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COMMONWEALTH OF MASSACHUSETTS

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SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.

TEN TAXPAYER GROUP

Plaintiff,

v.

CITY OF FALL RIVER and Mayor Jasiel F. Correia in his Official Capacity

Defendants

JUN 23 2016

PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER
AND APPLICATION FOR PRELIMINARY INJUNCTION

Pursuant to Mass.Civ. P. 65(a), the plaintiff, Ten Taxpayer Group, move for the entry of a Temporary Restraining Order in the form attached hereto restraining and enjoining the defendant from directly or indirectly, enforcing, executing, implementing or otherwise allowing the contract between EZ Disposal & Recycling, LLC and the City of Fall River from taking effect, a copy of which contract is attached as Exhibit A to the Complaint contemporaneously filed herewith.

In support of their motion, the plaintiffs rely on their Memorandum of Law In Support of Their Motion for a Temporary Restraining Order, the Complaint and Petition for Writ of Mandamus and accompanying exhibits.

CITY OF FALL RIVER
IN CITY COUNCIL
JUN 28 2016

6/23/16 - SUMMONS AND ORDER OF NOTICE RETURNABLE AT 2pm ON Wednesday, June 29, 2016
IN TAUNTON, (HOPKINS, J.) JFU



6/23/16 Original hand delivered to Law Dept

CIVIL ACTION COVER SHEET INSTRUCTIONS
SELECT CATEGORY THAT BEST DESCRIBES YOUR CASE

*** CONTRACTS**

*** REAL PROPERTY**

MISCELLANEOUS

A01 Services, Labor and Materials (F)	C01 Land Taking (eminent domain) (F)	E02 Appeal from Administrative Agency G.L. c. 30A (X)
A02 Goods Sold and Delivered (F)	C02 Zoning Appeal, G.L. c.40A (F)	E03 Claims against Commonwealth or Municipality (A)
A03 Commercial Paper (F)	C03 Dispute concerning title (F)	E05 Confirmation of Arbitration Awards (X)
A08 Sale or Lease of Real Estate (F)	C04 Foreclosure of mortgage (X)	E07 G.L. c.112, s.12S (Mary Moe) (X)
A12 Construction Dispute (A)	C05 Condominium Lien & Charges (X)	E08 Appointment of Receiver (X)
A99 Other (Specify) (F)	C99 Other (Specify) (F)	E09 General Contractor bond, G.L. c. 149, ss. 29, 29a (A)
E03 Claims against Commonwealth or Municipality (A)	E03 Claims against Commonwealth or Municipality (A)	E11 Worker's Compensation (X)
	EQUITABLE REMEDIES	E12 G.L.c.123A, s.12 (SDP Commitment) (X)
*TORT	D01 Specific Performance of Contract (A)	E14 G.L. c. 123A, s. 9 (SDP Petition) (X)
B03 Motor Vehicle Negligence (F)	D02 Reach and Apply (F)	E15 Abuse Petition, G. L. c. 209A (X)
personal injury/property damage	D06 Contribution or Indemnification (F)	E16 Auto Surcharge Appeal (X)
B04 Other Negligence- (F)	D07 Imposition of a Trust (A)	E17 Civil Rights Act, G.L. c.12, s. 11H (A)
personal injury/property damage	D08 Minority Stockholder's Suit (A)	E18 Foreign Discovery Proceeding (X)
B05 Products Liability (A)	D10 Accounting (A)	E19 Sex Offender Registry G.L. c. 178M, s. 6 (X)
B06 Malpractice-Medical (A)	D12 Dissolution of Partnership (F)	E25 Plural Registry (Asbestos cases) (F)
B07 Malpractice-Other (Specify) (A)	D13 Declaratory Judgment G.L. c. 231A (A)	E95 **Forfeiture G.L. c. 94C, s. 47 (F)
B08 Wrongful Death, G.L. c.229, s.2A (A)	D99 Other (Specify) (F)	E96 Prisoner Cases (F)
B15 Defamation (Libel-Slander) (A)		E97 Prisoner Habeas Corpus (X)
B19 Asbestos (A)		E99 Other (Specify) (X)
B20 Personal Injury- slip & fall (F)		
B21 Environmental (F)		
B22 Employment Discrimination (F)		
B99 Other (Specify) (F)		
E03 Claims against Commonwealth (A)		

*Claims against the Commonwealth or a municipality are type E03, Average Track, cases.

**Claims filed by the Commonwealth pursuant to G L c 94C, s 47 Forfeiture cases are type E95, Fast track.

TRANSFER YOUR SELECTION TO THE FACE SHEET.

EXAMPLE:

CODE NO.	TYPE OF ACTION (SPECIFY)	TRACK	IS THIS A JURY CASE?
B03	Motor Vehicle Negligence-Personal Injury	(F)	[X] Yes []

SUPERIOR COURT RULE 29

DUTY OF THE PLAINTIFF. The plaintiff or his/her counsel shall set forth, on the face sheet (or attach additional sheets as necessary), a statement specifying in full and itemized detail the facts upon which the plaintiff then relies as constituting money damages. A copy of such civil action cover sheet, including the statement as to the damages, shall be served on the defendant together with the complaint. If a statement of money damages, where appropriate is not filed, the Clerk-Magistrate shall transfer the action as provided in Rule 29(5)(C).

DUTY OF THE DEFENDANT. Should the defendant believe the statement of damages filed by the plaintiff in any respect inadequate, he or his counsel may file with the answer a statement specifying in reasonable detail the potential damages which may result should the plaintiff prevail. Such statement, if any, shall be served with the answer.

A CIVIL ACTION COVER SHEET MUST BE FILED WITH EACH COMPLAINT.

**FAILURE TO COMPLETE THIS COVER SHEET THOROUGHLY AND ACCURATELY
MAY RESULT IN DISMISSAL OF THIS ACTION.**

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.

TEN TAXPAYER GROUP)

Plaintiff,)

v.)

CITY OF FALL RIVER and Mayor Jasiel F.)
Correia in his Official Capacity)

Defendants)

COMPLAINT AND PETITION FOR WRIT OF MANDAMUS

INTRODUCTION

This action is brought seeking to void, invalidate and prevent the execution of a ten year contract between EZ Disposal & Recycling, LLC (“EZ Disposal”) and the City of Fall River by the Defendants, which contract has not been properly executed, was not approved by the Fall River City Council nor has it been appropriated for in violation of Massachusetts General Laws c. 44 § 31 and c. 40 § 4, and in violation of the Revised Ordinances of the City of Fall River, Massachusetts, 1999 (“Fall River Ordinances”) that apply to any contract that incurs liability to the City of Fall River.

PARTIES

1. Plaintiffs, hereinafter referred to as the “Ten Taxpayer Group” are as listed below are all residents of the City of Fall River in the Commonwealth of Massachusetts:

- a. Elmer Bradshaw, 987 Wilson Rd, Fall River, MA 02720
 - b. John M. Pearson, Jr, 923 Wilson Rd., Fall River, MA 02720
 - c. Ernest Velozo, Sr, 980 Wilson Rd, Unit 11A, Fall River, MA 02720
 - d. Alan Costa, 980 Wilson Rd, Unit 5B, Fall River, MA 02720
 - e. Eleanor Heyworth, 1214 Wilson Rd, Fall River, MA 02720
 - f. Robert Camara, 127 Gagnon St, Fall River, MA
 - g. CJ Ferry, 300 Buffington St, Unit 2-C, Fall River, MA 02721
 - h. Maria N. Alves, 382 Stetson St., Fall River, MA 02720
 - i. Dorothy Nicolau, 176 Irving St., Fall River, MA 02723
 - j. Beverly D. Pereira, 295 Newbury St., Fall River, MA 02720
 - k. Kathleen Duclos, 455 Oak Grove Ave, Fall River, MA 02723
 - l. Margaret J. Giza, 107 Lafayette St, Fall River, MA 02723
2. The City of Fall River (the “City”) is a duly organized and existing Massachusetts municipality.
 3. Mayor Jasiel F. Correia (the “Mayor”) is and was at all times relevant to this Complaint the duly elected mayor of the City of Fall River, with an address of One Government Center, Room 619 Fall River, MA 02722, and is named solely in his official capacity as Mayor.

JURISDICTION AND VENUE

4. The Massachusetts Superior Court has jurisdiction over this action pursuant to Massachusetts General Laws c. 44 § 59 which states that any one or more taxable inhabitants of a city may compel a city and other proper officers to conform to

Massachusetts General Laws chapter 44 by writ of mandamus or other appropriate remedy.

5. The Massachusetts Superior Court has jurisdiction over this action pursuant to Massachusetts General Laws c. 40 § 53 which states that ten taxable inhabitants of the town may restrain the unlawful exercise or abuse of such corporate power by petitioning the superior court department.
6. The Massachusetts Superior Court has jurisdiction over this action pursuant to Massachusetts General Law c. 231A, §§ 1 and 2 which state that proceedings for declaratory judgments may be made in the Superior Court for a determination of the legality of a contract under statute and municipal ordinance.
7. The Massachusetts Superior Court also has jurisdiction under common law where Plaintiff has no other remedy, and when the question is one of public right and the purpose is to procure the performance of a public duty, and as citizens the Plaintiff has an interest in the due execution of the laws.

FACTS

8. On June 10, 2016 Defendant Mayor, on behalf of the City, and EZ Disposal jointly announced that they had signed an AGREEMENT FOR COLLECTION AND HAUL OF SOLID WASTE AND SINGLE STREAM RECYCLING (the "EZ Contract"). A copy of the EZ Contract is attached hereto, and incorporated herein as Exhibit "A".
9. The EZ Contract provides an effective date of July 1, 2016 and continues until June 30, 2026. While the contract provides in Section 9.03 that it "shall not be terminated by either party under any circumstances . . . except as specifically provided in this

Agreement”, Section 9.04 of the agreement provides and Early Termination Fee payable by the City. The Early Termination Fee is payable as outlined on Schedule A of the EZ Contract plus the City would be responsible for all remaining sums due or to become due in the then current Service Year.

10. Pursuant to Section 13.14 of the EZ Contract, “EZ agrees to interview current city sanitation employees for possible employment.”
11. The EZ Contract has been executed by the Mayor and EZ Disposal, and approved as to form and manner of execution only by Joseph I. Macy, Corporate Counsel.
12. The City Council of the City Fall River has never appropriated any monies for the liabilities incurred by the EZ Contract, and has never approved entering into the contract. Attached hereto is an affidavit of Raymond A. Mitchell, as a city councilor attesting to the fact that monies have never been appropriated for this contract.

COUNT I - MANDAMUS

13. Plaintiff repeats the allegations made in paragraphs numbered 1 through 12 and incorporates them herein by reference.
14. Massachusetts General Laws c. 44 § 31 provides that no department of a city financed by tax revenues shall incur a liability in excess of what has been appropriated to said department.
15. The EZ Contract violates the express intent and purpose of c. 44 § 31 as it will incur a liability upon the City of at least \$798,168 upon the commencement of the agreement, which amount has never been appropriated by due action of the City Council. As the EZ Contract is unclear, this amount may be substantially greater, as the contract fails to have

a liquidated damages provision. Further, by entering into this contract the sanitation workers union has claimed a violation which will subject the City to substantial liabilities due to the workers that were improperly laid off from their sanitation jobs.

16. Defendants have unlawfully exercised their powers in agreeing to enter into the EZ Contract for a purpose that is inconsistent with the approvals and prior appropriations.

17. Under Massachusetts General Laws c. 44 § 59 the superior court shall have the authority by mandamus or other appropriate remedy, at law or in equity to compel the City and the Mayor to conform to c. 44 § 31.

COUNT II

Declaratory and Injunctive Relief Under G. L. c. 231(A)

18. Plaintiff repeats the allegations made in paragraphs numbered 1 through 17 and incorporates them herein by reference.

19. Plaintiff seeks a temporary restraining order, and, thereafter, a preliminary injunction prohibiting the Mayor and the City from entering into the EZ Contract until such time as it is approved and appropriated for in accordance with the laws of the Commonwealth of Massachusetts and the City of Fall River.

20. Defendants actions in executing the EZ Contract are in violation of Massachusetts General Laws c. 44 § 31 that applies to incurring liabilities without authority or an approved appropriation.

21. Defendants action in executing the EZ Contract are in violation of Massachusetts General Laws c. 40 § 4 that states that a city may only make contracts authorized by the city

council, and may not make a contract inconsistent with any applicable provision of the general laws.

22. Defendants action in executing the EZ Contract are in violation of Chapter 2, Article VI, Division 4, Subdivision IV, Sec. 2-781(a) of the Fall River Ordinances which provides that “[t]he sanitation division shall collect all residential solid waste and all refuse generally accumulated in the city and shall convey such solid waste to an appropriate disposal area”. The EZ Contract is in violation of this ordinance, and the Mayor is acting ultra vires in attempting to circumvent the authority of the Fall River City Council to adopt the ordinances of the City.

23. The EZ Contract is void or voidable because it was not properly executed in accordance with Chapter 2, Article VII, Division 4, Sec. 2-941 of the Fall River Ordinances which provides that no contract “shall be finally completed, valid and binding on the city unless previously signed by the mayor and also by the officer or the head of the department . . . making the contract.” The EZ Contract was only signed by the Mayor, and has not been signed by the Director of Community Maintenance or any other head of a department that properly should make such contract. The EZ Contract is invalid and non-binding on the City.

24. Defendants action in executing the EZ Contract are in violation of Chapter 2, Article VII, Division 4 of the Fall River Ordinances, Sec. 2-944 which provides that all contracts “shall give preference to resident of this city.” The EZ Contract in section 13.14 only states it will interview current sanitation employees for possible employment. The EZ Contract violates Sec. 2-944 of the Fall River Ordinances.

25. Defendants actions to violate Massachusetts General Laws c. 40 § 4 and c. 44 § 31 along with the violations of the Fall River Ordinances were willful in that Defendants knew or should have known that their actions violated the statute.
26. Defendants actions are an abuse of their corporate power or authority.
27. Plaintiffs only recourse is to obtain a declaratory judgment of this Court in order to protect its due process rights for an opportunity to be heard regarding the deprivation of Plaintiffs rights and advantages.
28. In the absence of the injunctive relief requested herein, Plaintiffs will suffer irreparable harm if the EZ Contract is allowed to become effective.
29. A balancing of the harms between Plaintiffs and the Defendants favors granting preliminary and permanent injunctive relief.
30. As a result, Defendants should be restrained from entering into the EZ Contract or any party except in the manner as provided in Massachusetts General Laws and the Fall River Ordinances.

WHEREFORE, Plaintiff respectfully requests that this honorable court grant the following relief:

1. Declare the Defendants execution of the EZ Contract to be an abuse and unlawful exercise of its authority;
2. Grant the request for a temporary restraining order and schedule a hearing on the request for a preliminary injunction at the earliest possible date;
3. Issue a writ of mandamus requiring Defendants to comply with the legal mandates of Massachusetts General Laws c. 44 § 31;

4. Enter a preliminary and permanent injunction ordering Defendants to refrain from any further and future action relating to the execution or implementation of the EZ Contract for its stated purposes until such time as the City Council has approved its terms and conditions;
5. Grant the Plaintiff costs, including reasonable counsel fees; and
6. Any other further relief as this Court deems is just and appropriate.

Respectfully submitted,
By its Attorneys,



Lesley S. Rich (BBO # 638345)
Rich Law Associates
44 Bedson Road
Cranston, RI 02910
Tel: (401)529-1191
Fax: (401)464-4884
Email: LESR313@GMAIL.COM

Dated: June 23 2016

EXHIBITS

EXHIBIT "A"

Joseph Macy

From: Loren Westmoreland [loren@ezdisposalrecycling.com]
Sent: Friday, June 10, 2016 2:21 PM
To: Francis A. Shannon, III, Esq.; James N. Worden, Esq.; Joseph Macy
Subject: Re: EZD/General
Attachments: SKMBT_C22416061013190.pdf

Here is the copy of the signed agreement.

Have a nice weekend.

Loren

On 6/10/2016 12:16 PM, Francis A. Shannon, III, Esq. wrote:

I'm ok with sliding the Exhibits in after the fact if the City is.



Francis A. Shannon, III, Esq.
Shannon Law Associates, Inc.
300 Crown Colony Drive, Suite 504
Quincy, MA 02169-0904
Telephone 1-617-479-1313
Facsimile 1-617-479-1233
Portable 1-617-686-3514
email fashannon@shannonlawassociates.com
visit our website at www.shannonlawassociates.com

From: James N. Worden, Esq.
Sent: Friday, June 10, 2016 12:16 PM
To: Joseph Macy
Cc: Francis A. Shannon, III, Esq.; Loren Westmoreland
Subject: RE: EZD/General

We are getting hung up on these exhibits. I do not have, and have never seen, Exhibits F and G.

