



MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION
MUNICIPAL CONTRACTING TEMPLATE:
PROCESSING RECYCLABLES

Prepared For:

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

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Introduction: Using the Contract Template

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 on private service providers. In order to support them, the Massachusetts Department of Environmental Protection (MassDEP) is providing a series of documents to support municipal procurement and contracting for recycling services.

This Contract Template for Processing Recyclables and a separate Recycling & Trash Collection Contract Template serve as companions to the **Best Practices Checklist for Successful Recycling Procurements (Checklist)**. 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 a combined contract, however it's critical to clearly delineate the requirements and financial terms separately for collection services and processing services to minimize potential confusion for either party.

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 processing and marketing of municipal recyclable materials. 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 of Successful Recycling Procurements** where more detailed explanation and best practices can be found at:

<https://www.mass.gov/lists/solid-waste-management-contracts-contracting>.

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.

Acknowledgements

Massachusetts Department of Environmental Protection would like to thank all municipalities that provided data and insight on their contractual processes and Kessler Consulting, Inc. for preparing this document.

Municipal Contract Template: Processing Recyclables

Article 1. Definitions

Purpose. Certain words and phrases used throughout the contract must be clearly defined in order 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, collection, employment, site conditions and all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.

Average Market Value (AMV): The value of Recyclables Received at the Recycling Facility based on the average aggregate of published market indexes such average being weighed by the composition of Recyclables.

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 materials 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.

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.

Designated Hauler: The entity and/or contractor identified by the Municipality to transport and deliver Recyclables to the Recycling Facility.

Dual Stream: A method of collecting and delivering Recyclables whereby Recyclable Paper is collected and delivered to the Recycling Facility separated from Recyclable Containers.

Holiday: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

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

Materials Recovery Facility (MRF): The facility or facilities designated by the Contractor or Municipality to Receive and Process Recyclables.

Materials Recovery Facility (MRF) Manager: The individual(s) designated in writing by the Contractor to represent it in all matters relating to operation and management of the Recycling Facility.

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.

Municipality: [name of the jurisdiction]

Outbound: Materials leaving the MRF either as Recovered Material or Residue. Outbound materials are an aggregate of materials from all sources of Inbound material.

Party: The Municipality or the Contractor (jointly "Parties").

Process / Processing: Actions taken by the Contractor after Receiving Recyclables to convert Recyclables into Recovered Materials and market Recovered Materials for use as a raw material for manufacturing or other type of beneficial use approved by the Municipality other than energy recovery, thermal conversion, or disposal.

Processing Fee: The fee as defined in this Contract paid to the Contractor by the Municipality for Recyclables accepted by the MRF.

Receive / Receiving: The means by which the Contractor weighs, manages unloading, and inspects Recyclables at the MRF.

Recovered Material(s): Outbound Materials that have been separated and prepared for sale or distribution and which may include small amounts of Contamination.

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 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 and Waste Disposal Ban requirements (310 CMR 19.017 and <https://www.mass.gov/guides/massdep-waste-disposal-bans>).

Recyclables: Materials collected by a community consisting primarily of materials designated for recycling by the community or otherwise jointly agreed to be acceptable by the community and its processing facility. Recyclables can include contamination.

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>.

Rejects: Contaminants removed from Inbound materials when received and prior to being processed at the MRF.

Residue: Outbound material that has not been converted into Recovered Materials and which are destined for disposal. Recyclables and Recovered Materials cannot be classified as Residue due to commodity market conditions.

Revenue Share Percent: The percentage used as part of the calculations to determine the Revenue Share Payment to the Municipality for Recyclables accepted at the MRF.

Revenue Share Payment/Charge: The payment or the charge to the Municipality by the Contractor for Recyclables accepted at the Recycling Facility.

Shutdown: Any time in which the Contractor is unable to Receive or Process Recyclables according to the provisions of this Contract with the exception of force majeure.

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 Recycling 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 Acceptable Recyclables that are otherwise defined as refuse in the Commonwealth of Massachusetts Solid Waste Recycling Facility Regulations (310 CMR 19.000).

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 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. Contractor's Responsibilities

Purpose. This article addresses the municipality's expectations of the contractor's work. It defines the facility requirements and processing services to be provided by the contractor including operating schedule, materials receiving, inspection and rejection, processing and marketing, residue disposal, record keeping and reporting, and other responsibilities.

