



MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION  
**MUNICIPAL CONTRACTING TEMPLATE:**  
RESIDENTIAL CURBSIDE RECYCLING & TRASH COLLECTION

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Prepared For:

**Massachusetts Department of Environmental Protection  
Bureau of Air and Waste, Division of Hazardous and Solid Waste**

**kessler consulting inc.**  
innovative waste solutions

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## Introduction: Using the Contract Template

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Recycling programs are a vital municipal service. Contracting for recycling collection and processing in an ever-changing industry requires in-depth knowledge and a clear understanding of the community's objectives.

Massachusetts municipalities experience multiple challenges providing consistent, cost effective and high performing recycling programs for their residents, including volatile markets, industry consolidation, and reliance to a large extent on private service providers. To support them, Massachusetts Department of Environmental Protection (MassDEP) is providing a series of documents to support municipal procurement and contracting for recycling services.

This Recycling & Trash Collection Contract Template and a separate Recyclables Processing Contract Template serve as companions to the Best Practices for Successful Recycling Procurements. The Templates should not be used without first consulting the Checklist to adapt them to the unique needs of each municipality.

Together these documents serve as a roadmap for municipalities to determine where they are, where they want to go, and the various ways they can get there. In other words, these are not specific directions. All trash and recycling is local; every community faces unique circumstances. Templates are a useful starting point, but it is important to tailor them to the specific needs of a community to ensure a successful public-private partnership.

***A note about combined collection and processing service contracts:*** Services for the collection and processing of recyclable materials may be bundled under one contract, however it is recommended that the single contract clearly delineate the requirements and financial terms for each service separately to minimize potential confusion for either party. **Note to User: If using a combined contract, utilize the language in the Contract Template for Processing Recyclables.**

### Structure of the Template:

This Template is not a complete contract. Its content is focused on the technical requirements, responsibilities, financial compensation, and other general terms that would be incorporated into a legally binding agreement related to collection of municipal recyclables and trash. Each article identifies the purpose and provides suggested language for adaptation based on a community's specific needs. Cross references are provided to the Best Practices Checklist for Successful Recycling Procurements where more detailed explanation and best practices can be found at: <https://www.mass.gov/lists/solid-waste-management-contracts-contracting>.

This template addresses both recycling and trash collection because most communities that contract collection services combine these. For the handful of communities that split these services, the template can be customized accordingly.

*Information provided in this document is for general guidance only. It is not designed to be a substitute for legal counsel in procurement or contract negotiations. Public entities should always consult with technical and legal advisors with respect to a procurement, contract, issue, or problem.*

# Municipal Contract Template: Residential Curbside Recycling & Trash Collection

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## **Article 1. Definitions**

*Purpose. Certain words and phrases used throughout the contract must be clearly defined to eliminate potential for misunderstandings between the parties. These definitions are examples that must be evaluated to determine which are appropriate for the services being contracted, as well as customized to meet the specific characteristics of a community's program.*

### **See Checklist Section Titled: Provide Clear Definitions**

#### Sample Language:

Acceptable Recyclables: Refer to the [Smart Recycling Guide](#).

Applicable Law: Federal, State or local law, ordinance, code, rule or regulation or other similar legislation which in any manner affects facility operations, employment, site conditions and all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.

Commencement Date: The date when the Contractor begins providing services according to the provisions of this Contract, which is [date].

Contaminant(s) or Contamination: Materials that are mixed with a community's Inbound material which do not meet the definition of Acceptable Recyclables and are collected along with Acceptable Recyclables.

Contract: This agreement, together with all exhibits, amendments, and attachments to such agreement.

Contract Manager: The individual designated in writing by the Contractor to represent it in all matters relating to the management and implementation of the Contract.

Contracted Services: The Recycling and Trash services provided by the Contractor under the terms of the Contract.

Contractor: The entity that is party to this Contract, whether that be a corporation, firm, individual, joint venture, or any combination thereof, and including any subcontractors thereof.

Curbside: The portion of right-of-way adjacent to paved or traveled roadways (including alleys).

Disposal Facility(s): The designated facility or facilities designated by the Municipality or the Contractor (as applicable) to receive Trash and meeting all Federal, State, and local requirements.

**Dual Stream:** A method of collecting and delivering Recyclables, whereby Recyclable Paper and Cardboard, sources of fiber, are collected and delivered to the MRF separated from Recyclable Containers made from glass, plastic, and/or metal.

**Holiday:** Examples include New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas.

**Inbound:** Materials tipped at the Disposal Facility or the MRF prior to any processing, sorting, or mixing with materials from other communities.

**Materials Recovery Facility (MRF):** A specialized facility that receives, separates, and prepares Acceptable Recyclables for marketing to end-use manufacturers.

**Mercury Prohibition:** Disposal Prohibition Provision of the Mercury Management Act (Chapter 190 of the Acts of 2006): As of May 1, 2008, mercury-added products cannot be disposed of in trash when they reach the end of their useful life. 310 CMR 76.00 prohibits any solid waste collector from collecting as solid waste the contents of a solid waste container that the collector knows (or reasonably should know) includes one or more mercury-added products.

**Multi-Family:** A residential building containing more than one single dwelling unit.

**Municipality:** [name of the jurisdiction]

**Municipal Representative:** The individual designated in writing by the Municipality to represent it in all matters relating to the management and implementation of the Contract.

**Operations Manager:** The individual designated in writing by the Contractor to represent it in all matters relating to the operational aspects of the Contracted Services.

**Party:** The Municipality or the Contractor (jointly “Parties”).

**PAYT:** Pay-As-You-Throw.

**Prevailing Wage:** As defined in Massachusetts General Law c. 149, §§ 26 – 27 and administered by the Massachusetts Executive Office of Labor and Workforce Development Department of Labor Standards.

**Recyclable Containers:** Metal food and beverage cans, plastic bottles/jars/tubs/jugs, glass bottles and jars, clear plastic hinged containers (clamshells), clear plastic cups, and clear plastic egg cartons, including labels and caps. The list of Recyclable Containers may be expanded or reduced from time to time as determined jointly by the Municipality and Contractor.

*Note: see [www.RecycleSmartMA.org](http://www.RecycleSmartMA.org) and Waste Disposal Ban requirements (310 CMR 19.017 and <https://www.mass.gov/guides/massdep-waste-disposal-bans>).*

**Recyclable Paper:** Papers, newspapers, magazines/catalogs, paperbacks & phonebooks (covers ok), corrugated cardboard, and paperboard, including paper clips, staples, and metal spirals.

The list of Recyclable Paper may be expanded or reduced from time to time as determined jointly by the Municipality and the Contractor.

*Note: see [www.RecycleSmartMA.org](http://www.RecycleSmartMA.org) and Waste Disposal Ban requirements (310 CMR 19.017 and <https://www.mass.gov/guides/massdep-waste-disposal-bans>).*

Recyclables: Recyclable Containers and Recyclable Paper collected as either Single Stream or Dual Stream materials.

Recycle: as defined in the Commonwealth of Massachusetts Solid Waste Facility Regulations (310 CMR 19.000).

*Note: see <https://www.mass.gov/doc/310-cmr-19000-solid-waste-management-facility-regulations>.*

Recycling Receptacle: Receptacle used by Service Recipients to set out Recyclables for collection and conforming to the specifications in this Contract (e.g., wheeled carts, set-out bins, dumpsters).

Service Area: The area as specified in this Contract in which the Contractor shall provide Contracted Services.

Service Fee: The fee as defined in this Contract paid to the Contractor by the Municipality for Contracted Services.

Service Recipient: Any residential dwelling unit, non-residential building, or municipal building that receives Contracted Services pursuant to this Contract.

Single Family: A residential building containing one single dwelling unit.

Single Stream: A method of collecting and delivering Recyclables whereby all materials are mixed together.

Solid Waste: as defined in the Commonwealth of Massachusetts Solid Waste Facility Regulations (310 CMR 19.000).

*Note: see <https://www.mass.gov/doc/310-cmr-19000-solid-waste-management-facility-regulations>.*

Trash: Discarded materials excluding Recyclables that are otherwise defined as solid waste in the Commonwealth of Massachusetts Solid Waste Facility Regulations (310 CMR 19.000).

Trash Receptacle: Receptacle used by Service Recipients to set out Trash for collection and conforming to the specifications in this Contract (e.g., wheeled carts, pre-printed pay-as-you-throw/PAYT bags, dumpsters).

Ton: 2,000 pounds.

**Waste Disposal Bans:** No person shall dispose, transfer for disposal, or contract for disposal or transport of the restricted material as defined in the Commonwealth of Massachusetts Solid Waste Facility Regulations (310 CMR 19.000).