Loren Westmoreland of EZ emailed you regarding the certificate of insurance language required by the City at about 11:20 a.m.

I am looking for a form of performance bond in other bid documents I have that can be modified for this contract.

The other option would be to forego the Exhibits except those we already have. Let me know and I can edit the Contract accordingly.

James N. Worden, Esq.
Shannon Law Associates, Inc.
300 Crown Colony Drive, Suite 504
Quincy, MA 02169-0904

CONTRACT

**SOLID WASTE COLLECTION AND HAUL AND
SINGLE STREAM RECYCLING AGREEMENT**

BETWEEN

**EZ DISPOSAL & RECYCLING, LLC AND
THE CITY OF FALL RIVER**

TABLE OF CONTENTS

ARTICLE	HEADING
I.	Definitions and Interpretation
II.	Representatives
III.	Agreement
IV.	Term of Agreement
V.	Collection; Additional Collections; Bulk Items; Single Stream Recycling, Yard Waste, Revenue/Cost
VI.	Diversion of Waste
VII.	Trash Fees, Escalation and Payment; SSR Revenue/Costs
VIII.	Disputes
IX.	Default and Remedies Termination
X.	Force Majeure Events
XI.	Assignment or Amendment of Agreement
XII.	Insurance
XIII.	Residential Collection and Haul Covenants
XIV.	Applicable Law
XV.	Severability
XVI.	Headings
XVII.	Liability of Parties
XVIII.	Annual Appropriations
XIX.	Separate Agreement
XX.	Entire and Complete Agreement
XXI.	Performance Bond
XXII.	Laws and Regulations
XXIII.	Change in Law, Costs, Payment
XXIV.	Sales tax Exemption
XXV.	Prevailing Wage Rates
XXVI.	Indemnity
XXVII.	Notices
XXVIII.	Education and Program Assistance
XXIX.	Future Program Provisions

Exhibit A	Contract Pricing
Exhibit B	Schedule 1 – Solid Waste Municipal Containers Schedule 2 – Recycling Municipal Containers
Exhibit C	Prevailing Wages Rates
Exhibit D	Form of Performance Bond
Exhibit E	Form of Certificate of Insurance
Exhibit F	Single Stream Specifications
Exhibit G	Acceptable Trash Waste
Exhibit H	"Special Businesses " and "Limited Business Customer" List

AGREEMENT FOR COLLECTION AND HAUL OF SOLID WASTE

AND

SINGLE STREAM RECYCLING

BETWEEN

THE CITY OF FALL RIVER AND EZ DISPOSAL & RECYCLING, LLC

THIS COLLECTION AND HAUL AGREEMENT dated June 10, 2011

between EZ Disposal & Recycling, LLC a Massachusetts limited liability corporation duly organized and existing under laws of the Commonwealth of Massachusetts with a business address of 20 Railroad Avenue, Revere, MA 02128 together with its successors and permitted assigns hereunder, (hereinafter "EZ" or "Contractor"), and the City of Fall River, together with its successors or assigns hereunder, a municipal corporation and political subdivision of the Commonwealth of Massachusetts, acting through its Mayor and Director of Community Maintenance, but without personal liability to them, with a business address of _____, Fall River, MA _____, together with its permitted assigns hereunder, (hereinafter "City" or "Fall River") witnesses as follows:

WHEREAS, EZ has expertise and ability to provide curbside collection and haul of acceptable solid waste and has presented an offer for a ten (10) year contract; and

WHEREAS, the City is responsible for planning and providing for the collection, haul, processing and disposal of solid waste generated and present within its boundaries and is authorized to enter into contracts to carry out such responsibility; and

WHEREAS, the City desires to enter into an Agreement with EZ that will result in the collection and haul of solid waste and single stream recycling, excluding disposal

charges for Municipal Solid Waste and processing and marketing of recyclable materials, from within City boundaries, and

WHEREAS, EZ offers its collection and haul services to City to ultimately transport for disposal certain quantities of Residential and Municipal Acceptable Waste, and

NOW, THEREFORE, in consideration of the promises and of mutual covenants and agreements herein set forth, and of the undertakings of each party to the other, and for other good and valuable consideration the receipt and adequacy of which is hereby acknowledged the parties do hereby promise and agree as follows:

ARTICLE I

Definitions and Interpretation

SECTION 1.01 Definitions. The following words and terms shall, for all purposes of this Contract, have the following meanings, unless the context clearly indicates a different meaning or intent:

"Acceptable Waste" means all household (including occasional non-hazardous in mixed commercial) and non-hazardous municipal waste of the type currently generated or present within the corporate boundaries of Fall River and now currently collected and disposed of on behalf of Fall River, including materials set out specifically for recycling. Acceptable Waste may include ferrous and nonferrous metals, food and other constituents that normally appear in residential trash, but not including explosives and ordnance materials, pathological waste, radioactive waste, hazardous waste, oil, mercury, cesspool or other human or animal waste, human and/or animal remains, motor vehicles and parts, large machinery or any type or kind of Hazardous Material as defined herein, or materials deemed "Waste Ban" items by the Massachusetts Department of Environmental Protection,

provided, however, that "waste ban" items that are recyclable which meet the specifications for Single Stream Recycling shall be considered to be Acceptable Waste when set out as part of Single Stream Recycling Collection.

"Affiliate" with respect to any person, corporation, firm or entity, any person, corporation, firm, or entity, which directly or indirectly, controls or is controlled by or is under common control of such person, corporation, firm or entity.

"Agreement" means this Agreement between EZ and the City.

"Bulky Waste" means burnable items too large to fit into a standard City issued collection cart capable of being accepted at the designated disposal site and of a size and weight that can be reasonably lifted by two employees and placed in a standard rear-load packer vehicle. Said items shall include but not be limited to household furniture, metal, household appliances (white goods) but shall exclude municipal solid waste, CFC containing devices, CRT's or other waste ban items.

"Change in Law" means any event or condition occurring after the Effective Date of this Agreement which has a material adverse or positive effect on EZ's or City's ability to perform its obligations under this Agreement, if such event or condition is beyond the reasonable control, and not the result of willful or negligent action or lack of reasonable diligence on the part of the party relying thereon as justification for not performing any obligation or complying with any condition required of such party under this Agreement.

(a) the adoption, promulgation, issuance, modification or official change in interpretation after the Effective Date of any federal, state, or local law, regulation, rule, requirement, ruling or ordinance, unless such law, regulation, rule, requirement, ruling or ordinance was in force or effect on or prior to such date duly adopted, promulgated, issued or otherwise

officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any federal, state or local government body, administrative agency or governmental official having jurisdiction, provided that any increase in minimum wage rates or schedules is not a Change in Law;

(b) the order and/or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the party relying thereon, provided that the contesting in good faith of any such order and/or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of such party; or

(c) the suspension, termination, interruption or failure of renewal of any permit, license, consent, authorization, or approval legally necessary and essential to the performance of collection and haul obligations under this Agreement, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the non-performing party, provided that the contesting in good faith of any such suspension, termination, interruption or failure of renewal shall not be construed as willful or negligent action or a lack of reasonable diligence of such non-performing party.

"City" means the City of Fall River, Massachusetts, acting through its Mayor or his/her designee.

"City Acceptable Waste" is the Acceptable Waste collected and generated by the City of Fall River.

"Collection Fee" means, with respect to each service year, the fee to be paid to EZ for the collection and haul of Acceptable Waste.

"Collection Route" the schedule of streets and locations from which Acceptable Waste is to

be collected during a particular day of the work week. Each collection route shall permit the collection, transport and disposal of approximately 1/5 of the total amount of Acceptable Waste typically collected during the work week.

"Commencement Date" 12:01 AM local time on July 1, 2016.

"Commonwealth" means the Commonwealth of Massachusetts.

"Daily or Operating Day" any day of the week other than a Sunday, a Saturday (when a holiday falls on a working day), legal holiday, or as directed by the Director of Community Maintenance

"Disposal" disposing of trash in a legal manner at the permitted location of Fall River Transfer Station with a business address of Airport Road FR ("")

"Early Termination Fee" is the fee set forth on Exhibit A hereto for the month in or during this Agreement is cancelled or terminated as set forth herein or in which the City fails to appropriate sufficient funds for all payments due or to become due to EZ during the City's then-current fiscal year.

"Effective Date" July 1, 2016.

"Force Majeure Event" any event or condition having, or which may reasonably be expected to have a material adverse effect on the Contractor or Fall River or on the Contractor or Fall River's ability to perform pursuant to this Agreement and not the result of willful or negligent action or lack of reasonable diligence, of the party relying thereon as justification for not performing (the Non-Performing Party) any obligation or complying with any condition required of such party under this Agreement. The foregoing provisions shall not be construed to require that the Non- Performing party observe a higher standard of conduct than that required by the usual and customary standards of the industry in

question, as a condition of claiming the existence of a Force Majeure Event. Such events or conditions may include, but shall not be limited to, circumstances of the following kind:

(1) A Change in Law, an act of God, epidemic, landslide, lightning, earthquake, hurricane, fire, explosion, storm, flood, or similar occurrence, an act of war, blockade, insurrection, riot, civil disturbance or similar occurrences or physical damage caused directly or indirectly by Unacceptable Waste unless knowingly accepted by EZ; or

(2) A strike, lockout, work slowdown, or similar industrial or labor action, which affects, impacts or impedes the ability to receive acceptable waste at the Fall River Transfer Station.

"Hazardous Materials" material addressed by regulations adopted by the United States Environmental Protection Agency, pursuant to the Resource Conservation Recovery Act of 1976, as amended.

"Legal Holiday" the following days: New Years, Martin Luther King, Presidents , Patriots, Memorial, Independence, Labor, Columbus, Veterans, Thanksgiving, Christmas and any other such legal holiday that may be declared during the duration of this Agreement. If a legal holiday falls on a Sunday but celebrated on Monday by the City of Fall River, the collection will follow a holiday collection schedule as set forth in Section 13.03.

"Mixed Rigid Plastics" a category of recyclable plastic, which includes hard or rigid plastic items that are not bottles, films, or other flexible plastic.

"Month" calendar month.

"Director of Community Maintenance" the Director of Community Maintenance for the City of Fall River or his/her designee. The Director of Community Maintenance or his/her designee shall act as Fall River's representative in all matters relating to the services to be

performed by the Contractor under the provisions of this Agreement.

"Recyclable Materials" recyclable residential and municipal waste generated or present within the corporate boundaries of Fall River consisting of: paper including cardboard, glass and plastic bottles, metal cans, leaf and yard waste, or any other material that may be deemed recyclable by the Department of Environmental Protection, or successor agency and EZ.

"Residential Collection and Haul" the curbside collection of Acceptable Waste generated by the households, including limited business customers set forth in Exhibit H (or their successors), of Fall River, the collection of Acceptable Waste from specified municipal dumpster containers, and the direct transport of the collected waste to the Site as of the effective date of this Agreement.

"Service Year" a twelve-month (12) period, beginning the first day of the month of July of one calendar year and extending through the last day of the month of June of the next calendar year (or a lesser time pro rata in the event of termination prior to the conclusion of the full service year), during which collection and haul services are provided to Fall River by the Contractor pursuant to this Agreement.

"Single Stream Recycling" (also known as "fully commingled") refers to a system in which all paper fibers and co-mingled containers are mixed together in a collection truck, instead of being sorted into separate commodities (newspaper, cardboard, plastic, glass, etc.) by the resident and handled separately throughout the collection process. In single stream, both the collection and processing systems must be designed to handle this fully commingled mixture of recyclables. Acceptable Waste for Single Stream Recycling more fully described on Exhibit F, includes, but not limited to all of the following:

Paper-Cardboard: newspapers (including all inserts), magazines, catalogs, telephone

books, brown paper bags, white and colored office type paper, computer paper, junk mail (paper materials only), paperboard, soft and hard cover books, stationery, envelopes, booklets, pamphlets, greeting cards, manuals with glued bindings, file folders, corrugated cardboard, spiral notebooks.

Glass containers (clear and colored), metal containers (tin cans), including empty paint and aerosol cans, aluminum cans, aluminum food containers and foil, plastic containers, including but not limited to #1-7, aseptic containers, milk and juice cartons (caps, labels, lids and rings need not be removed).

Any other recyclable materials, which may be mandated by any state or federal agency, provided they are capable of being accepted without modification to the existing single stream processing facility or which the parties may agree upon.

"Site" the place to which Fall River shall cause waste to be delivered by Contractor. The current Site is the Fall River ^{TRANSFER STATION} ~~Landfill~~ unless changed in accordance with this Agreement.

"Unacceptable Waste" includes, but is not limited to the materials set forth on the list of Acceptable and Unacceptable Waste (Exhibit G) explosives and ordnance materials, pathological waste, radioactive waste, hazardous waste, mercury, cesspool or other human or animal waste, highly flammable substances, human and/or animal remains, motor vehicles and parts, large machinery, waste oils, any type or kind of Hazardous Material as defined herein or materials deemed "Waste Ban" items by the Massachusetts Department of Environmental Protection (except "Waste Ban" items that can be recycled shall be deemed to be Acceptable Waste when set out for Single Stream Recycling Collection), construction or building materials including earth, stone, cement and gravel, and any other debris left from work performed in residences

including castings, sheetrock, plaster, lumber, doors and windows; leaf and yard waste including sod, landscaping and tree debris such as tree logs and stumps.

"Waste" any waste, by-pass waste, or waste residue ordinarily collected, hauled and delivered to or handled by any other trash or recycling collector, hauler, or processor pursuant to any written contract or agreement with the City in effect at any time during the period covered by this Agreement.

"Waste Ban Items" are prohibitions according to 310 CMR 19.017 on the disposal and transfer of certain toxic and/or recyclable items: glass, metal and plastic containers; paper, including cardboard; leaf and yard waste; asphalt pavement, brick, concrete, metal, wood (except as disposed at combustion facilities), certain batteries, white goods, cathode ray tubes (TV and computer monitors), and tires (except as disposed at combustion facilities).

SECTION 1.02 Interpretation. The words "herein", "hereby", and "hereof" and such general terms of reference as may be utilized in this Agreement shall pertain to this Agreement as a whole, including any exhibits, attachments, schedules or annexed material forming part of this Agreement and referenced in it. The singular of any term defined in this Agreement shall encompass the plural and the plural the singular, unless the context indicates otherwise.

ARTICLE II

Representations

SECTION 2.01 Representations of Fall River. Fall River makes the following representations as the basis for the undertakings on the part of EZ herein contained:

- (a) Fall River is a municipal corporation and political subdivision of the Commonwealth of Massachusetts, duly created and existing under and pursuant to the

Constitution and laws of the Commonwealth;

(b) Fall River has full power and authority to enter into this Agreement, to carry out the transactions contemplated by this Agreement and to perform its obligations under this Agreement.

(c) Fall River has by proper action duly authorized the execution and delivery of this Agreement.

SECTION 2.02 Representation of EZ. EZ makes the following representations as the basis for the undertakings on the part of Fall River herein contained:

(a) EZ is a Massachusetts limited liability company duly organized, validly existing and in the good standing under the laws of the Commonwealth of Massachusetts and is in the business of collecting and hauling municipal solid waste;

(b) EZ has the authority and legal capacity to enter into this Agreement and perform its obligations hereunder in accordance with the terms of this Agreement;

(c) The execution, delivery and performance by EZ of this Agreement and transactions contemplated thereby, are within its corporate powers, have been duly authorized by all necessary corporate and other action and do not and will not:

(i) violate any provision of its incorporation papers or bylaws, as amended to date or of any securities issued by EZ;

(ii) constitute or result in a breach of or default under or conflict with any statute or other law, or any order, judgment, award, decree, regulation, ruling or requirement of any court or other tribunal, or any arbitrator or of any governmental or administrative authority, commission or agency, or any indenture, agreement, lease, instrument or other undertaking, to which EZ or its associates, affiliates or related

entifies is a party or by which it or its property or assets may be bound or affected;

(d) EZ Disposal acknowledges and agrees that the City has separate agreements for recycling and solid waste disposal. Such separate agreements include contracts with Casella Recycling, Republic Allied Services, and WasteZero, Inc. that require certain actions on the part of the City or its agents. EZ Disposal, upon and after full review, agrees to take no action that would in any way violate the terms and conditions of those contracts. Further, EZ Disposal represents that it is familiar with and has read the aforementioned contracts and shall not do any act or thing violative of said contracts.

(e) This Agreement constitutes a legal, valid and binding obligation of EZ, enforceable against EZ in accordance with its terms.

SECTION 2.03 Mutual Covenant. The parties covenant, as a condition of each other's obligations to exercise all and every prudent effort to develop and implement necessary long- term strategies to eliminate, avoid or mitigate any possible events of Force Majeure, Change in Law or other events which would increase costs in any way for the other party.

