

CONTRACT FOR MUNICIPAL SOLID WASTE COLLECTION AND  
RECYCLABLE MATERIAL COLLECTION AND DISPOSAL

Between The TOWN OF TOWNSEND  
And  
G.W. SHAW & SON, INC.

The Town of Townsend, a municipal corporation located in the Commonwealth of Massachusetts by its Appropriate Town Official, duly authorized who, however, incurs no personal liability by reason of the execution hereof or anything herein contained, and G.W. Shaw & Son, Inc. a corporation, having a usual place of business in New Ipswich, New Hampshire, hereinafter designated as the CONTRACTOR, agree as follows:

**ARTICLE I.        DEFINITIONS**

**CONTRACTOR** – Whenever the word “CONTRACTOR” is used in this agreement, it shall mean G.W. Shaw & Son, Inc. of New Ipswich, New Hampshire and will include the CONTRACTOR’s heirs, executors, administrators, successors, and assigns.

**TOWN** – Whenever the word “TOWN” is used in this agreement, it shall be understood to mean the Town of Townsend, Massachusetts, acting through its Appropriate Town Official, as defined below, or his/her designee.

**Appropriate Town Official** – The term “Appropriate Town Official” shall refer to the contract awarding authority (ies) or his/her designee and can be changed by the TOWN from time to time.

**Refuse** – The term “refuse” shall include garbage and rubbish from all municipal establishments and private non-commercial establishments and residences with the exception of sewage, manure, building rubbish, industrial wastes, and materials included in the TOWN's recycling and yard waste programs.

**Rubbish** – The term “rubbish” as used herein shall be defined to mean all non-putrescible waste that is not included in the TOWN's recycling programs. Rubbish shall exclude all excluded waste per Section 2.1 of the Request for Proposals.

**Recyclables** – The term “recyclable” shall mean newspaper and inserts, magazines, books and catalogs, junk mail, phone books, office paper, chipboard/boxboard, corrugated containers (if flattened), clear, green, and brown glass, food and beverage containers, steel and aluminum food and beverage containers, aluminum pie plates and trays, and all plastic bottles, regardless of resin code.

**Leaf and yard waste** – The term “leaf and yard waste” or “yard waste” shall include leaves, grass clippings and tree trimmings, vine cuttings, loose wood and brush when properly tied in bundles or placed in refuse containers not exceeding 75 pounds in weight, 4 feet in length and 30 inches in diameter.

**Building Rubbish** – The term “building rubbish” shall mean rubbish from construction, remodeling, demolition and repair operations on houses, commercial buildings, and other structures, including but not limited to, excavated earth, stones, brick plaster, lumber, rubble, concrete, and waste parts, occasioned by demolitions, installations and repairs including toilets, windows, doors or other building construction or demolition waste.

**Industrial Waste** – The term “industrial waste” shall mean the waste from manufacturing processes, manufacturing operations, food processing plants, slaughterhouses and building rubbish.

**Single Day** – The term “single day” shall mean one day, such that all collection of refuse and recyclables will be completed on a single day for the TOWN.

**Multi-Day** – The term “multi day” shall mean more than one day but no more than five days, such that collection from the TOWN may be completed in two or more days, but no more than five days.

**Conventional Collection** – The term “conventional collection” shall mean the currently accepted method of collecting refuse and recyclables by use of no mechanical means.

**Automated Refuse Collection** – The term “automated refuse collection” shall mean the method of collecting refuse by use of mechanical means.

**Single Stream Recycling** – The term “single stream recycling” shall mean the method of collecting recyclables by use of a single container where all commingled recyclables are placed.

**Holiday** – The term “holiday” when used in connection with days of collection, shall include Sundays, New Year's Day, Martin Luther King Day, President's Day, Patriot's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day and such other days as shall be mutually agreed upon in writing by the CONTRACTOR and the Appropriate Town Official.

**RFP** – Shall mean the Request for Proposals issued by the TOWN.

**Specifications** – Shall mean the specifications included in the RFP.

**CONTRACTOR's Proposal** – Shall mean the proposal submitted to the TOWN in response to the RFP.

**Agreement or Contract** – Shall mean this Agreement between the CONTRACTOR and the TOWN. It shall include the RFP and the CONTRACTOR's Proposal, which are incorporated herein by reference.

## **ARTICLE II. AGREEMENT**

The CONTRACTOR agrees to, at his own expense, perform all the work and furnish all the vehicles, materials, equipment and labor necessary, proper and convenient for the performance of its duties required by and reasonably inferable from the Agreement, including the collecting and transporting of all the refuse, recyclables, and yard waste collected within the Town of Townsend during the term of this 3-year Contract, beginning July 1, 2011 and ending June 30, 2014 subject to annual appropriation, all in accordance with the terms and provisions of this Contract and in a proper, thorough and workmanlike manner and to the satisfaction of the TOWN, whose decision as to matters pertaining to the fulfillment of this Contract shall be final and binding on CONTRACTOR.