Note: see <https://www.mass.gov/doc/310-cmr-19000-solid-waste-management-facility-regulations>.

## **Article 2. Contract Term and Amendment**

*Purpose.* This article addresses the initial term length and number of extensions and requirement for amending the contract.

**See Checklist Section Titled: Define Appropriate Length of Contract and Renewal Options**

### **2.1. Term**

Sample Language:

The initial term of this Contract shall be for a period of \_\_\_ years from the Commencement Date terminating on [date].

### **2.2. Extension**

Sample Language:

At the option of the Municipality and with the concurrence of the Contractor, this Contract may be extended for one (1) additional \_\_\_ year term. Any Contract extension must be executed at least \_\_\_ months prior to [date].

### **2.3. Amendment**

Sample Language:

This Contract may not be amended, extended, or modified except by mutual agreement of the Parties in writing. Such amendment(s), when mutually agreed upon by and between the Parties, shall be incorporated into this Contract by written amendment, and executed in the same manner by the signatories hereto.

## **Article 3. Collection Services**

*Purpose.* This article defines the basic parameters of collection services including the service area, customers, collection schedule and frequency, the Receptacles used by customers, and customer set out requirements.

See Checklist Sections Titled: Clearly Define Community Objectives and Delineate Responsibilities

### **3.1. Service Area and Customers**

Sample Language:

Service Area. The Contractor shall provide Contracted Services in the Service Area defined in Exhibit 1.

Service Recipients. The Contractor shall provide Contracted Services to: [select all that apply]

1. All Single-Family buildings.
2. All Multi-Family buildings.
3. Multi-Family buildings listed in Exhibit 1.
4. Non-residential buildings listed in Exhibit 1.
5. Municipal buildings listed in Exhibit 1.



Change in Service Area or Service Recipients. The Municipal Representative shall notify the Contractor of any change in the Service Area(s) or Service Recipients. In the event that the Contractor identifies changes in Service Recipients prior to being notified by the Municipality, the Contractor shall promptly notify the Municipal Representative who shall confirm within \_\_\_ calendar days whether to add or delete the identified Service Recipients. The Contractor shall initiate service to the added Service Area or Service Recipients or terminate service to the deleted Service Area or Service Recipients within \_\_\_ calendar days of receiving notice from the Municipal Representative.

### 3.2. Collection Schedule and Frequency

#### Sample Language:

Hours and Days of Collection. The Contractor shall provide Contracted Services \_\_\_ days per week between the hours of \_\_\_ a.m. and \_\_\_ p.m. on [list collection days] except on Holidays or as otherwise authorized by the Municipal Representative.

Holidays. The Contractor shall not be required to provide Contracted Services on Holidays, but for the remainder of the week following a Holiday shall shift the collection day for all Customers to the day following their normally scheduled collection day. Collection will be allowed on the Saturday following a Holiday.

Collection Schedule and Frequency. The Contractor shall provide Contracted Services on a scheduled route basis such that each Service Recipient receives each collection service on the same day each time. All Service Recipients shall receive Recyclables and Trash collection on the same pick-up day. The collection frequency shall be [select and modify all that apply]:

1. Single Family:
  - a. Recyclables on a [weekly, every other week, twice monthly] basis.
  - b. Trash on a [weekly, every other week, twice monthly] basis.
2. Multi-Family:
  - a. Recyclables on a [weekly, every other week, twice monthly] basis.
  - b. Trash on a [weekly, every other week, twice monthly] basis.
3. Non-residential and municipal building:
  - a. Recyclables on a [weekly, every other week, twice monthly] basis.
  - b. Trash on a [weekly, every other week, twice monthly] basis.

### 3.3. Collection Receptacles

#### Sample Language:

Designated Receptacles. Service Recipients shall utilize the following Recycling and Trash Receptacles [select and modify all that apply; list multiple sizes if applicable]:

1. Single Family:
  - a. Recycling: \_\_\_ gallon [open bin, lidded Receptacle, lidded wheeled cart suitable for automated collection].
  - b. Trash: \_\_\_ gallon [lidded Receptacle, lidded wheeled cart suitable for automated collection] [if applicable, list multiple sizes, i.e., for PAYT service].
2. Multi-Family:

- a. Recycling: \_\_\_ gallon [open bin, lidded Receptacle, lidded wheeled cart suitable for automated collection].
  - b. Trash: \_\_\_ gallon [lidded Receptacle, lidded wheeled cart suitable for automated collection] [if applicable, list multiple sizes, i.e., for PAYT service].
3. Non-residential and municipal:
    - a. Recycling: \_\_\_ gallon [dumpster, open bin, lidded Receptacle, lidded wheeled cart suitable for automated collection].
    - b. Trash: \_\_\_ gallon [dumpster, lidded Receptacle, lidded wheeled cart suitable for automated collection] [if applicable, list multiple sizes, i.e., for PAYT service].

Number of Receptacles. Single Family Service Recipients shall be allowed to utilize no more than \_\_\_ Recycling Receptacles and \_\_\_ Trash Receptacles for each collection scheduled service. The number of Recycling and Trash Receptacles utilized by Multi-Family, non-residential, and municipal Service Recipients may be determined jointly by the Contractor, Municipality, and Property Owner based on the collection frequency and estimated volume of materials to be collected.

Receptacle Specifications: All Receptacles provided by the Contractor shall conform to specifications in Exhibit 2, be equipped with radio frequency identification (RFID) and contain a minimum 30 percent post-consumer recycled content. It is recommended that the color of the trash receptacles be gray or black and the color of recycling receptacles be royal blue.

Ownership and Provision of Receptacles. Receptacles used for the Contracted Services shall be owned and provided by [select and modify all that apply]:

1. Single Family residential:
  - a. Recycling: [Municipality, Contractor, Service Recipient].
  - b. Trash: [Municipality, Contractor, Service Recipient].
2. Multi-Family residential:
  - a. Recycling: [Municipality, Contractor, Service Recipient].
  - b. Trash: [Municipality, Contractor, Service Recipient].
3. Non-residential and municipal:
  - a. Recycling: [Municipality, Contractor, Service Recipient].
  - b. Trash: [Municipality, Contractor, Service Recipient].

Any Receptacles owned and provided by the Contractor shall become the property of the Municipality at the end of the initial contract expiration date.

Receptacle and Parts Inventory. For the Contracted Services for which it is providing Receptacles, the Contractor shall maintain an inventory of new Receptacles for distribution to new Service Recipients and replacement of damaged Receptacles. The Contractor shall also maintain an inventory of parts to repair damaged Receptacles.

Receptacle Repair and Replacement. The Receptacle owner shall be responsible for repair and replacement of Receptacles required due to normal wear and tear. The Contractor shall be responsible, at its own expense, for repair and replacement of Receptacles required due to the Contractor's or its employee's fault. The Contractor shall repair or replace damaged Receptacles

within \_\_\_\_ calendar days after being notified by Service Recipient or the Municipal Representative or if identified by the Contractor. If a damaged Receptacle needing replacement was owned by the Service Recipient or Municipality, the Contractor shall replace it with one of similar size, material, quality and a capacity.

Asset Management Database. The Contractor shall maintain an electronic asset management database that tracks each Contractor-owned Receptacle by type, RFID code, serial number, current location, and location history. Each Receptacle's geolocation shall be recorded when delivered to Service Recipients, when relocated, and when returned to inventory.

### 3.4. Set Out Procedures

#### Sample Language:

Preparation. All Service Recipients shall place materials fully within and not exceeding the designated volume of program Receptacles. Lids on Receptacles so equipped will be able to fully close. Individual Receptacles shall not exceed \_\_\_\_ pounds. Overflow Recyclables shall be placed in a suitable container adjacent to the recycling program Receptacle. Overflow Trash shall be placed in a bag or suitable Receptacle adjacent to the trash program Receptacle.

PAYT Bags. Service Recipients that are subject to the Municipality's PAYT requirements shall place Trash in official bags or containers designated by the Municipality. Service Recipients may place PAYT bags in a rigid receptacle.

#### Collection Point.

1. Single Family: Service Recipients shall place Receptacles Curbside after \_\_\_\_ p.m. on the day preceding scheduled collection and before \_\_\_\_ a.m. on the scheduled collection day. Receptacle shall be placed no more than \_\_\_\_ feet from the public right of way in a convenient and accessible location [add if automated collection: and at least five (5) feet away from any other object and with a minimum of fifteen (15) feet of overhead clearance]. When construction work is being performed in the right-of-way, Receptacles shall be placed as close as practicable to an access point for the collection vehicle. [Add if automated collection: Lidded Receptacles shall be placed with the lid opening facing the street].
2. Multi-Family, non-residential, and municipal buildings: The collection point shall be mutually agreed to by the Contractor and Municipality. The collection point must provide safe and efficient accessibility for the Contractor's collection crew and vehicle. In the event an appropriate location and schedule cannot be agreed upon, the Municipality shall mediate the dispute and designate the collection point.