ARTICLE III

Agreement

SECTION 3.01 Agreement. EZ agrees to, at its own expense, perform all the work and furnish all vehicles, equipment, and labor for collecting and transporting all of the Acceptable Waste and Single Stream Recycling collected within the City of Fall River during the term of this Agreement, all in accordance with the terms and provisions of this Agreement and in a proper, thorough and workmanlike manner, and to the reasonable

satisfaction of the Public Works Commissioner or his/her designee.

ARTICLE IV

Term of Agreement

SECTION 4.01 Term of Agreement. The term of this Agreement shall begin on the Effective Date and shall continue through June 30, 2026 (unless this Agreement is earlier terminated as provided herein).

ARTICLE V

Trash Collection; Additional Collections; Bulk Items;

Single Stream Recycling; Yard Waste, Roll-Offs

SECTION 5.01 Collection - Trash. The City of Fall River trash collection program utilizes green 95, 65 or 35 gallon, blue 95, 65 or 35 gallon and pink 65 and 35 gallon carts to service legal units receiving curbside collection by the City of Fall River. EZ personnel will maintain and repair the carts from City supplies. These carts will be owned by the City of Fall River and retained by residents. Any trash outside the cart will not be collected unless specified in Sections 5.02 and 5.05.

SECTION 5.02 Trash Dumpster Collection. The City of Fall River collects trash at sites indicated in Exhibit B, from municipal and school sites. Additional dumpster collections will be modified to a rate per pick-up. These will be non-dedicated commercial routes. City owned compacting units may replace dumpsters at the public schools. The City shall be responsible for any site preparation, if any, (cement pads, electrical, building modifications) that may be required for compactor units to be installed. All dumpster collection sites are required to recycle according to the same requirements as a single unit site.

SECTION 5.03 Bulk Items. By appointment only, EZ will collect bulky items weekly from each legal residential unit that receives City trash and recycling services and has a paid bulky item ticket or sticker for each bulky item to be collected. The cost of these collections is included in the annual lump sum cost as set forth in Section 7.01. The City agrees to provide EZ with an electronic list of addresses and items to be collected no later than 3:30 pm on the day previous to the designated collection day (i.e. Monday by 3:30 pm for Tuesday's collections).

SECTION 5.04 Single Stream Recycling. All recyclable materials covered hereunder shall be collected as single stream recycling. Occupants of legal residential units receiving curbside collection by the City of Fall River shall place all recyclable materials in a blue 95, 65 or 35 gallon or green 95, 65 or 35 gallon or pink 65 and 35 gallon cart(s) for collection and EZ shall collect recyclable materials from these carts at curbside. All acceptable recyclable materials must be inside the cart to be collected.

EZ shall collect all recyclables from municipal and school buildings in either wheeled carts or dumpsters as directed by the Commissioner of Public Works. (Exhibit B, Schedule 2).

Dumpster collections shall occur at a frequency set forth in the applicable schedule in Exhibit B, Schedule 2. However, at no extra charge, EZ shall allow extra recycling collections at all schools.

SECTION 5.05 Single Stream Recycling Collections at Dumpster Locations. All sites with a trash dumpster service must also recycle. Recycling may be in a dumpster(s) or carts. Compacting units may replace dumpsters at the Fall River Public Schools. City shall be responsible for any site preparation, if any, (cement pads, electrical, building

modifications) that may be required for compactor units to be installed.

SECTION 5.06 Yard Waste. Yard waste shall be collected curbside weekly on the same schedule from legal residential units that receive trash and recycling collection services from the City of Fall River and shall be delivered to Tiverton, Rhode Island for 36 weeks per year. The dates of yard waste collection shall be approximately mid-March through early-December, weather pending. The City reserves the right to establish these dates. The city shall designate 2 weeks for the collection of Christmas trees. Any additional collection weeks beyond 36 per year will be subject to an additional fee as agreed to by the parties. Yard waste shall be brought to the Town of Tiverton, Rhode Island. In the event delivery location changes, price shall remain same so as long as new location is not more than 10 miles from Fall River.

SECTION 5.07 Roll-Off Units: 2-30 CY Metals, 1-40 CY Tires, 2-30 CY C&D, 1-40 CY Public Recycling, and 2-40 CY Yard Waste Containers Located at the DPW Yard will be on call.

ARTICLE VI

Diversion of Waste

Intentionally Deleted

ARTICLE VII

Trash Fees, Escalation and Payment Single Stream Recycling Revenue/Costs

SECTION 7.01 Trash Fees. The annual fee for collection and haul shall be determined as follows:

The fee for all collection and haul services for trash and recycling by EZ shall be as set forth in Exhibit A. The annual fee for collection and haul during the

first two (2) Service Years of the Agreement shall be the rate set forth in Exhibit A. The fee is based upon one (1) cart issued for trash collection and one (1) cart issued for single stream recycling collection to the residential household units requiring curbside collection and 3 green carts, and 3 blue carts for Multi-Family Residences as described in Sections 5.01 through Sections 5.07 and as determined by the City. In addition, all dumpsters currently collected at municipal and school sites listed in the applicable schedule in Section 13.02 will continue to be collected as provided in Section 13.01. Should the Massachusetts Prevailing Wage Rate, in any contract year after year 2, increase by more than 2%, then the annual price shall be further adjusted up to, but not exceeding 2.5%.

SECTION 7.02 Intentionally Deleted.

SECTION 7.03 Trash Compactors, Roll-Offs and Additional Dumpsters. New dumpster locations (trash and/or recycling) will be added at per pick up rates.

SECTION 7.04 Trash Payment. EZ shall be paid monthly based upon 1/12 of the annual lump sum payment as determined in Section 7.01. Each monthly payment shall be determined in accordance with the methods provided herein. There shall be no other cost or charges for any work performed under this Agreement. Payments in whole or in part will be made for the faithful performance of this Agreement, less any penalties for noncompliance.

At the end of each month, EZ shall render to the City a monthly statement for an amount equal to one twelfth (1/12) of the agreed upon annual fee plus any additional itemized fees.

Invoices submitted within ten days after the end of the previous month for work performed during the preceding month will be paid no later than thirty days from the date of invoice subject to the collection of expenses and/or defaults to be

reimbursed to and deducted by the City, and subject to the City's right to terminate the contract upon payment of the then-applicable Termination Fee set forth in Exhibit A hereto.

ARTICLE VIII

Disputes

SECTION 8.01 In the event of any dispute as to any portion of any monthly or other bill, Fall River shall pay any undisputed amounts as set forth in Section 7 and shall give written notice of the disputed portion to EZ. Such notice shall identify the disputed portion of the bill, state the amount in dispute and set forth the grounds on which such dispute is based. No Event of Default shall result from a failure to pay or late payment during any dispute. EZ shall give consideration to such dispute and shall advise Fall River with regard to its position relative thereto within twenty (20) days following the receipt of such written notice. Upon final determination (whether by agreement, mediation, arbitration, or otherwise) of the correct amount, any difference between such correct amount and such full amount shall be added to or subtracted from the statement next submitted to Fall River after such determination. During the pendency of any dispute as to the amounts owed, both Fall River and EZ shall continue performing their respective obligations under this Agreement.

SECTION 8.02 The parties agree to use their respective best efforts to resolve any dispute(s), which may arise regarding this Agreement. If a dispute arises that cannot be resolved among the parties involved in the daily management and implementation of this Agreement, the Director of Community Maintenance or his/her designee and the Company's senior operations manager or his/her designee shall use their respective best efforts to resolve such dispute within thirty (30) days of the City's notice to EZ. If those

individuals are unable to resolve the dispute within a reasonable time period, the parties agree to submit the dispute to alternative dispute resolution in the form of non-binding mediation (within sixty days of the City's notice to EZ) for resolution prior to seeking to enforce this Agreement by arbitration.

ARTICLE IX

Default and Remedies, Termination

SECTION 9.01 Events of and Remedies of Default.

(a) In the event of the breach by either party of an obligation under this Agreement, the right to recover damages or to be reimbursed as provided herein will ordinarily constitute an adequate remedy. Therefore, neither party shall have the right to terminate this Agreement for cause for any breach unless an Event of Default on the part of the other party shall have occurred and be continuing.

(b) The continued failure after notice or refusal by a party to fulfill any of its material obligations in accordance with this Agreement shall constitute an Event of Default, unless such failure or refusal shall be excused or justified by a Force Majeure Event, provided, however, that no such failure or refusal shall constitute an Event of Default unless and until:

(i) The affected party shall have given prior written notice to the party allegedly in breach stating that in the affected party's opinion a particular default or defaults (to be described in reasonable detail in such notice) exist, which will, unless corrected, constitute a material breach of this Agreement on the part of the party allegedly in breach and which will, in the affected party's opinion, give it a right to terminate this Agreement for cause under this Section unless such default is corrected within ten

(10) days, and

(ii) the party allegedly in breach shall have neither corrected such default nor initiated reasonable steps to promptly and successfully correct the same within ten (10) days from the date of the notice given pursuant to this Section, or has not succeeded in correcting such default within sixty (60) days of such notice or a longer period if the default cannot reasonably be cured in 60 days and such party is using best efforts to cure the default.

SECTION 9.02 Termination on Default. If any party shall have a right of termination for cause in accordance with this Section, the same may be exercised only by written notice of termination given to the party in default. The proper exercise of such right of termination shall be in addition to and not in substitution for such other remedies, whether damages or otherwise, as the party exercising the right of termination may have. Failure by either party to provide such notice of termination in the event of a default, or to terminate this Agreement upon a failure by the breaching party to cure such default, shall not act as a waiver of any prior or subsequent default, nor as a waiver of the right to terminate in the event of default.

SECTION 9.03 Termination. This Agreement shall not be terminated by either party under any circumstances, whether based upon the default of the other party under this Agreement or any other instrument or otherwise, except as specifically provided in this Agreement.

Section 9.04 Early Termination Fee. Notwithstanding anything to the contrary in this Agreement, in consideration of the Discount offered to the City by EZ for Service Year 1 and Service Year 2 of this Agreement, and in the event the City terminates this Agreement early for any reason, whether with or without cause, including, but not limited

to, the failure of the City to appropriate sufficient funds to pay all sums due or to become due to EZ during the then-current Service Year of this Agreement or the City's then-current fiscal year, whichever is applicable, the City agrees to immediately pay EZ the then-applicable Early Termination Fee set forth in Schedule A without demand, deduction, abatement, offset, suspension, deferment, counterclaim, diminution, or reduction of any kind.

Article X

Force Majeure Events

SECTION 10.01 Force Majeure Events. A non-performing party shall be excused without cost or liability to the other, for failure or delay in performance of any obligation set forth in this Agreement, by reason of a Force Majeure Event. This provision shall not, however, relieve the non-performing party from using all reasonable efforts to overcome or remove such Force Majeure Event as soon as legally possible, nor from providing immediate notice to the other party of such Force Majeure Event. Such failure or delay shall be excused at any time during which performance is prevented by such Force Majeure Event, and during such period thereafter as may be reasonably necessary for the non-performing party to correct the adverse effect of such Force Majeure Event, provided that the non-performing party shall use its best efforts to obtain a stay or appeal of any Force Majeure Event constituting a Change in Law if in the non-performing party's good faith judgment, after consultation with counsel, such action is warranted. The non-performing party shall give prompt notice of a Force Majeure Event to the other party. The non-performing party shall attempt to remedy with all reasonable dispatch the cause or causes constituting a Force Majeure Event.

SECTION 10.02 Strikes, Work Slowdown. No strike, lockout, work slowdown or similar industrial or labor action, labor dispute or labor shortage shall constitute a Force Majeure Event for the residential collection and haul of Acceptable Waste. If such occurs, EZ shall assign whatever management or other personnel from EZ including but not limited to EZ personnel from other districts to provide sufficient manpower to provide the same/continuing level of trash collection and haul services as referenced in this Agreement with the City of Fall River.

ARTICLE XI

Assignment or Amendment of Agreement

SECTION 11.01 Assignment of Agreement.

(a) This Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties to this Agreement provided, however, that except for any assignments authorized hereunder, neither this Agreement nor any interest herein shall be transferred or assigned by either party hereto except with the consent in writing of the other party hereto, and any attempt to the contrary to assign without such consent shall be void, except as provided in subparagraph (b) herein.

(b) Subject to subparagraph (c) herein, EZ may not assign, nor delegate its obligations under this Agreement without the express written consent of Fall River. If EZ makes such an assignment, it shall remain responsible for the performance bond provided in Article XXI until such time as assignee posts a performance bond acceptable to the City, to be renewed annually for the balance of the term of this Agreement, equal to the total annual Collection Fee. EZ's obligations under this Section 11.01(b) shall be an essential and material term of this Agreement. Any

assignment in violation of this provision is void.

(c) In the event of bankruptcy, takeover or merger, outright purchase, majority stock purchase by another organization, or any assignment for the benefit of creditors, the City may, at the election of the City:

(i) terminate this Agreement with all pertinent contractual conditions herein affected in favor of the City, or

(ii) fully obligate the newly formed organization, corporation and/or legal entity to fulfill all terms and conditions of the contract, and to perform in accordance with the specifications or descriptions contained herein. Notwithstanding the foregoing, failure of a permitted assignee to perform shall not relieve EZ of its obligations to fulfill the terms and conditions of the contract as set forth herein.

SECTION 11.02 Amendment of Agreement. This Agreement may not be amended except in writing agreed to, executed and delivered by the parties hereto. It is contemplated by both parties that amendment to this Agreement may be necessary during the term of this Agreement.

Article XII

Insurance

SECTION 12.01 Claims. EZ shall provide insurance coverage (Exhibit E) as will protect EZ performing work covered by this Agreement and the City of Fall River and its employees, agents and officials from all claims set forth below which may arise out of or result from EZ's operations under this Agreement, whether such operations be by EZ or by anyone directly or indirectly employed by EZ, or anyone for whose acts EZ may be liable:

(a) claims under workers' or workmen's compensation, disability benefits, and other similar employee benefit acts;

(b) claims for damages because of bodily injury, occupational sickness or disease, or death of EZ's employees;

(c) claims for damages because of bodily injury, sickness or death of any person other than EZ's employees;

(d) claims for damages insured by usual personal injury liability coverage which are sustained (i) by any persons as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (ii) by any other person;

(e) claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and

(f) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership maintenance, or use of any vehicle.

SECTION 12.02 Minimum Limits. Prior to the execution of this Agreement, EZ shall obtain and deliver to the City of Fall River certificates of insurance as specified hereunder. During the performance of the work, EZ shall maintain insurance of the kinds and at least the amounts specified hereunder, and in a form satisfactory to Fall River. This insurance shall be provided at EZ's expense and shall be in full force and effect during the full term of this Agreement.

a)	Statutory Workers' Compensation Employer's Liability, per occurrence	Statutory \$1,000,000
b)	Comprehensive General Liability Insurance, including contractual and products/completed operations	\$1,000,000 per occurrence \$2,000,000 per occurrence
c)	Comprehensive Automobile Liability Including non-owned and hired vehicle Hired:	
	Bodily injury and property damage	\$1,000,000 per occurrence
d)	Comprehensive Excess Umbrella	\$5,000,000 per occurrence

SECTION 12.03 Certificates. Not later than the commencement date of the Agreement, and annually thereafter for the term of this Agreement or any extension thereof EZ shall furnish Fall River with certificates of insurance, in triplicate, evidencing coverages set forth above and such certificates shall contain a provision that Fall River shall be given thirty (30) days advance written notice by registered mail of any change in or cancellation of coverage. The description of each coverage listed on the certificates shall include an appropriate means of identification, referencing the coverage to the corresponding paragraph

subdivision listed above.

EZ shall not commence the work until proof of compliance with this article has been furnished to the City of Fall River. The City of Fall River shall be named an additional insured party under all General liability policies covering or applicable to Residential Collection and Haul under this Agreement to the extent of EZ's obligations hereunder. If the City is damaged by EZ's failure to maintain such insurance, then EZ shall be responsible for all reasonable costs attributable thereto. Failure to comply with the requirements of this section on the part of the EZ shall be considered an Event of Default under this Agreement.

ARTICLE XIII

Residential Collection and Haul Covenants

Trash and Recycling

SECTION 13.01 Operation. EZ shall provide residential collection and transport of the entire quantity of the City of Fall River's Acceptable Waste generated or present within its corporate boundaries for the term specified in Section 4.01. Collection shall occur at curbside, and from municipal and school dumpster units and compactor units specifically identified in Section 13.02 or as directed by the Director of Community Maintenance or his/her designee and in accordance with the provisions of this Article XIII. EZ shall take and acquire title to Acceptable Waste from the City of Fall River collected by EZ at the time EZ removes waste from curbsides in Fall River by loading same into collection vehicles under its control or transports the same in accordance with the provisions of this Article XIII. Title to all Unacceptable Waste shall remain with the City of Fall River. EZ agrees to support efforts to identify the generator of any Unacceptable Waste but the City shall exclusively bear the costs of remediation for such Unacceptable Waste. EZ shall deliver all

Acceptable Waste to the disposal Site at the Fall River land fill or other site designated by the City of Fall River Director of Community Maintenance and shall not permit the diversion of waste from such facility unless the City of Fall River agrees or directs such diversion.

