

**AMENDMENT #2 TO THE  
CONTRACT FOR SOLID WASTE SERVICES  
BY AND BETWEEN  
THE TOWN OF WINTHROP  
AND  
CAPITOL WASTE & RECYCLING, LLC**

**THIS AGREEMENT**, made as of this 18<sup>th</sup> day of March 2013, by and between the Town of Winthrop, Massachusetts (hereinafter referred to as the "**TOWN**") as represented by its Town Manager (hereinafter referred to as the "**TOWN MANAGER**") and Capitol Waste & Recycling LLC, 250 Lee Burbank Highway, Revere, MA 02151 (hereinafter referred to as the "**CONTRACTOR**").

**WITNESS THAT:**

**WHEREAS**, the Town of Winthrop and Capitol Waste Services & Recycling, Inc. of East Boston, Massachusetts entered into a contract for solid waste services on or about June 13, 2003 ("Contract").

**WHEREAS**, the **AGREEMENT** was previously amended to extend the term for an additional five-year (5) period.

**WHEREAS**, Capital Waste Services, Inc. is now known as Capital Waste & Recycling, LLC and any and all rights and obligations of Capital Waste Services, Inc. under the Contract have been assigned to Capital Waste & Recycling, LLC, and the **TOWN** has consented to said assignment.

**WHEREAS**, the **TOWN** has appropriated funds to procure solid waste services (hereinafter referred to as "**SERVICES**"; and

**WHEREAS**, Contractor services as outlined in the Scope of Services dated May 2003 relating to the **SERVICES** are consistent with the Town approved budget and incorporated by reference herein;

**AGREEMENT OF THE CONTRACTOR:** That for and in consideration of the payments and agreements hereinafter mentioned:

The **CONTRACTOR** will commence and provide the additional services as specified in the attached **ADDITIONAL TERMS** (Attachment A).

The **CONTRACTOR** agrees to perform all of the work described in this **AMENDMENT** and to comply with the terms and conditions therein for of a lump sum of :

**Fiscal Year #1: (FY 2014): July 1, 2013 thru June 30, 2014-** \$1,081,950.22 (2.25% increase fro FY2013)

**Fiscal Year #2 (FY2015): July 1, 2014 thru June 30, 2015 -** \$1,106,294.10 (2.25% increase from FY2014)

**Fiscal Year #3 (FY2016): July 1, 2015 thru June 30, 2016-** \$1,131,185.72 (2.25% increase from FY2015)

**Fiscal Year #4 (FY2017): July 1, 2016 thru June 30, 2017 -** \$1,156,637.40 (2.25% increase from FY2016)

**Fiscal Year #5 (FY2018): July 1, 2017 thru June 30, 2018 -** \$1,182.661.74 (2.25% increase from FY 2017)

**Fiscal Year #6 (FY2019): July 1, 2018 thru June 30, 2019 -** \$1,209,271.63 (2.25% increase from FY2018)

**Fiscal Year #7 (FY2020): July 1, 2019 thru June 30, 2020 -** \$1,236,480.24 (2.25% increase from FY2019)

**ENTIRE UNDERSTANDING:** This **AGREEMENT**, together with the exhibits attached hereto, represents the entire understanding of the parties. The original contract dated June 13, 2003 is incorporated into this amendment in its entirety. Neither party is relying upon any representations not contained herein.

**SEVERABILITY:** If any provision of the **AGREEMENT** or portion of such provision or the application thereof to any person, entity or circumstance is held invalid, the remainder of the **AGREEMENT** (or the remainder of such provision) will not be affected thereby so long as such remaining or modified provisions reflect the intent of the parties as of the date of this **AGREEMENT**.

**CONTINUITY:** This **AGREEMENT** shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors and assignees and at the option of the **TOWN**, may be renegotiated and renewed beyond the termination date stipulated herein above.

**NOTICE REQUIREMENTS:** Any notice call for or provided for herein shall be served by registered mail and shall be deemed served when deposited in the United States Mail, postage prepaid.

**ATTACHMENT B**  
**TOWN OF WINTHROP**  
**AND**  
**CAPITOL WASTE & RECYCLING LLC**  
**ADDITIONAL TERMS and CONDITIONS**

**Term of Contract**

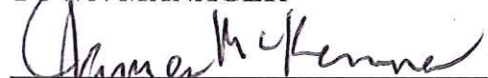
The term of this AGREEMENT shall be extended for seven (7) years, effective, July 1, 2013 and continuing through June 30, 2020 unless sooner terminated as provided in the original contract documents. The payment from the Town to Capitol Waste & Recycling LLC shall be in the form of a lump sum for each of the contract years as previously stated.

**Additional Terms and Conditions:**

1. Capitol Waste & Recycling LLC shall purchase and furnish to the Town of Winthrop a new 8-11 yard rear load packer truck on a new International 25999 GVW chassis. The truck will also be equipped with a 10 foot Fisher plow. The cost of this vehicle is \$145,436.00.
2. Capitol Waste & Recycling LLC will purchase and furnish to the Town of Winthrop 6,700 – 65 gallon recycle totes to be distributed to our 1-3 family residences. These closed top totes will aid in increasing recycling volume and ensure that recyclables remain inside the intended containers prior to pick-up. These larger volume totes will replace the smaller 18 gallon bins that are currently being provided by the Department of Public Works.
3. Capitol Waste & Recycling LLC will supply four (4) 30 yard dumpsters per year at no cost to the Town for the purpose of town-wide clean up efforts.

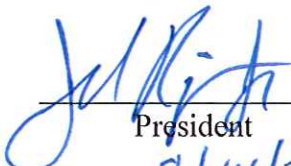
IN WITNESS THEREOF, the Town of Winthrop, Massachusetts and Capitol Waste & Recycling LLC of Revere Massachusetts, have executed this **AGREEMENT** as of the date first written above.

**TOWN OF WINTHROP  
TOWN MANAGER**

  
James McKenna

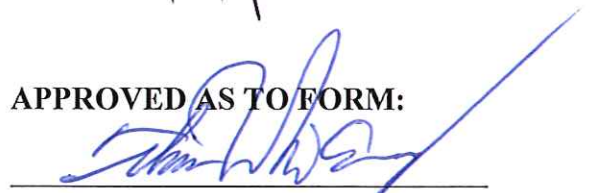
Date 8/19/13

**CAPITOL WASTE & RECYCLING LLC**

  
President

Date 8/14/13

**APPROVED AS TO FORM:**

  
\_\_\_\_\_, Town Counsel

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

**APPROVED AS TO AVAILABILITY OF FUNDS:**

  
Timothy Gordon, Chief Financial Officer

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

**AMENDMENT TO  
THE CONTRACT FOR SOLID WASTE SERVICES BY AND BETWEEN  
THE TOWN OF WINTHROP AND CAPITOL WASTE SERVICES INC.**

**THIS AGREEMENT**, made as of this 21<sup>st</sup> day of December 2007 by and between the Town of Winthrop, Massachusetts (hereinafter referred to as the "**TOWN**") as represented by its Town Manager (hereinafter referred to as the "**TOWN MANAGER**") and Capitol Waste Services Inc. of East Boston, Massachusetts (hereinafter referred to as the "**CONTRACTOR**").

**WITNESS THAT:**

**WHEREAS**, pursuant to the agreement made between the **Town of Winthrop and Capitol Waste Services Inc.** of East Boston, Massachusetts on June 13, 2003, the agreement is hereby amended according to the provisions included in the **TERMS OF CONTRACT**, of the original agreement. Any such amendments shall be recorded and executed by all parties and incorporated into this **AGREEMENT**.

**WHEREAS**, the **TOWN** has appropriated funds to procure solid waste services (hereinafter referred to as "**SERVICES**", and

**WHEREAS**, Contractor services as outlined in the Scope of Services dated May 2003 relating to the **SERVICES** are consistent with the Town approved budget and incorporated by reference herein;

**AGREEMENT OF THE CONTRACTOR:** That for and in consideration of the payments and agreements hereinafter mentioned:

The **CONTRACTOR** will commence and provide the additional services as specified in the attached **ADDITIONAL TERMS** (Attachment A).