Notwithstanding anything to the contrary in this Agreement, in the event of any conflict in and among the terms of this Agreement, the specifications in Part 2 of the RFP and/or CONTRACTOR's proposal, the specifications in the RFP shall control, provided, however, that where giving primacy to the specifications in the RFP does not resolve the conflict, such conflict shall be resolved by requiring of the CONTRACTOR the greater quantity and better quality of services, material, equipment, etc.

## **ARTICLE III. INSURANCE REQUIREMENTS**

The CONTRACTOR shall take out and maintain during the life of the Contract, the following insurance in companies and forms acceptable to the TOWN and in adequate amounts, as shall protect him in performing work covered by this Contract and as shall protect the Town of Townsend and its employees, agents and officials from all claims and liability for damages for bodily injury, including accidental death, and for property damage, which may arise from operations under this Contract. The CONTRACTOR covenants and agrees to defend, indemnify and hold the TOWN and its employees, agents and officials harmless from all losses or damages arising from or in connection with the CONTRACTOR's performance of this Contract, including, but not limited to, economic damages sustained by the TOWN or any third party making claim on the TOWN for the same, and including claims for personal injury and/or property damage arising from or in connection with operations under this Contract.

Except as otherwise stated, the Amounts of such insurance to be obtained by the CONTRACTOR shall be for each policy, not less than the following amounts:

- A. Worker's Compensation: as required by the laws of Massachusetts.
- B. General Liability: Bodily injury liability, including death, \$2,000,000 on Account of any one person and \$2,000,000 on account of any one accident and \$2,000,000 aggregate limit. Extraterritorial and guest clause shall be included.

- C. Property damage liability, \$2,000,000 on account of any one accident, and \$2,000,000 in the aggregate.
- D. Contingent coverage for subcontractors for B. and C. above.
- E. Automobiles and trucks, including hired vehicles: Bodily injury liability, including death; \$2,000,000 on account of any one person; and \$2,000,000 on account of any one accident. Property damage liability: \$2,000,000.
- F. Excess Umbrella Liability coverage of \$5,000,000.
- G. Insurance in name of Town of Townsend: The Public Liability and Property Damage Insurance and Owner's Contingent Policies, as the case may be, shall show the Contract indemnification clause as set forth in Article XI in the manner spelled out hereinafter.
- H. The Town of Townsend will be named as additional insured on all previously named insurance policies.

Failure to provide and continue in force such insurance as aforesaid shall be deemed a material breach of the Contract and shall operate as an immediate termination thereof.

All policies shall be so written that the TOWN will be notified of cancellation or restrictive amendment at least thirty (30) days prior to the effective date of such cancellation or amendment.

Certificates evidencing such insurance shall be furnished to the TOWN at the execution of this Contract. Such certificates shall not merely name the types of policy provided, but shall specifically refer to this Contract and shall state that such insurance is as required by this Contract. The CONTRACTOR shall make no claims against the Town of Townsend or its officers for any injury to any of his officers or employees or for damage to his trucks or equipment arising out of work contemplated by this Contract.

#### **ARTICLE IV. GENERAL REQUIREMENTS**

- A. **Collection Routes** – The CONTRACTOR shall submit in writing and map form to the TOWN for the TOWN's approval, a schedule for the collection of refuse and recyclables. The CONTRACTOR shall strictly adhere to the approved schedule.
  - a. The CONTRACTOR shall make no changes in or deviation from routes and schedules, once established by the TOWN, without the prior written approval of the TOWN.
- B. **Other Conditions** – Rain and snow shall not be cause for omissions of the collection of refuse in accordance with this Contract and the specifications. Collections may be omitted only under extreme adverse weather conditions such as blanketing snowstorms, hurricanes and the like, and even then only with the prior written approval of the TOWN.
- C. **Special Collections** – The CONTRACTOR shall make special collections whenever required by the TOWN in individual cases arising because of complaints or otherwise in accordance with section 2.29 of the specifications.

