protection (“MADEP”) and the Public Health Department at 781-596-8864 and otherwise in accordance with all applicable federal, state and local laws, codes and regulations.

S. Accidents and Breakdowns.

The Contractor shall notify the Public Health Department at **781-596-8864** and by email within fifteen (15) minutes of any accident or breakdown that may delay the Contractor’s performance of the Work and Curbside Pickup activities. The Contractor shall notify the Town within fifteen (15) minutes of any accident involving either personal injury or damage to private or public property of any sort.

T. Services for Physically Challenged Residents.

The Contractor, with the assistance of the Town, shall establish a procedure to assist eligible household residents who are physically unable, due to age or physical condition, to place barrels, trash or bins at curbside as described above in Section 4.A. After documentation and verification of such person’s condition, and verification that there is no other Household resident able to perform such a task, the Town, after certification of need from the Household resident, will notify the Contractor, who will then be responsible for Curbside Pickup at the building line rather than the designated place at curbside at no additional cost to the Town.

5. SOLID WASTE DISPOSAL.

A. Disposal Facility

The Contractor shall provide the Town, in writing, with information on the Disposal Facility(s) which shall include, without limitation, its address, history of accepting Solid Waste, and capacity. The Contractor shall notify the Town in writing of any changes in the Disposal Facility location.

B. Permits and Licenses.

The Disposal Facility must be fully licensed and permitted by the U.S. Environmental Protection Agency (“EPA”) and the MADEP, and must also be approved to operate pursuant to any other required federal, state, or local departments, boards, commissions or offices.

C. Weights.

Contractor shall provide the Town with “Individual Monthly Summarized Municipal Tonnage Reports” from the Disposal Facility accompanied by proper and verifiable weight slips, certified by a facility which maintains a Massachusetts, officially approved scale along with any other supporting evidence and material as may be reasonably requested by the Director of Public Health to the Contractor all of which must be submitted to the Director of Public Health on a monthly basis within seven (7) days of the beginning of each month. Additionally, the Contractor shall provide, on a monthly basis by email, in spreadsheet format, to the Director of Public Health Solid Waste and Recyclable Material tonnage reports broken down by collection day, for the entire Town in absolute quantities and percentages.

D. Rejected Solid Waste Loads.

Any Solid Waste, Unacceptable Waste or Hazardous Waste rejected from the Disposal Facility and/or Processing Facility for any reason shall remain the property of the Contractor and shall be disposed of at an appropriate facility at no additional cost to the Town.

6. RECYCLABLE MATERIALS PROCESSING

A. Processor Facility Location.

The Contractor shall provide the Town, in writing, with information on the Processing Facility(s) which shall include, without limitation, its address, history of accepting Recyclable Material, and capacity. The Contractor must take the Recyclable Material to a Processing Facility(s) that accepts and processes Recyclable Material. The Contractor shall notify the Town in writing of any changes in the Processing Facility location. The Contractor shall also provide the Town with a list of materials accepted by the Processing Facility and will notify the Town of any changes in materials accepted by the Processing Facility.

B. Permits and Licenses.

The Processing Facility must be fully licensed and permitted by the U.S. Environmental Protection Agency (“EPA”) and the MADEP, and must also be approved to operate pursuant to any other required federal, state, or local departments, boards, commissions or offices.

The Contractor is responsible for the processing and marketing of Recyclable Material. The Contractor must designate in writing to the Town, recyclable marketing and disposal site(s), and may change such sites subject to prior notice to and approval by the Town, which approval shall not be unreasonably denied or delayed subject to Section 4.F. above.

C. Weights

Contractor shall provide the Town with “Individual Monthly Summarized Municipal Tonnage Reports” from the processing Facility accompanied by proper and verifiable weight slips, certified by a facility which maintains a Massachusetts, officially approved scale along with any other supporting evidence and material as may be reasonably requested by the Director of Public Health to the Contractor all of which must be submitted to the Director of Public Health on a monthly basis within seven (7) days of the beginning of each month. Additionally, the Contractor

shall provide, on a monthly basis by email, in spreadsheet format, to the Town Administrator and the Public Works Department Recyclable Material tonnage reports broken down by collection day, for the entire Town in absolute quantities and percentages.

D. Processing and Disposal Conditions

The Contractor covenants that at no time throughout the Term of this Agreement shall any of the Recyclable Material accepted pursuant to this Agreement be incinerated or placed in a landfill.