SECTION 13.02 Frequency of Collection and Haul of Trash and Single Stream Recycling. EZ shall collect and haul Acceptable Waste at least once per week from every residential dwelling within Fall River that has City collection service limited to single, 2-, 3-, 4-, 5- and 6-family buildings, special businesses set forth in Exhibit H (or their successors) and at all municipal and school buildings as set forth in the attached Exhibit B.

As of the commencement date of this Agreement, EZ shall collect Acceptable Waste from municipal buildings on the following schedule:

TRASH: See Exhibit B, Schedule 1.

RECYCLING: See Exhibit B, Schedule 2.

EZ shall ensure that no wastes other than that to be collected and hauled under the provisions of this Agreement shall be placed into the collection vehicles used for Residential Collection and Haul, except for vehicles collecting from locations with dumpsters, pursuant to the provisions of this Agreement. The City agrees to encourage households to place only Acceptable Waste in collection containers.

SECTION 13.03 Work Week. EZ shall provide Residential Collection and Haul of all Acceptable Waste on a daily basis during a five-day work week, commencing on Monday and concluding on Friday. No Residential Collection and Haul shall occur on legal holidays which fall within the five day work week. When a collection day falls on a legal holiday, the collection route shall be collected the day after the legal

holiday and the remaining collection routes for that week shall be delayed by one (1) day, unless otherwise directed by the Commissioner of Public Works and mutually agreed upon by the parties. If a legal holiday falls on a Sunday and is celebrated on the following Monday, then the collection and haul schedule shall be the same as a holiday week schedule, delayed by one (1) day. Should the City of Fall River recognize additional legal holidays during the term of this Agreement, such legal holidays shall be added to this Agreement's definition of legal holidays and all parties shall conform their conduct and obligations under this Agreement accordingly.

If, in case of an emergency and with prior approval of the Director of Community Maintenance, a collection route is to be run on a legal holiday, EZ shall, at its expense, notify the public in Fall River of the holiday collection by advertisement in local newspapers and on local radio and on local access TV channels. EZ shall also insure that holiday collection can be accepted by the disposal site to which the collected waste is hauled. There shall be no Residential Collection and Haul on weekends (Saturday and Sunday) unless such collection is the result of a legal holiday during the work week, an emergency or EZ has received prior approval of the Commissioner of Public Works.

SECTION 13.04 Time of Collection. EZ shall not commence Residential Collection and Haul within Fall River before 7 AM. EZ shall complete the removal of all Acceptable Waste from curbside or dumpsters on each daily collection route and those collection vehicles used to satisfy the Agreement's obligations shall leave Fall River on or before 5 PM. EZ acknowledges and agrees that the timely completion of daily collection routes is an essential and material condition of this Agreement. EZ shall not permit any Acceptable Waste set out for collection in accordance with applicable local ordinances and scheduled for collection

on that day's Collection Route, as specified hereunder, to remain uncollected later than 5 PM of the collection day or overnight at the conclusion of the collection day, unless specifically and expressly permitted in advance by the Director of Community Maintenance, at which time the material shall be collected at the beginning of the next business day unless deemed otherwise by the Commissioner of Public Works. If EZ repeatedly fails to satisfy its obligations for timely collection and transport, it warrants to cause additional collection vehicles and personnel to be used to promptly remedy such failure.

The Contractor shall provide storage for its equipment, adequate to provide all weather, year- round operation. Adverse weather, extreme cold temperatures and snow accumulations, unless state- of-emergency conditions prevail shall not be grounds for the cancellation or delay of Residential Collection and Haul in accordance with this Agreement, unless both parties agree that collection should not occur for safety or health reasons. EZ shall schedule collection and haul from schools at such times as shall insure the safety of pupils and other personnel. The schedule of school collections shall be subject to the reasonable review and approval by the Commissioner of Public Works.

SECTION 13.05 Collection from Curbside. EZ shall collect all Acceptable Waste deposited on the curbside in accordance with all applicable local ordinances, as they may be amended from time to time, not earlier than 7:00AM or later than 5:00 PM on a scheduled collection route unless permission is given by the Director of Community Maintenance. The Acceptable Waste, except for separately handled Bulky Waste, is to be placed in proper containers distributed by the City to each household and Contractor shall not be required to collect waste left outside or around the City issued containers, unless specifically

allowed by ordinance or as a result of Section 5.02 and 5.05. Unless otherwise authorized by the Director of Community Maintenance, EZ shall not collect as part of its trash collection any waste placed on the curbside for Single Stream Recycling collection.

Residents are required to place carts at curbside according to City ordinances within three (3) feet of the edge of the roadway with the cart opening facing the street.

If any portion of the collection route is temporarily blocked or inaccessible for any reason, the Director of Community Maintenance shall provide notice and consultation to EZ regarding a planned blockage and collections shall be performed at a time as the parties agree will allow Contractor access to the Acceptable Waste. EZ shall be responsible for the Residential Collection and Haul of Acceptable Waste only when such waste is placed in accordance with the provisions of local ordinances. EZ shall notify the Commissioner of Public Works daily in a prompt manner of all locations at which EZ failed to collect waste and the reason(s) for non-collection.

If during collection, waste is spilled onto a street, sidewalk or private property, or if at any time waste is spilled or dumped out of a collection vehicle prior to disposal, EZ shall immediately cause the spilled waste to be cleaned up and placed in the collection vehicle before the vehicle proceeds to the next stop on the collection route or shall promptly make all other necessary arrangements for the immediate cleanup of the spilled waste. The lids, doors and other openings of the collection vehicles shall remain closed between stops and all waste shall be securely stored and covered in a collection vehicle prior to the removal of such waste from Fall River. At all times, while in service in the City of Fall River, all vehicle bodies shall be properly plugged to prevent liquid from leaking onto the City streets.

SECTION 13.06 Collection from Dumpsters. EZ shall collect waste from dumpsters from Fall River School Buildings as set forth in the applicable Schedules in Exhibit B.

SECTION 13.07 Acceptable Waste. Acceptable Waste is defined in Article I. At no time shall EZ collect items as part of its trash collection that are considered "Waste Ban", "Recyclable" and/or "Unacceptable Waste" items as defined in Article I; provided however, that EZ may collect recyclable items meeting the Specifications set out for collection as part of Single Stream Recycling.

SECTION 13.08 Stickers. EZ shall place City-provided tickets or stickers on any items not considered Acceptable Waste or which do not meet the collection standards as defined in this section for proper collection and haul according to this Agreement. Sticker types include but may not be limited to the following:

- Failure to use City Required Bags
- Collection Notice
- Not Accepted for the Following Reasons
- Yard Waste
- Others as directed by the Commissioner of Public Works

SECTION 13.09 Collection Vehicles and Equipment. EZ shall use a sufficient number of collection vehicles and equipment commonly used for the collection of residential waste which are capable of collecting Acceptable Waste and waste from dumpsters within the hours of 7:00 AM -5:00 PM, and which are further capable of transporting the collected Acceptable Waste directly to the disposal facility and mechanically dumping directly into the waste pit of such site. EZ warrants that by the Commencement Date of this Agreement, it shall own new equipment or already have existing equipment

and/or have the exclusive right to use a sufficient number of existing collection vehicles and all necessary equipment, including reserve equipment in case of breakdowns of vehicles or equipment, so that there shall be no unnecessary delay in Residential Collection and Haul of all Acceptable Waste in accordance with the provisions of this Agreement. New vehicles put into service pursuant to this Agreement shall be state of the art vehicles capable of collection. All vehicles and/or employees of EZ in the performance of this Agreement shall have access to communications equipment, which operates on frequencies that shall not interfere with existing area frequencies or mobile communications. Each vehicle shall carry communications equipment. Communications equipment shall be assigned to a specific vehicle. The City shall have the power at any time to order a reasonable increase in the number of vehicles EZ has assigned to perform this Agreement, at no additional cost to the City, if in the judgment of the Director of Community Maintenance such an increase is necessary for the fulfillment of the Agreement. If upon receipt of such order, EZ fails to comply with such order within 10 days, or fails to respond with adequate reason why the increase is not warranted, such failure shall constitute a breach and default of the Agreement, and EZ shall forfeit in the form of liquidated damages the sum of \$100.00 for each day EZ fails to comply with such order.

The bodies of the trucks to be used for the collection and haul of Acceptable Waste shall be industry standard vehicle and body as used in the collection of solid waste. The bodies shall be watertight, readily cleanable and sanitary, and capable of being unloaded by dumping or automatic push-out means. The equipment shall be essentially a

standard product of a reputable manufacturer, so that continuing service and delivery of spare parts may be assured. The component parts of the unit need not be a product of the same manufacturer. The body shall be so mounted that when fully loaded, the axle loading shall fall within the maximum load limit per axle as prescribed by state law.

EZ shall also have available for constant use "chase" vehicles that will inspect and follow-up each Collection Route daily to assure that collections are made in accordance with provisions of this Agreement. Such "chase" vehicles shall also be used to check complaints and make immediate collection of Acceptable Waste from complainants or where not otherwise properly collected. Chase vehicles may also be used to pick up identified special citizen circumstances as outlined in the City's trash collection ordinance.

EZ shall not use collection vehicles used in the performance of its obligations under this Agreement or marked "City of Fall River" for any purpose or in any other manner than in the performance of this Agreement, unless the Commissioner of Public Works has received prior notice. Prior to 7:00 AM on any operating day, EZ shall give notice and identify the collection vehicles which are to be used for collection and haul in the City of Fall River on that operating day. Such notice shall also identify when, where and for whom collection vehicles permanently marked as provided below will be used on that operating day if such use is not for Fall River and shall also identify which collection vehicles marked as provided below are under repair on such operating day or will otherwise not be in use for any purpose on that operating day. Prior to 7:00 AM on any non-operating day, EZ shall give notice and identify collection vehicles permanently marked which will be used for any purpose other than for the collection and haul of the City of Fall River's Waste on that day, indicating when, where and for whom such services will be provided.

In the event that EZ elects to use a collection vehicle for any purpose other than for the collection and haul of the City of Fall River's Waste after the commencement of the collection in Fall River by such vehicle, then EZ shall give immediate notice of such use to Fall River. Any collection vehicle which has provided collection services to any entity other than Fall River shall be emptied and cleaned by EZ and shall be inspected by both EZ and Fall River prior to the use of such vehicles for collection of Fall River's Waste.

SECTION 13.10 Identification. EZ and Fall River shall agree to the size and type of identification to be used for all vehicles employed in the performance of this Agreement, but such identification must include the prominent identification of "City of Fall River", affixed on all collection vehicles which are substantially dedicated to the collection and haul of Fall River's Waste under this Agreement, provided, however, that all vehicles used for collection and haul of the City of Fall River's Waste, whether substantially dedicated to the collection and haul of the City of Fall River's Waste or not, must have prominent identification of "City of Fall River" affixed to such vehicle while it is engaged in the collection and haul of the City of Fall River's Waste under this Agreement. Any vehicle marked as required in this paragraph shall have such identification covered at all times when it provides services to any entity other than the City of Fall River.

SECTION 13.11 Inspection. EZ shall present any and all collection vehicles and other equipment used for Residential Collection and Haul under this Agreement for inspection and approval by the Director of Community Maintenance at such times and places as he/she may reasonably request. Prior to the Commencement Date of this Agreement, EZ shall furnish the Commissioner of Public Works with a list of all such vehicles, including on such list the make, body type and registration for each vehicle. EZ shall file updates to this list so

that the Commissioner of Public Works has at all times an accurate list of vehicles and equipment currently being used by EZ in Residential Collection and Haul. EZ shall notify the Commissioner of Public Works prior to the addition of another vehicle or the substitution of any vehicle. New or substitute vehicles shall be inspected and approved prior to being used by EZ in Residential Collection and Haul under this Agreement. EZ shall affix the identifying information required in this section to any substitute vehicle prior to using such vehicle in Residential Collection and Haul. All equipment used by EZ shall be subject to inspection for sanitation, safety, and appearance, and subject to approval or rejection by the City at any time. The City of Fall River also reserves the right to inspect the premises garaging the vehicles and equipment including the right to enter upon any property owned or occupied by EZ provided reasonable notice is provided to the Contractor.

SECTION 13.12 Condition. EZ shall maintain all collection vehicles, reserve vehicles and all other vehicles and equipment used in Residential Collection and Haul in good condition and repair, including being neatly and uniformly painted and rust free, properly identified as provided hereunder and thoroughly clean, throughout the term of this Agreement, all in accordance with industry standards, so that at no time during the term of this Agreement is EZ unable to comply with any and all provisions of this Agreement due to the condition of its vehicles or equipment. EZ shall make adequate provision for maintenance and prompt repair of its equipment. All equipment used in the collection and transport of Acceptable Waste shall be thoroughly cleaned both inside and outside, at least once a week and sprayed with such deodorizing material as may be deemed necessary by the City of Fall River.

SECTION 13.13 Cleanliness. EZ shall see that all vehicles and equipment used in

Residential Collection and Haul are at all times clean, in good repair and kept in a sanitary condition in accordance with industry standards. Any collection vehicles stored, parked or garaged in the City of Fall River overnight shall be completely unloaded and cleaned prior to such storage, parking and garaging, although this Agreement does not contemplate parking, storing or garaging in Fall River, except as expressly provided by the Commissioner of Public Works.

SECTION 13.14 Employees. EZ shall have available at all times the necessary labor force to collect and haul waste according to the terms of this Agreement. EZ shall also have a reserve of labor available to cover vacations and sick leave. The City requires CORI on all EZ employees. EZ agrees to provide the driving records of any EZ employee driving on Fall River collection routes.

EZ agrees to interview current city sanitation employees for possible employment. Candidates will be required to pass a CORI check and drug check.

SECTION 13.15 Competence. Employees of EZ are the main contact with City of Fall River residents. Employees are therefore required to act in a courteous and respectful manner at all times, and shall be fully prepared to answer questions or complaints made by residents concerning trash collection. All employees shall conduct themselves appropriately towards all members of the general public. Rude and offensive conduct, including foul and abusive language, shall not be tolerated and shall be considered a condition of this agreement.

EZ shall supply sufficient personnel, including supervisory and management personnel, to perform Residential Collection and Haul in accordance with the provisions of this Agreement. EZ agrees that whenever Fall River notifies EZ in writing that an employee of EZ while performing Residential Collection and Haul services under this Agreement is

incompetent, disorderly, under the influence of alcohol and/or drugs, uses insolent or improper language to members of the public or is otherwise unsatisfactory in any manner, including the operation of collection vehicles, or is not employed in accordance with the provisions of this Agreement, EZ shall promptly investigate such complaint. If EZ is unable to correct the problem, EZ shall no longer assign such employee to perform Residential Collection and Haul duties under this Agreement.

EZ shall provide each employee with proper training, instructions and handouts to ensure the employee understands and can communicate to the residents which materials are acceptable and not acceptable for trash collection, including any special preparation requirements.

All employees in service under this Agreement shall use every effort to ensure that recyclable items as defined in Article I are not collected as trash, but rather as part of the Single Stream Recycling collection as contemplated under this Agreement.

SECTION 13.16 Level of Service. EZ shall familiarize itself with all customs and procedures of the City relative to trash collection and haul and hereby agrees to adopt and incorporate these customs and procedures in the performance of its duties hereunder, including the City's ordinance addressing trash collection. These procedures include but are not limited to the collection, transport and disposal of all items currently collected in the City as described in this Agreement. Notwithstanding anything to the contrary in the provisions of this Agreement, this Agreement shall be construed to require EZ to provide at least the same level and quality of trash pickup and disposal services that have been previously provided by the City of Fall River, and as defined by the Director of Community Maintenance.

SECTION 13.17 Training and Licenses. EZ warrants that all vehicle operators shall be trained in public safety, driving safety and basic first-aid prior to their commencement of services hereunder, and shall, at all times while performing Residential Collection and Haul services under this Agreement, possess and carry the necessary valid and applicable Commercial Driver License (CDL) issued by the Commonwealth of Massachusetts or State of bearer's residence. EZ warrants that any of its employees driving on Fall River collection routes shall have a good driving record. The Commissioner of Public Works shall have the right to review the public safety and driving safety training provided by EZ to all vehicle operators.

EZ shall use its best efforts to see that its vehicle operators comply with all applicable traffic and motor vehicle laws, regulations and local ordinances while performing Residential Collection and Haul services. The Director of Community Maintenance reserves the right to require that all drivers periodically produce their licenses for examination.