- D. **Directions** – The CONTRACTOR shall comply with directions that may from time to time be reasonably given by the TOWN regarding changes in routing, order of collections, type and care of vehicles and equipment and such matters as the TOWN deems necessary to protect public health and ensure adequate refuse and recyclables collection services.
- E. **Compliance with Laws, Regulations, and Codes** – The CONTRACTOR shall strictly comply with all applicable federal, state and local laws, regulations and codes, including, but not limited to, the health regulations of the Town and State Department of Health. Failure of the CONTRACTOR to do so shall constitute a material breach of this Contract.
- F. **Collection Equipment** – All vehicles used in the collection and transportation of refuse, recyclables and yard waste shall be of sufficient size and capacity to operate efficiently. A sufficient number of vehicles will be supplied by the CONTRACTOR to collect residential refuse between the hours specified in Section 2.8 of the specifications and the collection schedule approved by the TOWN. The TOWN shall have the power at any time to order the CONTRACTOR to increase the number of vehicles, at no additional cost to the TOWN, if in the TOWN's judgment such an increase is necessary for the fulfillment of the Contract. If upon receipt of such order, the CONTRACTOR fails to comply with such order within ten (10) days, or fails within such period to demonstrate to the TOWN's satisfaction that the increase is not possible or is not necessary, such failure shall constitute a material breach of this Contract, and the CONTRACTOR shall forfeit in the form of liquidated damages the sum of Two-Thousand Five Hundred (\$2,500.00) dollars for each day that the CONTRACTOR fails to comply with such order, said penalty to be imposed for each additional truck ordered by the TOWN but not placed in service by the CONTRACTOR, not as a penalty, but as a reasonable estimation of the damages that may be sustained by the TOWN in the event of such a breach by the CONTRACTOR. In the event the TOWN's actual damages exceed the amount of liquidated damages, the CONTRACTOR shall instead be responsible for actual damages.

Bodies for the trucks to be used for refuse collection shall be enclosed, with a capacity of not less than sixteen (16) cubic yards by actual measurement. 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 and municipal code. The CONTRACTOR shall provide a garage and yard for his equipment, which is adequate and sufficient to provide all weather, year-round operation. The CONTRACTOR shall make adequate provision for maintenance and prompt repair of his equipment. All equipment used for the collection and transportation of refuse shall be thoroughly cleaned both inside and outside, at least once each week and sprayed with such deodorizing material as may be deemed necessary by the TOWN. **All equipment used by the CONTRACTOR shall be subject to inspection for sanitation, safety, and**

appearance, and subject to approval or rejection by the TOWN at any time. The CONTRACTOR will replace rejected equipment as soon as reasonably possible

- G. **Care of Citizens and Municipal Property** – When, in the judgment of the TOWN, refuse receptacles belonging to residents of the TOWN and used for collection of refuse are damaged or destroyed by employees of the CONTRACTOR such receptacles shall be replaced forthwith by the CONTRACTOR at the CONTRACTOR's expense.
- H. **Level of Service** – The CONTRACTOR shall familiarize itself with all customs and procedures of the TOWN relative to refuse collection and recyclable collection and, notwithstanding anything to the contrary herein, hereby agrees to adopt and incorporate these customs and procedures in the performance of its duties hereunder. These procedures include but are not limited to the collection and disposal of all items currently collected by the TOWN. Notwithstanding anything to the contrary in the provisions of this contract and the specifications, this contract shall be construed to require the CONTRACTOR to provide at least the same level and quality of refuse and recyclables pick-up and disposal services as have previously been provided by/for the Town of Townsend, as determined solely by the Appropriate Town Official.

The CONTRACTOR will support parity of service. The maximum number of containers collected from each household shall gradually be adjusted each year by one barrel. The first year of service 5 thirty-three gallon barrels will be accepted; the second year 4 and the third year 3 thirty-three gallon barrels will be accepted from each household. Any household that feels it has "extenuating circumstances" may contact the Board of Health for an adjustment to this limitation. The CONTRACTOR will notify residents that exceed this limit with a written notice. Any refuse not collected by the CONTRACTOR must be left with a "Rejected Refuse" sticker applied in an obvious location, with the reason for rejection checked or stated on the sticker. Failure to place the "Rejected Refuse" sticker with refuse left at the curb will be treated as a missed collection. CONTRACTOR is responsible for any penalties associated with the collection or disposal of unacceptable or banned refuse in compliance with Laws, Regulations, and Codes as listed above.

- I. **Non-Performance** – Whenever, in the TOWN's judgment, the CONTRACTOR has failed to perform according to this Contract, the TOWN shall notify the CONTRACTOR in writing of such failure. The TOWN may terminate the Contract and/or pursue any and all relief permitted by this Contract and law.

## ARTICLE V. PAYMENTS TO CONTRACTOR

- A. The TOWN will pay the CONTRACTOR monthly payments based upon 1/12 of the Annual Lump Sum Payment for refuse and recyclables collection components and payment to cover the disposal cost for the refuse tonnage collected, as agreed upon between the TOWN and the CONTRACTOR. Payments in whole or in part will be made for the faithful performance of this contract, less, any penalties for noncompliance.

To be compensated for the per ton disposal fee, the Contractor must submit with its invoice all weigh slips (weighing in and out) generated from the weigh station. Absolutely no payment will be made for disposal costs should these slips not be provided.