E. Rejected Recyclable Material Loads.

Any Recyclable Material rejected from the Disposal Facility and/or Processing Facility for any reason shall remain the property of the Contractor and shall be disposed of at an appropriate facility at no additional cost to the Town.

7. CONTAMINATED MATERIALS.

A. General.

Contractor shall take all reasonable and necessary precautions to ensure that all Recyclable Material collected at curbside are not contaminated or comingled with Solid Waste, Unacceptable Waste or Hazardous Waste. Contractor shall be responsible for all costs and expenses associated with the disposal of Recyclable Material delivered to the Processing Facility determined, by the Processing Facility's representative, employees or staff, to be contaminated.

The Contractor shall be entitled to dispose, at the Contractor's sole cost and expense, any individual load of Recyclable Material not acceptable to the secondary market due to contamination.

B. Hazardous Waste/Hazardous Material.

In addition to Unacceptable Waste, Hazardous Waste or Hazardous Material of any sort shall not be collected under this Agreement including, without limitation:

- (i) Gasoline and waste oil;
- (ii) Liquid oil-based paints, turpentine, paint thinners and shellac;
- (iii) Pesticides;
- (iv) Auto batteries;
- (v) Explosives;
- (vi) Propane tanks and gas cylinders;
- (vii) PCBs and radioactive waste containers;
- (viii) Mercury waste
- (ix) Any other materials designated hazardous by DEP or EPA;
- (x) Medical waste.

8. LIABILITY OF THE TOWN. The Town's liability pursuant to this Agreement shall be to make all payments when they shall become due in accordance with Section 3 above and the Town shall be under no further obligation or liability.

No Town officer, board member, employee, agent, official or resident of the Town or any Curbside Service Recipient and any landlord and/or tenant shall ever be personally liable under this Agreement and the Contractor shall look solely to the Town in pursuit of its remedies upon any Town Event of Default below pursuant to Section 19.D.

9. TITLE TO SOLID WASTE/RECYCLABLE MATERIAL. The Contractor shall receive and accept title to all Solid Waste and Recyclable Material and all other materials collected by Contractor including, without limitation, Burnable Bulky Waste items, Christmas Trees and Yard and Leaf Waste upon Curbside Pickup. The Town shall not be considered the generator of any such waste for any purpose. It shall be Contractor's responsibility to provide quality control for processing of all such materials collected at curbside, including, without limitation, making the determination as to whether any materials collected by Contractor contain Unacceptable Waste, Hazardous Waste, Hazardous Materials or "contaminated materials" as described herein this Agreement.

10. INDEPENDENT CONTRACTOR/EMPLOYEES.

A. The Contractor acknowledges and agrees that it is acting as an independent contractor for all Work and services rendered pursuant to this Agreement, and shall not be considered an employee or agent of the Town for any purpose.

B. All employees of the Contractor working in the Town must have a minimum of ten (10) hours of relevant training prescribed by OSHA and the regulations promulgated by it. The Contractor shall provide upon Town's request, all records relative to such OSHA and other safety training provided for Contractor's employees working within the Town.

C. Contractor must subject all of its employees performing any aspect of the Work or reasonably anticipated to perform any aspect of the Work to a CORI/SORI check and shall certify same to the Town Administrator and the Director of Public Health. Contractor's certification shall include a roster of the Contractor's employees working within the Town in performance of the Work. And shall be made annually on January 1 or more frequently as necessitated by Contractor's addition of more employees performing or reasonably anticipated to perform the Work. The Contractor shall employ competent and courteous employees and shall, when ordered to do so by the Director of Public Health, immediately discharge or transfer to duties outside the Town any incompetent or discourteous employee or any employee who is found by the Town to act in violation of any provisions and requirements of this Agreement or who acts in violation of any law. The Contractor shall not again employ, in performance of the Work within the Town, any employee dismissed or transferred under the foregoing provisions without the prior written consent of the Director of Public Health exercisable in his/her sole discretion.

D. The Contractor agrees to use best efforts to train new employees for a period of at least two (2) weeks prior to their assuming full responsibility in performance of the Work. Notwithstanding anything to the contrary contained herein, the Contractor shall prepare route maps based on the Curbside Collection Route and, at a minimum, train collection employees before the Contractor permits an employee to begin performance of any aspect of the Work in the Town.

11. PERMITS AND LICENSES. The Contractor shall obtain and pay for all licenses, approvals and permits necessary for collecting, transporting and marketing Recyclable Materials and/or collecting, transporting and disposing of Solid Waste.