The **CONTRACTOR** agrees to perform all of the work described in this **AMENDMENT** and to comply with the terms and conditions therein for a lump sum of:

**Fiscal Year #1: July 1, 2008 thru July 1, 2009** - nine hundred and forty-nine thousand, three hundred and forty dollars (\$949,340.) - (no change).

**Fiscal Year #2: July 1, 2009 thru June 30, 2010** - nine hundred and seventy three thousand and seventy three dollars (\$979,073) - (2.5% increase).

**Fiscal Year #3: July 1, 2010 thru June 30, 2011** - one million and eight thousand, two hundred and sixty five dollars (\$1,008,265.) - (3% increase).

**Fiscal Year #4: July 1, 2011 thru June 30, 2012** - one million and thirty eight thousand, five hundred and twelve dollars (\$1,038,512.) - (3% increase).

**Fiscal Year # 5: July 1, 2012 thru June 30, 2013** - one million and sixty four thousand, four hundred and seventy four dollars (\$1,064,474.) - (2.5% increase) of this contract. The compensation provide by this **AGREEMENT** is subject to continued availability of funds.

**ATTACHMENT A  
TOWN OF WINTHROP AND CAPITOL WASTE SERVICES INC.**

**ADDITIONAL TERMS AS AMENDMENT TO CONTRACT**

December 21<sup>st</sup>, 2007

**TERM OF CONTRACT:**

The term of the contract between the Town of Winthrop and Capitol Waste Services Inc. of East Boston, Massachusetts shall be extended for five (5) years, effective July 1, 2008 and continuing through June 30, 2013 unless sooner terminated as provided in the original contract documents. The payment from the Town to Capitol Waste Services Inc. shall be in the form of a lump sum for each of the contract years as previously stated.

**CONSIDERATIONS:**

1. Capitol Waste Services Inc. shall furnish five hundred (500) recycle bins to the town at no charge to the Town.
2. Capitol Waste Services Inc. shall affix permanent signage on the vehicles contracted for use by the Town of Winthrop. Final wording to be approved by the Town Manager.
3. Capitol Waste Services Inc. will furnish on a yearly basis to the Town of Winthrop tow (2) – 30 yard roll off containers holding five (5) tons each for Fourth of July cleanup.
4. Capitol Waste Services Inc. agrees to pick up Christmas trees during the first and second weeks of January at no cost to the Town. Said trees are to be picked up and disposed of in accordance with standard practices of the trade.
5. The Town of Winthrop agrees to continue their sticker program for bulk cleanouts and furniture pick-ups.
6. Capitol Waste Services Inc. agrees to pickup yard waste two (2) Saturdays during the month of November of each contract year and dispose of it at the Town of Winthrop compost site. Yard waste must be put out properly by residents in open barrels or paper bags.

**ENTIRE UNDERSTANDING:** This **AGREEMENT**, together with the exhibits attached hereto, represents the entire understanding of the parties. The original contract date June 13, 2003 is incorporated into this amendment in its entirety. Neither party is relying upon any representations not contained herein.

**SEVERABILITY:** If any provision of the **AGREEMENT** or portion of such provision or the application thereof to any person, entity or circumstance is held invalid, the remainder of the **AGREEMENT** (or the remainder of such provision) will not be affected thereby so long as such remaining or modified provisions reflect the intent of the parties as of the date of this **AGREEMENT**.

**CONTINUITY:** This **AGREEMENT** shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors and assignees and at the option of the **TOWN**, may be renegotiated and renewed beyond the termination date stipulated herein above.

**TERM:** The term of the **AGREEMENT** shall commence upon the date of its execution. The Term shall continue until June 30, 2013 unless extended by Prior written agreement executed by the parties, or sooner terminated as provided for herein.

**NOTICE REQUIREMENTS.** Any notice call for or provided for herein shall be served by registered mail and shall be deemed served when deposited in the United States Mail, postage prepaid.

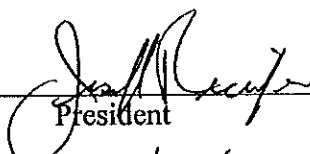
**IN WITNESS THEREOF**, the Town of Winthrop, Massachusetts and Capitol Waste Services Inc. of East Boston, Massachusetts, have executed this **AGREEMENT** as of the date first written above.

**TOWN OF WINTHROP**  
**TOWN MANAGER**

  
\_\_\_\_\_  
Richard J. White

Date: 12/17/07

**CAPITOL WASTE SERVICES INC.**

  
\_\_\_\_\_  
President

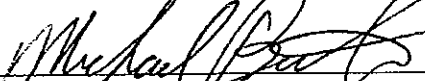
Date: 12/24/07

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Robert E. Noonan, Town Counsel

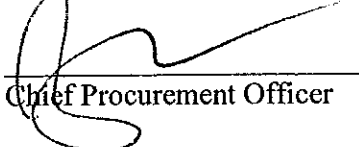
Date: 12/24/07

**APPROVED AS TO AVAILABILITY OF FUNDS:**

  
\_\_\_\_\_  
Michael Bertino, Town Accountant

Date: 12-14-07

**APPROVED AS TO ADHERENCE TO PROCUREMENT POLICY:**

  
\_\_\_\_\_  
Chief Procurement Officer

Date: 12/24/07

## TOWN OF WINTHROP



### SOLID WASTE SERVICES AGREEMENT

This Solid Waste Services Agreement (the "Agreement") is made and entered into as of the day of June, 2003, by and between the Town of Winthrop, Massachusetts, a political subdivision of the Commonwealth of Massachusetts with an address of 1 Metcalf Square, Winthrop, MA 02152 (hereinafter "the TOWN"), and Capitol Waste Services, Inc. of East Boston, Massachusetts, a Massachusetts corporation with offices at 1222 Bennington St., East Boston, Massachusetts (hereinafter the "CONTRACTOR").

#### 1. DEFINITION OF TERMS:

Whenever the following terms, or pronouns in place of them, are used in this Agreement, the intent and meaning shall be interpreted as follows:

**ALTERATION:** Change in the form or character of any of the Work done or to be done.

**TOWN:** The Town of Winthrop, Massachusetts, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts.

**CONTRACT:** The written agreement executed between the Town and the Contractor setting forth the obligations of the parties hereunder, including, but not limited to, the performance of the Work, the furnishing of all labor, vehicles, equipment and materials, and the basis of payment.

The Contract includes the Agreement, accepted price proposal, Wage Rates, Performance Bonds, General and Detailed plans, any Extra Work orders and agreements that are required to complete the Work in an acceptable manner, if any, including authorized extensions thereof, all of which constitute one instrument.

**CONTRACTOR:** The company designated under this agreement to perform the Work in accordance herewith, referred to herein as "Contractor," "he," "him," or "it."

**DEPARTMENT:** The Department of Public Works of the Town of Winthrop.

**DIRECTOR:** The Director of the Department of Public Works, acting directly or through an authorized representative, provided such representative is acting within the scope of his or her delegated authority.

**EXTRA WORK:** Work that: (a) was not originally anticipated and/or contained in the Contract; (b) is determined by the Director to be necessary for the proper completion of the Work; and (c)

bears a reasonable subsidiary relation to the full execution of the Work originally described in the Contract.

**HAZARDOUS MATERIALS:** Gasoline, explosives, compressed gases, explosive chemicals, corrosive chemicals, televisions, computer monitors, florescent bulbs, batteries, and all other hazardous wastes as defined by DEP and EPA, and other materials as the Director may deem hazardous.

**OWNER:** The Town of Winthrop, Massachusetts.

**RECYCLABLE MATERIAL:** Shall mean materials that the Town has designated as having potential for recycling and that is pre-sorted from solid waste. These include, but are not limited to: paper (including without limitation, newspapers, telephone books, magazines, mail, white paper, colored paper, envelopes, mixed paper), corrugated cardboard and paperboard, glass (bottles, jars and other clear or colored glass), #1 through #7 plastic containers, aluminum (cans and other products), steel cans and tin.

**SOLID WASTE:** means useless, unwanted or discarded materials resulting from household, municipal or commercial activities, such as rubbish, refuse, garbage, trash, bulk items and all waste which is normally acceptable at an incineration facility or landfill.