If the TOWN chooses to implement a Pay-As-Your-Throw (PAYT) program and the CONTRACTOR is collecting both refuse and recyclables prior to the implementation, there will not be a price adjustment to this contract. If separate Contractors collect refuse and recyclables, price adjustments will be negotiated based on actual cost impacts and tonnage changes after the first six months of operations.

Payment will be made to the CONTRACTOR within thirty (30) days after receipt of an invoice, subject to the collection of expenses and/or defaults to be reimbursed to and deducted by the TOWN, and subject to the TOWN's right to terminate the Contract. The TOWN shall pay the CONTRACTOR for its performance of the Contract the following amounts:

**For July 1, 2011 through June 30, 2012**

REFUSE COLLECTION AND TRANSPORT	<u>\$396,000.00</u>
DUMPSTER REFUSE COLLECTION AND TRANSPORT	<u>\$included in price</u>
RECYCLABLES COLLECTION, TRANSPORT AND PROCESSING	<u>\$included in price</u>
2 ROLL OFFS FOR BULKIES & C&D	<u>\$included in price</u>
DISPOSAL TIPPING/TONNAGE FEE	<u>\$75.00/Ton</u>

For subsequent years, the contract price will be determined by applying an annual adjustment. The annual total payment will be increased by the increase in the Consumer Price Index (CPI) for the Boston-Brockton-Nashua area for the aforementioned price items based on a time frame from the November to November. The annual increase shall not exceed a maximum of three (3) percent per year. The increase will be made on June 30 of each year.

**ARTICLE VI. CONTRACT EXTENSION**

It is not anticipated that this agreement will be extended beyond the period called for in this contract, however this agreement may be extended at the time of expiration with the mutual consent of both parties.

**ARTICLE VII. INSPECTION AND REPORTS**

The TOWN shall have the right at any time to inspect the equipment and premises, records and books of the CONTRACTOR, including the right to enter upon any property owned or occupied

by the CONTRACTOR, whether situated within or beyond the limits of the TOWN. Whenever requested, the CONTRACTOR shall immediately furnish to the TOWN full and complete written reports of his operations under this Contract in such detail and with such information as the TOWN may request. Failure of contractor to comply with this provision shall constitute a material breach of this Contract.

#### **ARTICLE VIII. EMPLOYEES TO BE COMPETENT**

The CONTRACTOR shall employ only competent persons to do the work and whenever the Appropriate Town Official shall notify the CONTRACTOR that any person on the work is, in his opinion, incompetent, discourteous, disorderly or otherwise unsatisfactory, such person shall be discharged from the work and shall not again be employed under this Contract, except with the consent of the Appropriate Town Official.

#### **ARTICLE IX. PROTECTION AGAINST LIABILITY**

The CONTRACTOR acknowledges and agrees that he is responsible, as an independent CONTRACTOR, for all operations under this Contract and for all acts of his employees and agents hereunder, and agrees that he will indemnify and hold harmless the TOWN and its officers, board and employees from any loss, damage, cost, charge, expense and claim, which may be made against it or them, or to which they may be subject by reason of any alleged act, action, neglect, omission or default on the part of the CONTRACTOR or his agents or employees and will pay promptly on demand all costs and expenses of the investigation and defense thereof, including attorney fees and expenses, and if any claim is made, the TOWN may retain out of any payments, then, or thereafter, due to the CONTRACTOR a sufficient amount to protect itself completely against such claim, cost and expenses, including attorneys' fees incurred by the TOWN, if any.

#### **ARTICLE X. TERMINATION**

The CONTRACTOR agrees that if at any time during the term of this Contract the TOWN determines, in its sole discretion, that the CONTRACTOR is improperly, negligently or incompetently performing the work, or any part thereof, or is unable to the satisfaction of the TOWN to perform the same, or is not complying with the direction of the TOWN, or with any laws, regulations and/or codes, including but not limited to the regulations or orders of the Appropriate Town Officials or is otherwise failing to perform this Contract in accordance with all of its terms and provisions, or is disposing of the refuse without a permit, in any municipality that requires such a permit the TOWN may, at its election at any time thereafter, terminate this Contract, by giving written notice thereof to the CONTRACTOR specifying the effective date of such notice and upon the date so specified, Contract shall terminate.



Notwithstanding anything to the contrary in the Contract, CONTRACTOR agrees that the TOWN may, at its sole discretion, terminate the Contract for convenience and without cause upon 60 days written notice to CONTRACTOR.