SECTION 13.18 Clothing. EZ's personnel who are employed in the collection of Acceptable Waste shall be dressed in suitable clothing, identified as EZ employees and shall be clean and neat in appearance.

SECTION 13.19 Contractor Representative. EZ shall provide a representative to whom all orders and directions pertaining to Residential Collection and Haul shall be given by the Director of Community Maintenance. The EZ Representative or a duly authorized designee capable of acting in place of the EZ Representative, shall be on-call and reachable within two (2) hours, during the days of collection. EZ shall make a representative available until 5:00 PM during days of collection. EZ agrees that

whenever the City of Fall River notifies EZ in writing that the EZ Representative is incompetent, unresponsive to complaints concerning the level of performance of collection and pickup services, or is unable to communicate with members of the public in a tactful and satisfactory manner, EZ shall investigate such complaint. If EZ is unable to correct the problem, EZ shall no longer assign such individual to serve as the EZ Representative, and EZ shall provide a new EZ Representative.

SECTION 13.20 Presence in Fall River. The EZ Representative shall be physically present in Fall River at all times during actual performance of this Agreement, and EZ shall maintain adequate telephone service with local telephone numbers 24 hours a day, which may include an answering service after-hours, to allow the timely performance of Residential Collection and Haul in accordance with the provisions of this Agreement. The EZ Representative shall have a mobile phone.

SECTION 13.21 Complaints. The EZ Representative shall contact the Director of Community Maintenance or his/her designee at or before 10:00 AM and again at or before 3:00 PM during each work day to receive complaints, which the EZ Representative shall promptly remedy. All complaints regarding collection and pickup reported before 2 PM shall be investigated and resolved by the EZ Representative on the same day, unless otherwise mutually agreed by the Director of Community Maintenance or his/her designee and the EZ Representative. All attempts will be made to resolve complaints received after 2:00 PM on that same day. Otherwise the EZ Representative shall file a report (written or verbally as agreed upon) to the Director of Community Maintenance or his/her designee before 10:00 AM on the day following the day the complaint was received. Such report shall describe the complaint and the action taken to resolve the complaint. All reports of non-

collection of waste shall be filed with the Commissioner of Public Works on the day following the non-collection.

Failure to satisfactorily resolve any complaint, no matter how or when communicated to the EZ Representative, may result in the imposition of liquidated damages as provided in this Article.

SECTION 1322 Records. Intentionally Deleted.

SECTION 1323 Collection Routes. The City of Fall River will provide to EZ the Collection Routes, including maps, indicating streets, or portions thereof, to be collected on each day of the schedule. Each address shall be scheduled for collection this same day of each week, holidays excepted. No modification to the Collection Routes shall be made without the prior written approval of the Commissioner of Public Works. The City shall reserve the right to require EZ to modify the collection schedule and/or routes, type and care of vehicles and equipment for the health and safety of the City and the public, provided such change does not result in EZ incurring additional cost. The cost of providing notice of same to the Fall River public as may be reasonably required by the Commissioner of Public Works will be borne by the party requesting the change to the Collection Routes.

SECTION 1324 Modification of Routes. Fall River and EZ will define the Collection Routes. Prior to any modification of the Collection Routes approved and implemented on the Effective Date of this Agreement at EZ's request, EZ shall submit the proposed collection route changes, together with street maps, to the Commissioner of Public Works for final approval. Prior to any modification of the Collection Routes approved and implemented on the Effective Date of this Agreement at the City's request, the City shall furnish the proposed collection route changes, together with street maps, to EZ. Any

changes to the Collection Routes implemented after the Effective Date of this Agreement shall continue to permit the collection, transport, and disposal of approximately 1/5 of the total amount of Acceptable Waste typically collected during the work week.

If the Collection Route modification, or any other modification, is approved by the City of Fall River, the City of Fall River in cooperation with EZ shall issue and deliver, at EZ's expense, if the change was requested by EZ, or at the City's expense, if the change was requested by the City, notice of Collection Route modification to all parties or members of the public in areas within Fall River affected by the Collection Route modification. This notice shall be delivered to every household within the area affected no later than 30 days before the new collection routes take effect and shall include EZ's name and address, telephone number for complaints, the date the Collection Route modification shall commence and the new day of the week when Acceptable Waste should be set out for collection. This notice shall also contain a summary of Fall River ordinances and regulations governing residential trash collection and recycling.

After the Collection Route modification takes effect, additional notices shall be left by EZ at each household within the affected area as often as the Commissioner of Public Works deems necessary. EZ shall also advertise the Collection Route modification in the local newspaper and Fall River Web Site no less than two (2) successive weeks prior to the effective date of the Collection Route modification. The newspaper advertisements shall contain the same information as the notices to be left at the households, and shall be in a form approved by the Commissioner of Public Works. The cost of the advertisements shall be borne by the party requesting the change or modification of the Collection Route.

SECTION 13.25 Health Regulations. EZ shall comply with all applicable rules and regulations that may be issued by the City's Board of Health, including vehicle registration fees and the State Department of Health.

SECTION 13.26 Care of Property. EZ shall use its best efforts to see that trash carts are not damaged. Empty receptacles shall be left right side up, in a standing position and in the appropriate place where found.

At no time shall trash be scattered about the street or on private property. Trash which was accidentally spilled by EZ, shall be immediately picked up by EZ and removed. EZ must carry tools on each truck for the proper removal of spilled debris, i.e. brooms, rakes, shovels, etc. At all times the trash body shall be properly plugged while the vehicles are in the City so liquid does not spill onto the City streets.

Section 13.27 Replacement. If in the City of Fall River's judgment, carts are damaged or destroyed by EZ's personnel, EZ shall at its expense promptly replace the damaged or destroyed cart with a similar cart.

Section 13.28 Cart Maintenance. EZ shall repair carts at curbside for the City of Fall River with spare materials from the City stockpile (wheels, axles, lids, lift bars, etc) in a timely manner, no later than two weeks from the damaged cart notice by the resident. Spare wheels and axles shall be carried as stock in each vehicle.

Section 13.29 Property. Any damage to public property by EZ's personnel during Residential Collection and Haul shall be promptly repaired or paid for by EZ, or may be repaired by the City of Fall River and the cost thereof deducted from any monthly payment due EZ under the terms of this Agreement.

Section 13.30 Weighing Tonnages. If the disposal by EZ of the City of Fall River's waste is terminated for any reason, the weighing of waste tonnage collected and hauled by EZ shall be undertaken by EZ in a commercially reasonable manner, provided that EZ must separately weigh and tabulate, if applicable, (1) waste collected at curbside, (2) City Acceptable Waste and (3) Single Stream Recycling.

Section 13.31 Haul of City Acceptable Waste. Intentionally Deleted.

Section 13.32 Liquidated Damages. In addition to its rights under Article IX, Fall River shall be entitled to assess liquidated damages against EZ for its failure to perform the following specified obligations for Residential Collection and Haul of Fall River's Acceptable Waste. EZ acknowledges and agrees that the liquidated damages provided herein are not penalties but represent a fair measure of damages which will be sustained by Fall River in the event EZ defaults on any of the following specified obligations.

Fall River shall have the right to withhold the amount of liquidated damages assessed by it from any payment owed to EZ as a credit or set-off of such amount, provided the City notifies EZ of the specific assessment in advance of deduction. Fall River's failure to assess liquidated damages shall not constitute a waiver of its rights to hold EZ in default nor does Fall River waive its right to claim and collect damages for the EZ's default on any of its obligations for Residential Collection and Haul by reason of Fall River's failure to provide a liquidated damage hereunder for such default.

1.	Failure to sticker for non-conformance	\$25.00 per occurrence
2.	Failure to immediately pick up waste spilled during Collection at curbside	\$100.00 per occurrence
3.	Failure to promptly pick up waste spilled	

	during haul in Fall River or outside the City boundaries of Fall River if Fall River receives a complaint of such spill	\$100.00 per occurrence
4.	Failure to place waste barrels/receptacles in upright position at approximately the same location upon emptying	\$50.00 per occurrence
5.	Following notice of complaint, failure to collect Acceptable Waste from a specific location on the same day as complaint is registered or by 9 AM the following day if so authorized by the Commissioner of Public Works	\$50.00 per occurrence
6.	Failure to collect Acceptable Waste from 5 or more adjoining locations on the same day as a regular Collection route or by 9 AM the following day if so authorized by the Commissioner of Public Works	\$300.00 per occurrence
7.	Continued violation of traffic laws, ordinance or regulation during collection and haul, after written notice to correct from Fall River	\$500.00 per occurrence
8.	Failure to finish any single Collection route by 5 PM without prior notice to the City	\$500.00 per day
9.	Failure to notify the Commissioner of Public Works prior to the departure of the last Collection vehicle from Fall River, of the time the daily Collection Routes were completed	\$100.00 per day
10.	Use of unmarked or uninspected Collection vehicles	\$300.00 per occurrence
11.	Use of Collection vehicle marked "City of Fall River" for the collection and/or haul of waste other than under the provisions of this Agreement [using vehicle outside Fall River w/out covering Fall River sign]	\$100.00 per occurrence
12.	Failure to clean vehicle or conveyances as provided herein	\$100.00 per occurrence
13.	Knowingly Disposing of Waste Ban Items in	

	with trash	\$1,000.00 per occurrence
14.	Failure to increase number of trucks as provided in Section 13.09	\$100.00 per day
15.	Beginning trash and recycling collections before 7:00 AM	\$100.00 per occurrence

SECTION 1333 Obligation to Assist EZ. EZ shall be responsible for the proper disposal of all waste loaded into its vehicles or otherwise collected by it in Fall River, with payment by Fall River as provided in Article VII Upon request from EZ, Fall River shall use its best efforts to assist EZ in determining the location or generator of any waste collected which fails to conform to the definition of Acceptable Waste. Fall River further agrees that it will suspend EZ's obligation to collect Acceptable Waste from such specifically identified locations until such time as only Acceptable Waste is placed for collection at such location.

ARTICLE XIV

Applicable Law

SECTION 14.01 Applicable Law. This Agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

ARTICLE XV

Severability

SECTION 1501 Severability. If any section, paragraph, clause or provision of this Agreement shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Agreement shall be unaffected by such adjudication and all of the remaining provisions of this Agreement shall remain in full force and effect as though such section, paragraph, clause or provision, or any part thereof so adjudicated to be invalid, had

not been included herein, unless such remaining provisions, standing alone, are incomplete and incapable of being executed in accordance with the intent of the parties to this Agreement.

ARTICLE XVI

Headings

SECTION 16.01 Headings. The Headings in this Agreement are for convenience and reference only and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

ARTICLE XVII

Liability of Parties

SECTION 17.01 Liabilities of Parties. EZ and the City of Fall River shall each be independently responsible and liable for the maintenance and operation of their respective properties and fulfillment of their respective obligations.

17.02 Independent Contractor. In the performance of services pursuant to this Agreement, the Contractor shall be an independent contractor and not an officer, agent, servant or employee of the City. The Contractor is customarily engaged in an independently established business of Solid Waste and Recycling Services or business or trade of a similar nature. The Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, or subcontractors, if any. Neither the Contractor nor its officers, agents, employees, or subcontractors shall obtain any right to retirement benefits, Workers' Compensation benefits, or any other benefit that accrue to City employees.

17.03 No Waiver. No forbearance or assent, express or implied, by either Party with respect to any breach of or default in any term, covenant or condition herein contained on the part of the other to be performed or observed shall constitute a waiver of or assent to any succeeding breach of or default in the same or any other term, covenant or condition hereof.

ARTICLE XVIII

Annual Appropriations

SECTION 18.01 Annual Appropriations. Intentionally Deleted.

ARTICLE XIX

Separate Agreement

SECTION 19.01 Separate Agreement. The obligations of the parties herein under are separate and independent of any obligations of the parties under contracts other than this Agreement which are or may exist.

ARTICLE XX

Entire and Complete Agreement

SECTION 20.01 Entire and Complete Contract. This Agreement along with any schedules and/or attachments attached and incorporated by reference herein, constitutes the entire and complete Agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements or understandings.

ARTICLE XXI

Performance Bond

SECTION 21.01 Performance Bond. EZ shall annually provide the City of Fall River for the term of this Agreement a performance bond securing its satisfactory performance of its obligations under this Agreement. Such bond shall first be submitted to Fall River not later than ten (10) days after execution of this Agreement by EZ, and annually thereafter thirty (30) days prior to July 1 of that year. The performance bond shall be issued by a surety licensed or authorized to issue insurance in the Commonwealth of Massachusetts. This bond shall be in the form acceptable to the City of Fall River. The penal amount of the bond shall be 100 percent of the actual annual amount of the contract. Failure to provide performance

bond requirements shall be cause to terminate this Contract. See Exhibit D.

ARTICLE XXII

Laws and Regulations

SECTION 22.01 Laws and Regulations. EZ shall comply at all times in the performance of this Agreement with all applicable federal, state and municipal laws and regulations. EZ shall keep fully informed of all state and federal laws, municipal ordinances and regulations and any other matter affecting those engaged or employed in the work, or the materials used in the work or in any way affecting the conduct of the work and of all such orders and decrees or bodies of tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency is discovered in the specifications of the Agreement for this work in relation to such law, ordinances, regulation, order or decree, EZ shall forthwith report the same to the City of Fall River in writing. EZ shall at all times observe and comply with, and shall cause all his/her agents and employees to observe and comply with all such existent and future laws, ordinances, regulations, orders and decrees; and shall protect and indemnify the City and the /City Council and their officers and agents against any claim liability arising from or based on the violation of any law, ordinance, regulation, order or decree, whether by EZ or its employees.

ARTICLE XXIII

Change in Law, Costs, Payment

SECTION 23.01 Change in Law Costs. "Change in Law Costs" means for any period and for any Change in Law, the amount, if any, of the increased operating and/or capital cost pertaining to the collection and haul of Acceptable Waste and

attributable to services rendered by EZ under this Agreement, including any amounts resulting from increases in the amount of any tax payable by or on behalf of EZ with respect to the collection and haul of Acceptable Waste. For purposes of this section, the Change in Law costs pertaining to capital costs shall be recovered under generally accepted accounting principles and shall be allocable evenly over the remaining life of this Agreement or the generally accepted life of the capital investment, whichever is greater.

SECTION 23.02 Payment. For each Change in Law that causes EZ to sustain a Change in Law Cost, EZ shall inform the City of Fall River of the nature and cause of the Change in Law, as well as the Change in Law Cost incurred or to be incurred by EZ and shall supply the City of Fall River with such reasonable financial information as requested by the City regarding the Change in Law Costs. Thereafter, the City of Fall River shall pay EZ the Change in Law Cost reasonably incurred, such payment to be invoiced on the monthly statement and to be paid monthly in accordance with the provisions in this section. The Change in Law costs shall not be added to the Collection Fee nor adjusted by the Escalator Factor. If a Change in Law Cost is expected to be incurred beginning at a point in time after the commencement of any Service Year, EZ shall be entitled to receive such cost only at or after the point in time at which such cost is actually incurred.

ARTICLE XXIV

Sales Tax Exemption

SECTION 24.01 Sales Tax Exemption. The City of Fall River is exempt from state sales tax under Chapter 14 of the acts of 1966 and all amendments thereto.

ARTICLE XXV

Prevailing Wage Rates

SECTION 25.01 Prevailing Wage Rates. EZ shall pay the prescribed rates of wages as determined by the Commonwealth of Massachusetts pursuant to Massachusetts General Laws Chapter 149, Section 27F to all employees providing services under this Agreement covered by such wage rates. Rate schedules as of the date of this Agreement are attached as Exhibit C; EZ further agrees to comply with the provisions of Chapter 149, Section 34 of the General Laws as amended.

ARTICLE XXVI

Indemnity

SECTION 26.01 EZ agrees that it is responsible, as an independent contractor, for all operations under this Agreement and for all acts of its employees and agents hereunder, and agrees that it will fully indemnify and hold harmless the City and its officers, and employees from any loss, damage, cost, charge, expense and claim, including reasonable attorneys' fees, which may be made against it or them, or to which they may be subject to the extent caused by the negligent or willful act or omission on the part of the EZ or its agents or employees. In no event whether in contract, tort or otherwise, shall either party be liable to the other for any incidental, consequential, special, indirect or punitive damages.