**SURETY:** The company issuing the bonds required of the Contractor by this Contract.

**TRANSPORT or TRANSPORTATION:** Means to transfer or carry acceptable solid waste or recyclable material in an approved and lawful vehicle from the point of collection or pickup to some approved disposal site, in accordance with the terms and conditions of this Contract.

**WHITE, LIGHT IRON GOODS:** includes all appliances made of metal including, but not limited to, refrigerators, freezers, stoves, ovens, dishwashers, air conditioners, clothing washers and dryers, hot water heaters.

**WORK:** The performance by the Contractor, including the furnishing of all materials, labor, tools, vehicles, equipment and incidentals, of everything required of the Contractor under the terms of this Contract, provided that the words "as directed," "as permitted," "as required," or words of like effect shall mean that the direction, permission or requirement of the Director is intended, and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean approved by, acceptable or satisfactory to the Director, unless otherwise provided herein. The words "necessary," "suitable," "equal," or words of like import shall mean necessary, suitable or equal in the opinion of the Director.

## **2. TERM OF CONTRACT**

The Contractor shall commence Work on July 1, 2003 and the Work shall continue through June 30, 2006 unless sooner terminated as provided herein. The continuation of the contract through the second and third years as well as an extended term shall be subject to the appropriation. Failure to obtain funds from Town Meeting shall terminate the contract on the applicable June 30<sup>th</sup> date with no additional compensation to the Contractor.

### 3. SERVICES TO BE PROVIDED

#### A. Solid Waste

Contractor shall provide to the Town all labor, services, equipment, vehicles and material required for five-days-per-week (Monday through Friday) curbside collection, transportation and disposal of Solid Waste and properly segregated Recyclable Materials generated within the Town of Winthrop. In the event there is a weekday holiday, the collection schedule will be advanced one day (e.g., Monday pick-up will be on Tuesday, Friday pickup will be on Saturday). No collection will be made on the following legal holidays:

New Year's Day  
Martin Luther King Day  
Presidents' Day  
Evacuation Day  
Patriots' Day  
Memorial Day  
Bunker Hill Day  
Independence Day  
Labor Day  
Columbus Day  
Veterans' Day  
Thanksgiving Day  
Christmas Day

The Contractor shall accept responsibility for all advertisements placed in the local newspapers notifying the public of holidays on which trash/recycling will not be collected.

No collection shall be made before 7:00 A.M. or after 5:00 P.M., except with the written permission of the Director. The Contractor shall collect all waste timely deposited when it is in appropriate containers or when it can be determined that it was set out with the intention of being so collected. No waste shall be refused for collection and hauling from the time of commencement of this contract. Contractor shall be responsible for placing stickers on inappropriate waste or waste left at the curb improperly.

Residential collections shall be made at curbside. Other collections shall be made in accordance with Table 1 or as needed. All allowable bulk items shall be collected at the time of the regular bag or barrel pick up. No special collection of bulk items shall be permitted without the permission of the Director of Public Works.

Prior to starting the Work, the Contractor shall submit to the Town for approval a proposal showing the sequence of the Work, street by street, as he wishes to do it. The sequence approved by the Town shall be followed specifically by the Contractor. Any change thereafter shall be made only with the express written approval of the Director. Recyclables shall be collected on the same day as solid waste.

If the Town goes to an alternative municipal funding scenario for trash pick-up such as "Pay As You Throw", the Contractor will pick up the appropriately tagged receptacles.

#### **B. Disposal**

Contractor understands and agrees that the solid waste collected pursuant hereto shall be disposed of at a duly permitted site or facility designated by the Contractor.

#### **C. Recyclable Materials And White And Light Iron Goods**

Recyclable Materials shall be collected and transported by Contractor to a duly permitted recycling facility. The Contractor shall have all rights and responsibility for the collection and disposal of all Recyclable Materials, and White, and Light Iron Goods. It is the intent of the parties that, as markets become available, other items shall be added to the list of Recyclable Materials.

Containers or bins for recyclables shall be provided to occupants by the Town. Occupants shall be responsible to set out recyclable glass, plastics and metals in the bins, to be collected and separated by the Contractor. Newspapers shall be bagged or tied beside the bins; cardboard shall be similarly bundled and placed beside the bins or in a separate bin. Recyclable goods shall be placed weekly at curbside, on the same day as the regular collection of solid waste. The Contractor shall provide assistance with educational programs for the Town and its residents concerning recycling, including, but not limited to participation in public information meetings, media interviews, and distribution of written information.

The obligation to collect recyclable materials, and white and light iron goods shall exist whether the Contractor has its own permit for recycling or is obliged to dispose of recyclable goods at another permitted facility. Collection of the aforementioned items shall continue regardless of any change in law or regulations affecting the material picked up or the method marketing or disposal of same. Contractor expressly agrees to dispose of recyclable goods in a lawful manner. The terms or conditions of this paragraph are a necessary and material term of this contract. The Contractor's failure to fulfill its obligations under this paragraph shall be considered a material breach of this contract.

The Contractor shall not be responsible for collection of improperly separated recyclables. If materials which are not subject to recycling have been improperly placed in recycling bins then the Contractor shall use best efforts to remove recyclables. Non-recyclables shall be left in the bin at curbside and a sticker affixed to the bin. Disposal of materials which have been improperly placed in recycling bins shall be the responsibility of the occupant of the premises.

The Contractor shall submit monthly reports for each type of recyclable material which provide, as follows: 1) the tons collected; 2) the average number of households collected from per run, day, and 3) month and where each type of material is disposed. The Contractor shall also provide monthly statements as to the amount and type of material which is temporarily stored for future disposal. The Contractor shall be entitled to any proceeds derived from the sale of any Recyclable Materials collected by said Contractor.

#### **D. White And Light Iron Goods**

Contractor shall provide for the curbside collection, transportation and disposal of light Iron, white goods on a weekly basis in accordance with Town policy. All pickups shall be coordinated by and with the Town and the Town shall be notified promptly upon completion of pick-up requests. Payment for the Contractor's pick-up of these items is to be assessed on a per item basis, as follows:

|        | Items with Freon  | Other items       |
|--------|-------------------|-------------------|
| Year 1 | \$ 30.00 per item | \$ 20.00 per item |
| Year 2 | \$ 30.00 per item | \$ 20.00 per item |
| Year 3 | \$ 30.00 per item | \$ 20.00 per item |

#### E. Container Collection

Collection of solid waste and recyclable materials at Schools, Municipal facilities and the Winthrop Housing Authority shall be in accordance with the schedule listed in Table 1. The Contractor shall supply containers in the quantities and sizes listed. The Contractor shall maintain all containers. Friday pickups shall be made between 1:00 PM and 2:30 PM, and Monday pickups shall be made by 11:00 AM. School containers will be emptied after the daily school sessions.

The containers shall be fitted with covers made of vinyl, rubber or other light weight material, and the covers shall be small enough to open easily from the front and the back. The containers shall be maintained free of all damage or defects and they shall be kept clean and presentable. The Contractor shall repair or replace any container that the Town determines is unsatisfactory within two weeks of it's receipt of written notice from the Town.

The Contractor shall clean up trash under and around the containers and any spillage that occurs from emptying said containers. Clean-up shall include, but not be limited to, broom picking up litter and debris and sweeping surfaces within the enclosure. If the container covers are fastened for emptying, they shall be unfastened when emptied.

Where there are bays within an enclosure, the containers shall be placed against the bays to facilitate rear loading. Enclosure gates shall be closed after the containers are emptied.

The Contractor shall thoroughly wash and disinfect each container during the months of April, June, August and October; and, otherwise regularly deodorize them. Trash collection vehicles shall not be driven over curbs or on sidewalks or grass.