#### **ARTICLE XI. PAYMENT FOR DAMAGES**

The CONTRACTOR shall pay to the TOWN all expenses, including attorneys' fees, losses and damages, as determined by the TOWN, incurred as a result of the conduct, misfeasance, omission or mistake of the CONTRACTOR or its employees or the making good thereof. It is further agreed that damage to the TOWN will result from a failure by the CONTRACTOR to collect refuse or recyclables from each building, clean up spilled refuse, maintain clean vehicles, or furnish a collection and disposal schedule, and therefore, the CONTRACTOR agrees to pay and the TOWN agrees to accept the following amounts as liquidated damages, not as a penalty, but as reimbursement for the damages sustained by the TOWN, which the parties acknowledge may be difficult to determine.

- A. Failure to clean up spilled solid waste materials, each instance.....\$100.00
- B. Failure to clean vehicle or conveyances as provided for in the specifications, each instance .....\$100.00
- C. Failure or neglect to collect refuse, recyclables, and yard waste placed at curbside before the daily collection time as provided by this Contract within twenty-four hours of that collection time, each instance .....\$100.00
- D. Failure or neglect to furnish a schedule or a revised schedule of collection and disposal, each instance .....\$100.00
- E. Failure to respond to request for increase in vehicles in accordance with Article IV, Paragraph F, of this contract, per day.....\$2,500.00

The TOWN may deduct ALL damages referred to in this section from any payment then or thereafter due to the CONTRACTOR. In the event that the TOWN's actual damages exceed the liquidated damages permitted under this contract, the TOWN shall be entitled to its full actual damages.

#### **ARTICLE XII. LAWS AND REGULATIONS**

CONTRACTOR agrees to perform all services under this Contract in strict compliance with all federal, state laws and local laws and local bylaws and regulations. The CONTRACTOR shall keep himself fully informed of all state, federal and local laws, and local bylaws and regulations including, but not limited to, such laws and regulations 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 including further all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the services to be performed under this Contract. If any discrepancy or

inconsistency is discovered in the specifications or Contract for this work in relation to any such law, bylaws, regulation, order or decree, the CONTRACTOR shall forthwith report the same to the TOWN in writing. The CONTRACTOR shall at all times observe and comply with, and shall cause all his agents and employees to observe and comply with all existent and future laws, bylaws, regulations, orders and decrees; and shall defend, protect and indemnify the TOWN and the Board of Selectman and their officers and agents against any claim or liability arising from or base on the violation of any such law, bylaw, ordinance, regulation, order or decree, whether by CONTRACTOR or his employees or agents.

#### **ARTICLE XIII. RESPONSIBILITY FOR LABOR AND MATERIALS**

The CONTRACTOR further agrees that he will pay for all labor performed or furnished, and for all material used or employed, and for the rental or hire of vehicles, power shovel, tools and other appliances and equipment used or employed in the carrying out of this Contract, and shall pay all persons who contract with the CONTRACTOR for labor and materials on account of the work herein contemplated and that CONTRACTOR will furnish the Appropriate Town Official at his request with evidence satisfactory to the Appropriate Town Official that all persons who have done work or furnished anything under this contract and all claims of private corporations or individuals for damage of any kind arising from or in connection with CONTRACTOR's activities under this Contract have been fully paid or satisfactorily secured and in case such evidence is not furnished the TOWN may cause to be retained out of any amount due the CONTRACTOR sums sufficient to cover any such unpaid claims, the TOWN may nevertheless cause any moneys retained or to become due to be held and applied to the payments for labor or materials for which security is required under the provisions, of law.

#### **ARTICLE XIV. PERFORMANCE BOND**

The CONTRACTOR shall furnish for the term of this Contract a bond in a form approved by the TOWN and, with a surety company licensed with the Secretary of State and authorized to do business in the Commonwealth of Massachusetts, conditioned upon, the CONTRACTOR fully performing all his obligations under this Contract, including but not limited to the payment of liquidated damages. The penal sum of the bond shall be 50% of the annual amount of the contract, which shall be renewed, for each of the contract years. The bond shall be delivered to the TOWN at the time of execution of this contract. Performance bond renewal each year shall be executed 30 days prior to July 1 of that year. Failure to provide performance bond requirements shall be cause to terminate this Contract.

#### **ARTICLE XV. CHANGE IN LAW**

CONTRACTOR will not be eligible for any additional compensation on account of any change in the laws or regulations affecting its performance under this Contract, and CONTRACTOR shall be required to full comply with the same at no additional cost to the TOWN.

## **ARTICLE XVI. FORCE MAJEURE**

Neither the CONTRACTOR nor the TOWN shall be liable for the failure to perform their duties if such is caused by a catastrophe, riot, war, act of God or other similar or different contingency beyond the reasonable control of the CONTRACTOR or the TOWN.