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

3.1. General Requirements

Sample Language:

This Contract between Municipality and Contractor is for the Receiving and Processing of Recyclables. The Contractor is responsible for, including but not limited to, all operations, maintenance, repair, staffing, management, record keeping, reporting, compliance with all Applicable Laws, and other services necessary to meet its obligations to the Municipality. Any and all costs associated with Receiving and Processing Recyclables, including marketing and transporting Recovered Materials, and transporting and disposing Rejects and Residue shall be the responsibility of the Contractor.

3.2. Materials Recovery Facility (MRF)

Sample Language:

Location. Contractor shall Receive and Process all Recyclables at [name of facility] located at [facility address].

Capacity. The MRF shall be capable of Receiving up to ___ tons per day of Recyclables from the Municipality in accordance with the terms of this Contract.

Certified Scale. The MRF shall be equipped with a calibrated and certified truck scale.

Enclosed Receiving. Recyclables shall be Received by the Contractor in an enclosed building to minimize litter, provide odor control and protect Recyclables from degradation.

Change of MRF. Any change in the MRF used by the Contractor must be approved in writing by the Municipality.

3.3. Receiving

Sample Language:

Schedule. The MRF shall be available to Receive Recyclables at a minimum from [hours and days to be determined by Municipality based on its collection program], with the exception of Holidays. The MRF may be closed on Holidays that occur on normal working days but shall be open on the following Saturday between [hours].

Weighing of Loads. Each load of Recyclables from the Municipality shall be weighed on a calibrated and certified truck scale to determine the net weight of Recyclables. For each load of Recyclables, the Contractor shall record the date, time weighed in, time weighed out, the gross and net weights, name of truck owner, truck number, and route number.

Maximum Turnaround Time. The turnaround time for each load of Recyclables from initial weigh-in to weigh-out at the MRF shall not exceed thirty (30) minutes. Delays not caused by negligence of the Contractor, delays as a result of the fault of the delivery vehicle or driver, or load rejection shall not be computed in the turnaround time.

Ownership of Recyclables. The Contractor shall assume ownership of Recyclables upon acceptance of materials at the MRF except for materials rejected in accordance with the terms of this Contract.

3.4. Load Rejection

Sample Language:

Right to Reject. The Contractor may reject loads of Recyclables that contain more than ___ percent by weight of Contaminants (Contamination limit).

Rejection Procedures. If the Contractor intends to reject a load of Recyclables, the Contractor and Municipality shall comply with the following procedures. In the event the procedures are not followed, the Contractor shall compensate the Municipality for the total weight of the load.

1. Load Isolation, Documentation and Notification. The Contractor shall immediately isolate the load, document the load by digital photograph or videotape, and notify the Municipal Representative.
2. Municipal Inspection. The Municipality shall have the right to inspect the load where such inspection shall not unduly impede or interfere with the operation of the MRF.
3. Agreement to Reject Load. If the Contractor and Municipality mutually agree that the load contains more than the Contamination limit, the Contractor may choose to either accept and Process or dispose of the material and charge the Municipality for documented costs incurred.
4. No Initial Agreement to Reject Load. If the Municipality does not concur that the load contains more than the Contamination limit, the Contractor must demonstrate to the Municipality, using a procedure acceptable to the Municipality, that the Contamination limit has been exceeded. If the load contains less than the Contamination limit, the Contractor shall accept and Process the load in accordance with the terms of this Contract. If the load contains more than the Contamination limit, the Contractor may either accept and Process or dispose of the material and charge the Municipality for documented costs incurred.

3.5. Processing and Marketing

Sample Language:

General: The Contractor shall bear all responsibilities and costs associated with Processing Recyclables accepted at the MRF, including marketing, and transporting Recovered Materials and disposing of Rejects and Residue at a permitted disposal facility.

Process Within Forty-eight (48) Hours. The Contractor shall remove Recyclables from the Recycling Facility tip floor and Process them within forty-eight (48) hours of when they are accepted at the MRF, not including Sundays and Holidays.

Marketing. The Contractor shall market all Recovered Materials during the term of the Contract regardless of fluctuations in prices paid for Recovered Materials. The Contractor shall document and provide evidence, upon request by the Municipality, regarding the name, location, and contact information of entities to which Recovered Materials are being distributed, marketed, or sold to be Recycled. *Municipality may consider including a preference for use of domestic markets for Recovered Materials.*

Disposal of Residue and Rejects. The Contractor shall be responsible for the transportation and disposal of Rejects and Residue at a permitted disposal facility. The Contractor shall provide the Municipality with up-to-date information regarding the name and location of the disposal facility(s) throughout the term of this Contract.