12. INDEMNIFICATION. The Contractor acknowledges and agrees that it is responsible as an independent contractor for all operations under this Agreement and for all acts of employees, subcontractors and agents hereunder, and agrees that Contractor will, to the extent of its liability under this Agreement indemnify, and hold harmless the Town and its officers, boards, employees, agents and officials, any Curbside Service Recipient and any landlord and/or tenants from and against any and all loss, damage, cost, charge, expense and claim, including, without limitation, claims for property damage and personal injury which may be made against it or them or to which it or they may be subject to the extent caused by any act, action, neglect, omission or default on the part of the Contractor or any of its agents, subcontractors and employees and will pay promptly on demand all costs and expenses of the investigation and defense thereof, including attorneys' fees and expenses. If any such claim is made, the Town may retain out of any payments, then or thereafter due to the Contractor, a sufficient amount to protect it completely against such claim, costs and expenses.

In any event that the Town is sued or becomes subject to administrative action because the Contractor has failed to properly transport, process or dispose of the Recyclable Material and Solid Waste, full restitution will be made to the Town for all expenses, fees, fines or other costs or charges incurred.

13. LIQUIDATED DAMAGES. In addition to all of its other rights and remedies under the Agreement, at law or in equity, the Town shall be entitled to assess liquidated damages against the Contractor for its failure to perform the specified obligations described in this Agreement for collection and transportation of the Town's Solid Waste and Recyclable Material prior to the occurrence of a Contractor Event of Default as specified below in Paragraph 19.A and in the amounts specified in **Appendix F**. The Contractor acknowledges and agrees that the Liquidated Damages provided herein and as specified in the attached Appendix F are not penalties but represent a fair measure of damages which will be sustained by the Town in the event the Contractor defaults on any of the following specified obligations.

The Town shall have the right to withhold the amount of Liquidated Damages assessed by it from any payment owed to the Contractor as a credit or set-off of such amount.

Any consent or permission by the Town to any act or omission which otherwise would be a breach of any covenant or condition herein, or any waiver by the Town of the breach of any covenant or condition herein, shall not in any way be held or construed (unless expressly so

declared) to operate so as to impair the continuing obligation of any covenant or condition herein, or otherwise operate to permit the same or similar acts or omissions except as to the specific instance. The failure of the Town to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Agreement shall not be deemed a waiver of such violation nor prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The failure of the Town to assess Liquidated Damages shall not be deemed to have been a waiver by the Town of any such violation or of any of the Town's remedies on account thereof, including its right of termination of this Agreement for such default.

14. INSURANCE. The Contractor shall carry and continuously maintain until completion of this Agreement, insurance as specified below and in such form as shall protect the work covered by this Agreement, and the Town and its employees, agents and officials, from all claims and liability for damages for bodily injury, including accidental death, and for property damage, which may arise from operation under this Agreement. The Contractor covenants and agrees to hold the Town and its employees, agents and officials harmless from and against any and all loss or damage due to claims for personal injury and/or property damage arising from, or in connection with operations under this Agreement.

Except as otherwise stated, the amounts of such insurance shall be not less than:

- (A) Commercial General Liability to be written on a “primary and non-contributory basis” favoring the Town in the following amounts:
 - \$2,000,000 Products/Completed Operations Aggregate Limit
 - \$2,000,000 General Aggregate (Other Than Products/Completed Operations)
 - \$1,000,000 on account of one occurrence and
 - \$1,000,000 Personal and Advertising Injury

- (B) Automobile Liability (Owned, Non-Owned and Hired Automobiles and Vehicles):
 - \$1,000,000 each accident (Combined Single Limit)

- (C) Commercial Umbrella:
 - \$5,000,000 Products and Completed Operations
 - \$5,000,000 General Aggregate
 - \$5,000,000 Any One Occurrence

- (D) Employer’s Liability:
 - \$500,000 Each Accident
 - \$500,000 Each Employee Injury by Disease
 - \$500,000 Aggregate for Injury by Disease

- (E) Workmen's Compensation Insurance including a “waiver of subrogation” favoring the Town in the following amounts:
 - as required by the General Laws of the Commonwealth of Massachusetts.

