

STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS

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Memorandum of Decision

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CHRO No. 0910466 - Commission on Human Rights and Opportunities ex rel.
Thomas George, Complainant v. Town of West Hartford, Respondent

Procedural Background

On June 3, 2009, Thomas George ("the complainant") filed an affidavit of illegal discriminatory practice ("affidavit" or "complaint") with the Commission on Human Rights and Opportunities ("commission") asking that the commission investigate the complaint and secure for the complainant his rights and any remedy to which he is entitled. The affidavit, inter alia, alleged that the Town of West Hartford ("the respondent"), violated Conn. Gen. Stat. § 46a-58(a) (enforcing the substantive provisions of title II of the Americans with Disabilities Act as amended, 28 U.S.C. 12131, et seq. ("ADA")) and Conn. Gen. Stat. § 46a-64(a), when the respondent failed to make a modification to its refuse and recycling collection service.¹

On November 5, 2010, the Office of Public Hearings issued the required Notice of Contested Case Proceeding and Hearing Conference and the case was assigned to the Jon P. Fitzgerald, as the presiding human rights referee. On January 12, 2012, the case was reassigned to the Alvin R. Wilson, Jr., as the presiding human rights referee. All statutory and procedural prerequisites having been satisfied, the complaint is properly before this tribunal for hearing and decision.

The complainant died on October 17, 2011. On or about October 22, 2012, his attorney, Nancy B. Alisberg of the Connecticut Office of Protection and Advocacy for Persons with Disabilities, filed a motion, pursuant to Regulations of Connecticut State Agencies §§ 46a-54-38a and 46a-54-40a(3), to substitute Carol

¹ Referee Jon P. Fitzgerald granted the respondent's motion to dismiss the Conn. Gen. Stat. § 46a-64(a) claim on March 24, 2011.

Reid, his daughter and the executor of his estate, to pursue the complaint. The motion was granted on December 2, 2013.

In addition to complainant's counsel, participating in this case is Attorney Robin Kinstler-Fox, for the commission, and Attorneys James M. Sconzo and Jonathan C. Sterling for the respondent.

The parties submitted Stipulations of Fact on April 25, 2014. (See Appendix A.) No witnesses appeared in this matter. The parties then filed briefs, on June 16, 2014, and reply briefs on July 11, 2014, and the record was closed.

Section I

This is a case of first impression. The central issue is whether title II of the Americans with Disabilities Act ("ADA"), and certain regulations contained in 28 CFR Part 35 to implement title II (issued, in 1984, by the Department of Justice ("DOJ") pursuant to section 204 of the ADA), requires a municipality to provide a service to retrieve, from private property, the trash and recycling receptacles belonging to an individual who is physically incapable of rolling the receptacles to the curb in front of his or her residence.² The standard service provided to all residents requires that the receptacles be placed curbside for its contents to be emptied by an automated process and taken away, without the truck's driver leaving the vehicle. The complainant requested that this supplemental service be provided to him free of charge, although able-bodied residents must pay for this service.³

The complainant, commission, and the office of protection and advocacy (hereinafter the "complainants") assert that title II requires the town to provide the supplemental service gratis because without it the complainant was deprived

² The complainant was legally blind and mobility impaired (his ability to walk and his physical strength was substantially limited). It is not clear whether the complainant is alleging that both of these disabilities are the basis of the requested accommodation.

³ The town provides this rear-yard service free to eligible individuals with disabilities that meet specified income guidelines.

of "meaningful access" to the benefit of the municipal refuse/recycling collection service to which he was "legally entitled." They argue that the refusal of the respondent to provide this supplemental service denies the complainant a reasonable modification that title II requires.