## **Article 4. Contractor Responsibilities**

*Purpose. This article addresses the Municipality's expectations of the Contractor's work. It needs to clearly define the collection procedures, vehicle and personnel requirements, record keeping and reporting requirements, and other requirements.*

***See Checklist Sections Titled: Clearly Define Community Objectives and Delineate Responsibilities***

The Contractor shall furnish all equipment, labor, materials, management, and supervision necessary to provide the Contracted Services in accordance with the requirements of this Contract.

#### 4.1. Collection Procedures

##### Sample Language:

**Handling of Receptacles.** The Contractor shall carefully handle all Receptacles. Receptacles shall be thoroughly emptied. Empty Receptacles shall be in the approximate location where placed by the Service Recipient with any attached lids open and unattached covers or lids placed on the ground next to the Receptacle. Receptacles shall not be placed in driveways, in front of mailboxes, in the right of way, or in any other way that interferes with traffic or mail delivery service. Receptacles shall not be bent, thrown or otherwise abused. Any type of Receptacle found in an enclosure of any kind shall be returned upright with covers placed on the Receptacle(s).

**PAYT Trash.** The Contractor shall only collect Trash from Service Recipients subject to PAYT requirements that has been set out in official bags or containers.

**Prohibition of Mixed Loads.** The Contractor shall handle [Recyclables -or- Recyclables and Trash] separately at all times during collection and delivery to Designated Facilities.

**Dedicated Collection.** The Contractor shall not combine [Recyclables -or- Trash and Recyclables] collected in the Service Area with any materials collected outside of the Service Area. The Contractor shall make collection vehicles, vehicle daily reports, weigh tickets, and other documentation as needed to document compliance with this requirement available to the Municipal Representative immediately upon request.

**Procedures for Non-Collection.** The Contractor may decline to collect any Receptacle that is not prepared or placed in accordance with the Contract requirements. The Contractor shall not collect Receptacles of Recyclables that contain visible Contaminants in conformance with Recyclesmartma.org ([www.RecycleSmartMA.org](http://www.RecycleSmartMA.org)). The Contractor shall affix a printed non-collection notice to the set out stating the reasons for non-collection, take a picture and notify the Municipal Representative within \_\_\_ hours of declining to collect the Receptacle. The design and content of the non-collection notice shall be subject to the approval of the Municipal Representative.

**Litter and Spills.** The Contractor shall prevent litter and spills during the collection and transport of materials. All collected materials shall be contained fully within the body of the collection vehicle, except during the loading of materials. Hoppers on all collection vehicles shall be cleared frequently to minimize potential for litter and spills. The Contractor shall immediately clean up and repair any damage, at its own expense, caused by litter or spills that occurs during collection and transport of materials to the satisfaction of the Municipal Representative.

**Disposal Prohibition.** The Contractor certifies to the Municipality that all Recyclables collected under this contract are in fact delivered to a properly permitted MRF, broker, or end user. The Contractor is prohibited from disposing (as Trash) Recyclables collected under this Contract.

**Special Needs Service.** The Contractor shall provide special collection service to disabled Service Recipients at no additional cost to the Municipality. The collection point shall be mutually acceptable to the Service Recipient and the Contractor. The Municipal Representative shall maintain the list of Service Recipients eligible for this service.

**Missed Collections.** If the Municipal Representative or Service Recipient notifies the Contractor before 12:00 p.m. that the Contractor failed to provide collection service (missed collection), the Contractor shall return to the Service Recipient by 6:00 p.m. the same day and collect all [Recyclables -or- Trash and Recyclables] placed out for collection. If the Contractor is notified about a missed collection after 12:00 p.m., collection shall be made by 8:00 a.m. the following day. The Contractor shall report all missed collections as a complaint as part of its monthly report.

#### 4.2. Designated Facilities

**Sample Language:**

**Recyclables.** The Designated Facility for the Municipality's Recyclables is:  
[name and address of the processing facility].

**Trash.** The Designated Facility for the Municipality's Trash is:  
[name and address of the disposal facility].

**Proof of Capacity.** The Contractor shall furnish a copy of the legally binding agreement(s) with the Designated Facility(s) that ensures adequate capacity at the Designated Facility(s) to receive the Municipality's [Recyclables -or- Recyclables and Trash]. The Contractor shall maintain said agreement for the entire Contract term and/or notify the Municipality within [number of days] in advance of changes to the agreement.

**Weight Slips.** The Contractor shall obtain weight slips (physical or electronic) for each load of the Municipality's [Recyclables -or- Recyclables and Trash] and retain them for the duration of the Contract.

**Rejected Loads.** In the event a load of the Municipality's Recyclables and or Trash is rejected by a Designated Facility, the Contractor shall immediately notify the Municipal Representative, adhere to the Designated Facility's load rejection procedures, and cooperate with the Municipal Representative to resolve the matter.

#### 4.3. Collection Vehicles

**Sample Language:**

**Vehicle Age.** The Contractor's frontline fleet shall not exceed an average age of \_\_\_ years. No single frontline vehicle shall exceed a maximum age of \_\_\_ years; no single reserve vehicle shall exceed a maximum age of \_\_\_ years.

**Vehicle Identification:** Contractor shall provide to the Municipality, and maintain throughout the term of the Contract, an up-to-date list of all vehicles including year, make and model, vehicle identification number (VIN) and truck number.

**Enclosed and Watertight Vehicles.** All of the Contractor's collection vehicles shall have an enclosed compartment(s) for collected materials with waterproof seals and watertight to a depth sufficient to prevent the discharge or leaking of liquids that have accumulated in the compartment(s) during loading and transport operations.

**Inspection.** The Municipality reserves the right to conduct periodic inspections of collection vehicles to ensure compliance with Federal and State commercial motor vehicle statutes, as well as the above requirements.

**Reserve Vehicles.** The Contractor shall have sufficient reserve vehicles, of similar size and capacity to frontline vehicles, available to complete daily scheduled Contracted Services. Reserve vehicles shall be available to replace frontline vehicles when out of service or unanticipated delays prevent frontline vehicles from completing the Contracted Services within the established hours of collection. Reserve vehicles shall be ready to go into service within \_\_\_\_ hours of any breakdown or delay.

**Ancillary Equipment in Vehicles.** All vehicles used to provide Contracted Services shall be equipped at all times with:

1. all safety supplies, equipment, and first aid required by Applicable Laws.
2. a fire extinguisher.
3. a heavy-duty broom, a rake, and a large dustpan.
4. a spill response kit.
5. an audible back-up warning device.
6. back-up cameras.

**Global positioning system (GPS), RFID and Routing Software.** All vehicles used to provide Contracted Services shall be equipped with a GPS locator system and RFID reading equipment that is compatible with the RFID tags utilized on Receptacles. The RFID reading equipment shall be able to acquire and transmit data to track collection events and location of RFID-tagged Receptacles. The Contractor shall utilize an office-based routing software system capable of monitoring the vehicles' movements for customer service and operational improvement processes. Upon request, the Contractor shall promptly provide its GPS logs and RFID service records to the Municipal Representative.

**Maintenance and Cleaning.** The Contractor shall monitor, maintain and repair its vehicles, at a minimum, in compliance with the manufacturer's recommendations. Oil/hydraulic systems and waterproof seals/enclosures shall be kept in good condition at all times to prevent spills and leaks. All vehicles used for the Contracted Services shall be washed and sanitized at least once weekly.

**Vehicle Marking and Identification.** All vehicles used for the Contracted Services shall:

1. Be painted a uniform color
2. Clearly display the Municipality's name and recycling theme and logo on recycling collection vehicles.

3. Clearly display the Contractor's logo, name, telephone number, and vehicle identification number

Alternative Fuels and Hybrid Drive Technology. The Municipality encourages the use of alternative fuels and/or hybrid drive technology in collection service vehicles. For the Contractor to be eligible for the \_\_\_ year extension of the initial Contract term, the Contractor's frontline fleet must be fully comprised of vehicles using alternative fuels and/or hybrid drive technology. The Municipality also prefers the use of environmentally preferable hydraulic fluid in their service vehicles, which can be found on state contract VEH96.