Table A

| Location                        | Number and Type | Frequency per Week |
|---------------------------------|-----------------|--------------------|
| Residence                       | Curbside        | 1                  |
|                                 |                 |                    |
| Schools:                        |                 |                    |
| High School                     | 1 Container     | 3 or as needed     |
| Middle School                   | 1 Container     | 3 or as needed 3   |
| Center School<br>(upon opening) | 1 Container     | 3 or as needed 3   |

|                                     |             |                  |
|-------------------------------------|-------------|------------------|
| E.B. Newton                         | 1 Container | 3 or as needed 3 |
| Dalrymple School<br>(until closing) | 1 Container | 3 or as needed 3 |

|                   |                               |                                                |
|-------------------|-------------------------------|------------------------------------------------|
| Other facilities  |                               |                                                |
| Senior Center     | Barrels and recycling         | 1 or as needed                                 |
| Town Hall         | 1 5yd dumpster<br>and barrels | 5 or as needed                                 |
| Skating Rink      | 1 container                   | 3 or as needed                                 |
| Miller Field      | 1 container                   | 1 or as needed                                 |
| Housing Authority | Barrels and recycling         | Weekly as per location<br>on residential route |
| DPW Facility      | Barrels & recycling           | 1 or as needed                                 |
|                   |                               |                                                |

#### **F. Winthrop Clean Up Day**

A Townwide Winthrop Clean Up day may be scheduled by the Town each Spring. Bulk items and other irregularly scheduled items are especially likely to be collected at that time. The contractor shall assign a solid waste packer to the Town for the duration of the day of clean up.

#### **G. Containers To Be Provided At DPW Yard**

Contractor shall provide to the Town, separate containers at the Town DPW yard for solid waste, and white goods and light iron upon the request of the Director. Contractor shall be responsible for hauling and disposing of the debris contained therein. The Contractor shall clean up trash under and around the containers and any spillage that occurs from emptying said containers. Clean-up shall include, but not be limited to, broom picking up litter and debris and sweeping surfaces within the enclosure. The Contractor shall thoroughly wash and disinfect each container during the months of April, June, August and October; and, otherwise regularly deodorize them.

#### **H. Collection Hours, Routes And Days Of Collection**

Collection routes, hours and days of collection shall be as established by the Town's Director of Public Works. There shall be five routes, one each weekday. Recyclables and other materials shall be collected on the same day as solid waste except where otherwise specified in this contract or the recycling plan. No modification to the routes or schedule shall be made without the approval of the Town's Director of Public Works.

#### **I. Municipal Building Collection**

All waste at municipal buildings excluding the schools shall be picked as indicated in Table 1. Recyclable materials shall be picked up weekly from both municipal buildings and schools. Holiday pickup shall be on the following day, except where otherwise specifically noted in this agreement or other modifications agreed to in writing by the Director of Public Works.

#### **J. Equipment Maintenance**

All equipment shall be maintained in an efficient and safe condition while performing work under this Contract. All trucks and trailers shall have appropriate signage denoting Contractor's name affixed at all times while in use. If equipment does not contain proper safety devices and/or is being operated in an unsafe manner, the Town shall direct the Contractor to remove such equipment until the deficiency is corrected to the satisfaction of the Town.

#### **K. Weather Conditions**

Contractor must be familiar with all weather conditions prevailing in this area and familiarize itself thoroughly with the route and provide proper equipment and sufficient labor to perform Work under the Contract.

#### **L. License And Permit Costs**

The Contractor shall obtain and assume all costs for all local, state and/or federal licenses and permits that are or may become necessary for collecting, transporting and disposing of solid waste and recyclable materials under this Contract.

#### **M. Contractor Employees**

The Contractor shall employ competent and courteous employees, and when directed to so by the Director for just cause, shall replace immediately any incompetent or discourteous employee in accordance with applicable laws and standards.

#### **O. Transport Operation Compliance**

At all times the Contractor's transport operation shall be conducted in compliance with applicable Federal and State laws, rules and regulations, and regulations of the Town's Board of Health and all Town ordinances and regulations. In particular, the Contractor is responsible for compliance with regulations regarding the proper disposal of materials banned from incineration by DEP regulation 310CMR19.006.

#### **P. Spillage**

The Contractor shall not allow solid waste or recyclable materials to be scattered about the street or on private property during pick-up. Any waste or materials spilled or dropped accidentally during pick-up shall be immediately picked up and removed by the Contractor. All receptacles shall be returned to the sidewalk after being emptied.

#### **Q. Street Blockage**

If streets are blocked from any cause, the Contractor shall hand carry the solid waste, recyclable materials and other matter to be removed, to the truck, unless otherwise directed by the Town.

#### **R. Household Demolition Debris**

Small quantities of household demolition debris, in accordance with the policies of the Department of Public Works, shall be picked up and disposed of by the Contractor. Large quantities of demolition debris defined as material resulting from the demolition of structures or parts thereof including interior finishes and fixtures shall not be collected or disposed of by the Contractor. It is the responsibility of the property owner or contractor generating such debris to secure a permit for demolition debris from the Inspectional Services Department and to dispose of such debris.

#### **S. Outreach**

The Contractor shall issue on July 1st of each year, at his/her own expense, a prepared trash pick-up/Recycling Brochure. The contents of the brochure is subject to approval by the DPW Director, but at a minimum must contain the name and address of the Contractor; the days upon which collection of rubbish, trash, garbage and recyclables will be made in each particular street; the types of acceptable trash/recycling that will be collected and a list of unacceptable trash/recycling that will not be collected; the holidays on which trash/recycling will not be collected; and the name and telephone number of who residents should call in the event that there is a problem with collection.

### **4. CONTRACTOR'S GENERAL OBLIGATIONS**

#### **A. Manner of Work**

The Contractor shall in a good and workmanlike manner, do and perform all the Work and furnish all labor, materials, vehicles, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the Work required by this Contract, within the time herein specified, in accordance with the provisions of this Contract and the specifications and in accordance with the directions of the Director as given from time to time during the progress of the Work.

#### **B. Personnel and Performance;**

The Contractor shall furnish personnel for all services rendered under this Agreement, including supervisory, clerical, and working personnel. Such personnel shall consist of the number and classification as may at any time be necessary to accomplish, on schedule, all Work under this Agreement. This Work force shall be maintained on all days on which services are required. All Contractor's employees shall be qualified and experienced in their respective classifications, and all employees shall be physically able to perform their assigned work.

Adequate and competent supervision shall be provided at all times for all work done by the Contractor's employees to assure performance and accomplishment in strict accordance with the provisions of this Agreement. The Contractor shall provide the Town with the name of a designated Supervisor on a daily basis. The designated Supervisor shall not be performing collection duties and shall be solely responsible for supervision of Contractor's performance. Supervisory tasks shall include but not be restricted to, the following:

- i.) to provide an adequate labor force including finding immediate replacements for personnel dismissed for cause or leaving employment of their own volition; and to train personnel properly on performing work in accordance with tasks and methods outlined herein.

**C. Performance of Contractor:**

The Contractor shall give personal attention constantly to the faithful prosecution of the Work, shall keep the same under direct control, and shall neither legally nor equitably assign any of the funds payable under this Agreement, or its claim thereto, without the written consent of the Town. The Contractor shall be responsible for the acts and omissions of subcontractors, if any, and all persons directly or indirectly employed in connection with the work.

The Contractor shall not assign by power of attorney or otherwise, or subcontract the Work encompassed by this Agreement or any part thereof without the previous written consent of the Town. In the absence of such written approval, the Contractor shall perform all work with its own personnel.

**D. Equal Opportunity Employing:**

The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin. The Contractor will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex, age, or national origin.

The Contractor shall take steps to ensure that employees are treated during employment without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to the following activities: employment, promoting, demoting, or transferal, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, including apprenticeship.

The Contractor shall be prepared to sign an Affirmative Action Affidavit at the time of contract execution. The Contractor will comply with required provisions for Minority/Women Business Enterprise programs.

The Contractor shall at all times observe and comply with all federal, state and local laws, by-laws, ordinances, and regulations in any matter which affects the conduct of the work or applies to employees under contract. Similarly, the Contractor shall comply with all orders or decrees which have been promulgated or enacted by any other legal body or tribunal having authority or jurisdiction over the work, materials, employees, or the contract.

**E. Contract Compliance**

The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the Contract and specifications, and shall do, carry on, and complete the entire Work to the satisfaction of the Director and the Town.

**F. Contractor's Office, Complaints and Contractor's Representative:**

The Contractor hereby agrees to handle all complaints arising out of this contract in a courteous and expeditious manner and agrees that he/she will employ mature people of judgement and discretion able to be reached during business hours at a listed telephone number to handle

complaints. The Contractor, at his/her own expense, shall provide a local telephone number (to be displayed on trucks) for the purpose of directly receiving and handling complaints from Winthrop residents.