ARTICLE XXVII

Notices

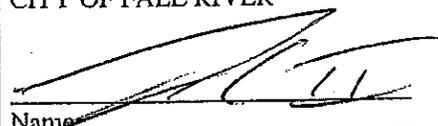
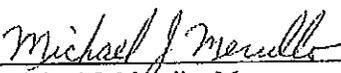
SECTION 27.01 Notices. Any notice, demand, approval, proposal, protest, direction or request provided for in this Agreement to be delivered, given or made shall be in writing except as otherwise explicitly provided herein and shall be deemed given

when delivered by hand, deposited with an overnight courier service or mailed by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

<p>If to Fall River:</p> <p>Mayor City Administrator One Government Center Fall River, MA 02722</p>	<p>With a copy to:</p> <p>Director of Community Maintenance City of Fall River Corporation Counsel One Government Center Fall River, MA 02722</p>
<p>If to EZ:</p> <p>Mr. Michael J. Merullo, Manager EZ Disposal & Recycling, LLC 20 Railroad Avenue Revere, MA 02151</p>	<p>With a copy to:</p> <p>Francis A. Shannon, III, Esq. Shannon Law Associates, Inc. 300 Crown Colony Drive, Suite 504 Quincy, MA 02169 (617) 479-1313 fashannon@shannonlawassociates.com</p>

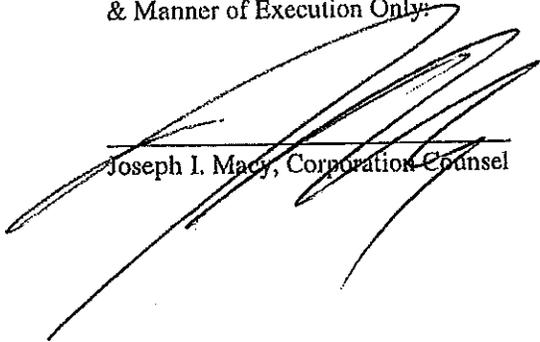
In the event either party changes their address or designee for notice purposes such party must notify the other in writing. Failure to give such notification shall allow this notice given to the above address to be deemed sufficient.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed under seal the day and year first above written.

CITY OF FALL RIVER  Name: _____ Jasiel F. Correia II, Mayor	EZ DISPOSAL & RECYCLING, LLC  Michael J. Merullo, Manager
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1500:001:Contract-FallRiver-EZDisposal-SLA-05-18-16

Approved as to Form
& Manner of Execution Only



Joseph I. Macy, Corporation Counsel

**SCHEDULE A TO
SOLID WASTE COLLECTION AND HAUL
AND SINGLE STREAM RECYCLING AGREEMENT BETWEEN
EZ DISPOSAL & RECYCLING, LLC AND THE CITY OF FALL RIVER**

**SCHEDULE A TO
SOLID WASTE COLLECTION AND HAUL
AND SINGLE STREAM RECYCLING AGREEMENT BETWEEN
EZ DISPOSAL & RECYCLING, LLC AND THE CITY OF FALL RIVER**

Payment Schedule:

Year 1: Total Price - \$3,300,000.00

Month	Payment	Early Termination Fee
1.	\$275,000.00	\$798,168.00
2.	\$275,000.00	\$798,168.00
3.	\$275,000.00	\$798,168.00
4.	\$275,000.00	\$798,168.00
5.	\$275,000.00	\$798,168.00
6.	\$275,000.00	\$798,168.00
7.	\$275,000.00	\$798,168.00
8.	\$275,000.00	\$798,168.00
9.	\$275,000.00	\$798,168.00
10.	\$275,000.00	\$798,168.00
11.	\$275,000.00	\$798,168.00
12.	\$275,000.00	\$798,168.00

Year 2: Total Price - \$3,300,000.00

Month	Payment	Early Termination Fee
1.	\$275,000.00	\$1,678,299.00
2.	\$275,000.00	\$1,678,299.00
3.	\$275,000.00	\$1,678,299.00
4.	\$275,000.00	\$1,678,299.00
5.	\$275,000.00	\$1,678,299.00
6.	\$275,000.00	\$1,678,299.00
7.	\$275,000.00	\$1,678,299.00
8.	\$275,000.00	\$1,678,299.00

9.	\$275,000.00	\$1,678,299.00
10.	\$275,000.00	\$1,678,299.00
11.	\$275,000.00	\$1,678,299.00
12.	\$275,000.00	\$1,678,299.00

All calculations following Year 2 are subject to adjustment pursuant to Section 7.01.

Year 3: Total Price - \$4,473,521.00

Month	Payment	Early Termination Fee
1.	\$372,793.42	\$1,660,816.75
2.	\$372,793.42	\$1,643,334.50
3.	\$372,793.42	\$1,625,852.25
4.	\$372,793.42	\$1,608,370.00
5.	\$372,793.42	\$1,590,887.75
6.	\$372,793.42	\$1,573,405.50
7.	\$372,793.42	\$1,555,923.25
8.	\$372,793.42	\$1,538,441.00
9.	\$372,793.42	\$1,520,958.75
10.	\$372,793.42	\$1,503,476.50
11.	\$372,793.42	\$1,485,994.25
12.	\$372,793.38	\$1,468,512.00

Year 4: Total Price - \$4,558,796.00

Month	Payment	Early Termination Fee
1.	\$379,899.67	\$1,451,029.75
2.	\$379,899.67	\$1,433,547.50
3.	\$379,899.67	\$1,416,065.25
4.	\$379,899.67	\$1,398,583.00
5.	\$379,899.67	\$1,381,100.75
6.	\$379,899.67	\$1,363,618.50
7.	\$379,899.67	\$1,346,136.25
8.	\$379,899.67	\$1,328,654.00
9.	\$379,899.67	\$1,311,171.75
10.	\$379,899.67	\$1,293,689.50
11.	\$379,899.67	\$1,276,207.25
12.	\$379,899.63	\$1,258,725.00

Year 5: Total Price - \$4,645,776.00

Month	Payment	Early Termination Fee
1.	\$387,148.00	\$1,241,242.75
2.	\$387,148.00	\$1,223,760.50
3.	\$387,148.00	\$1,206,278.25
4.	\$387,148.00	\$1,188,796.00
5.	\$387,148.00	\$1,171,313.75
6.	\$387,148.00	\$1,153,831.50
7.	\$387,148.00	\$1,136,349.25
8.	\$387,148.00	\$1,118,867.00
9.	\$387,148.00	\$1,101,384.75
10.	\$387,148.00	\$1,083,902.50
11.	\$387,148.00	\$1,066,420.25
12.	\$387,148.00	\$1,048,938.00

Year 6: Total Price - \$4,734,496.00

Month	Payment	Early Termination Fee
1.	\$394,541.33	\$1,031,455.75
2.	\$394,541.33	\$1,013,973.50
3.	\$394,541.33	\$996,491.25
4.	\$394,541.33	\$979,009.00
5.	\$394,541.33	\$961,526.75
6.	\$394,541.33	\$944,044.50
7.	\$394,541.33	\$926,562.25
8.	\$394,541.33	\$909,080.00
9.	\$394,541.33	\$891,597.75
10.	\$394,541.33	\$874,115.50
11.	\$394,541.33	\$856,633.25
12.	\$394,541.37	\$839,151.00

Year 7: Total Price - \$4,824,990.00

Month	Payment	Early Termination Fee
1.	\$402,082.50	\$821,668.75
2.	\$402,082.50	\$804,186.50
3.	\$402,082.50	\$786,704.25
4.	\$402,082.50	\$769,222.00
5.	\$402,082.50	\$751,739.75
6.	\$402,082.50	\$734,257.50
7.	\$402,082.50	\$716,775.25
8.	\$402,082.50	\$699,293.00
9.	\$402,082.50	\$681,810.75
10.	\$402,082.50	\$664,328.50
11.	\$402,082.50	\$646,846.25
12.	\$402,082.50	\$629,364.00

Year 8: Total Price - \$4,917,294.00

Month	Payment	Early Termination Fee
1.	\$409,774.50	\$611,881.75
2.	\$409,774.50	\$594,399.50
3.	\$409,774.50	\$576,917.25
4.	\$409,774.50	\$559,435.00
5.	\$409,774.50	\$541,952.75
6.	\$409,774.50	\$524,470.50
7.	\$409,774.50	\$506,988.25
8.	\$409,774.50	\$489,506.00
9.	\$409,774.50	\$472,023.75
10.	\$409,774.50	\$454,541.50
11.	\$409,774.50	\$437,059.25
12.	\$409,774.50	\$419,577.00

Year 9: Total Price - \$5,011,444.00

Month	Payment	Early Termination Fee
1.	\$417,620.33	\$402,094.75
2.	\$417,620.33	\$384,612.50
3.	\$417,620.33	\$367,130.25
4.	\$417,620.33	\$349,648.00
5.	\$417,620.33	\$332,165.75
6.	\$417,620.33	\$314,683.50
7.	\$417,620.33	\$297,201.25
8.	\$417,620.33	\$279,719.00
9.	\$417,620.33	\$262,236.75
10.	\$417,620.33	\$244,754.50
11.	\$417,620.33	\$227,272.25
12.	\$417,620.37	\$209,790.00

Year 10: Total Price - \$5,107,477.00

Month	Payment	Early Termination Fee
1.	\$425,623.08	\$192,307.75
2.	\$425,623.08	\$174,825.50
3.	\$425,623.08	\$157,343.25
4.	\$425,623.08	\$139,861.00
5.	\$425,623.08	\$122,378.75
6.	\$425,623.08	\$104,896.50
7.	\$425,623.08	\$87,414.25
8.	\$425,623.08	\$69,932.00
9.	\$425,623.08	\$52,449.75
10.	\$425,623.08	\$34,967.50
11.	\$425,623.08	\$17,485.25
12.	\$425,623.12	\$3.00



CHARLES D. BAKER
Governor

KARYNE POLITO
Lt. Governor

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

Prevailing Wage Rates

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

RONALD L. WALKER, II
Secretary

WILLIAM D. MCKINNEY
Director

Awarding Authority: City of Fall River
Contract Number: City/Town: FALL RIVER
Description of Work: The City of Fall River, by and through its City Administrator seeks proposals for the privatization of municipal solid waste collection and the recycling pick-up program.
Job Location: One Government Center, 6th Floor, Fall River MA

Information about Prevailing Wage Schedules for Awarding Authorities and Contractors

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

Issue Date: 02/17/2016

Wage Request Number: 20160216-016

W C 11

Classification	Effective Date	Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
Trash/Recycle						
Driver (FALL RIVER)	08/01/2016	\$17.99	\$7.90	\$0.00	\$0.00	\$25.89
Laborer (FALL RIVER)	08/01/2016	\$16.91	\$7.90	\$0.00	\$0.00	\$24.81

Additional Apprentice information:

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

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

All steps are six months (1000 hours.)

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

** Multiple ratios are listed in the comment field.

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

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

EXHIBIT D

UNITED CASUALTY AND SURETY INSURANCE COMPANY
1250 HANCOCK STREET QUINCY, MASSACHUSETTS 02169

PERFORMANCE BOND

Bond #8012-052101

KNOW ALL MEN BY THESE PRESENTS: That EZ Disposal & Recycling, LLC 20 Railroad Avenue Revere, MA 02151 (hereinafter called the Principal), and UNITED CASUALTY AND SURETY INSURANCE COMPANY, 1250 Hancock Street Quincy, Massachusetts 02169 a corporation organized under the laws of the Commonwealth of Massachusetts and duly authorized by the Massachusetts Division of Insurance as a Surety (hereinafter called Surety), are held and firmly bound unto The City of Fall River, Massachusetts One Government Center Fall River, MA 02722 (hereinafter called Obligee) in the full and just sum of ~~Three Million Three Hundred Thousand Dollars and 00/100 \$3,300,000.00~~ the payment of which sum, well and truly be made, the said Principal and Surety bind themselves, their and each their heirs, their administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bonded Principal has entered into a certain written contract with the above mentioned Obligee for; Collection Of Trash, Recyclables, Yard Waste and Bulky Items

WHEREAS, the Obligee, by virtue of its acceptance of this performance bond agrees to a bond guaranteeing the performance of said contract on an annual basis, and this performance and payment bond is for a period year (1) one year only for the term identified below. The Surety may, at its sole option, and upon request by Principal, issue Continuation Certificates for additional one year terms and will reflecting the annual increase in contract amount.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bonded Principal shall well and truly keep, do and perform, for each and every, all and singular matters and things in said contract set forth and specified to be performed by the said Principal kept, done and performed at the time and in the manner in said contract specified during the term of this bond, and shall pay over, make good and reimburse to the above named Obligee, all loss and damage which said Obligee may sustain by reason of failure of default on the part of the said Principal, then this obligation shall be void, otherwise to be and remain in full force and effect.

Provided, however, that this bond is subject to the following conditions and provisions:

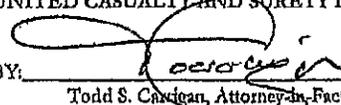
1. This bond is for the term beginning July 1, 2016 and ending June 30, 2017
2. In the event of default by the Principal in performance on the contract during the term of this bond the Surety shall be liable only for the loss to the Obligee due to actual excess costs for performance of the contract up to the termination of the term of this bond. The amount of this bond shall be automatically reduced by the value of the work completed by the Principal.
3. No claim, action, suit, proceeding, except as hereinafter set forth, shall be had or maintained against Surety on this instrument by any person, entity or corporation other than the named Obligee, and unless same be brought or instituted and process served upon the Surety within twelve months after the completion of the contract during the term of this bond, unless said term is extended by Surety under condition 5, or as required by law.
4. Neither non renewal by the Surety, nor failure, nor inability of the Principal to file a replacement bond shall constitute loss to the Obligee recoverable under this bond.
5. This bond may be extended for additional terms at the option of the Surety, by continuation certificate executed by the Surety.

Signed and sealed this 10th day of June, 2016

EZ DISPOSAL & RECYCLING, LLC

BY: _____
Michael J. Merullo, President

UNITED CASUALTY AND SURETY INSURANCE COMPANY

BY:  _____
Todd S. Casigan, Attorney-in-Fact



UNITED CASUALTY AND SURETY INSURANCE COMPANY
QUINCY, MASSACHUSETTS

Power No: 8012

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That UNITED CASUALTY AND SURETY INSURANCE COMPANY, a corporation of the Commonwealth of Massachusetts, does hereby make, constitute and appoint

Todd S. Carrigan

its true and lawful Attorney-in-Fact, with full power and authority, for and on behalf of the Company as surety, to execute and deliver and affix the seal of the Company thereto, if a seal is required, bonds, undertakings, recognizances, consents of surety or other written obligations in the nature thereof, as follows:

Any and all bonds, undertakings, recognizances, consents of surety or other written obligations in the nature thereof

and to bind UNITED CASUALTY AND SURETY INSURANCE COMPANY, thereby, and all of the acts of said Attorney-in-Fact pursuant to these presents, are hereby ratified and confirmed.

This power of attorney is signed and sealed by facsimile under and by authority of the following Resolutions adopted by the Board of Directors of UNITED CASUALTY AND SURETY INSURANCE COMPANY at a meeting duly called and held on the 1st day of July, 1993 which Resolutions are now in full force and effect:

Resolved that the President, Treasurer, or Secretary be and they are hereby authorized and empowered to appoint Attorneys-in-Fact of the Company, in its name and as its acts, to execute and acknowledge for and on its behalf as Surety any and all bonds, recognizances, undertakings of indemnity, waivers of retention and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-Fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected Officers of the Company in their own proper persons.

This power of attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of UNITED CASUALTY AND SURETY INSURANCE COMPANY, at a meeting duly called and held on the 1st day of July, 1993:

That the signature of any officer authorized by Resolutions of this Board and the Company seal may be affixed by facsimile to any power of attorney or special power of attorney or certification of either given for the execution of any bond, undertaking, recognizance or other written obligation in the nature thereof; such signature and seal, when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS WHEREOF, UNITED CASUALTY AND SURETY INSURANCE COMPANY has caused these presents to be signed by its proper officer and its corporate seal to be hereunto affixed this 17th day of September, 2015.

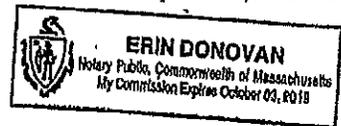
UNITED CASUALTY AND SURETY INSURANCE COMPANY
[Signature]
Todd S. Carrigan, President



Commonwealth of Massachusetts, County of Norfolk ss:

This 17th day of September in the year 2015 before me personally came Todd S. Carrigan to me known, who, being by me duly sworn, did depose and say: that he resides in the Commonwealth of Massachusetts; that he is President of UNITED CASUALTY AND SURETY INSURANCE COMPANY, the corporation described in and which executed the above instrument; that he signed his name thereto by the above quoted authority; that he knows the seal of said corporation; that said seal affixed to said instrument is such corporate seal, and that it was so affixed by authority of his office under the by-laws of said corporation.

[Signature]
Notary Public



I, Timothy M. Carrigan, Treasurer of UNITED CASUALTY AND SURETY INSURANCE COMPANY, certify that the foregoing power of attorney, and the above quoted Resolutions of the Board of Directors of July 1, 1993 have not been abridged or revoked and are now in full force and effect.