#### 4.4. Personnel

##### Sample Language:

Contract Manager and Operations Manager. At least \_\_\_ days prior to the Commencement Date and throughout the term of the Contract, the Contractor shall provide the Municipality with the name, title, and contact information for the Contract Manager and one (1) or more Operations Managers. The Contract Manager shall be the official point of contact on behalf of the Contractor for all technical and administrative matters pertaining to the Contracted Services. The Operations Manager(s) shall oversee the Contractor's day-to-day operations and Contracted Services under the Contract.

Licenses and Training. At all times when operating vehicles to provide the Contracted Services, employees shall carry a valid Massachusetts license to operate the type of vehicle being operated. Employees shall be qualified and appropriately trained for the tasks assigned to them and to ensure compliance with the requirements of the Contract and all Applicable Law. The Municipality has the right to review the Contractor's training records.

Quality and Conduct of Personnel. The Contractor shall use competent and qualified personnel to provide the Contracted Services meeting all non-discrimination and OSHA standards. The Contractor shall perform a criminal record check for all personnel through the Massachusetts CORI database and maintain records for inspection upon request by the Municipality. All of the Contractor's personnel shall maintain a courteous and respectful attitude toward the public at all times. At no time may they solicit, request or receive gratuities of any kind.

Uniforms and Personal Protective Equipment. The Contractor shall furnish all personnel (whether full-time, temporary, or contracted) with a uniform identifying them as working for the Contractor. The uniform need not be a complete set of clothing but must be sufficient to ensure easy identification. Personnel are required to wear the uniform at all times while on duty. All collection personnel must wear a reflective safety vest with the name of the company affixed. Regardless of uniform, shirts must be worn at all times. The Municipality reserves the right to approve the uniform furnished by the Contractor.

Approval of Personnel. The Municipality reserves the right to disapprove and request replacement of any of the Contractor's personnel assigned to the Municipality's work, including the designated Contract Manager or Operations Manager. Such disapproval or request shall be for reasonable cause only and shall be addressed in writing to the Contract Manager.



Notwithstanding the foregoing, the Contractor shall not be required to take any action with regard to the Contractor's personnel that would violate any Applicable Law.

#### 4.5. Safety

##### Sample Language:

**Safety Plan and Safety Manager.** The Contractor shall develop, implement, and comply with a safety plan for all of its operations under the Contract. The safety plan shall comply with all Applicable Laws for solid waste collections operations and equipment. A copy of the safety plan shall be provided to the Municipal Representative upon request. The Contractor shall appoint an employee who is qualified and authorized, as defined by ANSI and OSHA, to supervise and enforce safety compliance.

**Safety Training.** The Contractor shall provide routine safety training to all employees in compliance with all Applicable Laws. Documentation of the Contractor's training programs shall be provided to the Municipal Representative upon request.

**Medical Response Procedure.** A written procedure shall be established for the immediate removal to a hospital or a doctor's care of any employee or other person that is injured and requires medical assistance during the execution of the Contract. Any injury sustained by a Contractor employee while on the job, including OSHA recordable injuries, shall be reported to the Municipal Representative immediately.

#### 4.6. Office and Website Requirements

##### Sample Language:

**Office Requirements.** The Contractor shall maintain an office within [define geographic area] to handle operations and customer services which shall remain open for business at a minimum from \_\_\_ a.m. to \_\_\_ p.m. on \_\_\_\_\_ to \_\_\_\_\_ each week. The office shall be equipped with adequate and appropriate personnel and equipment to document and timely respond to all inquiries, issues, and complaints. Office staff shall be familiar with the Municipality, the Contracted Services, and the Contractor's obligations under the Contract. The Contractor shall provide a staffed voicemail service during non-office hours to receive and log Service Recipient calls. The Contractor shall provide and maintain a voice communication system to allow immediate communication between the Contract Manager, the Operations Manager(s), and all collection vehicles.

**Website Requirements.** The Contractor and/or the Municipality shall establish and maintain a website that is publicly available 24/7 with information specific to the Municipality and Contracted Services where Service Recipients can easily obtain information about collection services, address-specific collection schedule information, material preparation requirements, inclement weather service changes, links to Recycle Smart MA and other MassDEP resources, and other relevant service information. The website shall provide Service Recipients the ability to easily submit service inquiries and complaints.

**Contract Manager Contact.** The Municipal Representative shall be able to directly contact the Contract Manager via mobile device at any time.



#### 4.7. Customer Service

Sample Language:

**General Provisions.** The Contractor shall be responsible for providing customer service functions relating to delivery of Contracted Services including informing Service Recipients of potential service levels and changes, receiving and resolving Service Recipient complaints, dispatching special collections, and referring questions as necessary to the Municipality. The Contractor shall answer all incoming calls and respond to all internet inquiries promptly and courteously. When calling the Contractor's customer service telephone number, Service Recipients should be able to receive recorded service information and talk directly with a customer service representative. When contacting the Contractor through its website, Service Recipients should be able to obtain service information and send an email to a customer service representative.

**Response Time.** During office hours, the Contractor shall respond to all Service Recipient inquiries whether received via telephone or internet within \_\_\_ [minutes/hours]. During non-office hours, Contractor shall respond to all Service Recipient inquiries by \_\_\_ a.m. the following business day.

**Handling of Complaints.** The Contractor shall maintain a computerized daily log of all complaints including date, time, complainant's name and address, nature of the complaint, and the date and manner of resolution. The Contractor shall take whatever steps are necessary to remedy the cause of a complaint within \_\_\_ hours after receiving a complaint from the Service Recipient or the Municipal Representative. The Contractor may request, and the Municipal Representative may grant, additional time to remedy a complaint when necessary.

**Dispute Resolution Process for Service Recipients.** The Contractor shall promptly notify the Municipal Representative whenever assistance is needed to resolve a dispute between a Service Recipient and the Contractor, including but not limited to, disputes concerning the proper interpretation and implementation of the Contracted Services. The Contractor shall notify the Municipal Representative about any disputes with a Service Recipient that the Contractor has not been able to resolve within \_\_\_ hours after receiving the complaint. The Municipal Representative shall promptly evaluate the facts concerning such disputes and shall make a fair and impartial determination about such matters. The Municipal Representative shall notify the Contractor and the Service Recipient in writing concerning the Municipal Representative's decision about the disputed issue(s).

#### 4.8. Records and Reporting

Sample Language:

**General.** The Contractor shall provide monthly and annual reports to the Municipality in a format approved by the Municipality. In addition, the Contractor shall allow the Municipal Representative access to records and pertinent operations information utilized for reporting to the Municipality and related to compliance with obligations defined in the Contract. Contractor shall retain all records and reporting related to the Contracted Services for \_\_\_ years.

**Route Maps and Schedule.** The Contractor shall maintain up to date collection route maps and schedules for the Contracted Services which shall be readily available for review by the Municipal Representative.

Daily Route and Missed Collection Reporting. By \_\_\_ p.m. on each day Contracted Services are provided, the Contractor shall send an email to the Municipal Representative verifying whether that day's collection routes were completed and listing any missed collections. The email shall state whether the scheduled routes are complete or not complete. A route shall be deemed incomplete if more than \_\_\_ percent (or \_\_\_ number of streets and/or households) of scheduled Service Recipients have not received collection service.

Complaints Reporting. By \_\_\_ p.m. on each day Contracted Services are provided, the Contractor shall send an email to the Municipal Representative detailing all complaints received that day, including complainant's name and address, nature of the complaint, and the status of its resolution.

Monthly Reports. The Contractor shall submit to the Municipality a monthly report as documentation to support the Contractor's monthly invoice. The monthly report shall contain:

1. Documentation of collection activities, including daily and total monthly numbers of routes completed and not completed, missed collections, complaints, litter and spill incidents, and vehicle accidents and traffic infractions.
2. Documentation of daily and total monthly number of loads and tons delivered to Designated Facilities (for both trash and recyclables).
3. Description of any changes to collection routes, Receptacles, vehicles, customer service or other related activities affecting the provision of Contracted Services.
4. Calculation of Service Fee(s) in accordance with this Contract.
5. Calculation of administrative charges, interest on overdue payments, or proration determined in accordance with this Contract.
6. Certified weekly payroll for all employees working in the Municipality including without limitation, drivers, laborers, day laborers, and temporary laborers.
7. Other information reasonably requested by the Municipality.
8. Please refer to the Contracting Template for Processing Recyclables for reporting requirements relative to recyclables processing.

Annual Reports. The Contractor shall submit to the Municipality an annual report for the previous year within thirty (30) calendar days of the anniversary of the Commencement Date. The annual report shall contain:

1. Documentation of monthly and annual numbers of routes completed and not completed, missed collections, complaints, litter and spill incidents, and vehicle accidents and traffic infractions.
2. Documentation of monthly and annual number of loads and tons delivered to Designated Facilities.
3. Documentation of monthly and total annual Service Fees.
4. Documentation of monthly and total administrative charges, interest on overdue payments, and prorations.
5. An inventory of current collection frontline vehicles.
6. Other information reasonably requested by the Municipality.