Disposal Prohibition. Unless the Contractor has obtained written approval from the Massachusetts Department of Environmental Protection, the Contractor shall not burn, landfill, or otherwise dispose of any Recyclables or Recovered Material handled under this Contract. Contractor shall not knowingly sell Recovered Material for any use that constitutes disposal under Massachusetts law. This prohibition does not apply to Rejects and Residue.

Glass. The Contractor's Recycling Facility shall be capable of producing color-mixed glass suitable to be marketed for subsequent glass beneficiation. Notwithstanding, if the Contractor can clearly demonstrate that a glass beneficiation market does not exist, color-mixed glass may be beneficially used for landfill alternative daily cover and other civil construction applications.

3.6. Recyclables Recovery Standard

Sample Language:

The Contractor guarantees that Residue shall contain less than ___ percent by weight of Recyclables [5 to 10 percent is recommended dependent on facility performance]. Upon request from the Municipality, the Contractor will sort representative samples of Residues using a procedure acceptable to the Municipality to determine the percent by weight of Recyclables in the sample.

3.7. MRF Manager and Contract Manager

Sample Language:

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 MRF Manager and MRF Contract Manager. The MRF Manager shall be the primary point of contact for all technical and operational matters pertaining to the Contract. The MRF Contract Manager shall be the primary point of contact for all administrative and financial matters pertaining to the Contract.

3.8. Operations and Maintenance Plan

Sample Language:

Prior to the Commencement Date, Contractor shall provide an Operations and Maintenance Plan (O&M Plan) to the Municipality. Contractor shall maintain an up-to-date version of the O&M Plan throughout the term of the Contract readily available at the MRF for review by the Municipality upon request. The O&M Plan shall include a description of all activities to be undertaken by the Contractor to operate the MRF in accordance with this Contract, including at a minimum the following information:

1. MRF Contacts: name and contact information for responsible personnel and emergency contacts.
2. Receiving and Acceptance: procedures for traffic control, receiving and load inspection, load rejection, and Reject disposal.
3. Processing: procedures for materials handling, processing system plan, equipment list, and staffing plan.
4. Contingency Plan: procedures in case the MRF is unable to accept Recyclables for any reason.
5. Reporting: Sample record keeping and reporting forms.

3.9. Shutdowns

Sample Language:

Contingency Plan. The plan shall ensure that Receiving of Recyclables is not interrupted.

Notification. As soon as the Contractor knows that a Shutdown may occur or has occurred, the Contractor shall notify the Municipal Representative as to the reason for the Shutdown, what

services the Contractor is unable to provide, procedures that have been/will be implemented, and the timeline anticipated to resume regular operations.

Alternative Facilities. In the case of a Shutdown, it shall be the responsibility of the Contractor to locate an alternative facility or facilities if needed to ensure that Receiving and Processing of Recyclables is not interrupted. The Contractor shall be responsible for any costs incurred for transport, Receiving, and Processing at any alternative facility.

Penalties and Termination. In the event of a Shutdown for any reason other than a force majeure event, the Contractor shall be subject to penalties pursuant to this Contract.

3.10. Records and Reporting

Sample Language:

General. Contractor shall provide monthly and annual reports to the Municipality in a format approved by the Municipality. In addition, Contractor shall allow the Municipal Representative access to pertinent operations information related to compliance with obligations defined in the Contract. Contractor shall retain all reporting and financial documents for ___ years.

Daily Records. The Contractor shall maintain daily records detailing the information provided on each weigh slip for loads of Recyclables and the information required to document the evaluation and disposition of each load subjected to rejection procedures. Daily records shall be immediately available to the Municipal Representative upon request.

Monthly Reports. 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 daily and total monthly tons of Recyclables delivered to and accepted at the MRF from the Municipality or its Designated Hauler.
2. Documentation of the number and total monthly tons of rejected loads.
3. Calculation of the Processing Fee, AMV, and Revenue Share in accordance with this Contract.
4. Calculation of the total payment for Recyclables due to the Municipality or to the Contractor determined in accordance with this Contract.
5. Calculation of administrative charges, interest on overdue payments, or proration determined in accordance with this Contract.
6. Other information reasonably requested by the Municipality.