Signed and sealed by its proper officer and its corporate seal to be hereunto affixed this day, June 10th, 2016

[Signature]
Timothy M. Carrigan, Treasurer

TO CONFIRM AUTHENTICITY OF THIS BOND OR DOCUMENT CALL (800) 829-2663

**EXHIBIT F TO
SOLID WASTE COLLECTION AND HAUL
AND SINGLE STREAM RECYCLING AGREEMENT BETWEEN
EZ DISPOSAL & RECYCLING, LLC AND THE CITY OF FALL RIVER**

Single Stream Specifications:

As set forth in this contract and as may be further amplified by this exhibit

1500;001:Contract-FallRiver-EZDisposal-SLA-06-09-16-ExhibitF

**EXHIBIT G TO
SOLID WASTE COLLECTION AND HAUL
AND SINGLE STREAM RECYCLING AGREEMENT BETWEEN
EZ DISPOSAL & RECYCLING, LLC AND THE CITY OF FALL RIVER**

Acceptable Trash Waste:

As set forth in this contract and as may be further amplified by this exhibit

1500:001:Contract-FallRiver-EZDisposal-SLA-06-09-16-ExhibitG

EXHIBIT H

2011-12 BUSINESS RECYCLING PROGRAM		PAGE 1 OF 4			
	ADDRESS	DELO	SMALL QANT	LARGE QANT	PAYMENT AMOUNT
IBBO CONTROLS	221 WEAVER ST				\$70.00
PAWTUCKET PAWN BROKERS	002 SO MAIN ST				\$55.00
GABEL TV	804 PLEASANT ST				\$70.00
MUNRO DISTRIBUTING	116 NORTH SEVENTH ST				\$140.00
DE VILLERS PHARMACY	1002 RODMAN ST				\$70.00
KORBER	394 KILBURN ST				\$70.00
FALL RIVER ELECTRIC ASSOCIATES	74 CORNEAU ST				\$140.00
DAVE'S TIRE AND AUTO SERVICE	326 BEDFORD ST				\$55.00
BEASDAYS	1338 DAVOL ST				\$70.00
TANANALYSIS	201 MCGOWAN ST				\$70.00
NORTHDAME FED CREDIT UNION	059 EASTERN AVE				\$70.00
TACO	683 BEDFORD ST				\$280.00
BRISTOL TAPE CORPORATION	682 AIRPORT ROAD				\$420.00
STUDIO VOICE	688 BRAYTON AVE				\$55.00
CONTINUUM ENERGY TECHNOLOGIES	421 GURRANT ROAD				\$280.00
WALSH PHARMACY	202 ROCK ST				\$125.00
RAY STATE TRUCK CAPS	313 MARINE ST				\$70.00
BUNN DONUTS	24 WOODS ISLAND AVE				\$70.00
CITIZENS FOR CITIZENS	234 RUFEN ST				\$140.00
DEBORAH LIGGES, D.D.S.	422 MARANO BISHOP BLVD				\$140.00
RAWDEACODES	401 GURRANT RD				\$110.00
LORRINE ORTHODONTICS	181 ROCK ST				\$140.00
PACHECO INSURANCE	411 COLUMBIA ST				\$55.00
CITIZENS UNION BANK	4 60 MAIN				\$810.00
	51 TROY				\$55.00
	670 ROBESON				\$55.00
	235 STAFFORD RD				\$55.00
BANK OF FALL RIVER	30 BEDFORD ST				\$140.00
	1405 PLEASANT ST				\$55.00
LINDOS	180 ALDEN				\$70.00
PEOPLES INC.	1010 EASTERN AVE				\$140.00
	024 EASTERN AVE				\$70.00
	038 ROCK ST				\$140.00
	170 PLEASANT ST				\$70.00
	126 COVE				\$140.00
AUTO DOO	05 TOWER ST				\$70.00
ST. FRANCIS ANIMAL CLINIC	3302 NO MAIN				\$70.00
BEDFORD FABRIC	870 BEDFORD ST				\$120.00
MELLO ELECTRIC CO. INC	108 MORGAN ST				\$55.00
OILBERTS JEWELERS	1970 PLEASANT ST				\$70.00
ROBBINS MANUFACTURING	1200 AIRPORT ROAD				\$140.00
HEALTH FIRST	102 COUNTY ST				\$70.00
SOUTHEAST CENTER FOR IND. LIVING	30 TROY ST				\$70.00
BOLDEN LIGHT MARINA	1 FERRY STREET				\$210.00
KEYS AUTO PARTS	1200 PLYMOUTH AVE				\$70.00
BRISTOL-PLYMOUTH MFG INC	105 WEAVER ST				\$70.00
BANADY ASSOCIATES, P.O.	399 NORTH MAIN				\$55.00
GEORGE RODRIGUES D.D.S.	1505 PLEASANT ST				\$70.00
PRECISION SPORTSWEAR	54 FRONT ST				\$280.00
EASTERN TRANSMISSION	001 DRAYTON				\$70.00
WILLIAM STARK ARCHITECTS	120 COVE				\$140.00
DOCTORS PLUS	321 RHODE ISLAND AVE				\$55.00
HIGHLAND RESTAURANT SUPPLY	020 ROBESON				\$140.00
TOWER MILLS	057 QUARRY ST				\$140.00
TEKNIKOR	686 AIRPORT ROAD				\$185.00
THE CASTELO GROUP	1032 PLEASANT ST				\$55.00
RAINFORKS UNLIMITED	292 NEW BOSTON ROAD				\$55.00
STOP AND SHOP	333 MARANO BISHOP				\$70.00
BOYS AND GIRLS CLUB	003 BEDFORD ST				\$210.00
BAGNERS RESTAURANT	181 COLUMBIA ST				\$210.00
BHARS AUTOMOTIVE	400 STAFFORD ROAD				\$125.00
WHITE DOG	6 PROSSER LANE				\$210.00
LIGHTOLEN	631 AIRPORT RD				\$400.00
FAMILY SERVICES	101 ROCK ST				\$70.00
HIGHLAND OBSTETRIC	404 HIGHLAND AVE				\$70.00
OFFICE OF FALL RIVER	450 HIGHLAND AVE				\$210.00
KOHAN INSURANCE AGENCY	458 ROCK ST				\$70.00
ANDERSEN LOGISTICS	10 GURRANT				\$140.00
DIAS INSURANCE	516 DRAYTON				\$55.00
FUSION BEAUTY LOUNGE	287 COLUMBIA ST				\$55.00
ONYS RESTAURANT	950 WILSON ROAD				\$55.00
ARTIFICIAL KIDNEY CENTER	40 WEAVER ST				\$70.00
OLD COLONY V. - Donorship Plus Program	230 NORTH MAIN ST (2nd fl)				\$55.00
PLEASANT LIQUORS	878 PLEASANT ST.				\$140.00
THE FERRIS GROUP APTS.	480 ROCK ST (4th)				\$140.00
SOMETHING PRODUCTIONS	91 COLUMBIA ST				\$55.00
BOSTON URICOLOGY INSTITUTE LLC	211 MILKEN BLVD.				\$55.00
WALTER FULMAN CO.	180 LIBERTY ST.				\$70.00
ST. JAMES IRISH PUB	91 PURCHASS ST.				\$125.00
DENTISTRY IN THE HIGHLANDS	078 ROBESON ST.				\$140.00
BAKER SIGN WORKS INC.	1060 PLEASANT ST, UNIT #1				\$70.00
CHURCH OF THE HOLY SPIRIT	720 ROCK ST.				\$70.00
UNITED WAY OF GREATER FALL RIVER	80 NORTH MAIN ST.				\$55.00
CLEAN VU CORPORATION	186 ALDEN ST.				\$200.00
REMAX RIGHT CHOICE	670 ROBESON ST				\$70.00
ZUMS VARIETY	1884 PLEASANT ST.				\$140.00
COUNTY OF BRISTOL, F.R. REENTRY OFFICE	441 NORTH MAIN ST.				\$210.00
PLATINUM COLLISION	6 LAUREL ST.				\$70.00
JOHN'S SHOE STORE	225 RHODE ISLAND AVE				\$70.00
ALBERT AMBULANCE SERVICE	1200 WILSON RD.				\$70.00
FIRST CONGREGATIONAL CHURCH	81 JUNE ST.				\$70.00
GIUSEPPE'S RESTAURANT	66 COLUMBIA ST.				\$140.00
ST. VINCENT & PAUL EXCHANGE STORE	1725 PLEASANT ST.				\$140.00
LAW OFFICE NINA S. WHITE WILLEVER	658 NORTH MAIN ST.				\$55.00

2012-2013 BUSINESS RECYCLING PROGRAM

	Day	Business Name	Address	DEL'D	35 gal	65 gal	Payment
1	Thu	Self Image	954 Stafford Rd				\$70.00
2	Mon	American Legion Post 314	384 Third St				\$70.00
3	Tue	South Coast Center for Prof. Development	45 Rock St				\$70.00
4	Tue	Laurie P. Mullen, Attorney at Law	181 Lindsey St				\$70.00
5	Thu	Mello's Diesel Service, Inc.	185 Williston St				\$70.00
6	Mon	Christaline's Academy of Dance	218 Shove St				\$70.00
7	Tue	Law Office of Nancy C. Stanton	469 Locust St				\$68.00
8	Mon	K & S Laundromat	1001 S Main St				\$70.00
9	Mon	Tech Service Center Inc.	70 William St				\$140.00
10	Mon	Spectrum Transportation	367 So Main St				\$70.00
11	Mon	Physician's Resource Network Inc.	218 Shove St				\$70.00
12	Mon	Santo Christo Club	387 Hope St				\$250.00
13	Mon	Makin Waves	1226 South Main St				\$65.00
14	Mon	Silva's	48 Columbia St				\$65.00
15	Mon	Fall River House of Pizza	1848 S So Main St				\$70.00
16	Tue	Waring - Sullivan	178 Winter St				\$70.00
17	Tue	Ninth St. Day Nursery	633 Highland Ave				\$140.00
18	Wed	Precision Sportswear (on 2011-2012 list too)	54 Front St				\$140.00
19	Wed	Latino's Café	296 County St				\$140.00
20	Wed	Unique Boutique & Gift Shop	1246 Pleasant St				\$65.00
21	Wed	Committee for Public Counsel Services	54 Front St				\$65.00
22	Wed	Allan Auto Sales Inc.	60 N Quarry				\$70.00
23	Wed	Couto's Plaza	1554 Pleasant St				\$140.00
24	Thu	Superior Coin-Op Service Inc.	1839 Pleasant St				\$70.00
25	Thu	Cerbrl Hair Studio	1180 Plymouth Ave				\$65.00
26	Thu	Smith's Lock & Safe	921 Eastern Ave				\$70.00
27	Thu	Vin's Motor Sales Inc.	1426 Plymouth Ave				\$70.00
28	Thu	The Gutter Cleaning Co.	283 Augustus St				\$140.00
29	Thu	J. Marshall Associates	982 Eastern Ave				\$70.00
30	Thu	Sam's Bakery	266 Flint St				\$70.00
31	Mon	E-Z Car Rental	130 Morgan St				\$140.00
32	Mon	Lou's Bakery	379 East Main St				\$210.00
33	Tue	May Institute Inc.	37 Purchase St				\$70.00
34	Thu	American Wallpaper Co., Inc.	44 Troy St				\$70.00
35	Thu	Law Offices of Jane E. Sullivan	824 Brayton Ave				\$70.00
36	Thu	Citizens for Citizens - Aldrich School	295 Harrison St				\$70.00
37	Tue	Saulino & Silvia, P.C.	650 Locust St				\$70.00
38	Mon	Antonio Costa Property Management	227 So. Main St				\$140.00
39	Thu	Fels Bakery & Market	208 Snell St				\$140.00
40	Mon	Choloe Mirti Mart & Smoke Shop	927 So Main St				\$70.00
41	Wed	Rochester Auto Repair	127 Eastern Ave				\$70.00
42	Wed	Action Cycles	326 Pleasant St				\$70.00
43	Tue	Drs. Pavao & Kirdy	654 Weelamoe St				\$140.00
44	Mon	Eagle EMS	567 Spring St				\$70.00
45	Tue	St Michael's Federal Credit Union	60 Gerald St				\$70.00
46	Wed	Flint Village Restaurant	1270 Pleasant St				\$140.00
47	Mon	Pet Partners	139 Shaw St				\$140.00
48	Mon	Mello's Service Station	801 Bay St				\$70.00
49	Wed	Carl's Locksmith Service	1173 Bedford St				\$70.00
50	Thu	Preferred Health Care Services	1102 Plymouth Ave				\$70.00
51	Tue	C.M.G.F.R.	441 No Main St				\$70.00
52	Thu	Auto Loft Inc. Annex	1741 Stafford Rd				\$70.00
53	Tue	Al Mac's Diner	136 President Ave				\$420.00
54	Tue	Meyer, Rean & Wilner, LLP	111 Durlee St				\$140.00
55	Thu	Architectural Star Lighting	21 Father DeValles Blvd				\$70.00
56	Thu	Studio Vogue Salon & Day Spa	598 Brayton Ave				\$70.00
57	Thu	O'Brien's Plumbing, Heating Co., Inc.	63 Alden St				\$70.00

58	Thu	Flawless Cutz	744 Plymouth Ave			\$70.00
59	Wed	George's Auto Tech LLC	581 Pleasant St			\$210.00
60	Wed	Alme's Auto Repair Inc.	88 Earle St			\$140.00
61	Thu	John E. Boyd Center for Child Care & Dev.	208 Rodman St			\$70.00
62	Thu	"	201 Fr. Devalles Blvd			\$140.00
63	Thu	Tony's Towing	69 Napoleon St			\$70.00
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		UPDATED 02.05.2013	TOTALS:			\$880.00

2013-2016 BUSINESS RECYCLING PROGRAM

	Business Name	Address	35 gal	65 gal	Payment
1	Graham's Hot Dogs	931 Bedford St			\$140.00
2	Greater Fall River Association of Realtors	680 Eastern Avenue			\$70.00
3	South Park Mini Mart	594 South Main St			\$70.00
4	Albrite Quality Cleaners	181 Presalient Avenue			\$70.00
5	Joe's Market	1132 Robeson St			\$125.00
6	Mike's Auto Body	635 Bay St			\$140.00
7	John E. Boyd Center	2028 Rodman St			\$210.00
8	Collins Construction Co., Inc.	33 Swindells St			\$70.00
9	Solidground Psychotherapy	620 Locust St			\$70.00
10	Almeida's Floral Design	924 Eastern Ave			\$70.00
11	St. Vincent dePaul Exchange Store	392-398 County St			\$70.00
12	Kid's World Learning Center	225 Robeson St			\$210.00
13	Swimex, Inc.	846 Airport Rd			\$70.00
14	Business for Better Parking Inc.	200 Pocasset St			\$280.00
15	LeAcquire LLC	168 Rodman St			\$70.00
16	Marjo Realty	436 Columbia St			\$210.00
17	Child & Family Services Inc.	68 Troy St			\$140.00
18	Killoran & Killoran, P.C.	350 No. Main St			\$70.00
19	Humberto's Gifts	672 Bedford St			\$70.00
20	Auto Rally, Inc.	18 Thompson St			\$140.00
21	Barlatta Heavy/O & G, JV	104 Anawan St, Suite 11			\$70.00
22	PTP Realty Ltd	202 Rock St			\$280.00
23	Pella Windows & Doors	1325 Airport Rd			\$70.00
24	The Check Place	1433 So Main St			\$70.00
25	BTech Construction Inc.	63 Alden St			\$70.00
26	Aguilar Family Limited Partnership	285 Oliver St			\$70.00
27	Arrow Sign Co.	478 So. Main St			\$70.00
28	Peckham St. Garage	213 Peckham St			\$70.00
29	Allentio Cape Fisheries	140 Waldron Rd			\$70.00
30	Center Place Realty	218 So. Main St			\$140.00
31	East Side Counseling	1311 Bedford St			\$55.00
32	Blount Fine Foods	630 Current Rd			\$125.00
33	Bolger & O'Hearn	47 Slade St			\$70.00
34	Ray's Auto Sales	707 Brayton Ave			\$70.00
35	MBM Realty Trust	2160 So Main St			\$140.00
36	Ramsbottom Printing Inc.	135 Waldron Rd			\$140.00
37	Tiny Toons Club House	215 Lapham St			\$70.00
38	Fall River Philanthropic Burial Society	11 Sullivan Dr			\$55.00
39	Mendonca's Laundry	2832 So. Main St			\$70.00
40	Buoko's Tackle	191 Stafford Rd			\$140.00
41	R.E. Couture Appraisal Service	111 Oak Grove Ave			\$70.00
42	Modern Pontes Bakery	1175 Rodman St			\$140.00
43	South Coast Funeral Home	1555 Pleasant St			\$70.00
44	Modern Bakery	951 Alden St			\$70.00
45	Carpenters Local 1305	239 Bedford St			\$70.00
46	Alexandra's Boutique	372 So. Main St			\$70.00
47	Alsan Company Inc.	75 Fifth St			\$55.00
48	Tech Service Center Inc	70 William St			\$140.00
49	Curly-Up and Dye	238 Plain St			\$70.00
50	Princess Limousine	70 Weybosset St			\$140.00
51	Lizzie Borden Bed & Breakfast/Museum	230 Second St			\$70.00
52	Stop and Save	340 Oak Grove Ave			\$70.00
53	Fall River Mini Mart	837 Bay St			\$70.00
54	Family Service Association	1680 No Main St			\$70.00
55	Graphix Plus, Inc.	62 Queen St			\$140.00
			36,401	35,831	\$6,315.00
		sub total:			

2013-2016 BUSINESS RECYCLING PROGRAM

	Business Name	Address	36 gal	66 gal	Payment
56	Koah's Beauty Supply	284 So Main St			\$70.00
57	Marshall Paper Tube Co., Inc	767 Airport Rd			\$70.00
58	Redd's Suds & Bubbles	418 Quequechan St			\$140.00
59	Properly Revolution	249 Linden St			\$140.00
60	KlearVu Corp.	800 Airport Rd			\$140.00
61	JRI/Fall River TAP	1676 No. Main St			\$70.00
62	Reotoreal Corp	124 Davol St.			\$70.00
63	Fall River Tint	316 Durfee St			\$70.00
64	Yadav Food Mart	127 Stafford Rd			\$70.00
65	H & S Tool & Engineering, Inc.	777 Airport Rd			\$70.00
66	Robert's Tuxedo Co.	310 Rhode Island Ave			\$70.00
67	Mike's Auto Body	636 Bay St			\$140.00
68	A Cellphone Solution	418 Quequechan St			\$140.00
69	Fall River Financial	333 So Main St			\$55.00
70	People, Inc	450 Locust St			\$420.00
71	Rainbow Bears Child Care	46 Bayview St			\$70.00
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	UPDATED 09.21.2015	TOTAL:	105 gal	106 gal	\$371,200.00

EXHIBIT "B"

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.