The complainants seek enforcement of title II (but not its remedies) pursuant to Conn. Gen. Stat. § 46a-58(a), which states:

It shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of religion, national origin, alienage, color, race, sex, gender identity or expression, sexual orientation, blindness or physical disability.⁴

⁴ Although section 46-58(a) has its origins in a Connecticut criminal statute dating from 1884 (that reflected what is now 42 USC § 1983), in 1975, with the passage of Public Act 75-462, the commission was authorized to process complaints alleging violations of this provision. Section 73 of Public Act No. 15-5 of the June Special Session (An Act Implementing Provisions of the State Budget for the Biennium Ending June 30, 2017, concerning General Government, Education, Health and Human Services and Bonds of the State) amended this section to add "mental disability" as a protected class.

According to section 203 of the ADA, 42 U.S.C. § 12133, the remedies available for a violation of title II are available under § 505 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794a. However, those remedies are not available in this action. Instead, damages that may be awarded for the violation of any state or federal law enforceable via Conn. Gen. Stat. § 46a-58(a), including title II of the ADA, are provided for in subsections (a) and (c) of Conn. Gen. Stat. § 46a-86 which state:

(a) If, upon all the evidence presented at the hearing conducted pursuant to section 46a-84, the presiding officer finds that a respondent has engaged in any discriminatory practice, the presiding officer shall state the presiding officer's findings of fact and shall issue and file with the commission and cause to be served on the respondent an order requiring the respondent to cease and desist from the discriminatory practice and further requiring the respondent to take such affirmative action as in the judgment of the presiding officer will effectuate the purpose of this chapter...

(c) In addition to any other action taken under this section, upon a finding of a discriminatory practice prohibited by section 46a-58, 46a-59, 46a-64, 46a-64c, 46a-81b,

After a comprehensive review and consideration of the respective arguments of the parties, the stipulated facts, and the ADA (including, its regulations, case law, legislative history), the undersigned is not convinced that Congress intended, or even contemplated, that the ADA require a public entity to provide any individual the type of modification sought by the complainant – the provision of personal services to accomplish a task beyond the inherent abilities of the complainant.

For the reasons below, and consistent with numerous decisions that establish that neither the ADA nor the Rehabilitation Act of 1973 requires public entities to provide a minimum level of services to disabled individuals,⁵ I conclude that although the ADA prohibits trait-based discrimination and, when reasonable,

46a-81d or 46a-81e, the presiding officer shall determine the damage suffered by the complainant, which damage shall include, but not be limited to, the expense incurred by the complainant for obtaining alternate housing or space, storage of goods and effects, moving costs and other costs actually incurred by the complainant as a result of such discriminatory practice and shall allow reasonable attorney's fees and costs. The amount of attorney's fees allowed shall not be contingent upon the amount of damages requested by or awarded to the complainant.

⁵ See, Southeastern Community College v. Davis, 442 U.S. 397 (1979) (Section 504 of the Rehabilitation Act did not prohibit refusal of college to modify its curriculum); Alexander v. Choate, 469 U.S. 287 (1985) (Section 504 of the Rehabilitation Act did not prohibit Tennessee from limiting its Medicaid services); Townsend v. Quasim, 328 F.3d 511, 518 (9th Cir.2003) (Title II and its integration regulation, 28 C.F.R. § 35.130(d), do not require public entities "to create new create new [Medicaid] programs that provide heretofore unprovided services to assist disabled persons."). See also the following cases cited in Wright v. Giuliani, 230 F.3d 543, 548 (2d Cir. 2000) -- Rodriguez v. City of New York, 197 F.3d 611, 618 (2d Cir.1999) (rejected ADA challenge based on New York City's refusal to require caregivers to provide safety monitoring services to a subset of individuals with disabilities because "[t]he ADA requires only that a particular service provided to some not be denied to disabled people"); Doe v. Pfrommer, 148 F.3d 73, 83 (2d Cir.1998) (rejected Rehabilitation Act claim by disabled individual who sought, inter alia, a "job coach," because "what [plaintiff] seeks to challenge is not illegal discrimination against the disabled, but the substance of the services provided to him"); Lincoln Cercpac v. Health and Hospitals Corp., 147 F.3d 165, 168 (2d Cir.1998) (affirmed dismissal of Rehabilitation Act and ADA claims brought by disabled children who were transferred from one rehabilitation center to another with fewer services because "the disabilities statutes do not guarantee any particular level of medical care for disabled persons, nor [do they] assure maintenance of service previously provided").

requires covered entities to eliminate obstacles existing external to and distinct from an individual with a disability which interfere with his or her ability to perform functions within his or her own capabilities, Congress did not intend for the ADA to make it a violation for a public entity to refuse to perform any function for the benefit of any individual that exceeds their physical abilities, as long as the public entity does not perform that service for able-bodied citizens.