Semi-Annual Contamination Audit Reports. Contractor shall conduct (and invite Municipal Representative and other person s/he may delegate) to bi-annual recycling contamination audits. Contractor shall submit to the Municipality bi-annual report within thirty (30) calendar days of last Contamination Audit

Annual Reports. 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 tons of Recyclables delivered to and accepted at the Recycling Facility by the Municipality or its Designated Hauler.

2. Documentation of the number and annual tons of rejected loads.
3. Documentation of monthly AMV values.
4. Documentation of monthly and total payments made to the Municipality and made to the Contractor.
5. Documentation of monthly and total administrative charges, interest on overdue payments, and prorations.
6. Descriptions of capital and operational improvement(s) made at the Recycling Facility.
7. Other information reasonably requested by the Municipality.

3.11. Other Requirements

Sample Language:

Outreach and Education. The Contractor shall provide educational materials designed to increase public awareness of the processing and marketing of Recyclables. The Contractor shall utilize website and online media for providing further education on materials being recycled and marketed by the MRF. All outreach must conform and, where applicable, link to Recycle Smart MA <https://recyclesmartma.org/smart-recycling-guide/> and reference MA Waste Bans 310 CMR 19.017.

Audits and Composition Studies. Contractor shall provide the Municipal Representative with sufficient advance notice and access to the Recycling Facility for the Municipal Representative or Municipality-designated representative to observe any audits or composition studies of the Municipality's Recyclables performed by the Contractor. Additionally, the Contractor shall work with the Municipal Representative to provide access to the MRF and establish parameters for any audits or composition studies to be performed by the Municipality.

MRF Tours. Contractor shall provide up to four guided tours per year of the MRF. Prior to scheduling tours, the Municipality shall work with the Contractor to establish parameters for the tours to include, but not limited to, the size of the group, day and time, and tour logistics for safely moving visitors through the Materials Recovery Facility without disrupting normal operations.

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 Contractor's participation in a pilot program.

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 service 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, regulations, permits and similar requirements, 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 4. 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, 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:

Delivery of Recyclables. The Municipality shall deliver, or cause to be delivered, all Recyclables that it controls to the Recycling Facility.

Quantity and Quality of Recyclables. Recyclables shall be delivered to the Recycling Facility in an "as picked up" condition; no sorting, processing, bundling, or baling shall be done by the Municipality. Recyclables may be compacted in collection vehicles. Neither the quantity nor quality of Recyclables to be delivered under the Contract shall be guaranteed by the Municipality. The Municipality shall make reasonable efforts to ensure that only Recyclables as collected are delivered to the Contractor. The Municipality shall take reasonable steps to limit the amounts of Contaminants in Recyclables through its public education and monitoring program.

Inspections. The Municipality shall have the right to observe all Contractor operations related to this Contract and the Municipality's Recyclables. Observation may be by Municipal employees or Municipality-designated representatives. The Municipality reserves the right to inspect Contractor's Rejects and Residue and to cooperatively resolve issues should they arise.

Audits and Composition Studies. The Municipality shall have the right to observe any audits or composition studies of the Municipality's Recyclables performed by the Contractor. Additionally, the Municipality reserves the right and shall work with the Contractor to establish parameters for any audits or composition studies to be performed by the Municipality at the MRF.

Pilot Collection Programs. The Municipality reserves the right to 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. Prior to the execution of any pilot, coordination with the Contractor shall occur as necessary.

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 5. Financial Terms

Purpose. This article identifies the agreed upon financial terms of the processing contract. It covers items such as processing fee, average market value, revenue share payments and compensation calculations. Additionally, it covers payment concerns and dispute resolutions, proration and annual CPI adjustments.

See Checklist Section Titled: Select a Transparent Pricing Structure

5.1. Processing Fee

Sample Language:

The Municipality shall pay the Contractor based on a Processing Fee per Ton (PF/Ton) multiplied by the Tons of Recyclables accepted at the Recycling Facility. The Processing Fee on the Commencement Date shall be \$___per Ton.

The Processing Fee covers the costs for all the Contractor's responsibilities under this Contract, including general and administrative expenses, overhead, transportation and disposal of Rejects and Residue up to the Contamination limit of ___percent by weight of Recyclables.