The Contractor shall provide sufficient personnel and/or equipment to correct deficiencies in accordance with the provisions of the Agreement. Instructions given by the Director of Public Works of the Town of Winthrop or her/his designee to the Contractor's designated representative shall be considered as having been given to the Contractor. The Contractor also shall contact the director or his designee at least twice each working day (between 8:00 A.M. and 11:00 A.M. and 12:30 P.M. and 2:30 P.M.) for the purpose of receiving reports and reviewing complaints. By 8:00 A.M. of the following day, Contractor shall report how complaints have been handled.

If for any reason the Contractor is unable to handle satisfactorily a complaint by the end of the day he shall so inform the Director. If the Director approves and in extreme cases only, the Contractor may handle the complaint on the following day before that day's collection route is begun.

#### **G. Contractor Responsibility Acknowledgement**

The Contractor acknowledges and agrees that he is responsible as an Independent Contractor for all his acts and doings and all the acts and doings of his agents, employees and subcontractors hereunder.

#### **H. Incineration, Land filling and Storage of Recyclables**

The Contractor shall be permitted to incinerate or landfill, at the Contractor's sole expense, any load of contaminated waste without prior authorization from the Town, provided, however, that the Contractor shall notify the Town of the dates, disposal sites and tonnage of waste incinerated and/or landfilled in the applicable monthly statement. In the event that the Contractor fails to comply with the requirements of these paragraphs, it shall be liable for liquidated damages as provided herein. In the event that market conditions necessitate temporary storage of all or any portion of the Recyclable Materials or other waste collected and hauled by the Contractor, the Contractor hereby agrees to notify the Town and obtain the Town's prior approval of the location. The Town's approval shall not be unreasonably withheld. Any temporary storage fees for recyclables or other wastes shall be the sole responsibility of the Contractor. The Contractor guarantees not to incinerate or landfill any recyclable materials collected by it except as expressly provided for in this article. This is an essential and material term of this agreement.

#### **I. Compliance with Federal, State and Local Laws; Discrepancies or Inconsistencies**

The Contractor shall keep himself fully informed of all state, federal, and local laws, ordinances, regulations and policies affecting in any manner 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 of bodies or tribunals having any jurisdiction or authority over the same, and conform to and abide by the same. If any discrepancy or inconsistency is discovered by the Contractor between the Contract for this Work and any such law, ordinance, regulation, policy, order or decree, he shall forthwith report the same to the Department of Public Works in writing. Contractor shall at all times observe and comply with, and shall cause all his agents and employees to observe and comply with, all such existing and future laws, ordinances, regulations, policies, orders and decrees, and Contractor assumes the risk for changes in laws, regulations, and policies

that affect the Work. The Contractor shall defend and indemnify the Town and the Department of Public Works and their officers, agents and employees against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, policy, order or decree, whether by himself or his agents, employees or subcontractors.

#### **J. Federal, State and Local Permits and Licenses**

Except as otherwise specifically stated in this Contract, the Contractor shall secure, at its own expense, all necessary permits and licenses and comply with all Town, state and federal codes and regulations. Contractor must provide and pay for all vehicles, materials, equipment, labor, tools, temporary construction of every nature, charges, levies, fees, or other expenses incurred and all other services and facilities of every nature whatsoever for his performance of the Contract within the specified time, and required for the collection and disposal of solid waste in the Town.

#### **K. Timeliness and Diligence of the Contractor in Performing Work**

The Contractor agrees that said Work shall be prosecuted regularly, diligently, and uninterruptedly, and that **TIME IS OF THE ESSENCE** in the performance of this Contract.

### **5. REPORTS, RECORDS AND DATA**

All disposal slips received by the Contractor at the approved disposal site(s) for the disposals of trash and recyclables at that facility on any given day shall be reported to the DPW Director as follows.

The Contractor shall be responsible for providing an accounting and submitting to the Town a monthly report of tonnages for solid waste and recyclables (separately by material), the average number of households collected from per day, and month and location where each type of recyclable is disposed. Contractor shall also provide monthly statements as to the amount and type of material, which is temporarily stored for future disposal. The Contractor also shall submit to the Town such schedules of quantities and costs, progress schedules, payrolls, reports, estimates, records, and other data as the Town may request concerning the Work performed or to be performed under this Contract. In the event the Town needs to perform services to correct the above-listed items, the costs incurred by the Town will be added to the stated liquidated damages.

The Contractor shall keep daily records of solid waste and recyclable materials collected, and the Town shall have the right to inspect the same at all reasonable times. The records shall show the type (regular solid waste, bulky items, yard waste, etc.) and weight of materials collected under this Contract.

The Contractor will provide a site that the DPW trash truck can dump waste truck collection of barrels throughout the Town, i.e. business areas, parks, playgrounds etc.

### **6. VEHICLES**

#### **A. Vehicle Size, Capacity and Availability**

All vehicles used in the collection and transportation of solid waste, recyclable materials and all other materials to be collected pursuant to this Contract within the Town limits will be of sufficient

size and capacity to operate efficiently. A sufficient number of vehicles will be supplied by the Contractor to collect the solid waste, recyclable materials and other materials in accordance with the terms of this Contract. The Contractor shall have available standby equipment located within a twenty-five (25) mile radius of the Town. Each vehicle shall be equipped with a two-way radio. All equipment used shall be fully operational and none shall be older than six (6) years old during any portion of this Contract, or its extensions. All trucks shall be equipped with brooms and shovels for clean-up, as needed. Bodies of trucks for white goods to be State body type with lift mechanism.

#### **B. Vehicle Type**

Bodies for the trucks to be used in this Contract for solid waste collection shall be an enclosed Packer Type. The trucks used for pick-up of recyclable materials shall have the capacity to automatically load wheeled carts. The bodies shall be watertight, readily cleanable and sanitary, and capable of being unloaded by dumping or automatic push-out means. The body will be mounted so that when fully loaded, the axle loading will fall within the maximum load limit per axle as allowed by State law and municipal code.

#### **C. Identifying Markings on Vehicles**

The trucks and bodies will be painted with such color or colors as may be designated by the Contractor. The Town and the Contractor shall agree on a manner for identifying and marking all vehicles used in the performance of this agreement, so that identifying materials are visible.

#### **D. Maintenance and Repair of Vehicles and Equipment**

The Contractor will make adequate provisions for maintenance and prompt repair of his vehicles and equipment. All vehicles and equipment used for collection and transportation pursuant to this Contract will be thoroughly cleaned both inside and outside, at least once each week, and sprayed with deodorizing and disinfecting material as may be deemed proper by the Director.

#### **E. Contractor Facilities**

All vehicles and equipment and facilities used by the Contractor will be subject to inspection for sanitation, safety, appearance, and adequacy and the reasonable of approval the Director at any time during the Contract term.

#### **F. Vehicle Checks**

The Contractor, at the discretion and direction of the Director of Public Works, may be required to check-in each vehicle, including recyclable trucks, at the Department at or after 7:00 A.M. for the Town to inspect that the vehicle is empty upon the start of the collection routes. If any vehicles used in performing this contract is used for the hauling of waste for any entity other than the Town or as authorized under this contract, then the Town shall be so notified. If that occurs, the vehicle shall be emptied, cleaned and inspected before starting collection in the Town. The Contractor may be required to check-in each vehicle at the Department garage before leaving the Town for the

disposal facility to allow the Town to inspect the loaded condition (and weigh the vehicle at the Town's option) of the vehicle as it, exits the Town.

#### **G. Vehicle Rear Gates**

All vehicles shall have their rear gates closed at all times within the Town's limits, except when being loaded, and shall be open only while actually necessary. Lids of collection vehicles shall remain closed between stops and all waste shall be securely placed in collection vehicles before leaving the Town.

#### **H. Breach of Contract**

When collection work has been completed, the Contractor shall immediately transport all trucks containing solid waste out of the Town. Use of vehicles to pick up trash from generators not subject to this contract during pick-up under this contract is expressly prohibited and shall constitute a material breach of this contract.