(F) Pollution Liability and Contractor's Operations and Professional Services Environmental Insurance written on an "Occurrence" Policy Form on a primary, non-contributory basis favoring the Town in the following amounts:

\$5,000,000 Each Occurrence

\$5,000,000 Annual Aggregate

All policies shall be so written that the Town will be notified of cancellation or restrictive amendment at least thirty (30) days prior to the effective date of such cancellation or amendment. In the event any insurance carrier or Contractor's insurance agent will not provide such notice, Contractor covenants to notify the Town, accordingly, and any failure of which by the Contractor will be deemed a material breach of this Agreement pursuant to which the Town may terminate this Agreement. A certificate from the Contractor's insurance carrier showing at least the coverage and limits of liability specified above and expiration date shall be filed with the Town before operations are begun. Such certificates shall not merely name the types of policy provided, but shall specifically refer to this Agreement and shall state that such insurance is as required by this Agreement. The Contractor shall make no claims against the Town or its officers for any injury to any of his officers or employees or for damage to his trucks or equipment arising out of work contemplated by this Agreement. The certificate of insurance shall be delivered to the Town at least fifty (50) days prior to July 1 of each year that this Agreement is in force and effect. Failure to comply with the requirements of this Section 14 shall be cause to terminate this Agreement by the Town.

All insurance required by this Agreement shall be obtained from insurance companies that are duly licensed or authorized to conduct business in the Commonwealth of Massachusetts to issue insurance policies for the limits and coverage's so required. The Town shall be named as an additionally insured party on all policies issued hereunder. Certificates of Insurance are attached hereto as **Appendix G**.

15. FORCE MAJEURE.

A. Delays and Remedies

If any event of Force Majeure occurs which, through no fault of the Contractor, delays or will delay performance required by this Agreement, which event was: (i) beyond control of the Contractor, its agents, employees and subcontractors, and (ii) could not have been prevented or avoided by the exercise of due care, foresight, or due diligence on the part of the Contractor, its agents, employees and subcontractors, the Contractor shall immediately notify the Town of the delay, in writing, and in such writing the Contractor shall explain, in reasonable detail, the cause of the delay and the steps or measures intended to be taken to prevent or minimize the delay, including a timetable by which the Contractor intends to implement such steps or measures. Upon receiving the approval of the Town, the Contractor shall implement such steps or measures as are approved by the Municipality to avoid or minimize any delay. Nothing in this Section 15 shall excuse any noncompliance by the Contractor with the provisions of this Agreement, nor shall the Town's approval or failure to approve any measures or steps relieve the Contractor of its responsibilities under the Agreement.

B. Extension of Remedy

If the Contractor notifies the Town of the occurrence of an event of Force Majeure which delays or will delay performance of the Work under this Agreement, and if the Contractor otherwise complies with the requirements of this Section 15, Paragraph A above, and if the Town reasonably determines in its sole discretion that the delay has been or will be caused by circumstances beyond the control and without the fault of the Contractor, its agents, employees and subcontractors, and cannot or could not have been overcome by the exercise of due diligence, due care or foresight, the Town shall extend the time for performance hereunder for a period of time equal to the length of the delay.

C. Cost Increases

Unanticipated or increased costs or expenses associated with the implementation of the actions required under this Agreement through an event of Force Majeure or changed financial circumstances shall not, for the performance of the actions required by this Agreement, be considered beyond the control and without the fault of the Contractor.

D. Labor Strikes

If delays are caused by a strike or other labor unrest of the Contractors' employees, the Contractor shall diligently and in good faith take all action necessary in order for to resume operations including seeking to obtain temporary restraining orders, preliminary or permanent injunctions needed to resume operation. The Contractor shall during any such period keep the Town Administrator and the Director of Public Health duly notified of all such actions and shall allow the Town to participate and intervene in all such actions, if the Town so desires, but this right of the Town shall not create any obligation of the Town to participate or intervene, and nor shall any participation or intervention relieve Contractor of its obligations under this Paragraph.

Notwithstanding the foregoing, in the event of nonperformance of the Contractor due to labor disputes exceeding a period of five (5) days, excluding Holidays the Town shall have the right, but not the obligation, to temporarily procure services of other contractors until such time as such labor dispute is resolved and the Contractor resumes the regular schedule and the cost of same shall be deducted from all amounts due from Town to Contractor pursuant to this Agreement.

E. Inclement Weather

Ordinary snow and rain shall not be considered a Force Majeure event causing delay in performance of the Work of any type in accordance with the provisions of this Agreement. Collections may be omitted only under the most extreme, adverse weather conditions such as blanketing snowstorms, hurricanes and the like and then only with prior approval from the Director of Public Health.