#### 4.9. Transition

Sample Language:

Transition Plan. Prior to the Commencement Date, the Contractor shall work with the Municipality to develop and complete a mutually agreed-to transition plan no later than \_\_\_ days prior to the Commencement Date. The Contractor shall provide a draft Transition Plan no later than \_\_\_ days prior to the Commencement Date, including, but not necessarily limited to, the following:

1. Route Maps and Schedule: Identify collection routes and the schedule for collecting [Recyclables -or- Recyclables and Trash].
2. Receptacle Distribution. The plan shall specify the Receptacles to be provided by the Contractor and provide a schedule for assembly and distribution, an informational brochure to be attached to distributed Receptacles, and a Receptacle inventory management plan.
3. Service Recipient Outreach: The plan shall include a user guide to be distributed prior to the Commencement Date that provides a description of collection services, [Recycle Smart info card](#), proper preparation of [Recyclables -or- Recyclables and Trash], proper Receptacle placement, available service levels and rates, and information and a map indicating the day of collection. Separate user guides shall be prepared for each type of Service Recipient if needed.
4. Mobilization. The plan shall specify the vehicles that will be utilized to provide Contracted Services and provide a schedule for their acquisition and delivery (if newly acquired), provide job descriptions for and headcount of personnel who will be utilized to provide Contracted Services.
5. Other Information: The Transition Plan shall provide other information reasonably required by the Municipality to ensure a smooth and on-schedule transition.

Receptacle Distribution and Inventory. The Contractor shall complete assembly and distribution of Receptacles and informational pamphlets to be provided by the Contractor at least \_\_\_ days prior to the Commencement Date.

Vehicles and Personnel. The Contractor shall have all necessary vehicles and personnel mobilized and providing Contracted Services on the Commencement Date.

Transition at Expiration. The Contractor shall work with the Municipality and any subsequent service provider to develop and implement a transition plan to ensure continuity of services upon expiration of the Contract. In particular, the Contractor shall provide any information reasonably requested by the Municipality regarding the Contracted Services including, but not necessarily limited to, customer lists and contact information, customer collection schedules, and inventory database of Receptacles that will be retained by the Municipality and/or utilized by a subsequent service provider.

#### 4.10. Other Requirements

Sample Language:

Outreach and Education. Each year during the month following the anniversary of the Commencement Date, the Contractor shall distribute a printed mailer or agreed upon alternative to all Single Family and Multi-Family Service Recipients designed to increase public

awareness of the Contracted Services and proper recycling procedures. The mailer shall provide a description of collection services, accepted Recyclables and common Contaminants, proper preparation of [Recyclables -or- Trash and Recyclables], proper Receptacle placement, available service levels and rates (if applicable), and information and map indicating the day of collection. Separate user guides shall be prepared for each type of customer.

**Municipal Review and Approval.** The Contractor shall provide the mailer and any other printed education materials to be distributed to Service Recipients to the Municipality at least ten (10) days prior to printing for review and approval. No printed material shall be distributed to Service Recipients without the written approval of the Municipality. All printed material must contain a minimum of 30% post-consumer recycled content and same be stated on printed material.

**Recycle Smart MA.** All materials provided by the Contractor to Service Recipients shall conform to guidance outlined within Recycle Smart MA <https://recyclesmartma.org/smart-recycling-guide/> and reference MA Waste Ban 310 CMR 19.017. The Contractor shall utilize website and online media for providing further education on materials being recycled and marketed by the Designated Facility. All outreach must conform and, where applicable, link to Recycle Smart MA.

Designated Facility Tour requests should be welcome and not unreasonably denied.

**Meetings.** The Contractor shall participate in regular monthly meetings with the Municipality to review the status of Contracted Services. The Contractor shall participate in up to \_\_\_ additional meetings per year, as needed/requested by the Municipality, with the public and/or Municipality associated with the Contracted Services or to support the Municipality's outreach and education program.

**PAYT.** Municipalities that convert to a PAYT program during the contract term should not see any impact to the terms of the Contract, unless PAYT requires new equipment, and shall be compensated through a negotiated agreement between the Contractor and Municipality in accordance with this Contract.

**Pilot Programs.** The Municipality may require the Contractor to participate in pilot programs that temporarily alter one or more provisions of the Contract. The Municipality and Contractor will negotiate in good faith and execute a letter of agreement defining the schedule, responsibilities, obligations, and potential compensation for the Contractor's participation in a pilot program.

**Emergency Services.** In the event of a disaster or declared emergency, the Contractor shall provide emergency services at the Municipality's request. The Contractor shall be capable of providing emergency services within twenty-four (24) hours of notification by the Municipality or as soon thereafter as is reasonably practicable. Emergency services which exceed the scope of work under this Contract and which are not compensated as special services in accordance with this Contract shall be compensated through a negotiated agreement between the Contractor and Municipality in accordance with this Contract.

90 Day Extension. Should the Municipality choose not to renew this Contract, or should no renewal options remain and a new contract has not been established, the Contractor agrees to continue to provide the Contracted Services to the Municipality for up to an additional ninety (90) day period beyond the expiration of the Contract at the then established rates, provided that the Municipality requests said services in writing at least one hundred twenty (120) days prior to the expiration date.

Compliance with Laws and Regulations. The Contractor shall comply with all Applicable Laws, including all requirements concerning health and safety, noise, odors, effluent and emissions. Should the Contractor receive a notice for the violation of such requirement, the Contractor shall report the violation to the Municipality no later than twenty-four (24) hours following notification, including the type of violation, the date of notice, agency issuing the violation, any resulting fees or requirements, and planned resolution of the violation.

#### **Article 5. Municipality's Responsibilities and Rights**

*Purpose. This article addresses the municipality's responsibilities and rights under the contract. As noted within the Checklist for Successful Recycling Procurements (see: <https://www.mass.gov/lists/solid-waste-management-contracts-contracting>) these responsibilities are best identified during the procurement process and should be included within the final contract to ensure a clear delineation of expectations for both parties.*

**See Checklist Sections Titled: Clearly Define Community Objectives and Delineate Responsibilities**

#### **Sample Language:**

Ownership of Materials. The Contractor shall receive title to all Trash and Recyclable material upon its collection at the curbside. The Municipality shall not be considered the generator of such waste for any purpose.

Quantity and Quality of Materials. The quantity of [Recyclables -or- Trash and Recyclables] under the Contract shall not be guaranteed by the Municipality. The quality of Recyclables under the Contract shall not be guaranteed by the Municipality. The Municipality shall make reasonable efforts to minimize the amount of Contamination present in Trash and Recyclables through its public education and monitoring program. The Contractor shall make reasonable efforts to minimize the amount of Contamination present in Trash and Recyclables through tagging and tracking non-compliant receptacles and/or rejecting containers with visible contamination.

Inspections. The Municipality shall have the right to observe all Contractor operations related to this Contract. Observation may be by Municipality employees or Municipality-designated representatives.

Outreach and Education. The Municipality shall have primary responsibility for developing, designing and executing overall public promotion, education and outreach programs with the assistance and cooperation of the Contractor. All materials provided by the Municipality to Service Recipients shall conform to guidance outlined within Recycle Smart MA <https://recyclesmartma.org/smart-recycling-guide/> and reference MA Waste Ban 310 CMR

19.017. The Municipality shall utilize website and online media for providing further education on materials being recycled and marketed by the Designated Facility. All outreach must conform and, where applicable, link to Recycle Smart MA.

Pilot Collection Programs. The Municipality reserves the right to implement and evaluate various outreach and education methods, collection monitoring methods, collection equipment and/or material sorts on a pilot basis during the course of the Contract. The Municipality and Contractor will negotiate in good faith and execute a letter of agreement defining the schedule, responsibilities, obligations, and potential compensation for Contractor's participation in a pilot program.

Changes to the Contract. The Municipality's Representative may at any time, by a written order, and without notice to the sureties, make changes within the general scope of the Contract if both Parties mutually agree. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under the Contract, an equitable adjustment shall be made in the Contract price and the Contract shall be modified in writing accordingly.

Municipal Representative. Prior to the Commencement Date and throughout the term of the Contract, the Municipality shall provide the Contractor with the name, title, and contact information for the Municipal Representative. The Municipal Representative shall be the primary point of contact for all administrative, financial, technical, and operational matters pertaining to the Contract.