#### **I. Condition of Vehicles**

Contractor must keep his apparatus at all times in a condition satisfactory to the Director. Whenever so directed, Contractor shall be required to present his vehicles and all other equipment used pursuant to this Contract at such times and places as may be designated by the Director for the purpose of inspection.

#### **J. Use of Global Positioning System**

Contractor agrees that in the event the Town wished to utilize a global positioning system (GPS), the Contractor would permit the Town or an authorized agent to place a GPS tracking device on trucks used to pick up solid waste and recyclable materials. The installation and use of any GPS system would be at the Town's sole expense.

### **7. INSURANCE AND WORKMEN'S COMPENSATION**

Prior to commencing the Work, the Contractor shall obtain Workmen's Compensation Insurance, Comprehensive General Liability and Property Damage Insurance coverage in the amounts set out below. A certificate from the Contractor's insurance carrier showing at least the coverage and limits of liability specified herein and the expiration date shall be filed with the Town before Work commences. Such certificates shall not merely name the types of policy provided, but shall specifically refer to these specifications and shall state that such insurance is as required by these specifications.

All insurance carried shall be with insurance companies qualified to do business in the Commonwealth of Massachusetts, shall be not less than the amounts and kinds designated herein, and shall in no way limit the liability of the Contractor to the amounts and kinds of insurance designated herein. All policies shall indemnify and save harmless the Town, its officers, agents and employees from any and all claims for damages to persons or property as may arise out of the performance of this Contract.

- a. Workmen's Compensation in accordance with the laws of the Commonwealth of Massachusetts, for all Contractor's employees to be engaged in the Work: statutory amounts.
- b. Comprehensive General Liability covering bodily injury, including accidental death: \$1,000,000 for any one person, \$1,000,000 on account of one occurrence, and \$5,000,000 aggregate limit.
- c. Comprehensive General Liability covering property damage: \$1,000,000 on account of one occurrence and \$5,000,000 aggregate limit.
- d. Automobile Liability (owned, hired, and non-owned vehicles) covering bodily injury, including accidental death: \$1,000,000 for any one person and \$5,000,000 for each occurrence.
- e. Automobile Liability (owned, hired, and non-owned vehicles) covering Property Damage: \$1,000,000 on account of one occurrence and \$5,000,000.00 aggregate limit.

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

The Contractor must submit to the Town copies of all insurance policies, Any renewal insurance certificates shall be delivered to the Town at least thirty (30) days prior to expiration of the insurance certificate(s). Failure to deliver the renewal certificate shall be cause to either cancel the Contract or withhold payments to be made hereunder.

Upon executing the contract, and within 10 days of any renewal, the Contractor shall furnish the Town with certificates of insurance in corresponding insurance policies. Said policies shall be at the expense of the Contractor and shall identify the Town as an additional insured on all policies and state that bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy.

No insurance shall be secured from an insurer which: (a) is not licensed to transact the business of insurance in Massachusetts (b) is not authorized to provide insurance as an excess or surplus lines insurer in Massachusetts and does not have a current Best's rating of "A" or better; or (c) is not a risk retention group lawfully providing insurance to its members in Massachusetts.

## 8. PROTECTION OF HEALTH AND SAFETY

In order to protect the lives and health of his employees under this Contract, the Contractor shall comply with all applicable Federal, State and Local laws and regulations, including without limitation the United States Department of Labor Occupational Safety and Health Act and all amendments thereto, and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from Work, arising out of and in the course of employment on the Work under this Contract. The Contractor alone shall be responsible for the safety, efficiency, and adequacy of his trucks, equipment, plant, appliances, and methods, and for any damage which may result from their failure or improper construction, maintenance, or operation.

## 9. FORCE MAJEURE

A. If any event occurs which delays or will delay performance required by this Contract, which event was beyond the control and without the fault of Contractor, including his agents and subcontractors, and which event could not have been prevented or avoided by the exercise of due care, foresight, or due diligence on the part of the Contractor, including his agents and subcontractors, the Contractor shall immediately notify the Town of the delay, the cause of the delay and the steps or measures to be taken to prevent or minimize the delay, including a timetable by which the Contractor intends to implement such steps or measures- Upon receiving the approval of the Town, the Contractor shall implement such steps or measures as are approved by the Town to avoid or minimize any delay. Nothing in this paragraph shall excuse any noncompliance by the Contractor with the provisions of this Contract.

B. If the Contractor notifies the Town of the occurrence of an event which delays or will delay performance established by this Contract, and if the Contractor otherwise complies with the requirements of section A above, and if the Town determines that the delay has been or will be caused by circumstances beyond the control and without the fault of the Contractor, including his agents and subcontractors, and can not or could not have been overcome by the exercise of due diligence, due care or foresight, the Town shall extend the time for performance hereunder for a period of time equal to the length of the delay.

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

D. If delays are caused by a strike of the Contractors employees, the Contractor shall diligently and in good faith take all action necessary in order for him to resume operations including temporary restraining orders, preliminary or permanent injunctions needed to resume operation. The Contractor shall during any such period keep the Town duly notified of all such actions and shall allow the Town to participate and intervene where permissible in all such actions, if the Town so desires.

**10. PAYMENT; ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE OF THE TOWN.**

A. The Town agrees to pay and the Contractor agrees to accept the annual Contract amount to be paid monthly in accordance with the rates specified below and in the Final Proposal, as full compensation for performing and completing the Work contemplated in this Contract, including specifically the services set forth in Section 3 above. This Contract amount includes any and all Federal social security and manufactures excises, State unemployment, sales, use and income taxes imposed in connection with all of the labor performed and services, materials and equipment furnished under this Contract.

The annual payments to the Contractor for the collection of white goods, light iron goods, and CRT's will be adjusted on a pro rata basis, based on the following payment schedule:

|        | Items with Freon |          | Other items       |
|--------|------------------|----------|-------------------|
| Year 1 | \$ 30.00         | per item | \$ 20.00 per item |
| Year 2 | \$ 30.00         | per item | \$ 20.00 per item |

Year 3                      \$ 30.00    per item                      \$ 20.00 per item

B. The Town may keep any monies which would otherwise be payable at any time hereunder and apply the same, or as much as may be deemed necessary therefore, to the payment of any expenses, including any expense directly or indirectly resulting to the Town in connection with the faithful performance of the Contract, losses or damages incurred by the Town and determined aforesaid and may retain until all the claims are settled so much of such monies as the Department of Public Works shall be of the opinion will be required to settle all claims against the Town, its officers, agents or servants. Any monies kept hereunder shall be deemed not due and payable to the Contractor until final disposition of any such expenses, losses, damages or claims referred to herein.

C. So long as the Contractor shall faithfully do everything required of him by this Contract, the Town shall pay the Contractor each month the monthly portion of the yearly contract sum as stated herein, after deducting from the total amount thereof the amount of any claim, expenses, or loss that the Director may deem proper to retain as provided aforesaid.

D. The Town will make payments to the Contractor only, regardless of the fact that the Contractor employs one or more subcontractors. It shall be the Contractor's sole responsibility to determine the amount of payment due to his subcontractors.

E. The acceptance by the Contractor of final payment shall be and shall operate as a release to the Town of all claims and all liability to the Contractor for all things done or furnished in connection with the Work and for every act and neglect of the Town and others relating to or arising out of this Work. No payment, final or otherwise, shall operate to release the Contractor or his Sureties from any obligations under this Contract or the Performance Bond.

F. A Final Estimate shall be provided by the Contractor, to be certified by the Director as to its conformity with all provisions of the Contract. Such Final Estimate shall be certified by the Contractor to the effect that all just and lawful bills against the Contractor for labor, materials, and expendable equipment covered by the estimate have been paid in full, and that the amount stated as due the Contractor for payment is full compensation for all Work done under the terms of the Contract, including orders for Extra Work, and for all damages, losses and expense incurred by the Contractor in doing the Work, and that the Contractor waives all rights to claim or receive any further compensation in addition to that provided in the Final Estimate.

G. Neither the final certificate of payment nor any provision in the Contract shall constitute an acceptance by the Town of work not done in accordance with the Contract or shall relieve the Contractor of liability in respect to any express or implied warranties or other responsibility for faulty materials or workmanship.