F. Road Restrictions/Limitations

Changes to collection routes including the Curbside Collection Routes and routes for collection from Municipal Facilities, Schools and eligible Curbside Service Recipients pursuant to Section 4.B. above, necessitated by any existing and/or contemporaneous road restrictions/limitations which may occur from time to time throughout the Term shall not be considered a Force Majeure event causing delay in performance of the Work of any type in accordance with the provisions of this Agreement.

16. PREVAILING WAGES. Contractor shall pay wages in accordance with the attached Prevailing Wage Rates currently in effect and attached hereto as **Appendix H** with an Issue Date of March 2, 2015 as determined by the Massachusetts Executive Office of Labor and Workforce Development, Division of Occupational Safety as will be adjusted from time to time. The Contractor also hereby warrants and represents that it is fully aware of and is in strict compliance with the provisions of G.L. c. 149, §§ 27F and Contractor shall continue such compliance throughout the Term hereof. The Contractor shall be responsible to ensure that it pays all wages at Prevailing Wage Rates applicable to its performance of the Work under this Agreement.

The Contractor shall provide the Town, no later than the last day of each month unless such day is a Holiday, Saturday or Sunday and in such case, on the immediately preceding day when the Town conducts its normal business, with certified weekly payroll information for all of Contractor's employees working in the Town including, without limitation, drivers, laborers, day laborers and temporary laborers.

17. PERFORMANCE BOND. The Contractor shall furnish for the Term of this Agreement a performance bond in a form and with a surety company approved by the Town and authorized to do business in the Commonwealth of Massachusetts, conditioned upon the Contractor fully performing all Contractor's obligations under this Agreement in performance of the Work, and making full payment, at Prevailing Wage Rates, for all labor performed or furnished in performance of the Work. The penal sum of the bond shall be twelve months of the total amount of the Agreement sum for the particular year as set forth pursuant to this Agreement. The bond shall be delivered to the Town at least sixty (60) days prior to July 1 of each year that this Agreement is in force and effect. Failure to provide performance bond requirements shall be cause to terminate this Agreement. The Performance Bond is attached hereto as **Appendix I**.

18. ASSIGNMENT. The Contractor shall not assign or otherwise transfer this Agreement, in whole or in part, without the prior written consent of the Town, and shall not assign any of the moneys payable to Contractor under this Agreement, except by and with the written consent of the Town and any such attempted assignment without such written consent shall be void.

Events deemed an assignment include, without limitation: (i) Contractor's final and adjudicated bankruptcy whether voluntary or involuntary; (ii) Contractor's takeover or merger by or with any other entity; (iii) Contractor's outright sale of assets and equity, majority stock sale to another organization or entity for which Contractor does not maintain a controlling equity interest; (iv) or any other change in ownership or status of the Contractor; (v) any assignment for the benefit of creditors; and/or (vi) any other assignment not approved in advance in writing by the Town. In addition to any other rights and remedies available to the Town under this Agreement at law and

in equity, such assignment shall entitle the Town to terminate this Agreement and all pertinent contractual conditions contained herein shall be affected in favor of the Town.

Failure of any subcontractor to perform the Work pursuant to the terms hereunder shall not relieve the Contractor of its obligation to fulfill the terms and conditions of this Agreement as set forth herein.

19. EVENTS OF AND REMEDIES FOR DEFAULT.

A. Contractor Events of Default shall mean as follows:

- i. Failure of the Contractor to perform any of its obligations, covenants or agreements under this Agreement and the continuance of such failure for seven (7) days after written notice thereof from the Town to the Contractor; provided, however, that if such default is not susceptible to cure within such seven (7) days and if the Contractor commences diligently to cure such default promptly after receipt of notice thereof from the Town, such period of seven (7) days shall be extended to a period of time necessary to cure such default with all due diligence, but in no event shall such period exceed a total of thirty (30) days.
- ii. The Contractor becomes insolvent, however such insolvency is or may be evidenced, or Contractor makes an assignment for the benefit of creditors; or Contractor is adjudicated bankrupt; or admits in writing its inability generally to pay its debts as they become due.
- iii. A trustee, custodian or receiver of the Contractor's business, or any substantial portion of the Contractor's assets, is appointed by or at the behest of the Contractor, or, if appointed in a proceeding brought against the Contractor, the Contractor approves of, consents to, or acquiesces in such appointments or such trustee or receiver is not discharged within ninety (90) days.
- iv. Any proceedings involving the Contractor are commenced by or against the Contractor under any bankruptcy or reorganization, arrangement, probate, insolvency, readjustment of debt, dissolution or liquidation law of the United States, or any state, or, if such proceedings are instituted against the Contractor, the Contractor approves of, consents to, or acquiesces in such proceedings or such proceedings are not dismissed within ninety (90) days.
- v. Any representation or warranty made by the Contractor is not true in any material respect as of the date of the issuance or making thereof as contained in this Agreement or any other document or instrument executed in connection herewith.
- vi. The death, dissolution or termination of existence of the Contractor.
- vii. The assignment as described in Section 18; takeover or merger; outright purchase of a majority equity interest of Contractor by another, organization or entity for

