



CITY OF CENTRAL FALLS

Refuse/Recycling Collection Contract

## AGREEMENT FOR SERVICES

This Agreement for Services (hereinafter the “Agreement” or “Contract”) made this 12<sup>th</sup> day of April, 2013 between the City of Central Falls, a municipal corporation of the State of Rhode Island, with a business address of 580 Broad Street, Central Falls, Rhode Island (hereinafter the “City”) and MTG Disposal, LLC, a limited liability company authorized to do business in the State of Rhode Island, with a business address of 19 Industrial Way, Seekonk, Massachusetts (hereinafter the “Contractor”).

### **1. SCOPE OF CONTRACTOR SERVICES**

The Contractor shall provide refuse and recycling collection services in the City of Central Falls as specified herein and as set forth in the following Exhibits, all of which are attached hereto and incorporated into this Agreement by reference herein: Exhibit 1 - Request for Proposal “12-010” dated May 7, 2012, including the General Terms and Conditions of Purchase set forth therein; Exhibit 2 - Addendum #1 dated May 14, 2012; Exhibit 3 - Addendum #2 dated June 7, 2012); and Exhibit 4 - Addendum #3 dated June 21, 2012.

The Contractor shall collect refuse and recycling as outlined in the Exhibits attached hereto. More particularly, for a period of not less than 90 days, contractor shall collect refuse and recycling following the present City collection system and schedule; Monday, Tuesday and Wednesday. Specifically; the Contractor shall collect refuse from each location specified at least once per week throughout the Contract term. The parties, however, acknowledge that contract’s bid was based on a 5 day collection schedule. If after 90 days contractor concludes that the 3 day schedule is not operating effectively, operationally or financially, contractor, with approval from the City, said approval not to be unreasonably withheld, may commence

converting routes to a 5 day per week collection schedule. If the City opts for automated recycling collection as outlined in Section A below, the Contractor shall provide totes for recycling to each location as specified and shall provide recycling collection from each location at least once in each two-week time frame throughout the Contract term. The Contractor shall collect all other City-generated waste as specified in the Exhibits attached hereto. Collection of all waste streams and recycling in the City shall be as specified in the Scope of Work and other requirements detailed in the Exhibits.

a. AUTOMATED RECYCLING SERVICES

The parties acknowledge that the Contractor has estimated, and in fact, bid the cost of automated service pick up of recycling products which requires a substantial capital investment in both the trucks and the tote barrels required. Upon automation, the Contractor shall be allowed bi-weekly collection. In anticipation of the bi-weekly collection and in recognition of the uncertain nature of the risk of recycling under such a collection schedule, Contractor shall provide (4) four months of the bi-weekly recycling data from the City of Pawtucket, which shall begin August 1, 2013. Thereafter, the City at its sole discretion may opt to have recycling collection under an automated bi-weekly system. The notification of opting for automation by the City shall afford Contractor (6) six months lead time before implementing the automated bi-weekly system.

b. INSPECTION

The Contractor shall allow the Director of Public Works to inspect any and all truck loads, prior transfer to a licensed landfill, in order to confirm all refuse, waste and/or recycling is attributable to City of Central Falls.

**2. COMPENSATION FOR SERVICES**

The City shall pay the Contractor in the following sums for work performed under this Agreement after the effective date as set out below:

Year	Annual Cost
Year 1	\$498,000.00
Year 2	\$507,960.00
Year 3	\$518,120.00
Year 4	\$528,482.00
Year 5	\$539,052.00

In the event the City opts to have contractor conduct recycling collection under a bi-weekly automated system, the City shall pay the contractor in the following terms for work performed under this Agreement after the effective date as set forth below:

Year	Annual Cost
Year 1	\$503,000.00

Year 2	\$513,060.00
Year 3	\$523,322.00
Year 4	\$533,788.00
Year 5	\$544,464.50

**3. BILLING AND PAYMENT PROCEDURE**

The payment to the Contractor shall be divided into 24 equal parts, and shall, without the necessity of billing by the Contractor, be paid by the 15th of each month and the last day of each month, said payments covering services rendered for the immediately preceding term. The Contractor agrees that payment would be accepted via credit card providing the fee assessed by the credit card company does not exceed 1%.