## **Article 6. Financial Terms**

*Purpose. This article identifies the agreed upon financial terms of the collection contract. It covers the collection service fees, average market value, revenue share payments/**charges** and compensation calculations. Additionally, it covers payment concerns and dispute resolutions, proration, and annual Consumer Price Index (CPI) adjustments.*

### **See Checklist Section Titled: Select a Transparent Pricing Structure**

#### Sample Language:

##### 6.1. Service Fees

The Service Fee covers the costs for all the Contractor's responsibilities under this Contract. The Municipality shall pay the Contractor based on a Service Fee per type of Service Recipient per month. The Service Fees on the Commencement Date for the Contracted Services shall be [include all that apply and add additional categories for other types of Service Recipients, e.g., schools versus town hall]:

1. Single Family residential Service Recipients:
  - a. Option 1 (per dwelling unit): \$\_\_\_\_ per month multiplied by number of Service Recipients.
  - b. Option 2 (lump sum): \$\_\_\_\_ per month.
2. Multi-Family residential Service Recipients:
  - a. Option 1 (per dwelling unit): \$\_\_\_\_ per month multiplied by number of Service Recipients.

- b. Option 2 (lump sum): \$\_\_\_\_ per month.
- 3. Non-residential Service Recipients: \$\_\_\_\_ per month.
  - a. Option 1 (per dwelling unit): \$\_\_\_\_ per month multiplied by number of Service Recipients.
  - b. Option 2 (lump sum): \$\_\_\_\_ per month.
- 4. Municipal buildings: \$\_\_\_\_ per month.
  - a. Option 1 (per building): \$\_\_\_\_ per month multiplied by number of Service Recipients.
  - b. Option 2 (lump sum): \$\_\_\_\_ per month.

#### 6.2. Liquidated Damages

Each month, the Contractor shall owe the Municipality for any and all liquidated damages determined during the month to be valid performance standard violations in accordance with the terms of the Contract.

#### 6.3. Invoicing and Payment Procedures

No later than \_\_\_\_ calendar days following the end of each month, the Contractor shall submit an invoice and monthly report including: calculation of the Service Fee(s), invoices detailing trash and recycling tonnage with **Average Market Value (AMV)** calculation, interest on overdue payments, or proration, and the net payment due to either Party. The Municipality shall make payment, minus any valid liquidated damages, to the Contractor within \_\_\_\_ calendar days following submission of the invoice and a complete monthly report.

*Note: If a municipality contracts separately with a MRF, the above language does not apply.*

#### 6.4. Interest on Overdue Payments

All payments that are outstanding after the applicable due date, shall bear simple interest at the prime rate of [bank name].

#### 6.5. Proration

If any payments, rights or obligations under this Contract (whether relating to financial terms, insurance, or to any other provision of this Contract) relate to a period in part before the Commencement Date or after the date of expiration or termination of the term, the Parties agree that appropriate adjustments and proration shall be made.

#### 6.6. Invoice or Payment Disputes

If any Party disputes an amount owing to the other Party, such Party shall give notice to the other Party of such disputed amount together with sufficient information to allow the other Party to understand the nature of the dispute and deliver such notice on or before the due date of the amount disputed. The Party shall pay all undisputed amounts on the due date. Interest at the rate specified in the Contract, or as specifically established for such item so disputed, shall accrue from the original due date on disputed amounts, or the portions thereof, to the Party which is ultimately determined to be entitled to such disputed amount or any portions thereof.



#### 6.7. Annual CPI Adjustment

On [contract anniversary date] of each year of the term of this Contract, the Service Fee shall be automatically adjusted based on the change in the monthly CPI in [month] of the prior year (CPI Old) and the average monthly CPI in [month] of the current year (CPI New). The rate adjustment shall be rounded to the nearest hundredth of a percent and in any given year shall not exceed \_\_\_ percent of the previous rate.

The index used shall be the CPI for All Urban Consumers (CPI-U), Northeast Region; All Items, not seasonally adjusted, 1982-1984=100 reference base published by the United States Department of Labor, Bureau of Labor Statistics (Series ID – CUUR0200SA0). The CPI adjustment shall be calculated as follows:

$$\text{Rate Adjustment (\%)} = \frac{\text{CPI New} - \text{CPI Old}}{\text{CPI Old}}$$

### **Article 7. Performance Standards and Liquidated Damages**

*Purpose. It is important to clearly define all the standards for evaluating a contractor's performance. This allows for transparency and accountability, ensuring the contractor is aware of all contractual obligations and standards that the municipality will use to define the success of operations. A well-structured procurement and contract can establish a mutually beneficial partnership. However, it is important to include standards and penalties in the rare event that a contractor does not meet those standards.*

**See Checklist Section Titled: Establish Performance Standards**

#### Sample Language:

The Municipality expects the Contractor to provide a high-quality level of services consistent with the requirements of this Contract. To this end, any performance issues identified by the Municipality and reported to the Contractor shall be promptly resolved within twenty-four (24) hours. If the Contractor fails to perform consistent with these standards, the Municipality will be presumed to have suffered harm. Such harm caused by the Contractor's substandard performance cannot be easily ascertained, and the Contractor and the Municipality agree that the amount of liquidated damages is a reasonable estimate of just compensation to the Municipality in the event of the Contractor's failure to adhere to the performance standards of this Contract.

#### 7.1. Prior To Collection Commencement Date

#### Sample Language:

Prior to the Commencement Date, the Contractor shall prepare to provide its Contracted Services in a responsible manner in accordance with this Contract. In the event the Contractor fails to provide required information or meet the deadlines, the Municipality has the right to assess liquidated damages for each deadline that is missed. Failure to meet the deadline of more than two (2) tasks may lead to the termination of the Contract. The Municipal Representative may impose liquidated damages for Contractor's actions during the transition period prior to the Commencement Date, as set forth below:



Performance Standard Violation	Liquidated Damages
Failure to provide the draft Transition Plan with the required contents no later than ___ days prior to the Commencement Date.	\$___ for each calendar day of delay.
Failure to identify the Contract Manager and Operations Manager at least ___ days prior to the Commencement Date.	\$___ for each calendar day of delay.
Failure to complete assembly and distribution of Receptacles and informational pamphlets at least ___ days prior to the Commencement Date.	\$___ for each calendar day of delay.
Failure to have all necessary vehicles and personnel mobilized and providing Contracted Services on the Commencement Date.	\$___ for each calendar day of delay.

7.2. During the Term of the Contract

Sample Language:

Performance Standard Violation	Liquidated Damages
Monthly missed collections as a percentage of total services scheduled.*	More than ___% = \$___ per month. ___% to ___% = \$___ per month. More than ___% = \$___ per month.
Failure to complete a scheduled collection route.**	\$___ per route per day.
Failure to handle Receptacles according to the required procedures.	\$___ per incident.
Mixing of Recyclables and Trash.	\$___ per incident.
Mixing of [Recyclables -or- Trash and Recyclables] from the Service Area with any materials from outside the Service Area.	\$___ per incident.
Failure to deliver [Recyclables -or- Trash and Recyclables] to the appropriate Designated Facility.	\$___ per incident, plus \$___ per Ton.
Failure to affix a non-collection notice to a set out that is not collected and notify the Municipal Representative within the required time frame.	\$___ per incident.
Failure to immediately clean up and repair damage caused by litter and/or spills.	\$___ per incident
Involvement in a vehicle accident or traffic infraction where the Contractor's vehicle and/or personnel is at fault.	\$___ per incident.
Failure to utilize a fleet that fully complies with all of the vehicle requirements.	\$___ per vehicle per day.
Failure to utilize personnel with the required qualifications, training, and license.	\$___ per individual per day.
Failure to provide personnel with the required uniforms and personal protective equipment.	\$___ per individual per day.
Failure of personnel to maintain the required behaviors.	\$___ per individual per day.
Failure to maintain and comply with a safety plan compliant with Applicable Laws.	\$___ per day.
Failure to meet the office and website requirements.	\$___ per day.
Failure to respond to customer inquiries within the required time frame.	\$___ per incident.
Failure to maintain an accurate daily log of complaints.	\$___ per day.

Failure to handle complaints and adhere to the dispute resolution according to the required procedures.	\$___ per incident.
Weekly complaints verified to be due to fault of the Contractor as a percentage of residential and total services scheduled.*	More than ___% = \$___ per month. ___% to ___% = \$___ per month. More than ___% = \$___ per month.
Failure to maintain up to date collection route maps and schedules.	\$___ per day.
Failure to provide daily route and missed collection reports.	\$___ per day.
Failure to provide daily complaint reports.	\$___ per day.
Failure to provide annual reports meeting the required contents.	\$___ per day.