which Contractor does not maintain a controlling equity interest, or other change in ownership, management or status of the Contractor.

B. Town Events of Default shall mean as follows:

Subject to the provisions of Paragraph 3.D. above, failure of the Town to pay any sums due the Contractor hereunder within thirty (30) days after receiving an invoice for payments due to the Contractor, and the continuance of such failure for fifteen (15) days after written notice thereof from the Contractor to the Town; provided, however, that if the Town notifies the Contractor of a dispute as to any sums pursuant to Section 3 of this Agreement within such fifteen (15) days after written notice by the Contractor to the Town of such nonpayment, no Event of Default shall occur until a final determination of the correct amount pursuant to the provision of said Section 3.D. and the failure of the Town to pay such correct amount within thirty (30) days after receiving the statement next submitted to the Town after such determination.

C. Remedies for Contractor Events of Default.

If at any time during the Term of this Agreement the Town reasonably determines that a Contractor Event of Default has occurred or the Contractor has, otherwise breached the terms of this Agreement by negligently or incompetently performing the Work, or any part thereof, or by failing to perform the Work to the reasonable satisfaction of the Town, or by not complying with the direction of the Town or its agents, in addition to and not in derogation of any other right or remedy available to it under this Agreement, at law or in equity (which rights and remedies shall be cumulative and shall not be deemed inconsistent with each other and which may be exercised at the same time to the greatest extent permitted by law) the Town may, at its election at any time after the expiration of the notice and cure periods contained in Paragraph 19.A, terminate this Agreement by giving written notice thereof to the Contractor specifying the effective date of the termination. Upon receipt of said notice, the Contractor shall cease to incur to the Town any additional expenses in connection with this Agreement. Upon the date specified in said notice, this Agreement shall terminate. Upon such termination, the Contractor shall be entitled to compensation for all satisfactory work completed prior to the termination date, as determined by the Town in its sole and reasonable discretion. Notwithstanding the foregoing, the Contractor specifically agrees that it shall indemnify and hold the Town harmless from any loss, damage, cost, charge, expense or claim arising out of or resulting from any Contractor Events of Default or such breach regardless of its knowledge or authorization of the actions resulting in any Contractor Events of Default or breach and such amounts shall be deducted from the aforementioned compensation due to the Contractor for completed prior to the termination date. Further, after termination of this Agreement pursuant to the provisions of this Paragraph 19.C., the Town may have such service performed by others and the Contractor agrees to accept liability for all costs to the Town in excess of the Agreement price set forth on the Pricing Schedule attached as Appendix E for the remaining portion of the Term of the Agreement.

At any time following any Contractor Events of Default, the Town may (but shall not be obligated to) cure any default by the Contractor hereunder, and all costs and expenses incurred by the Town, including attorneys' fees and expenses, in curing a Contractor default shall be paid

by the Contractor to the Town on demand, together with interest thereon at the rate as may be determined by the Town using standards of commercial reasonableness.

D. Remedies for Town Events of Default.

Subject to Paragraph 3.D, above, upon any Town Event of Default and after expiration of all notice and cure periods contained in Paragraph 19.B, the Contractor may, in addition to and not in derogation of the right to sue the Town for such sums actually due hereunder (which rights and remedies shall be cumulative and shall not be deemed inconsistent with each other and which may be exercised at the same time to the greatest extent permitted by law), terminate this Agreement upon written notice thereof to the Town. In no event shall the Town be liable for any indirect, special or consequential damages.

20. TERMINATION FOR CONVENIENCE. The Town may terminate this Agreement at any time for convenience by providing the Contractor written notice specifying therein the termination date which shall not be sooner than ten days from the issuance of said notice. Upon receipt of said notice, the Contractor shall cease to incur additional expenses in connection with this Agreement. Upon such termination, the Contractor shall be entitled to compensation for all satisfactory work completed prior to the termination date, as determined by the Town, such payment not to exceed the fair value of the services provided hereunder.