**4. EFFECTIVE DATE: TERM**

This Agreement shall be for a term of (5) five years; (“the Term”), effective as of June 1, 2013 and shall terminate on May 31, 2018. Additionally, the City, and only the City, in its sole discretion, shall have an option to extend this contract for a period of up to (5) five additional years, which said option may be exercised in whole or in any number of increments over the course of the term, or any extension thereunder. However; pursuant to the scope of services as identified under Paragraph 1, and the incorporated addendum; if at anytime the City opts to have contractor handle recycle collection through the, “automated tote”, collection system, the “term”,

for services of (5) five years will in fact reset to be effective from the date the conversion to automated tote collection occurs, and the parties shall at that time, execute the appropriate memorandum to reflect same.

**5. EARLY TERMINATION OF AGREEMENT**

(a) The Municipality and Contractor, by mutual written agreement, may terminate this Agreement at any time.

(b) Except by mutual agreement, there shall be no early termination except for breach of this Agreement. Either the Municipality or the Contractor may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within sixty (60) days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.

**6. PAYMENT ON EARLY TERMINATION**

In the event of termination under subsection 5(a) or (b) hereof, the Municipality shall pay the Contractor for work performed in accordance with the Agreement prior to the termination date.

In the event of termination under subsection 5(a) or (b) hereof by the Contractor due to a breach by the City, then the Municipality shall pay the Contractor as provided above.

In the event of termination under subsection 5(a) or (b) hereof by the Municipality due to a breach by the Contractor, then the Municipality shall pay the Contractor as provided above, subject to set-off of excess costs provided for in Paragraph 7(a) and 12 of this Agreement.

In the event of early termination, for any reason, by either party, if the Contractor has converted to automated recycling and provided totes to the City's residents, the City will pay to the Contractor or its designee, the balance of the purchase price of the totes based on an amortization schedule as originally provided to the City at the commencement of automated services. Upon such payment all right, title, and interest in the totes shall pass to the City. Otherwise, title to the totes shall remain with the Contractor until the expiration at the original five (5) year contract term at which time ownership of the totes shall pass to the City and Contractor shall execute any documents necessary to effect this result.

## **7. REMEDIES**

(a) In the event of termination by the City due to a breach by the Contractor, then the City may complete the work either itself or by agreement with another contractor, or by a combination thereof. In the event the cost of completing the work exceeds the amount actually paid to the Contractor hereunder, plus the remaining unpaid balance of the compensation provided under the contract and appendices hereto, then the Contractor shall pay to the City the amount of the excess cost.

(b) The remedies provided to the Parties herein for a breach of this agreement shall not be exclusive. The Parties also shall be entitled to any other equitable and legal remedies that are

available.

## **8. CITY PROJECT MANAGER**

This Contract shall be administrated by the Director of Public Works, and at his sole discretion, a designee of his choosing.

## **9. RHODE ISLAND LAW AND FORUM**

(a) This Agreement shall be construed according to the law of the State of Rhode Island.

(b) Any litigation between the City and the Contractor arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Providence County Superior Court, and in the federal courts, in the United States District Court for the District of Rhode Island.

## **10. MAINTENANCE OF RECORDS**

The Contractor shall maintain records on a current basis to support its billings to the City. The City or its authorized representatives shall have the authority to inspect, audit, and copy on reasonable notice and from time to time any records of the Contractor regarding its billings or its work hereunder. The Contractor shall retain these records for inspection, audit, and copying for three (3) years from the date of completion or termination of this Agreement.

## **11. FUEL ADJUSTMENT**



The parties recognize that fuel costs are integral to the transportation industry and that the Contractor has bid the delivery of services based upon present day fuel costs with an anticipation that fuel prices would in fact rise over the term of the contract. The parties hereby agree that if for unforeseen reasons the market rate of fuel increases dramatically – above and beyond the average % price increase over the past (3) three years, the parties will in good faith negotiate a cost adjustment.