\* The total number of services scheduled shall be determined by multiplying the number of Service Recipients by the number of monthly services provided to each Service Recipient.

\*\* Except when such completion is made impossible by weather or other conditions, as determined by the Municipality. Liquidated damages for incomplete routes will not be assessed for a period of \_\_\_ weeks after the Commencement Date. Notwithstanding, complaints during this grace period shall still be recorded and reported; however, these complaints will not be counted towards any other performance standard.

## 7.2. Liquidated Damages Dispute Resolution

### Sample Language:

**Written Notice.** The Municipality will provide written notice of any assessment and the Contractor will then have \_\_\_ days to submit a written response detailing the basis for disputing the assessment. Failure to respond in writing constitutes acceptance of the assessment.

**Resolution.** The Municipal Representative will then meet with the Contractor within \_\_\_ days of the Municipality’s receipt of the written response and attempt to resolve the dispute. If the dispute is not resolved within \_\_\_ days following the meeting, the Contractor and the Municipality may submit the dispute for mediation to a mutually agreeable mediator. Responsibility for the costs of mediation shall be divided equally, unless otherwise mutually agreed, between the Contractor and the Municipality. If the Parties are not able to resolve the dispute through mediation, then either party, provided it first gives notice to the other party within \_\_\_ days following the conclusion of the mediator’s involvement, may take whatever further action(s) may be available at law, in equity, or under the Contract.

**Levying of Liquidated Damages.** Liquidated damages determined to be valid performance standard violations shall be deducted from the monthly payment due the Contractor from the Municipality.

## Article 8. Performance Bond

*Purpose: A performance bond can provide an incentive for the contractor to provide services in accordance with the contract and avoid termination for cause. It also can provide the municipality with financial compensation in the event of such a termination.*

### Sample Language:

The Contractor must maintain for the duration of the Contract a valid performance bond covering the work performed under this Contract. This bond guarantees to the Municipality the

completion and performance of all work covered in this Contract as well as full payment of all suppliers, agents, laborers, or subcontractors employed in the performance of this Contract. Such bond must be in a form and with a surety acceptable to the Municipality and must provide for the protection of all persons supplying labor or materials used for the performance of the work. The Contractor agrees to keep such bond, or replacement thereof, at all times during the performance of this Contract. The amount of such bond shall equal \$\_\_\_ (typically 100% of annual contract cost). The performance bond must be executed by a surety company of recognized standing authorized to do business in the Commonwealth of Massachusetts. The surety company will hold a current certificate of authority as acceptable surety on federal bonds in accordance with the U.S. Department of Treasury Circular 570 Current Revision. This performance bond must be provided to the Municipality no less than \_\_\_ calendar days prior to the Commencement Date. Said bond shall be executed yearly, shall be obtained prior to the execution of the initial Contract, and shall be a condition precedent to the execution of the Contract and each and any renewal thereof. The Bond shall be delivered to the Municipality at least sixty (60) days prior to \_\_\_\_\_ of each year that this Contract is in force and effect.

#### **Article 9. Termination**

*Purpose: Termination of a contract before its term is complete is a severe measure undertaken only when significant cause exists due to non-performance of the Contractor or when unforeseen events limit the Municipality's ability to fulfil its contractual obligations. This article defines the allowable reasons for termination and the procedures for doing so.*

##### **9.1. Termination for Cause**

###### **Sample Language:**

Each of the following events by the Contractor shall constitute grounds for terminating this Contract, provided that the Municipality has given written notice to the Contractor of such event.

1. Excessive performance standard violations resulting in imposition of liquidated damages.
2. Interruption of Contracted Services not caused by force majeure for (a) a period of more than \_\_\_ consecutive days during a Contract year, or (b) more than \_\_\_ times during a Contract year for any period of time.
3. Mixing of Recyclables and Trash.
4. Mixing of [Recyclables -or- Trash and Recyclables] from the Service Area with any materials from outside the Service Area.
5. Disposal of Recyclables.
6. Failure to take timely corrective action after a notice of a violation of a law or regulation.
7. Abandonment, subletting or assignment of the work or any part thereof to be performed under this Contract without the prior written consent of the Municipality.
8. Failure to maintain the insurance pursuant to this Contract.
9. Failure to maintain the Performance Bond pursuant to this Contract.
10. The Contractor makes an assignment for the benefit of creditors; files a petition in bankruptcy; is adjudicated insolvent or bankrupt; petitions or applies to any tribunal for any custodian receiver or trustee for it or any substantial part of its property; or is



[Municipality, State, Zip]  
[E-mail]

## Article 11. Insurance

*Purpose: This article provides a sample language for contractor insurance requirements. It is recommended that the municipality consult with its insurance advisor for the appropriate terms and language to be included for their specific contract.*

### Sample Language:

#### 11.1. General

The insurance coverage listed below must be maintained during the life of the Contract. Prior to beginning work under this Contract, the Contractor must provide the Municipality with certificates of insurance, acceptable to the Municipality, showing each of the insurance policies required under this Contract, the insurance company, policy number, any endorsements, amount of insurance, deductibles and/or self-insured retentions, and policy effective and expiration dates.

Insurance shall be provided by insurers authorized to transact business in Massachusetts and having at least an "A" Best's Rating and a Class VII financial size category. Insurance policies shall contain a provision or endorsement stating that coverage will not be canceled, or renewal refused unless at least thirty-days (30) prior written notice has been delivered or mailed to the Municipality and the Contractor. Certificates of insurance shall contain a statement confirming the thirty-days' (30) prior written notice. Any coverage that expires during the period in which it is to remain in full force and effect shall be renewed and a certificate filed with the Municipality within fifteen (15) days of the renewal. The Municipality reserves the right to request certified complete copies of all policies and endorsements required under this Contract at any time during the Contract term.

#### 11.2. Worker's Compensation Insurance

The Contractor, at its own expense, must maintain during the life of the Contract workers' compensation insurance for officers, agents and employees under or in connection with this contract with policy limits (with respect to all coverage) of not less than the statutory minimum including without limitation coverage for: the payment of compensation and the furnishing of all benefits referred to in M.G.L. Chapter 152, as amended, disability benefits and other similar benefits which are applicable to the work which is the subject matter of the Contract, employers liability coverage, voluntary coverage providing compensation for private entities performing work at the site who are exempt from the legal obligation to procure and maintain workers compensation coverage on account of the number of employees or occupation, and occupational disease benefits.

#### 11.3. Comprehensive General Liability Insurance

The Contractor, at its own expense, must maintain during the life of the Contract comprehensive general liability insurance written on an occurrence basis, including without limitation the following coverage: bodily injury and death liability; personal injury liability (with no employee exclusion); independent Contractor protective liability; broad form property damage (with X, C, and U coverage) and contractual liability. This insurance shall not contain a

care, custody and control exclusion. The policy must identify the Commonwealth of Massachusetts as an additional insured. This insurance shall be written with respect to all coverage, for not less than the following policy limits: \$1,000,000 each occurrence; \$3,000,000 aggregate. This policy shall contain a waiver of subrogation in favor of the Commonwealth.

#### 11.4. Comprehensive Business Motor Vehicle Liability Insurance

The Contractor, at its own expense, must maintain during the life of the Contract comprehensive business motor vehicle liability insurance written on an occurrence basis, with no deductible including without limitation coverage for: bodily injury and death liability; property damage and any other hazard arising out of the ownership, maintenance or use of motor vehicle. Such coverage shall be in accordance with Applicable Law, including, but not limited to, the automobile insurance and hazardous waste transport liability laws and regulations of the United States, the Commonwealth of Massachusetts, and any other states where the Contractor may maintain its principal place of operation and/or staff or maintain personnel or equipment. This insurance shall be written with respect to all coverage, for not less than the following policy limits: \$1,000,000 each occurrence.

#### 11.5. Pollution and Hazardous Waste Liability

The Contractor, at its own expense, must maintain during the life of this Contract, pollution and hazardous waste liability insurance coverage. "Hazardous Materials" as used herein shall include substances defined or classified as a "hazardous substance," "toxic substance," "hazardous material," "hazardous waste," "hazardous pollutant," or "toxic pollutant," or otherwise denominated as hazardous, toxic, or a pollutant in: (A) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, as amended (CERCLA); (B) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as amended ("RCRA"); (C) the Massachusetts Hazardous Waste Management Act, Massachusetts General Laws Chapter 21C, as amended ("Chapter 21C"); (D) the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Massachusetts General Laws Chapter 21E, as amended ("Chapter 21E"); (E) any other Federal, State, or local law or ordinance addressing the protection of human health, safety, welfare, or the environment, as amended or (F) regulations promulgated pursuant to CERCLA, RCRA, Chapter 21C, Chapter 21E, or other applicable environmental laws, as amended.