21. INSPECTION AND REPORTS.

A. General.

The Contractor shall be required to keep accurate weights of collected materials including those referenced above in Sections 5 and 6. The Contractor shall submit to the Director of Public Health, on a monthly basis (attached to monthly invoice), accurate weigh slips, with a summary report for Solid Waste and Recyclable Material, showing the quantity (in tons) of materials collected by route for the entire Town.

The Town shall have the right at any time, upon reasonable notice, to inspect the equipment and any premises of the Contractor, including the right to enter upon any property owned or occupied by the Contractor, whether situated within or beyond the limits of the Town. Whenever requested, the Contractor shall promptly furnish the Town full and complete written reports of operations under this Agreement in such detail and containing such information as the Town may reasonably request.

At the Town's option, the Town may require the Contractor's collection vehicles to be weighed, prior to the commencement of all collections pursuant to this Agreement and following all such collections to determine the tonnage collected.

In addition, at the discretion of the Town, the Contractor may be subjected to periodic weigh-ins of materials on Massachusetts certified scales within a ten (10) mile radius of the Town of Swampscott. The Director of Public Health will select the time and place for weigh-ins. The

Town will pay any direct cost incurred for the use of the scales associated with such weigh-in. The Contractor will incur all other costs of the weigh-ins.

B. End of Route Reporting.

All service requests for Curbside Pickup reported to the Contractor between the hours of 7:00 a.m. to 4:00 p.m. shall be responded to on the same day unless otherwise mutually agreed to by the Director of Public Health and the Contractor's Managing Agent. After responding to any such service request, the Contractor's Managing Agent or the collection vehicle operator must report, in writing, on a service request/complaint form designed by the Contractor and approved by the Director of Public Health, no later than the following collection day to the Director of Public Health.

The Contractor shall maintain daily logs regarding pick up exceptions, damaged barrels, carts or bins, any non-compliance matters arising under this Agreement and any issues relating to the Curbside Collection Route or other routes related to the collection of Solid Waste and Recyclable Material from Municipal Facilities, Schools, and eligible Curbside Service Recipients as prescribed hereunder, including, without limitation, the time, date, and address of any incident and issuance of any Non-Collection Notices. If any collection vehicle is unable to perform collections at any address in Town for any reason, or is delayed in completing its collection route for any reason, the Contractor's Managing Agent or the collection vehicle operators must notify the Director of Public Health immediately of the difficulty. The Managing Agent shall make whatever arrangements are necessary at the Contractor's sole expense to ensure that all portions of that day's collection route are complete on the scheduled day for collection. Daily logs are to be submitted electronically to the Town.

C. Audit.

The Town may request of the Contractor an audit, at a time selected by the Director of Public Health or the Town Administrator in their sole and reasonable discretion of the entire collection route, including the Curbside Pickup Route to ensure that the Contractor's collections vehicle operators are only collecting from eligible Curbside Service Recipients, Municipal Facilities and Schools.

D. Compliance with Directions.

The Contractor shall comply with any and all directions that may, from time to time, be given by the Director of Public Health regarding changes in routing, order of collections, type and care of vehicles and equipment and such matters as the Director of Public Health deems, in his/her sole discretion, advisable for the improvement of the Municipal Collection Program.

E. Complaints and Individual Collections.

The Contractor shall make any collections in individual cases arising out of complaints by Curbside Service Recipients, the Town Administrator, the Director of Public Health or any Town official concerning the performance of the Work. The Contractor shall assure that collections are

made in accordance with the provisions of this Agreement. The Contractor shall also review complaints on a daily basis and make immediate collection as required hereunder this Agreement.

F. Materials from Other Sources.

The Contractor shall not pick up Solid Waste or Recyclable Material from any address not listed as an eligible Curbside Service Recipient, Municipal Facility or School. The Contractor shall not commingle solid waste or recyclable material generated by such other sources with Solid Waste or Recyclable Material collected on behalf of the Town in performance of the Work.

22. CHANGES IN THIS AGREEMENT. The Contractor shall do the Work in the manner set forth in this Agreement, except that the Town, by order in writing given to the Contractor, may make any reasonable order respecting a change (increase or removal) of any part of the Work or the furnishing of extra trucks or labor relating thereto, and the Contractor shall conform to such orders within a reasonable time and Contractor's compensation shall be equitably adjusted (increased or decreased) accordingly. If requested by the Town, the Contractor will amend this Agreement to include up to five (5) additional days so that this Agreement expires on the last day of the week.