Section II

Section 202 of the ADA, codified at 42 U.S.C. § 12132, states that “[s]ubject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, program or activities of a public entity, or be subjected to discrimination by any such entity.”⁶ This provision is derived from Section 504

⁶ Subtitle A of title II of the ADA states, in its entirety:

SEC. 201 (42 USCA § 12131) -- As used in this title: (1) The term “public entity” means— (A) any State or local government; (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and (C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act). (2) The term “qualified individual with a disability” means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

SEC. 202 (42 USC § 12132) -- Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

SEC. 203 (42 USC § 12133) -- The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be the remedies, procedures, and rights this title provides to any person alleging discrimination on the basis of disability in violation of section 202.

SEC. 204 (42 USCA § 12134) -- (a) Not later than 1 year after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this subtitle. Such regulations shall not include any matter within the scope of the authority of the

of the Rehabilitation Act of 1973, as amended, codified at 29 U.S.C. § 794, which states, in relevant part that,

No otherwise qualified individual with a disability in the United States, ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978....

Section 204 of the ADA, codified at 42 U.S.C. § 12134, directs the DOJ to issue regulations to implement title II. Specifically, with respect to “program accessibility, existing facilities” and “communications,” Congress directed the DOJ to promulgate regulations that are “consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under section 794 of title 29.” (Hereinafter 28 CFR Part 39

Secretary of Transportation under section 12143, 12149, or 12164 of this title. (b) Except for “program accessibility, existing facilities”, and “communications”, regulations under subsection (a) of this section shall be consistent with this Act and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). With respect to “program accessibility, existing facilities”, and “communications”, such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations [Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Justice], applicable to federally conducted activities under section 504. (c) Regulations under subsection (a) of this section shall include standards applicable to facilities and vehicles covered by this part, other than facilities, stations, rail passenger cars, and vehicles covered by part B of this subchapter [i.e., Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory]. Such standard shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204(a) of this title.

will be referred to as the "DOJ Rehabilitation Act regulations.") This provision reflects the intent of Congress that "Section 202 ... extend[] the nondiscrimination policy in section 504 of the Rehabilitation Act of 1973 to cover all State and local government entities...." See, Report from the House Committee on Education and Labor, H.R. Rep. 101-485(II) (1990).

Subpart D of the title II regulations, §§ 35.149-35.152, set forth its program accessibility requirements. The essential purpose of the title II accessibility regulations is to ensure, within reason, that public facilities are readily accessible to individuals with disabilities. Similar accessibility regulations are found at 45 CFR §§ 84.21-84.23 (issued by the Department of Health and Human Service on May 4, 1977) and 28 CFR §§ 41.56-41.58 (issued by the DOJ on January 13, 1978), which also were issued to implement Section 504 of the Rehabilitation Act of 1973. (See, e.g., endnote i.)¹

Title II regulation § 35.149, essentially, restates the DOJ Rehabilitation Act regulation 28 CFR § 39.149.¹¹ (See, endnote ii.) It states, "[e]xcept as otherwise provided in §35.150, no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity."

Likewise, title II regulation § 35.130(b)(1)(i) restates the general prohibition against discrimination contained in the DOJ Rehabilitation Act regulation 28 CFR § 39.130. (See endnote ii.) It reads, "(1) a public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of a disability (i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service."