_____)
TEN TAXPAYER GROUP)
)
Plaintiff,)
)
v.)
)
CITY OF FALL RIVER and Mayor Jasiel F.)
Correia in his Official Capacity)
)
Defendants)
_____)

AFFIDAVIT OF RAYMOND A. MITCHELL

I, Raymond A. Mitchell, hereby states as follows:

1. I am a City Councilor in the City of Fall River. I make this affidavit on personal knowledge unless otherwise noted and submit it in connection with the Ten Taxpayer Group’s Complaint and Petition for Writ of Mandamus, and Plaintiffs’ Motion for a Temporary Restraining Order and Application for Preliminary Injunction.

2. I was directly involved in the appropriation process of the Fall River City Council as a member of the City Council and the Finance Committee. The City Council at its meeting on June 21, 2016 rejected the proposed budget submitted by the Mayor. The City Council has not appropriated any monies authorizing any expenditures for the contract between EZ Disposal & Recycling, LLC (“EZ Disposal”) and the City of Fall River. Chapter 2, Article VI, Division 4, Subdivision IV, Sec. 2-781(a), Chapter 2, Article VII, Division 4, Sec. 2-941, and Chapter 2, Article

VII, Division 4 of the Fall River Ordinances, Sec. 2-944 have not been modified, and to the best of my knowledge there is no proposal currently being considered to modify such provisions.

3. The Sanitation Division is charged with the collection of all residential solid waste and all refuse in the City of Fall River, and the City Council has never authorized any other party to perform such services for the City of Fall River.

Signed under the penalties of perjury this 22ⁿ day of June, 2016.

A handwritten signature in black ink, appearing to read "R.A. Mitchell". The signature is written in a cursive style with a large initial "R" and "M".

Raymond A. Mitchell, Fall River City
Councilor

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.

TEN TAXPAYER GROUP)

Plaintiff,)

v.)

CITY OF FALL RIVER and Mayor Jasiel F.)
Correia in his Official Capacity)

Defendants)

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR
TEMPORARY RESTRAINING ORDER**

INTRODUCTION

Plaintiff Ten Taxpayer Group submits this Memorandum of Law in Support of their Motion for a Temporary Restraining Order and application for preliminary injunction under Mass. R. Civ. P. 65(a).

The plaintiff relies on the Complaint and Petition for Writ of Mandamus and accompanying exhibits attached thereto.

FACTS

The Ten Taxpayer Group are concerned taxpayer inhabitants of the City of Fall River dedicated to effective good government.

On or before June 10, 2016 Mayor Jasiel F. Correia (the "Mayor") executed a contract entitled AGREEMENT FOR COLLECTION AND HAUL OF SOLID WASTE AND SINGLE

STREAM RECYCLING (the “EZ Contract”) that was negotiated purportedly on behalf of the City with EZ Disposal & Recycling, LLC (“EZ Disposal”)¹. The EZ Contract provides an effective date of July 1, 2016² and continues until June 30, 2026³. The contract states in Section 9.03 that it cannot be terminated under any circumstances, but then defines an early termination fee in Section 9.04, what is commonly known as a poison pill. The early termination fee shown on Schedule A of the EZ Contract purports to show certain amounts that would be paid should the city fail to appropriate funds for the contract. The EZ Contract does not have a liquidated damages clause and as such, EZ Disposal can continue to claim liquidated damages, and it is unclear whether the early termination fee is for one month, or is an accumulation of the months shown.

Entering into the EZ Contract also subjects the City to substantial liabilities due to layoffs that will occur with the City’s sanitation workers. Their union has allegedly already filed actions to enforce collective bargaining agreements.

The liabilities incurred by the EZ Contract were not appropriated for by the Fall River City Council (the “City Council”)⁴. On June 21, 2016 the Fall River City Council rejected the Mayor’s proposed budget, which included an appropriation for the EZ Contract. Chapter 2, Article VI, Division 4, Subdivision IV, Sec. 2-781(a) of the Fall River Ordinances provides that “[t]he sanitation division shall collect all residential solid waste and all refuse generally accumulated in the city and shall convey such solid waste to an appropriate disposal area”. The City Council never approved a change to this ordinance. Chapter 2, Article VII, Division 4 of

¹ A copy of said contract is attached as Exhibit “A” to the Complaint.

² EZ Contract, p. 8.

³ EZ Contract, p.15.

⁴ See Affidavit of City Council members attached as Exhibit “B” to the Complaint.

the Fall River Ordinances, Sec. 2-944 provides that all contracts “shall give preference to resident of this city.” The City Council never approved a change to this ordinance.

Finally, Chapter 2, Article VII, Division 4, Sec. 2-941 of the Fall River Ordinances provides that no contract “shall be finally completed, valid and binding on the city unless previously signed by the mayor and also by the officer or the head of the department . . . making the contract.” The EZ Contract was not signed by the head of the department responsible for the collection of waste in Fall River. The City Council never approved a change to this ordinance.

In summary, the facts as presented support the contention that the EZ Contract is null and void and of no legal effect. Any attempt to enforce the contract is against public policy and violates the basic tenets of the laws by which a city is governed.

ARGUMENT

I. THE PLAINTIFFS ARE ENTITLED TO A TEMPORARY RESTRAINING ORDER TO PREVENT THE ENFORCING, EXECUTING, IMPLEMENTING OR OTHERWISE ALLOWING THE CONTRACT BETWEEN EZ DISPOSAL & RECYCLING, LLC AND THE CITY OF FALL RIVER FROM TAKING EFFECT AND TO PRESERVE THE STATUS QUO PENDING A FULL HEARING ON THE MERITS.

The decision to grant a temporary restraining order or preliminary injunction is left to the sound discretion of the trial judge. Commonwealth v. Mass. CRINC, 392 Mass. 79, 86-87 (1984); Packaging Indus. Group, Inc. v. Cheney, 380 Mass. 609, 615 (1980). To succeed, the moving party must show a likelihood of success on the merits and a substantial risk of irreparable harm to the moving party if the requested relief is not granted. Healey v. Commissioner of Public Welfare, 414 Mass. 18, 20-21 (1992); CRINC, 392 Mass. at 87-88; Cheney, 380 Mass. at 617. The judge must then balance the risk of irreparable harm to the moving party if the relief is not granted, against any similar risk to the other party if the relief

is granted. Healey, 414 Mass. at 20-21; CRINC, 392 Mass. at 87-88; Cheney, 380 Mass. at 617. If the balance of these risks cuts in favor of the moving party, the judge may issue an injunction. Healey, 414 Mass. at 20-21; CRINC, 392 Mass. at 87-88; Cheney, 380 Mass. at 617.

Based on the facts set forth herein, the plaintiff should be afforded the requested injunctive relief. If it is not granted, the plaintiff and the people of the City of Fall River stand to lose substantial monies and their right to due process under the law and in equity. The people have an expectation that their government should operate under the statutory constraints, and that no one person should be allowed to circumvent the process of government.

A. The Plaintiff Has A High Likelihood of Succeeding on the Merits.

The Ten Taxpayer Group has a high likelihood of succeeding in this action. The factual issues presented are well established, and the issues presented are primarily interpretations of law. The statutes and ordinances cited herein clearly establish the legitimacy of the claims hereby made, and the fact that the City Council recently rejected the Mayor's proposed budget which included an appropriation for the EZ Contract is clear evidence that the contract is not acceptable to the majority of the Fall River City Council. The EZ Contract is currently of no force and effect, as it was not executed in accordance with the ordinances of the City of Fall River. Further discovery will show that the sanitation workers claims that there was no fair collective bargaining of their contract will reinforce the likelihood of success for this action. The facts presented will clearly show that the Mayor acted ultra vires in executing the EZ Contract.

B. There is a Substantial Risk of Irreparable Harm If The Injunction Is Not Granted.

There is a substantial risk of irreparable harm to the Ten Taxpayer Group and the people

of Fall River. If this injunction is not granted then Plaintiffs will have no recourse, as a ten taxpayer action is only effective prior to the City incurring a liability. Without granting such relief, the taxpayers of the City of Fall River will be stuck with a contract for 10 years that was not approved by the City Council.

In fact, Plaintiffs contend that Defendant endangers the public by entering into the EZ Contract, as the protective clauses within the contract may not be enforceable, and the citizens will be stuck with an agreement for 10 years that is contrary to the laws of the City. [I]t has ... long been settled that the law will not aid either party to an illegal contract to enforce it against the other, neither will it relieve a party to such a contract ... who seeks to reclaim his money or whatever article of property he may have applied to such a purpose." Atwood v. Fisk, 101 Mass. 363, 364 (1869). See Council v. Cohen, 303 Mass. 348, 354 (1939).

C. Balancing the Equities and the Effect on the Parties Compels Injunctive Relief.

A balancing of the equities demonstrates that injunctive relief is appropriate because the Ten Taxpayer Group stands to suffer irreparable injury if the requested relief is not granted. If this injunction is not granted then Plaintiffs will have no recourse. The Defendant Mayor might contend that it will be harmed by the imposition of an injunction, but this is not supported by the facts. City could easily endure the *status quo* if the requested relief were granted. In fact, the City would avoid substantial difficulties and liability for improperly laying off its sanitation workers.

D. The EZ Contract is void and against public policy.

Contract provisions which go beyond the scope of [a] statute are void." White Constr. Co. v. Commonwealth, 11 Mass.App.Ct. 640, 648 (1981), S. C., 385 Mass. 1005 (1982). The proposed contract that Defendant is contemplating is currently contrary to Fall River Ordinances and since it has no approve appropriation, is illegal in the Commonwealth. Defendant's might claim that their could be a change in the ordinance, but such change is a speculation that is beyond the scope of its authority. It is well established that a contract violating public policy will not be enforced. A.Z. v. B.Z., 431 Mass. 150, 160, 725 N.E.2d 1051 (2000). See Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., supra at 320-321, 662 N.E.2d 1015. Defendants are entering into contracts that will tie up the City of Fall River for 10 years. The EZ Contract goes way beyond the scope of what the statutes have authorized, and as such would be considered void because it is illegal at the time it was executed.

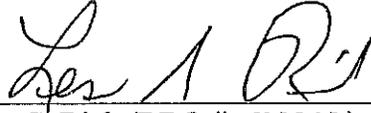
The factors examined by the courts when determining whether a contract violating public policy should be enforced are the following: "the nature of the subject matter of the contract; what was the extent of the illegal behavior; was that behavior a material or only an incidental part of the performance of the contract." Town Planning & Engr. Assocs. v. Amesbury Specialty Co., 369 Mass. at 745-746, 342 N.E.2d 706 (footnotes omitted). Defendant's allege that public policy of promoting the economic interests of the citizens of Fall River are behind its interest to promote the proposed contracts. Plaintiff disagrees, and does not believe that the Defendant has proven what the public's best interest is. Defendant has failed to have open public meetings on the specifics of its proposal, and Defendant has failed to go through a process similar to a modification of an ordinance whereby all facets of the public have an opportunity to voice their concerns.

CONCLUSION

For the above stated reasons, plaintiffs respectfully request that this Honorable Court issue a temporary restraining order in the form attached to plaintiffs' accompanying Motion and that the Court set the application for a Preliminary Injunction down for hearing on the earliest possible date.

TEN TAXPAYER GROUP

Respectfully submitted,
By its Attorney,



Lesley S. Rich (BBO # 638345)
Rich Law Associates
44 Bedson Road
Cranston, RI 02910
Tel: (401)529-1191
Fax: (401)464-4884
Email: LESR313@GMAIL.COM

Dated: June 23, 2016

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.

<hr/>	
TEN TAXPAYER GROUP)
)
Plaintiff,)
)
v.)
)
CITY OF FALL RIVER and Mayor Jasiel F.)
Correia in his Official Capacity)
)
Defendants)
<hr/>	

ORDER

This case came on to be heard upon the plaintiff's application for a temporary restraining order and preliminary injunction. Upon consideration thereof, the Court hereby ORDERS as follows:

The defendant, City of Fall River and Mayor Jasiel F. Correia and any agents, employees, representatives or other persons acting or purporting to act for or on their behalf, are hereby restrained, enjoined, pending further order of the Court from directly or indirectly enforcing, executing, implementing or otherwise allowing the contract between EZ Disposal & Recycling, LLC and the City of Fall River from taking effect.

ENTER:

PER ORDER:

Presented by:

Lesley S. Rich (BBO # 638345)
Rich Law Associates
44 Bedson Road
Cranston, RI 02910
Tel: (401)529-1191
Fax: (401)464-4884
Email: LESR313@GMAIL.COM

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.

TEN TAXPAYER GROUP)

Plaintiff,)

v.)

CITY OF FALL RIVER and Mayor Jasiel F.)
Correia in his Official Capacity)

Defendants)

PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER
AND APPLICATION FOR PRELIMINARY INJUNCTION

Pursuant to Mass.Civ. P. 65(a), the plaintiff, Ten Taxpayer Group, move for the entry of a Temporary Restraining Order in the form attached hereto restraining and enjoining the defendant from directly or indirectly, enforcing, executing, implementing or otherwise allowing the contract between EZ Disposal & Recycling, LLC and the City of Fall River from taking effect, a copy of which contract is attached as Exhibit A to the Complaint contemporaneously filed herewith.

In support of their motion, the plaintiffs rely on their Memorandum of Law In Support of Their Motion for a Temporary Restraining Order, the Complaint and Petition for Writ of Mandamus and accompanying exhibits.

WHEREFORE, Plaintiff Ten Taxpayer Group, moves for the entry of a
Temporary Restraining Order in the form attached hereto.

TEN TAXPAYER GROUP

Respectfully submitted,
By its Attorney,



Lesley S. Rich (BBO # 638345)
Rich Law Associates
44 Bedson Road
Cranston, RI 02910
Tel: (401)529-1191
Fax: (401)464-4884
Email: LESR313@GMAIL.COM

Dated: June 23, 2016

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.

_____)
TEN TAXPAYER GROUP)
)
Plaintiff,)
)
v.)
)
CITY OF FALL RIVER and Mayor Jasiel F.)
Correia in his Official Capacity)
)
Defendants)
_____)

ORDER

This case came on to be heard upon the plaintiff's application for a temporary restraining order and preliminary injunction. Upon consideration thereof, the Court hereby ORDERS as follows:

The defendant, City of Fall River and Mayor Jasiel F. Correia and any agents, employees, representatives or other persons acting or purporting to act for or on their behalf, are hereby restrained, enjoined, pending further order of the Court from directly or indirectly enforcing, executing, implementing or otherwise allowing the contract between EZ Disposal & Recycling, LLC and the City of Fall River from taking effect.

ENTER:

PER ORDER:

Presented by:

Lesley S. Rich (BBO # 638345)
Rich Law Associates
44 Bedson Road
Cranston, RI 02910
Tel: (401)529-1191
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Email: LESR313@GMAIL.COM