## **12. AUDIT OF PAYMENTS**

(a) The City, either directly or through a designated representative, may audit the records of the Contractor at any time during the term of the Contract. Said records must be kept available for thirty-six (36) months after the termination or expiration of the Contract.

(b) If an audit discloses that payments to the Contractor were in excess of the amount of which the Contractor was entitled, then the Contractor shall repay the amount of the excess to the City.

## **13. INDEMNIFICATION**

The Contractor shall hold harmless, defend, and indemnify the City and the City's officers, agents, and employees against all claims, demands, actions, and suits (including all attorney fees and costs) brought against any of them arising from the Contractor's work or any subcontractor's work under this Agreement.

## **14. LIABILITY INSURANCE**

(a) The Contractor shall maintain public liability and property damage insurance that protects the Contractor and the City and its officers, agents, and employees from any and all claims, demands, actions, and suits for damage to property or personal injury, including death, arising from the Contractor's work under this Agreement. The insurance shall provide coverage for not less than \$1,000,000.00 for personal injury to each person, \$1,000,000.00 for each occurrence and \$1,000,000.00 for each occurrence involving property damages; or a single limit policy of not less than \$1,000,000.00 covering all claims per occurrence. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Rhode Island during the term of the Agreement.

The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insurers the City and its officers, agents, and employees. Notwithstanding the naming of additional insurers, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurers liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The Coverage must apply as to claims between insurers on the policy. The insurance shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the Finance Director. If the insurance is canceled or terminated prior to completion of the contract, Contractor shall provide a new policy with the same terms or terms

otherwise acceptable to the City. Contractor agrees to maintain continuous uninterrupted coverage for the duration of the contract.

(b) The Contractor shall maintain on file with the Finance Department a certificate of insurance certifying the coverage required under subsection (a). The adequacy of the insurance shall be subject to the approval of the City Solicitor. Failure to maintain liability insurance shall be cause for immediate termination of this agreement by the City.

#### **15. WORKERS' COMPENSATION INSURANCE**

(a) The Contractor shall obtain workers' compensation insurance coverage for all of its workers, employees and subcontractors either as a carrier-insured employer or a self-insured employer, as provided by Rhode Island Statutes, before this Contract is executed. The Contractor further agrees to maintain workers' compensation insurance coverage for the duration of this Agreement.

(b) In the event the Contractor's workers' compensation insurance coverage expires during the term of this Agreement, the Contractor agrees to the timely renewal of its insurance, either as a carrier-insured employer or a self-insured employer, before its expiration, and the Contractor agrees to provide the City with further certification of workers' compensation insurance as renewals of said insurance occur.

#### **16. SUBCONTRACTING**

The Contractor shall not subcontract its work under this Agreement, in whole or in part, without the written approval of the City. The Contractor shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the Contractor as specified in this Agreement. Notwithstanding City approval of a subcontractor, the Contractor shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Contractor hereunder. Contractor agrees that if subcontractors are employed in the performance of this Agreement, Contractor and its subcontractors are subject to Workers' Compensation requirements.

#### **17. ASSIGNMENT**

The Contractor shall not assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the City.

#### **18. INDEPENDENT CONTRACTOR STATUS**

(a) The Contractor is engaged as an independent contractor and will be responsible for any federal, state and local taxes and fees applicable to payments hereunder.

(b) The Contractor and its subcontractors and employees are not employees of the City and are not eligible for any benefits through the City, including without limitation Federal Social Security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.

#### **19. NOTICE**

(a) Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

If to the City:

Mayor James A. Diossa  
City of Central Falls  
580 Broad Street  
Central Falls, RI 02863

And Public Works Department  
Attn: Public Works Director  
1280 High Street  
Central Falls, RI 02863

And Office of the City Solicitor  
City of Central Falls  
580 Broad Street  
Central Falls, RI 02763

If to the Contractor:

Robert Mega  
MTG Disposal, LLC  
19 Industrial Way  
Seekonk, MA 02771

**20. SEVERABILITY**

If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.