This insurance policy shall cover the liability of the Contractor during the process of removal, storage, transport, and disposal of Hazardous Materials and/or abatement. The policy shall include coverage for on-site and off-site bodily injury and loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gas, waste materials, or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental. The policy shall also include legal defense and clean-up costs. The policy date or retroactive date shall predate this Contract and the termination date of the policy or applicable extended reporting period shall be no earlier than one month after the end of the Contract. This insurance shall be written with respect to all coverage, for not less than the following policy limits: \$1,000,000 each occurrence; \$3,000,000 aggregate. This coverage may be provided through a separate pollution and

hazardous waste liability policy, or through a general liability or errors and omissions policy which does not contain a pollution exclusion, and which meets the requirements set forth in this paragraph.

#### 11.6. Additional Insureds

The Municipality, its elected and appointed officials, employees, and agents shall be listed by endorsement as additional insureds, except for worker's compensation and professional liability. Further, other designated persons or entities may be required to be listed as additional insureds.

### **Article 12. General Terms and Conditions**

*Purpose: This article provides a sample language for other common (standard) terms included in contracts. It does not provide a comprehensive list. It is recommended that the municipality consult with their legal and municipal procurement advisors for the appropriate terms and language to be included for their specific contract.*

#### 12.1. Force Majeure

##### Sample Language:

Except for the obligation to pay for services rendered, if either Party fails to fulfill its responsibilities under the Contract, such failure can be excused to the extent, but only to the extent, such failure is caused by a force majeure event. Failure to perform shall be no greater in scope and no longer in duration than is reasonably required by the force majeure event. The definition of force majeure events is limited to acts of god, war, terrorism, labor strike, changes of Applicable Law, and local, state and U.S. federal governmental actions that invalidate the Contract. Force majeure explicitly excludes commodity market fluctuations and economic hardship of the Contractor.

#### 12.2. Affirmative Action

##### Sample Language:

The Municipality has a firm commitment to affirmative action and equal employment opportunity. The Contractor shall not discriminate against applicants or employees on the grounds of race, color, religion, national origin, age, sex, gender identity, sexual orientation, genetic information, ancestry, or military service, in any phase of the employment process or in any conditions of employment (per M.G.L. c.151B). The Contractor is encouraged to subcontract work to firms listed with the State Office of Minority and Women Owned Business Assistance.

#### 12.3. Prevailing Wages

##### Sample Language:

All service provided by the Contractor pursuant to this Contract must comply with Massachusetts General Laws Chapter 149, Section 26 through 27F pertaining to prevailing wage rate minimums as administered by the Massachusetts Executive Office of Labor and Workforce Development Department of Labor Standards.



#### 12.4. Dispute Resolution

Sample Language:

In the event of a dispute arising under this Contract, the Parties shall continue performance of their respective obligations under this Contract and attempt to informally resolve such dispute in a cooperative manner. If a dispute between the Parties cannot be resolved independently by the Parties, the Parties may submit the dispute for mediation to a mutually agreeable mediator. Responsibility for the cost of mediation shall be divided equally, unless otherwise mutually agreed, between the Parties. If the Parties are not able to resolve the dispute through mediation, then either Party, upon first providing written notice to the other Party within seven (7) calendar days after conclusion of the mediator's involvement, may take further action(s) as may be available at law, in equity, or under the Contract.

#### 12.5. Independent Contractor

Sample Language:

The Contractor is an independent contractor and not an officer, agent, servant, or employee of the Municipality. The Contractor shall have exclusive control over the details of the service and work performed and over all persons performing such service and work. The Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. Neither the Contractor nor its officers, agents, employees, contractors or subcontractors shall obtain any right to retirement benefits, workers' compensation benefits, or any other benefits which accrue to the Municipality employees and the Contractor expressly waives any claim it may have or acquire to such benefits.

#### 12.6. Subcontracting

Sample Language:

The Contractor shall not subcontract its work under the Contract, in whole or in part, without first requesting and receiving the written approval of Municipality regarding each subcontractor, including any change in subcontractor. The Contractor shall fully describe the subcontractor's responsibilities and shall provide other information with respect to such subcontracts as the Municipality may require. Subcontracting approval shall not be unreasonably withheld by the Municipality.

The Contractor shall submit written request for approval no later than fifteen (15) days prior to the effective date of such subcontract and shall provide the Municipality with the name, address and phone number of the subcontractor's offices and the name of the individual responsible for the work being performed for the Contractor.

The Contractor shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the Contractor as specified in the contract. Notwithstanding Municipality approval of a subcontractor, the Contractor shall remain obligated for full performance hereunder, and the Municipality shall incur no obligation other than its obligations to the Contractor hereunder. The Contractor agrees that if subcontractors are employed in the performance of this Contract, the Contractor and its subcontractors are subject to worker's compensation requirements.



The Contractor and its subcontractors and employees are not employees of the Municipality and are not eligible for any benefits through the Municipality, including without limitation, Federal Social Security, health benefits, worker's compensation, unemployment compensation, and retirement benefits.

12.7. Assignment and Delegation of Duties

Sample Language:

The Contractor shall not assign the Contract nor any part thereof, sublet or delegate it nor any part thereof, or assign any monies due or to become due to the Contractor thereunder or any other rights against the Municipality without previous written consent of the Municipality.

The Contractor shall be solely responsible for provision of services under this Contract. The Contractor shall be responsible for the acts and omissions of its subcontractors, if any, and all persons directly or indirectly employed by the Contractor or subcontractors in connection with the work.

12.8. Buy Out Clause

Sample Language:

If in the event the Contractor sells, transfers or relinquishes, whether voluntarily or by operation of law, ownership interest in the corporation, partnership or proprietorship identified under this Contract, this Contract shall terminate unless prior written consent has been granted by the Municipality. Such consent shall not be unreasonably withheld. The Contractor shall promptly notify the Municipality of any actual or proposed change in, transfer of or acquisition by another party of control of said corporation, partnership, or proprietorship. For the purpose of this Contract, the word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. Any approval by the Municipality of transfer or ownership or control shall be contingent upon the prospective controlling party becoming a signatory to this Contract and otherwise complying with all the terms and conditions herein. No sale, transfer, or acquisition by another party of control of said corporation, partnership, or proprietorship shall be approved unless the prospective controlling party submits a performance bond satisfactory to the Municipality and in the amount specified under this Contract.

12.9. Compliance with Laws

Sample Language:

The Contractor shall qualify under and comply with any and all Federal, State and local laws and regulations now in effect, or hereafter enacted during the term of this Contract, which are applicable to the Contractor, its employees, agents or subcontractors, if any, with respect to the work and services described herein. The Contractor, at its sole cost and expense, shall maintain throughout the term of this Contract all permits, licenses and approvals necessary or required for the Contractor to perform the work and services pursuant to this Contract.

12.10. Indemnification and Hold Harmless

Sample Language:

Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the Municipality, and its agents, officers and employees, against any and all claims, liabilities and

costs for any personal injury or property damages, patent or copyright infringement or other damages that the Municipality may sustain which arise out of or in connection with the Contractor's performance of the Contract, including but not limited to the negligence, reckless or intentional conduct of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall at no time be considered an agent or representative of the Municipality. After prompt notification of a claim by the Municipality, the Contractor shall have an opportunity to participate in the defense of such claim and any negotiated settlement agreement or judgment. The Municipality shall not be liable for any costs incurred by the Contractor arising under this section. Any indemnification of the Contractor shall be subject to appropriation and Applicable Law. This indemnification and hold harmless agreement shall survive the termination or expiration of this Contract.

12.11. Laws to Govern and Venues

Sample Language:

The laws of the Commonwealth of Massachusetts shall govern the rights, obligations, duties, and liabilities of the Parties to this Contract and shall govern the interpretation of this Contract. Any and all legal action necessary to enforce this Contract shall be held and solely maintained in the Commonwealth of Massachusetts.

12.12. Right to Require Performance

Sample Language:

Failure of the Municipality at any time to require performance by the Contractor of any provision of this Contract shall in no way affect the right of the Municipality thereafter to enforce the same. Nor shall waiver by the Municipality of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

12.13. Severability

Sample Language:

If any provision of this Contract is declared or found to be illegal, unenforceable, or void, then both Parties shall be relieved of all obligations under that provision. The remainder of this Contract shall be enforced to the fullest extent permitted by law.

**Exhibit 1: Service Area Maps and Service Recipient Lists**

**Exhibit 2: Receptacle Specifications**