## **ARTICLE XVII. MAINTENANCE OF SERVICE**

Notwithstanding anything else to the contrary under this contract if by reason of strike, work stoppage or slowdown, etc., CONTRACTOR shall become hindered, slowed or otherwise unable to perform under this contract, CONTRACTOR, shall assign whatever management or other personnel from CONTRACTOR including but not limited to CONTRACTOR personnel from other districts in Massachusetts to provide sufficient manpower to provide the same/continuing level of refuse collection services to the TOWN in accordance with the requirements of this Contract.

## **ARTICLE XVIII. CLARIFICATION OF TERMS**

The term "day" or "working day" shall be interpreted to mean Monday, Tuesday, Wednesday, Thursday, Friday, (and Saturdays when a holiday falls on a working day) exclusive of legal holidays and weekends.

## **ARTICLE XIX. ALL CONTRACTS ARE SUBJECT TO APPROPRIATION**

The compensation provided by the Contract for any services to be rendered is subject to the availability and appropriation of funds, provided, however, that in the event that funds for compensation pursuant to this Contract are not available or have not been appropriated, the TOWN shall cancel this Contract and shall have no further liability to the CONTRACTOR under this Contract. The CONTRACTOR shall be entitled to compensation for all services satisfactorily performed prior to the expiration of the last fiscal year for which an appropriation is available for this purpose.

## **ARTICLE XX. SALES TAX EXEMPTION**

The Town of Townsend is exempt from State Sales Tax under the Sales Act, Chapter 14 of the Acts of 1966 and all amendments thereto. This may be considered when forming contract prices.

## **ARTICLE XXI. PREVAILING WAGE RATES**

This Contract is subject to payment of prevailing wages, and the CONTRACTOR shall make himself aware of and comply strictly with the provisions of Massachusetts General Law, Chapter 149, Section 27F and 31 before filing a Proposal with the TOWN. This law refers to the

prevailing wage rate minimums as set forth by the Massachusetts, Department of Labor and Industries, 100 Cambridge Street, Boston, MA 02202.

The CONTRACTOR shall be responsible to ensure that it pays all prevailing wages applicable to its work under this contract. The TOWN will make available copies of the latest edition of the prevailing wage rates as determined by the Executive Office of Labor and Workforce Development, Division of Occupational Safety; see attachment A.

## **ARTICLE XXII. ASSIGNMENT AND/OR ORGANIZATION CHANGES**

The CONTRACTOR shall not assign the Contract nor sublet it in whole or in part, or delegate any of the work to be performed to any other person, firm, company, corporation, or organization without the prior written permission of the TOWN. The CONTRACTOR shall not assign any monies due, or to become due to him under this Contract, without the previous written consent of the TOWN. Failure to comply with this provision shall constitute a material breach of this Contract.

The bankruptcy, takeover or merger, outright purchase, majority stock purchase by another organization, or other change in ownership or status of the CONTRACTOR, or any assignment for the benefit of creditors, or any other assignment not approved in advance in writing by the TOWN shall, at the election of the TOWN, and in addition to any other rights and remedies are available to the TOWN under this Contract and by law:

- (a) Terminate this Contract.
- (b) Require CONTRACTOR and the assignee to agree in writing that assignee is fully capable and shall be fully responsible to fulfill all terms and conditions of the Contract, and to perform or supply items in accordance with the specifications or descriptions contained herein.

Failure of any subcontractor to perform shall not relieve the CONTRACTOR of its obligation to fulfill the terms and conditions of the Contract as set forth herein.

## **ARTICLE XXIII. RECYCLABLE REBATE**

As an offset to the cost for recyclables collection, the CONTRACTOR shall provide a credit based on the tonnage of recyclable paper. The formula includes a guaranteed minimum payment of \$5 per ton of paper. The credit will be greater if the price for paper in the preceding month exceeds \$50.00 per ton on the "Yellow Sheet Price, second issue of the month for New England #8 News". In those months, the credit will be calculated as 50% of the amount by which the paper price exceeds \$50 per ton. This will be applied to the number of tons of paper and cardboard collected. For example, if the paper price per ton is \$100, the formula would indicate a rebate to the TOWN calculated as:

Recycling Credit =  $(\$100 - \$50) \times 50\% = \$25$  per ton applied to all paper and cardboard tons.

For the proposals for "single stream" collection of recyclable materials (i.e., combining fiber and containers), or if at any point in time, recyclables are collected in a single-stream manner, the rebate formula will be different and will be based on the total tonnage. The formula will be calculated assuming that the portion of the total tonnage of recyclables is 60% paper and 40% commingled containers. The rebate formula will include a minimum of \$5 per ton for ALL recyclables. In months when the paper prices for #8 News exceed \$50.00 per ton, the credit will be calculated as 30% of the amount by which the paper price exceeds \$50 per ton. This will be applied to the total number of tons recycled (including cardboard, paper and all commingled materials). For example, if the paper price per ton is \$100, the formula would indicate a rebate to the TOWN calculated as:

Single Stream Recycling Credit =  $(\$100 - \$50) \times 30\% = \$50 \times 30\% = \$15$  applied to ALL tons of recyclables.