#### 11. LIQUIDATED DAMAGES AND OTHER RECOURSE

A. The Town will notify the Contractor of each complaint or violation of the Contract. It will be the duty of the Contractor to take whatever steps may be necessary to remedy the cause of the complaint or violation.

B. Failure to remedy the cause of the complaint will be considered a breach of the Contract. It is agreed that the Town may deduct the following amounts as liquidated damages from payments due

or to become due the Contractor, which liquidated damages shall be in addition to any other remedy or damages the Town may be entitled to under this Contract or under any applicable provision of law. Contractor acknowledges and agrees that the liquidated damages provided herein are not penalties but represent a fair measure of damages which will be sustained by the Town in the event Contractor defaults in any of the following specified obligations:

1. Fifty Dollars (\$50.00) for each failure to immediately pick-up solid waste or recyclable materials spilled during collection.
2. Five Hundred Dollars (\$500.00) for each failure to pick up solid waste or recyclable materials spilled by the Contractor during a haul inside or outside the Town.
3. Twenty Five Dollars (\$25.00) for each residential container substantially damaged due to the willful or negligent mishandling by the Contractor.
4. Twenty Five Dollars (\$25.00) for each failure to properly replace containers upon emptying.
5. One Hundred Dollars (\$100.00) for each occurrence of operating during prohibited hours or prohibited days of operation without the prior authorization of the Director or his designee.
6. Fifty Dollar (\$50.00) for each occurrence of failing to clean vehicles as provided for herein.
7. If the Town receives five or more calls in one day for missed pick-ups, the Contractor shall be fined \$25.00 for each missed pick-up after the first five. The Contractor shall be fined \$50.00 if it fails to pick up the same location on more than three (3) separate occasions.
8. Failure to collect solid waste, recyclables or other items on an entire street block or a majority of an entire street block: There shall be a fine of \$100 per block for first occurrence, \$250 per block for second occurrence, and \$500 per block for third occurrence.
9. Failure to leave a rejection notice on material that is unacceptable: \$25.00 per occurrence
10. Continued violation of traffic laws, ordinances or regulations during the collection and haul, after written notice to correct from TOWN: \$250.00 per occurrence
11. Failure by the CONTRACTOR to receive and reply to any complaints prior to workday following day of complaints: \$100.00 per occurrence.
12. Use of unmarked or uninspected collection vehicles: \$500.00 per occurrence.
13. Use of a collection vehicle for collection and/or haul of recyclable materials or waste other than under the provisions of the Contract: \$5000.00 for first occurrence, \$10,000 for second occurrence, termination of contract thereafter.
14. Improper disposal of recyclables or solid waste: \$500.00 per occurrence.
15. Failure to finish a route in the specified time unless in agreement with TOWN: \$1,000 per route day

16. Failure to clean dumpsters: \$50.00 per dumpster

C. If the Contractor fails to supply sufficient equipment and manpower to collect solid waste and recyclable materials each day, then the Contractor is required to provide additional equipment.

D. If the Contractor fails to collect the solid waste on schedule without prior authorization from the Director, then the Director may elect without prior notice to engage another contractor to perform the obligations of the Contractor or may elect to conduct collection by any means, and all costs incurred thereby will be deducted from this Contract sum.

E. In the event the Contractor has excessive equipment breakdowns or labor disputes or other causes delay the collection of solid waste or recyclable materials for any reason, including acts of God, then the Town may elect, after twenty-four (24) hours, to engage another contractor or use any means to complete collection and all costs incurred may be deducted from this Contract without prior notice.

F. In the event the Contractor does not maintain all aspects of legal operations, as required by all governmental agencies, and a violation prevents the Contractor from timely performance under the terms and conditions of the Contract for twenty-four (24) hours or more, then the Town may, without prior notice, engage another Contractor, or elect to conduct collection by any means, and the costs will be deducted from said Contract sum. In the event the Contractor fails to perform for any reason beyond said twenty-four (24) hours, the Town will notify the Contractor's Surety of said default. The Surety will then have to elect within twenty-four (24) hours to make arrangements to engage an outside Contractor, pay the Town weekly all costs incurred by the Town to perform on behalf of the Surety, or both.

G. The Contractor without reservation must perform timely and must legally deliver all solid waste and recyclable materials to approved facilities. Any solid waste rejected from a disposal facility for any reason shall not be returned to the Town and will remain the property of the Contractor until delivery at an appropriate facility.

## 12. **DEFAULT; TOWN'S RIGHT TO TERMINATE; DAMAGES**

The Contractor agrees that the Town may, at its election, terminate this Contract by giving written notice thereof to the Contractor and specifying the effective date of such notice, if at any time during the term of this contract the Director of Public Works determines: (a) that the Contractor is performing the Work, or any part thereof, negligently or incompetently, (b) that the Contractor is unable to the satisfaction of the Director to perform the Work, or is not complying with the direction of the Director or with the regulations or orders of the Board of Health; (c) that the Contractor is otherwise failing to perform this Contract in accordance with all its terms and provisions; (d) that the Contractor is guilty of any malfeasance or misfeasance in performance of this Contract; (e) that the Contractor has been adjudged a bankrupt; (f) that the Contractor has made a general assignment for the benefit of creditors; (g) that a receiver has been appointed on account of the Contractor's insolvency; (h) that the Contractor persistently or repeatedly refuses, or fails, except in cases for which extension of time is provided, to supply enough property skilled workmen or proper materials or equipment; (i) that the Contractor fails to make prompt payments to subcontractors, or for material or labor, or (j) for other just cause. Thereupon, upon the date so specified, this Contract shall terminate, but such termination shall not prejudice or waive any

rights, claims or actions which the Town may have against the Contractor because of any default or failure in performance of this Contract, or violations of law, or for any other reason.

Thereupon, the Contractor shall discontinue Work, and the Town may, by contract or otherwise as it may determine, complete the Work, or such part thereof, and charge the entire expense of so completing the Work or part thereof to the Contractor. The right is reserved to the Town, at all times, to call upon Contractors Surety to complete such Work.

In addition to all other damages to which the Town may be entitled, the Contractor shall be liable to the Town for any amount which it may be required to pay after termination for labor and equipment during the remainder of the period covered by this Contract over and above the amount that would have been paid to the Contractor for the performance of the Work during said period. The Contractor agrees that said amount may be deducted from the retainage to be held by the Town as security for such costs in the event of termination for improper performance by the Contractor, and that the Contractor, upon demand will promptly pay to the Town any excess of said amount over said retained amounts. Any amount not deducted from said retainage under this section will be returned to the Contractor within thirty (30) days after the expiration date of this Contract.

### **13. RETAINAGE FOR CLAIMS**

The Town may, after the final completion of the Work, retain out of the moneys due to the Contractor under this Contract such sum of money as may, in the judgment of the Director, be required to cover the payment of claims arising and made payable by the Contractor under the provisions of the Contract but remaining unsatisfied. The balance of the sum thus retained shall be paid to the Contractor at the expiration of six months after the end of the Contract.

### **14. SUSPENSION OF WORK; ABANDONMENT OF WORK**

Should the Work be prevented or enjoined from proceeding either before or after the start of performance of this Contract by reason of any litigation or other reason beyond the control of the Town, the Contractor shall not be entitled to make or assert any claim for damage by reason thereof.

The Town may notify the Contractor by a written order (with a copy mailed to the home office of the Surety) to discontinue all Work, or any part thereof, if: (a) the Work to be done under this Contract or any part thereof shall be abandoned; (b) this Contract or any part thereof shall be sublet without the previous written consent of the Owner; (c) the Contract or any claim thereunder shall be assigned by the Contractor otherwise than as herein specified; (d) at any time the Director shall be of the opinion, and shall so certify in writing, that the conditions herein specified as to the rate of progress are not fulfilled, or that the Work or part thereof is unnecessarily or unreasonably delayed, or that the Contractor has violated any of the provisions of this Contract, or (e) for any other just cause. Thereupon, the Contractor shall discontinue such Work or such part thereof as the Town may designate, and the Town may, by contract or otherwise as it may determine, complete the Work, or such part thereof, and charge the entire expense of so completing the Work or part thereof to the Contractor. The right is reserved to the Town, at all times, to call upon Contractor's Surety to complete such Work.