23. SUCCESSORS AND ASSIGNS. This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives. Neither the Town nor the Contractor shall assign or transfer any interest in the Agreement without the written consent of the other.

24. SUBCONTRACTORS. The Contractor and its subcontractors, if any, shall be mutually bound by the terms of this Agreement to the extent that the provisions of this Agreement apply to the work of any of Contractor's subcontractors. The subcontractor shall assume toward the Contractor all obligations and responsibilities the Contractor, under this Agreement, assumes toward the Town. The Town shall have the benefit of all rights, remedies and redress against Contractor's subcontractors that the Town, under this Agreement, has against the Contractor insofar as applicable to this Agreement. Where a provision of Contractor's contract with its subcontractors is inconsistent with a provision of this Agreement, this Agreement shall govern.

25. COMPLIANCE WITH LAWS. This Agreement shall be considered to incorporate by reference all applicable federal, state and local laws and rules and regulations of all authorities having jurisdiction over collection, transportation and disposal of Solid Waste and Recyclable Material as though such provisions were set forth in full therein. The Contractor covenants that it shall keep fully informed of all federal, state and local laws, and municipal ordinances, bylaws and regulations in any manner affecting those engaged or employed in the Work, or the materials used in the Work, or in any way affecting the conduct of the Work and of all such orders and decrees or bodies or tribunals having any jurisdiction or authority over the same.

If any discrepancy or inconsistency is discovered in this Agreement for the Work in relation to any such law, ordinance, regulation, order or decree, the Contractor shall forthwith report the same to the Town in writing. The Contractor shall at all times observe and comply with, and

shall cause all agents, employees and subcontractors to observe and comply with, all such existing and future laws, ordinances, regulations, orders and decrees and shall protect and indemnify the Town, its officers, agents, boards and employees, any Curbside Service Recipient including, without limitation, the owners and occupants of any Residential Unit, Household, multifamily apartment complex, multifamily unit, landlords and tenants against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, by the Contractor, his agents or employees. Any additional cost caused by noncompliance to any applicable law or regulation shall be borne solely by the Contractor.

26. NOTICE. Any and all notices, or other communications required or permitted under this Agreement, shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service, or by confirmed facsimile transmission to the Parties at the addresses set forth below or furnished from time to time in writing hereafter by one Party to the other Party. Any such notice or correspondence shall be deemed given when so delivered by hand, if so mailed, when deposited with the U.S. Postal Service or, if sent by private overnight or other delivery service, when deposited with such delivery service as follows:

If to the Town: Thomas Younger, Town Administrator
 Town of Swampscott
 22 Monument Avenue
 Swampscott, MA 01907
 Fax: 781 596 8851

And Jeff Vaughan,
 The Director of Public Health
 Town of Swampscott
 22 Monument Avenue
 Swampscott, MA 01907
 Fax: 781 596 8818

With Copy to: Kopelman and Paige, P.C.
 101 Arch Street
 Boston, Massachusetts 02110
 Attn: John W. Giorgio, Esquire
 Fax: 617-654-1735

If to the Contractor:

Copy to:

27. SEVERABILITY. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any of the other provisions or obligations of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions have never been contained herein, and the remainder of this Agreement shall remain in full force and effect, unless the deletion of such provision would result in such a material change so as to deprive either party of the intended benefits of the Agreement.

28. GOVERNING LAW. This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts and the Contractor submits to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.

29. NON-DISCRIMINATION. The Contractor shall not discriminate against any customer, employee or applicant for employment because of race, color, religion, sex, sexual orientation, handicap, or national origin. The Contractor shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, handicap, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, age, handicap or national origin.

30. NON-COLLUSION, PAYMENT OF TAXES. By signing this Agreement, the Contractor certifies that under penalties of perjury, the Contractor has filed all State tax returns and has paid all State taxes required under law. The Contractor certifies under the penalties of perjury that its proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

31. ENTIRE AGREEMENT. This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

[Signatures Appear on Following Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

I certify that an appropriation is available in the amount of this Agreement.

Town Administrator

(Signature)

Town Accountant

(Signature)

Approved as to Form:

CONTRACTOR:

Town Counsel

(Signature)

(Name and Title)

Table of Appendices (*To be added at execution*)

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