Each month, the CONTRACTOR shall submit an invoice for payment that includes the Recycling Credit for the tonnage of recycling collected in the previous month and will also submit a copy of the applicable page of the "Yellow Sheet" as verification of the market rate assumed. The tonnage of recyclable material collected from curbside and municipal buildings shall be included in all calculations for reports and rebates. Also to be provided with the invoices are the weigh-in slips from the facility at which the recyclables were processed.

#### **ARTICLE XXIV. SEVERABILITY**

In the event any provision of this Agreement shall be held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall attach only to such provision and shall not affect or render invalid or unenforceable any other provision of this Agreement.

#### **ARTICLE XXV. NO WAIVER**

Where any approval of the TOWN is required under this Contract, any such approval, if given, shall not relieve CONTRACTOR of its responsibilities under this Contract and at law.

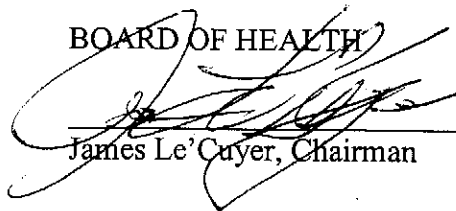
Moreover, no act or omission of the TOWN, including but not limited to the TOWN's performance of its administrative responsibility under the Contract, shall constitute a waiver of any of the TOWN's right under this Agreement and at law. CONTRACTOR agrees that a waiver by the TOWN may only be made in writing that is signed by a authorized representative of the TOWN and expressly and unequivocally states that a waiver is intended, and identified clearly the right or obligation being waived; and even then, such a waiver shall apply only to the right or obligation identified in such writing and to no other, and shall not apply to any subsequent exercise or performance of the right or obligation being waived.

**Contract for  
Municipal Solid Waste and Recyclable Materials Collection and Disposal  
Town of Townsend, Massachusetts**

In WITNESS WHEREOF these parties have signed this \_\_\_\_\_ day of \_\_\_\_\_ in the year of 2011.

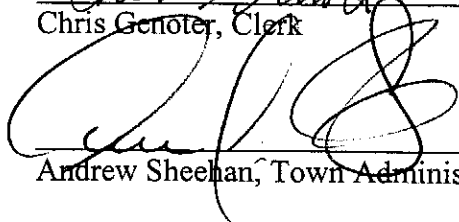
TOWN OF TOWNSEND, MASSACHUSETTS  
BY THE TOWN ADMINISTRATOR, BOARD OF SELECTMEN AND BOARD OF HEALTH

BOARD OF HEALTH

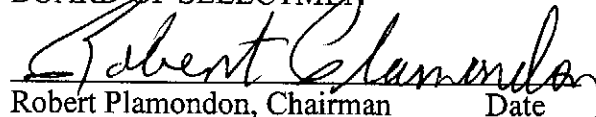
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James Le'Cuyer, Chairman Date


Michelle Dold, Vice Chairman Date

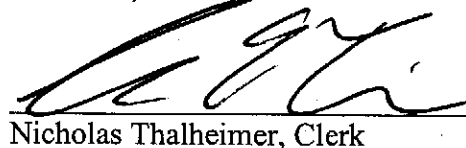
 4/11/11  
Chris Genotter, Clerk Date

  
Andrew Sheehan, Town Administrator


BOARD OF SELECTMEN

 4-26-11  
Robert Plamondon, Chairman Date

 4/26/11  
Sue Lisio, Vice Chairman Date

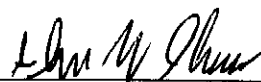
 4/26/11  
Nicholas Thalheimer, Clerk Date

Town Counsel

  
Kimberly Fales, Town Accountant  
(approved as to availability of funds)

(affix corporate seal)

G.W. Shaw & Son, Inc.

By:   
Glen W. Shaw  
G.W. Shaw & Son, Inc.

Date: 6-22-11

**Contract for  
Municipal Solid Waste and Recyclable Materials Collection and Disposal  
Town of Townsend, Massachusetts**

In WITNESS WHEREOF these parties have signed this \_\_\_\_\_ day of \_\_\_\_\_ in the year of 2011.