5.2. Average Market Value Calculation

Sample Language:

The materials and percentages stated in Exhibit A to this Contract are based on the composition of Recyclables delivered to the MRF and are the basis for calculating the AMV. The Contractor shall calculate the AMV of Recyclables each month. The AMV is defined as the sum of the products of the composition percent for each material multiplied by the RecyclingMarkets.net Northeast USA regional average commodity prices (U.S. Dollars per Ton) for that material first posted in the month for which payment is being made. Exhibit B is a blank AMV calculation worksheet to be filled in before the start of your contract.

5.3. Revenue Share

Payment/Charge

Sample Language:

Each month the Contractor shall calculate the Average Market Value (AMV) in accordance with Exhibit A. Contractor shall pay or charge the Municipality based on the monthly AMV, minus the Processing Fee, then multiplied by the Tons of Recyclables delivered to the MRF by the Municipality. If the AMV is less than \$0, the negative AMV shall be subtracted from the Processing Fee and the difference shall be multiplied by the Tons of Recyclables delivered to the MRF by the Municipality. If the AMV is greater than \$0 but less than the Processing Fee, the AMV shall be subtracted from the Processing Fee and then the difference is multiplied by the Tons of

Municipal Contracting Template: Recyclables Processing

Recyclables delivered to the MRF by the Municipality Community. If the AMV exceeds the established Processing Fee, the Contactor shall pay the Municipality for Recyclables based on 70% of the monthly AMV amount above the applicable Processing Fee, multiplied by the Tons of Program Recyclables delivered to the Receiving Facility by the Designated Community.

5.4. Compensation Calculation

Sample Language:

Each month, the Contractor shall calculate the net compensation due to either the Contractor or Municipality as follows:

1. If the AMV per Ton is less than the PF/Ton, then the Municipality's payment to the Contractor shall equal: $(PF/Ton - AMV \text{ per Ton}) \times \text{Tons of Recyclables}$.
2. If the AMV per Ton is equal to the PF/Ton, then no payment will be owed to either party for Recyclables.
3. If the AMV per Ton is greater than the PF/Ton, then the Contractor's payment to the Municipality shall equal: $(AMV \text{ per Ton} - PF/Ton) 70\% \times \text{Tons of Recyclables}$.

5.5. Composition of Recyclables

Sample Language:

The composition of recyclables used for calculating the AMV shall be determined using a Municipality-approved methodology and by a Municipality-approved entity with demonstrated experience conducting recyclables composition studies. The Municipality and Contractor each have the right to have a representative on-site during recyclables composition studies. Study results are subject to final approval by the Municipality, which shall not be unreasonably withheld. Adjustments to the composition shall be made and shall become effective on the first day of the following month and for the remainder of the Contract, or until further adjusted in a future composition study.

5.6. Market Index

Sample Language:

The market index (Recyclingmarkets.net) utilized is intended to reflect the potential regional average value of each Recyclable material. It is not intended to equate to the actual commodity revenue received by the Contractor. If at any time during the term of this Contract, Recyclingmarkets.net no longer posts or otherwise provides the applicable market indices, then the Parties shall mutually select an appropriate replacement source for the required information from among the sources recycling industry professionals utilize to obtain reliable Recovered Materials pricing information, and this selection shall be memorialized in writing.

5.7. Liquidated Damages

Sample Language:

Each month, the Contractor shall owe the Municipality for any and all liquidated damages levied by the Municipality for violations of performance standards in accordance with the terms of the Contract.

5.8. Invoicing and Payment Procedures

Sample Language:

No later than fifteen (15) days following the end of each month, the Contractor shall submit an

invoice and monthly report including calculation of the Processing Fee, Revenue Share Payment, administrative charges, interest on overdue payments, any liquidated damages, or proration, and the net payment due to either Party. The monthly market index commodity values must be provided with monthly invoice. Payment shall be made by the Contractor to the Municipality, or the Municipality to the Contractor, within calendar days following submission of the invoice and monthly report.

5.9. Interest on Overdue Payments

Sample Language:

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

5.10. Proration

Sample Language:

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 Contract, the Parties agree that appropriate adjustments and proration shall be made.

5.11. Invoice or Payment Disputes

Sample Language:

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.

5.12. Annual CPI Adjustment

Sample Language:

On [contract anniversary date] of each year of the term of this Contract, the Processing Fee shall be automatically adjusted based on the change in the monthly Consumer Price Index (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 plus or minus +/- ____percent of the previous rate.