Title II regulation § 35.130(b)(1)(i) is simply a restatement of both ADA section 202 and regulation § 35.130(a). Title II regulation § 35.130(a) states that "[n]o qualified individual with a disability shall, on the basis of disability, be excluded

from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any public entity.”⁷

Regulation § 35.130(b)(7) reads, “[a] public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.” (Emphasis added.) The DOJ 1991 Section-by-Section Analysis of the title II regulations (hereinafter “DOJ 1991 Analysis”), p. 195, states that –

Paragraph (b)(7) is a specific application of the requirement under the general prohibitions of discrimination that public entities make reasonable modifications in policies, practices, or procedures where necessary to avoid discrimination on the basis of disability. Section 302(b)(2)(A)(ii)⁸ of the ADA sets out this requirement specifically for public accommodations covered by title III of the Act, and the House Judiciary Committee Report directs the Attorney General to include those specific requirements in the title II regulation to the extent that they do not conflict with the regulations

⁷ Regulations §§ 35.149 and 35.150 essentially copy provisions contained in three sets of regulations implemented to enforce Section 504 of the Rehabilitation Act of 1973 – 45 CFR § 84.4, 28 CFR § 41.51, and 28 CFR § 39.130. (See (1) 45 CFR Part 84 – Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance issued by the Department of Health and Human Services, effective May 4, 1977); (2) 28 CFR Part 41 – Nondiscrimination on the Basis of Handicap in Federally Assisted Programs, the coordination regulations, effective August 11, 1981, issued by the DOJ pursuant to President Carter’s Executive Order 12250); and (3) 28 CFR Part 39 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Justice, effective October 11, 1984.)

⁸ Section 302(b)(2)(A)(ii), codified at 42 U.S.C. § 12182(b)(2)(A)(ii), states, “discrimination includes ... a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.”

implementing section 504 [of the Rehabilitation Act]. Judiciary report, at 52 (sic).

The DOJ intended to cite p. 51 of H.R. Rep. 101-485(III), which states --

Title II should be read to incorporate provisions of titles I and III which are not inconsistent with the regulations implementing Section 504 of the Rehabilitation Act of 1973, such as Section 102(b)(4) of the ADA. However, nothing in the other titles should be construed to lessen the standards in the Rehabilitation Act regulations which are incorporated by reference in Section 204.

Furthermore, the report from the House Committee on Education and Labor, H.R. Rep. 101-485(II), states, in pertinent part, that --

Section 202 ... extends the nondiscrimination policy in section 504 of the Rehabilitation Act of 1973 to cover all State and local government entities.... The Committee has chosen not to list all the types of actions that are included within the term discrimination, as was done in titles I and III, because this title essentially simply extends the anti-discrimination prohibition embodied in section 504 to all action of state and local governments. The Committee intends, however, that the forms of discrimination prohibited by section 202 be identical to those set out in the applicable provisions of titles I and III of this legislation. Thus, for example, the construction of "discrimination" set forth in section 102(b) and (c) and section 302(b) should be incorporated in the regulations implementing this title. In addition, however, section 204 [of the ADA] also requires that regulations issued to implement this section be consistent with regulations issued under section 504. Thus, the requirements of those regulations apply as well, including any requirements such as program access that go beyond titles I and III. In addition, activities which do not fit into the employment or public accommodation context are governed by the analogous section 504 regulations. For example, under this title, local and state governments are required to

provide curb cuts on public streets. The employment, transportation, and public accommodations sections of this Act would be meaningless if people who use wheelchairs were not afforded the opportunity to travel on and between the streets. Finally, it is also the Committee's intent that section 202 also be interpreted consistent with Alexander v. Choate, 469 U.S. 287 (1985).⁹

⁹ The Supreme Court in Choate decided that the state had the right to determine the scope of services it would provide under its Medicaid program and that limiting the number of in-patient hospital days did not violate Section 504 of the Rehabilitation Act, although advocates for individuals with disabilities claimed the 14-day limit was discriminatory. It stated that,

[t]he 14-day limitation will not deny respondents meaningful access to Tennessee Medicaid services or exclude them from those services... The reduction in inpatient coverage will leave both handicapped and nonhandicapped Medicaid users with identical and effective hospital services fully available for their use, with both classes of users subject to the same durational limitation. The 14-day limitation, therefore, does not exclude the handicapped from or deny them the benefits of the 14 days of care the State has chosen to provide.