TOWN OF TOWNSEND, MASSACHUSETTS  
BY THE TOWN ADMINISTRATOR, BOARD OF SELECTMEN AND BOARD OF HEALTH

BOARD OF HEALTH

BOARD OF SELECTMEN

\_\_\_\_\_  
James Le'Cuyer, Chairman      Date

\_\_\_\_\_  
Robert Plamondon, Chairman      Date

\_\_\_\_\_  
Michelle Dold, Vice Chairman      Date

\_\_\_\_\_  
Sue Lisio, Vice Chairman      Date

\_\_\_\_\_  
Chris Genoter, Clerk      Date

\_\_\_\_\_  
Nicholas Thalheimer, Clerk      Date

\_\_\_\_\_  
Andrew Sheehan, Town Administrator

Approved as to form  
Kopelman and Page, P.C.  
by David J. Donnelly  
Town Counsel

(affix corporate seal)

\_\_\_\_\_  
Kimberly Fales, Town Accountant  
(approved as to availability of funds)

G.W. Shaw & Son, Inc.

By: \_\_\_\_\_  
Glen W. Shaw  
G.W. Shaw & Son, Inc.

Date: \_\_\_\_\_

# Attachment A Prevailing Wage Rates



DEVAL L. PATRICK  
Governor  
TIMOTHY F. MURRAY  
Lieutenant Governor

## THE COMMONWEALTH OF MASSACHUSETTS EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT DIVISION OF OCCUPATIONAL SAFETY

### Prevailing Wage Rates

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



JOANNE F. GOLDSTEIN  
Secretary of Labor and Workforce Development  
GEORGE E. NOEL  
Director of Labor  
HEATHER E. ROWE  
Acting Commissioner of  
Division of Occupational Safety

Awarding Authority: Town of Townsend

Contract Number:

City/Town: TOWNSEND

Description of Work: Solid Waste Removal & Recycling Pick-up - Trash and recycling pick-up and disposal for the Town of Townsend and its citizens.

Job Location: 272 Main Street

Classification	Effective Dates and Total Rates	
Trash and Recycle		
Driver	07/01/2011	\$27.350
Laborer	07/01/2011	\$25.100

#### 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, Section 11.

All steps are six months (1000 hours) unless otherwise specified.

- \* Ratios are expressed in allowable number of apprentices to journeymen or fraction thereof.
- \*\* Multiple ratios are listed in the comment field.
- \*\*\* The job site ratio of 2 apprentices (APP) for every 3 journeymen (JM) is allowed as follows:  
1 JM: 1 APP; 2-3 JM: 2 APP; 4-6 JM: 4 APP; 7-9 JM: 6 APP; 10-12 JM: 8 APP; 13-15 JM: 10 APP; etc.
- \*\*\*\* The job site ratio of 2 apprentices (APP) for every 3 journeymen (JM) is allowed as follows:  
1-2 JM: 1 APP; 3-4 JM: 2 APP; 5 JM: 3 APP; 6-7 JM: 4 APP; 8 JM: 5 APP; etc.

This wage schedule must be posted at the work site in accordance with M.G.L. c. 149, § 27. Failure of the employer to pay "prevailing wage rates," which are the minimum wage rates listed above, on public works projects is a violation of M.G.L. c. 149, § 27. Employees not receiving such rates should report the violation to the Fair Labor Division of the Office of the Attorney General, 100 Cambridge Street, Boston, MA 02108; Tel: 617-727-3465. Contractors with questions about the wage rates or classifications included on the wage schedules have an affirmative obligation to inquire with DOS at [www.mass.gov/dos/pw](http://www.mass.gov/dos/pw) or at 617-626-6952.

Issue Date: 02/17/2011

Wage Request Number: 20110216-026

Page 1 of 1



## Attachment B

### Locations to Receive Municipal Service and Contractor-Provided Dumpsters for Refuse

CURBSIDE RECYCLABLES COLLECTED SAME DAY AS NEIGHBORHOOD			
FACILITY	LOCATION	TRASH 34-gallon wheeled barrels OR dumpsters	RECYCLING *
Memorial Hall Fire Annex	272 Main Street	1 – 10 yard dumpster	4-34 Gallon Barrels *
Public Library Senior Center	12 Dudley Road	1 – 10 yard dumpster	2-34 Gallon Barrels *
Police Station	70 Brookline Road	34-gallon barrel	1-34 Gallon Barrel *
Fire/EMS Offices	13 Elm Street	34-gallon wheeled barrel	2-34 Gallon Barrels *
Center Fire Station	Elm Street	34-gallon wheeled barrel	*
W. Townsend Fire Station	Main Street	34-gallon wheeled barrel	*
Harbor Fire Department		34-gallon wheeled barrel	*
Parks & Cemetery Depart.	31 Highland Street	1 – 2 yard dumpster	*
Water Department	540 Main Street	34-gallon wheeled barrel	2 Recycling Bins*
Recycling Center	33 Greenville Road	1 – 10 yard dumpster	4 receptacles: containers, corrugated, bulky and C&D
Highway Department	177 Main Street	1 – 10 yard dumpster	1-96 Gallon toter *

\* = Collection day same as neighborhood