The index used shall be the CPI for All Urban Consumers (CPI-U), Northeast Urban 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 6. 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.

Performance Standard Violation	Liquidated Damages
Failure to accept Recyclables delivered to the Recycling Facility during scheduled receiving hours.	\$__per vehicle per occurrence.
Failure to provide maximum turn-around time of thirty (30) minutes at the MRF.	\$__per vehicle per occurrence.
Recyclables placed outside of the Recycling Facility building without prior Municipality approval.	\$__per day.
Failure to remove Recyclables from the tipping floor and process them within forty-eight (48) hours of acceptance at the Recycling Facility.	\$__per day.
Disposal of Recyclables or Recovered Materials.	\$__per occurrence plus \$__ per Ton.
Exceeding__percent by weight of Recyclables in Residue.	\$__per occurrence.
Failure to notify Municipality of legal or regulatory violations.	\$__per day per occurrence.
Failure to provide any required report within the required Timeframe, including recycle markets index with monthly invoice.	\$__per day.
Failure to use recycling markets index to calculate Average Market Value (AMV).	_____ the difference between what was billed and the appropriate market index times two.

The Municipality may assess liquidated damages on a monthly basis and shall at the end of each month notify the Contractor in writing of the charges assessed and the basis for each assessment. In the event the Contractor wishes to contest such assessment it shall, within __ calendar days after receiving such monthly notice, request in writing an opportunity to be heard

by the Municipality and present its defense to such assessment. The Municipality shall notify the Contractor in writing of any action taken with respect to Contractor's claims and the decision of the Municipality will be final.

Article 7. Performance Bond

Purpose: A performance bond is strongly recommended and 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:

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. 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 State 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 and for each renewal year thereafter.

Article 8. 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.

8.1. 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. Shutdown 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. Disposal of Recyclables or Recovered Material in any Solid Waste disposal facility without the prior written consent of the Massachusetts Department of Environmental Protection or illegal disposal of Recyclables or Recovered Material.
4. Failure to take timely corrective action after a notice of a violation of a law or regulation.
5. 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.
6. Failure to maintain the insurance pursuant to this Contract.

7. Failure to maintain the Performance Bond pursuant to this Contract.
8. Failure to pay amounts owed to the Municipality under the terms of this Contract within ___ calendar days after such amounts become finally due and payable, unless the Municipality has approved a request for extension from the Contractor or amounts are subject to dispute resolution.
9. 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 subject to any proceeding relating to it under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution of liquidation law or statute.

The Municipality may terminate this Contract and:

1. Require the Contractor to discontinue all work, or any part thereof.
2. Require the Contractor to complete the work, or any part thereof, and the Contractor may charge the Municipality the cost of completing the work, or any part thereof, subject to the scope of work to be completed and the value of said work.
3. Require the Contractor to perform any reasonable transition activity required in order to ensure continuity of the services.

If terminated, the Municipality will provide a date for the Contractor to cease any further performance under this Contract. The Municipality shall have the full scope of remedies afforded by the law including withholding any monies due the Contractor and forfeiture of the Contractor's Performance Bond.

8.2. Termination for Non-Appropriation and Emergency

Sample Language:

Upon ___ calendar days' notice to the Contractor, the Municipality may terminate this Contract due to non-appropriation or availability of sufficient funds for the purposes of the Contract or an unforeseen public emergency, and without penalty or prejudice to any other right or remedy. In such case, the Municipality and Contractor shall make all payments pursuant to this Contract up to the effective date of termination. Neither the Contractor nor its consultants, subcontractors or suppliers shall be entitled to lost profits on work not performed or services not provided due to such termination. Payment by the Municipality hereunder shall be considered full and final compensation to the Contractor under the Contract.

Article 9. Notices

Purpose. This article defines the contacts for both parties in the event of submitting notices related to the services and terms defined within the contract.

Sample Language:

All notices required or contemplated by this Contract shall be personally served or mailed (postage prepaid and return receipt requested), addressed to the parties as follows:

To Municipality	[Municipal Representative] [Municipality] [Address] [Municipality, State, Zip]
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To Contractor: [Contract Manager]
[Contractor Business]
[Address]
[Municipality, State, Zip]

Article 10. 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:

10.1. 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.