469 U.S. 287, 302 (1985).

"Meaningful access" is not a term that appears in title II or its implementing regulations. The term first appeared in the Choate decision. Although rejecting the notion that Section 504 required the modification of services requested, the Court observed that specific Rehabilitation Act regulations –

are consistent with the view that reasonable adjustments in the nature of the benefit offered must at times be made to assure meaningful access. See, e.g., 45 CFR § 84.12(a) (1984) (requiring an employer to make "reasonable accommodation to the known physical or mental limitations" of a handicapped individual); 45 CFR § 84.22 and § 84.23 (1984) (requiring that new buildings be readily accessible, building alterations be accessible "to the maximum extent feasible," and existing facilities eventually be operated so that a program or activity inside is, "when viewed in its entirety," readily accessible); 45 CFR § 84.44(a) (1984) (requiring certain modifications to the regular academic programs of secondary education institutions, such as changes in the length of time permitted for the completion of degree requirements, substitution of

Regulation § 35.130(b)(7) appears to vary in substance from 302(b)(2)(A)(ii). The statute requires modifications in policies, practices, and procedures to "afford access" to goods, services, etc., except when the modification fundamentally alters the goods, services, etc. The regulation, derived from the statute, requires that a public entity modify its policies, practices, and procedures to "avoid discrimination on the basis of a disability," except when the modification would fundamentally alter the service, program, or activity offered.

Regulation §35.130(f) states, "[a] public entity may not place a surcharge on a particular individual with a disability or any group of individuals with a disabilities to cover the cost of measures, such as the provision of auxiliary aids¹⁰ or program

specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted).

Choate, 469 U.S., at 302.

The Court, however, did not determine that the general prohibitions against discrimination contained in 45 CFR § 84.4 (Discrimination prohibited), one of the regulations upon which title II regulation § 35.130 is modeled, required a modification of services that the complainants sought in that case.

¹⁰ The ADA appears to require the use of "auxiliary aids and services" only as measures to improve communications. See Subpart E of the title II regulations. Regulation §35.160, states in pertinent part,

(a)(1) A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others. (2) For purposes of this section, "companion" means a family member, friend, or associate of an individual seeking access to a service, program, or activity of a public entity, who, along with such individual, is an appropriate person with whom the public entity should communicate.

(b)(1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity. (2) The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the

accessibility that are required to provide that individual or group with the nondiscriminatory treatment required by the [ADA] or this part [i.e., 28 CFR Part 35].”

communication is taking place. In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

28 CFR § 35.104, defines “auxiliary aids and service” to include —

- (1) Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;
- (2) Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;
- (3) Acquisition or modification of equipment or devices; and
- (4) Other similar services and actions.

28 CFR § 39.103, the regulations issued by the DOJ, in 1984, to enforce nondiscrimination in its own programs and activities, in accordance with Section 504 of the Rehabilitation Act, defined “Auxiliary aids” to be —

services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Regulation § 35.135 states that the title II regulations “[do] not require a public entity to provide individuals with disabilities personal devices, such as wheelchairs; individually prescribed devices, such as prescription eyeglasses or hearing aids; readers for personal use; or services of a personal nature including assistance in eating, toileting, or dressing.”

Section III

The complainants argue, in effect, that Congress intended Section 202 and regulations §§ 35.130(b)(1)(i), 35.130(b)(7), 35.130(f) to require the town to provide the requested service as a reasonable modification. Additionally, they argue that the modification sought by the complainant is not the type of personal service that a covered entity is not required to provide under the 28 CFR § 35.135.

The complainants appear to argue that regulation § 35.135 should be interpreted to demonstrate that the only types of services the ADA does not require a public entity to perform on behalf of an individual with a disability, as a reasonable accommodation or modification, are services of a personal nature, i.e., services directly performed to or on the body of the individual. C-reply brief 4-5. This argument assumes, without citation to any supporting authority, that the ADA requires a public entity to provide a service or assistant to perform, for the benefit of an individual, an act that the individual cannot perform because of some personal limitation caused by his or her disability, even though that service is not provided to able-bodied individuals.