All expenses charged under this provision shall be deducted and paid by the Town out of any moneys then due or to become due to the Contractor under this Contract, or any part thereof. In such accounting, the Town shall not be held to obtain the lowest figures for the Work of completing the Contract or any part thereof or for insuring its proper completion, but all sums actually paid therefore shall be charged to the Contractor. In case the expenses so charged are less than the sum which would have been completed by the Contractor, the Contractor shall be entitled to receive the difference, and in case such expenses shall exceed the said sum, the Contractor shall pay the amount of the excess to the Town.

**15. CLAIMS FOR EXTRA WORK**

No claim for Extra Work or cost shall be allowed unless the same was done in pursuance of a written order of the Director approved by the Town, as aforesaid, and claim presented with the first estimate after the Extra Work is done. The Contractor shall furnish satisfactory bills, payrolls and vouchers covering all items of cost and, when requested by the Town, shall give the Town access to accounts relating thereto.

**16. SUBCONTRACTING OR ASSIGNMENT OF CONTRACT**

The Contractor shall give his direct attention constantly to the faithful prosecution of the Work, shall keep the same under his direct control. The Contractor shall not assign or subcontract the Work, or any part thereof, without the previous written consent of the Director, subject to all requirements of the Contract, including without limitation, the insurance requirements. The Contractor shall not either legally or equitably assign any of the moneys payable under this Contract, or any claim thereon, without the previous written consent of the Director. The Contractor shall be responsible for the acts and omissions of his subcontractors, if any, and of all persons directly or indirectly employed by him or them in connection with the Work.

**17. PERFORMANCE BOND AND GUARANTEE**

The Contractor shall furnish a Performance Bond in the penal sum of one hundred per cent (100%) of the annual Contract sum. The bond shall be from a bonding company licensed by the Massachusetts Division of Insurance, renewed at the option of the bonding company with sixty (60) written days notice to the Town.

The Contractor must submit to the Town and original of the Performance Bond. Any renewal bond shall be delivered to the Town at least thirty (30) days prior to expiration of the existing bond. Failure to deliver the renewal bond shall be cause to either cancel the Contract or withhold payments to be made hereunder.

**18. DAMAGES, SUITS AND CLAIMS; INDEMNIFICATION**

No officer, official, agent or employee of the Town shall be held personally responsible for any liability arising under the Contract. The Contractor shall indemnify, defend and hold harmless the Town of Winthrop, its Town Manager and Town Council, its Department of Public Works, and all of its and their officers, agents and employees, against all suits, claims or liability of every name and nature and from all claims for things which the Contractor is required to furnish under this Contract and for or on account of any injuries to persons or damage to property or nuisances or trespasses, and specifically including death and consequential damages, arising out of or in

consequence of the acts or omissions of the Contractor, its agents, employees and subcontractors in the performance of the Work covered by this Contract or failure to comply with the terms and conditions of the Contract, whether by the Contractor or his agents, employees, or subcontractors, and whether or not such claims, demands, suits, or proceedings are just, unjust, groundless, false or fraudulent; and the Contractor shall and does hereby assume and agrees to pay for the defense of all such claims, demands, suits and proceedings.

The Contractor shall compensate the Town for all damages to Town property of any nature arising out of the Contractor Work. The Contractor agrees to hold the Surety and the Town harmless from all and any claims, liens, demands or bills for labor and/or materials furnished or delivered in the performance of this Contract, and agrees to indemnify the Surety and the Town against all loss, damage or cost, legal or otherwise, ensuing from the same.

The Contractor also shall be responsible for paying any fines assessed to the Town for the Contractor's failure to provide required services.

## **19. REPRESENTATIONS**

### **A. Representations of the Town:**

The Town makes the following representations as the basis for the undertakings on the part of the Contractor under this Agreement:

1. The Town is a municipal corporation and political subdivision of the Commonwealth, duly created and existing under and pursuant to the Constitution and laws of the Commonwealth.
2. The Town has full power and legal authority to enter into this Agreement, to carry out the transactions contemplated by this Agreement, and to perform its obligations in accordance with the terms of this Agreement.
3. The Town makes no representation or guarantee as to the quantity of solid waste or recyclable materials that may be accepted.
4. The Town has not entered into any agreement with any other person or party regarding services that may be provided by the Contractor in accordance with this Agreement.

### **B. Representations of the Contractor**

The Contractor makes the following representations as the basis for the undertakings on the part of the Town under this Agreement:

1. The Contractor is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts, and is in the business of providing solid waste services;
2. The Contractor has the authority and legal capacity to enter into this Agreement and perform its obligations hereunder in accordance with the terms of this Agreement.

3. The execution, delivery and performance by the Contractor 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:
  - a. violate any provision of its incorporation papers or by-laws, as amended to date or of any securities issued by the Contractor;
  - b. constitute or result, in a breach of, default under, or conflict with any statute or other law, or any order, judgment, award, decree, regulation, ruling or requirement of any court, other tribunal, arbitration, or governmental or administrative authority, commission or agency, or any indenture, agreement, lease, instrument or other undertaking to which the Contractor or its associates, affiliates or related entities, is a party of by which it or its property or assets may be bound or affected.
4. This agreement constitutes a legal, valid and binding obligation of the Contractor, and shall be enforceable in accordance with its terms.
5. The Contractor agrees that it is an independent agent, and not an employee of the Town for any purpose.

## **20. MISCELLANEOUS**

### **A. Notices**

Any notice, demand, approval, proposal, protest, direction or request provided or 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:

**If to the TOWN:**

Town of Winthrop  
Chief Procurement Officer  
Town Hall  
1 Metcalf Square  
Winthrop, MA 02152

**and**

Town of Winthrop  
Director of Public Works  
100 Kennedy Road  
Winthrop, MA 02152

**If to Contractor:**  
Capitol Waste Services, Inc.  
President

1222 Bennington Street  
Winthrop, MA 02152

Each party may change the address to which notices shall be sent by filing written notice thereof with the other party.

**B. Applicable Law**

This Agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts. Each of the parties, to the extent that it may lawfully do so, hereby consents to the jurisdiction of the courts of the Commonwealth and the United States District Court for the District of Massachusetts, as well as to the jurisdiction of all courts from which an appeal may be taken from such courts, for the purposes of any suit, action or other proceeding arising out of any of its obligations arising hereunder or with respect to the transactions contemplated hereby, and expressly waives any and all objections which it may have as to the venue in any such courts.

**C. Discrepancies, Errors. And Omissions**

The provisions of this Contract are intended to be explanatory of the Work to be done and of each other, but should any discrepancies or errors appear or any omissions be made, they shall be called to the attention of the Director and shall be subject to his correction and interpretation, thereby defining and fulfilling the intent of this Contract.

**D. Provisions Required By Law Deemed Inserted**

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall be forthwith physically amended to make such insertion or correction.

**E. Severability**

If any provision of this Agreement is held invalid or unenforceable, such provision shall be modified consistent with the original intent of the parties so as to be enforceable and the remainder of the Agreement shall : remain in full force and effect.

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 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.

Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition,

enforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

#### **F. Amendment of Agreement**

This Agreement may not be amended except in writing executed in the same manner as the Agreement itself and delivered by the parties hereto. It is contemplated by both parties that amendment of this Agreement may be necessary during the term of this Agreement.

#### **G. Beneficiaries**

The parties intend that there shall not be any third party beneficiaries to this Agreement.

#### **H. Interpretation and Rules of Construction.**

References herein to articles and paragraph numbers shall refer to articles and paragraphs in this Agreement unless reference to another document is clearly stated and shall be solely for convenience of reference and shall not affect the meaning or the construction, interpretation or effect of this Agreement. The words "herein," "hereby," and "hereof" and such general terms of reference as may be utilized in this Agreement shall refer and pertain to this Agreement as a whole, including any exhibits, attachments, schedules or annexed material forming part of this Agreement and referenced in it. All exhibits attached hereto are incorporated herein by reference but to the extent of an conflict between an exhibit and the Agreement, the terms of this Agreement shall govern. The singular of any term defined in this Agreement shall encompass the plural, and the plural the singular, unless the context clearly indicates otherwise.