10.2. 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.

10.3. 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.

10.4. 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.

10.5. 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.

10.6. 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 11. 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.

11.1. 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.

11.2. 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.

11.3. 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.

11.4. 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.

11.5. 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.

11.6. 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.

11.7. 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.

11.8. 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.

11.9. 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.

11.10. 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.

11.11. 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.

11.12. 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 A: Average Market Value (AMV) Sample Calculation

For illustrative purposes, Exhibit A calculates the AMV based on the [recyclingmarkets.net](https://www.recyclingmarkets.net) commodity prices New York (Northeast USA regional average (U.S. Dollars per Ton) for each material first posted in the month and year for which payment is being made.

Average Market Value of Recyclables (Sample Calculation based on October 15, 2020 values)

Material	Recyclingmarkets.net Index Material	Index* Value (\$/ton)	Percent (by weight)**	AMV (\$/ton)
Mixed Paper	MP Mixed Paper (PS 54) (\$/ton, baled, picked up)	\$22.50	38%	\$8.55
Newspaper, Magazines & Catalogs	SRPN Sorted Residential Paper and News (PS 56) (\$/ton, baled, picked up)	\$37.50		
Cardboard	Old Corrugated Containers (PS11) (\$/ton, baled, picked up)	\$57.50	19%	\$10.93
Glass (3-Mix)	Glass 3 Mix (\$/ton del. as Recyclable or Disposable)	\$(62.00)***	18%	\$(11.16)
PET	PET (Baled, ¢/lb., picked up)	\$122.60	4%	\$4.90
HDPE, Natural	Natural HDPE (Baled, ¢/lb., picked up)	\$1,330.00	1%	\$13.30
HDPE, Colored	Colored HDPE (Baled, ¢/lb., picked up)	\$365.00	1%	\$3.65
PP	PP Post Consumer (Baled, ¢/lb., picked up)	\$130.00	3%	\$3.90
Mixed Plastics	Commingled (#3-7, Baled, ¢/lb, picked up)	\$(50.00)	2%	\$(1.00)
Aluminum Cans	Aluminum Cans (Sorted, Baled, ¢lb., picked up)	\$940.00	1%	\$9.40
Steel Cans	Steel Cans (Sorted, Baled, \$/ton, picked up)	\$72.50	3%	\$2.18
Contamination	<i>Percentage will vary based on most recent audit</i>	\$(80.00)	10%	\$(8.00)
Total			100%	\$36.64

*[recyclingmarkets.net](https://www.recyclingmarkets.net)

An annual subscription to recyclingmarkets.net is \$455. It is recommended that your MRF purchases subscription and shares monthly pricing.

**for illustrative purposes only

***adjusted for local market

Exhibit B: Average Market Value (AMV) Calculation Worksheet

Note: municipalities should enter sample commodity index prices and percent composition of their recyclables for the beginning of the contract. The actual AMV is calculated for each month during the contract.

The AMV for each material = Index Value x Percent. The Total AMV is the sum of the AMV column.

Average Market Value of Recyclables Worksheet

Material	Recyclingmarkets.net Index Material	Index* Value (\$/ton)	Percent (by weight)	AMV (\$/ton)
Mixed Paper	MP Mixed Paper (PS 54) (\$/ton, baled, picked up)			
Newspaper, Magazines & Catalogs	SRPN Sorted Residential Paper and News (PS 56) (\$/ton, baled, picked up)			
Cardboard	Old Corrugated Containers (PS11) (\$/ton, baled, picked up)			
Glass (3-Mix)	Glass 3 Mix (\$/ton del. as Recyclable or Disposable)			
PET	PET (Baled, ¢/lb., picked up)			
HDPE, Natural	Natural HDPE (Baled, ¢/lb., picked up)			
HDPE, Colored	Colored HDPE (Baled, ¢/lb., picked up)			
PP	PP Post Consumer (Baled, ¢/lb., picked up)			
Mixed Plastics	Commingled (#3-7, Baled, ¢/lb, picked up)			
Aluminum Cans	Aluminum Cans (Sorted, Baled, ¢lb., picked up)			
Steel Cans	Steel Cans (Sorted, Baled, \$/ton, picked up)			
Contamination				
Total			100%	

*recyclingmarkets.net

An annual subscription to recyclingmarkets.net is \$455. It is recommended that your MRF purchases subscription and shares monthly pricing.