Also, to support its case, the complainants cite decisions where courts have stated that “to establish a violation under the ADA, the plaintiffs must demonstrate that (1) they are ‘qualified individuals’ with a disability; (2) that the defendants are subject to the ADA, and (3) that plaintiffs were denied the opportunity to participate in or benefit from defendant’s service, programs, or activities, or were otherwise discriminated against by defendants, by reason of plaintiff’s disabilities.” C-brief p.3 (Emphasis added).¹¹ They assert that the only issue in

¹¹ Henrietta D. v. Bloomberg, 331 F.3d 261, 272 (2d. Cir.2003) (systemic failures of NYC and NY state social service agencies that deprived HIV-afflicted residents meaningful access to critical public assistance, i.e, subsistence benefits – food stamps, welfare, Medicaid coverage, shelter

this case is whether the complainant was denied the opportunity to participate in or benefit from the Town's refuse collection service. C-brief 3-4. This formulation of the issue, however, does not acknowledge an essential element of the requirement of the quoted third prong - that the denial of opportunity, or other alleged discriminatory act, be by reason of, or because of, the plaintiff's disability.

To support its position, the complainants argue that when a disabled individual is denied access to benefits to which he or she is entitled, they suffer a denial of opportunity to participate in or benefit from a service. Specifically, the complainants state "[t]he inquiry into this question considers 'whether those with disabilities are as a practical matter able to access benefits to which they are legally entitled,'" and notes that the ADA requires reasonable accommodation when necessary to provide meaningful access to benefits and services.¹² C-brief 4.

This argument tacitly assumes that the ADA requires a public entity to provide, as an accommodation or modification, a service or assistant to perform an act that is necessary to obtain the benefit of a program provided by a public entity, that the individual cannot perform because of some functional limitation caused by his or her disability. Although the complainants cite decisions that uphold the ADA's unambiguous mandate to remove structural barriers and that interpret the ADA

allowances, rental assistance, etc.) (citing Doe v. Pfrommer, 148 F.3d 73, 82 (2d Cir.1998)); Disabled in Action v. Bd. of Elections, 752 F.3d 189, 2014 WL 1910361 *6 (May 14, 2014)(access to polling places); McElwee v. Cnty. Orange, 700 F.3d 635, 640 (2d Cir.2012)(volunteer banned from facility after harassing female employees); Hargrave v. Vermont, 340 F.3d 27, 34-35 (2d Cir. 2003)(upholding injunction of state law that permitted the involuntary medication of civilly and criminally committed individuals); Brooklyn Ctr. for Independence of the Disabled v. Bloomberg, -- F.Supp.2d, 2013 WL 5943995 *47 (Nov. 7, 2013) (ordering that city's emergency and disaster planning include reasonable accommodations).

¹² To support this argument, the commission cites the following decisions -- Henrietta D., 331 F.3d 261, 273 (2d. Cir.2003) (citing Alexander v. Choate, 469 U.S. 287, 301 (1985); Disabled in Action, 752 F.3d 189, 2014 WL 1910361 *6 (May 14, 2014); McElwee, 700 F.3d at 641; Brooklyn Ctr. for Independence of the Disabled, -- F.Supp.2d --, 2013 WL 5943995 *47 (Nov. 7, 2013).

to require public entities to address organizational failures that prevent disabled individuals from accessing social service benefits, no authority is referenced that interprets the ADA to require a government entity to perform for an individual a function that the person is incapable of performing due to his or her inherent limitations.