**21. ENTIRE AGREEMENT**

This Agreement contains the entire Agreement between the City and the Contractor and supersedes all prior written or oral discussions or agreements. This Agreement may not be changed orally or by any agreement between the parties unless it is in writing, executed by the parties hereto.

**22. WAIVERS**

No waiver of any breach or any one or more of the conditions or covenants of this Contract by City or Contractor shall be deemed to imply or to constitute a waiver of any prior or succeeding breach; and the failure of City or Contractor to insist upon the strict performance of the terms, covenants, agreements and conditions herein contained or any one of them shall not constitute or be construed as a waiver or relinquishment of City's or Contractor's right to thereafter enforce any such default, or any term, covenants, agreement or condition.

**23. PAYMENTS TO VENDORS AND SUBCONTRACTORS**

The Contractor shall pay in a timely manner all suppliers, lessors, and contractors providing it services, materials or equipment for carrying out its obligations under this Agreement. The Contractor shall not take or fail to take any action in a manner that causes the City or any materials, other than totes, that the Contractor provides hereunder to be subject to any claim or lien of any person without the City's prior written consent.

**24. COMPLIANCE WITH LAWS**

Contractor shall materially comply with any and all Federal, state and local laws and regulations now in force and which may hereafter during the term of this contract, be enacted and become effected which are applicable, as well as obtaining any and all required permits and licenses.


**25. EMPLOYMENT OPPORTUNITES**

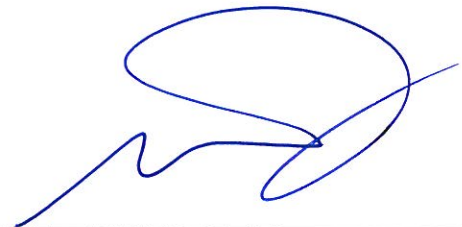
The Contractor shall make every effort to hire qualified City employees displaced by the implementation of this Contract as well as all reasonable efforts to employ City residents.

**IN WITNESS WHEREOF**, this instrument has been executed the day and year first above written.

**CITY OF CENTRAL FALLS**

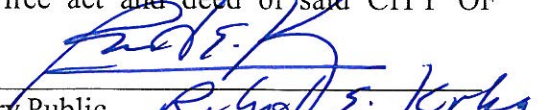
By and through its duly authorized agent,

  
John F. McJennett, III  
In His capacity as State-Appointed Receiver  
Of the City of Central Falls

  
\_\_\_\_\_  
Mayor James A. Diossa

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

In the City of Central Falls on the 12<sup>th</sup> day of April, 2013 before me personally appeared James A. Diossa, to me known and known by me to be the duly elected Mayor of said City executing the foregoing instrument on behalf of said City, and he acknowledged said instrument so executed to be the free act and deed of said CITY OF CENTRAL FALLS.

  
\_\_\_\_\_  
Notary Public Richard E. Kirby  
My Commission Expires: 8-6-16

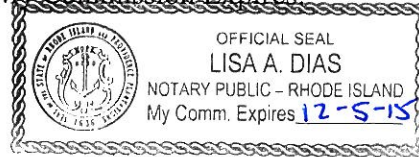
STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

In the City of Central Falls on the 12<sup>th</sup> day of April, 2013 before me personally appeared John F. McJennett, III, to me known and known by me to be the State-Appointed Receiver of the City of Central Falls executing the foregoing instrument on behalf of said City, and he acknowledged said instrument so executed to be the free act and deed of said CITY OF CENTRAL FALLS.

Lisa A. Dias

Notary Public

My Commission Expires:



**MTG DISPOSAL, LLC**

By and through its duly authorized agent,

Robert Mega

Robert Mega, Manager

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

In the City of East Providence on the 12<sup>th</sup> day of April, 2013 before me personally appeared Robert Mega, to me known and known by me to be the duly authorized agent/Manager of MTG Disposal, LLC executing the foregoing so executed to be the free act and deed of said MTG Disposal, LLC.

Austin J. Walsh  
Notary Public  
My Commission Expires: 8/8/2015