The respondent states that ruling in the favor of the complainant would “constitute an unprecedented expansion of federal law” and notes that neither the Department of Justice nor courts have interpreted Title II to require rear yard refuse collection. R-brief 1. The respondent, citing Regulation § 35.130(b)(7), states that the ADA requires a reasonable modification to policies that discriminate on the basis of a disability. R-brief 7. The respondent argues that the town did not discriminate against the complainant on the basis of his disability, but instead implemented a service to assist low-income individuals with disabilities that was not required by the ADA (R-brief 8-9); that the modification is a fundamental alteration of the refuse collection service (Id. 15-16); and that Title II does not regulate the content of the services a municipality provides (Id. 16-17).¹³

Section IV

Subtitle A of title II (Sections 201-205) articulates, in broad terms, Congress’ desire to prohibit acts of discrimination by public entities against individuals with disabilities. It is difficult to discern with precision the scope of protection that Congress intended to create from the subtitle’s expansive and undefined statutory language. Although section 202 is concise, its meaning is nebulous.

For example, “discrimination” is not defined in title II. Understanding what Congress intended the word to mean, in this context, requires an examination of

¹³ Regarding the respondent’s argument that it did not discriminate against the complainant on the basis his disability, there is no evidence to support such a “trait-based” discrimination claim. In fact, the complainants did not argue a violation of the ADA on that basis. Instead, they claimed that the respondent violated the ADA because it failed to provide a reasonable modification to the refuse collection service. These are distinct causes of action under the ADA.

the Congressional directives regarding the interpretation of Section 202.¹⁴ It appears that the DOJ attempted to follow these directives in drafting the title II regulations. See, e.g., DOJ 1991 Analysis, p. 195.

As noted previously, a review of the legislative history reveals that the Judiciary Committee, inter alia, intended that the title II regulations incorporate interpretations of the term discrimination set forth in titles I and III of the ADA "to the extent that they do not conflict with the Section 504 regulations." H.R. Rept. 101-485(III), p. 52. Additionally, the report from the House Committee on Education and Labor, H.R. Rep. 101-485(II), p. 84 (1990), states that --

Section 202 ... extends the nondiscrimination policy in section 504 of the Rehabilitation Act of 1973 to cover all State and local government entities.¹⁵ The Committee has chosen not to list all the types of actions that are included within the term discrimination, as was done in titles I and II, because this title essentially simply extends the anti-discrimination prohibition embodied in section 504 to all action of state and local governments.... Finally, it is also the Committee's intent that section 202

¹⁴ Discussing 42 U.S.C. § 12132, Justice Kennedy wrote:

Discrimination, of course, tends to be an expansive concept and, as legal category, it must be applied with care and prudence. On any reasonable reading of the statute, § 12132 cannot cover all types of differential treatment of disabled and nondisabled persons, no matter how minimal or innocuous. To establish discrimination in the context of this case, and absent a showing of policies motivated by improper animus or stereotypes, it would be necessary to show that a comparable or similarly situated group received differential treatment. Regulations are an important tool in identifying the kinds of contexts, policies, and practices that raise concerns under the ADA. The congressional findings in 42 U.S.C. § 12101 also serve as a useful aid for courts to discern the sorts of discrimination with which Congress was concerned.

Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581, 613 (1999).

¹⁵ Federal courts read section 504 of the Rehabilitation Act and the ADA to impose identical requirements and consider claims in tandem. See, e.g., Rodriguez v. City of New York, 197 F.3d 611, 618 (2d Cir.1999).

also be interpreted consistent with Alexander v. Choate, 469 U.S. 287 (1985).

Both Section 2 of the ADA, codified at 42 U.S.C. § 12101, and the ADA's legislative history leave no doubt that Congress intended to provide similar protections against discrimination for individuals with disabilities that it had provided for other protected classes in the federal civil rights laws enacted prior to the passage of the ADA.¹⁶ Collectively, these laws prohibit covered entities from denying to an individual certain opportunities (e.g., voting, employment, accessing and purchasing goods and services, buying or renting housing, etc.) because of variety of protected characteristics or beliefs that an individual possesses. These laws require that covered entities utilize rational considerations (e.g., whether a person has essential qualifications and skills for employment) when making decisions.

¹⁶ Subsection (a) of section 2 of the ADA, codified at 42 USC § 12101, states, in pertinent part, that --

(1) physical and mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination ...; (2) historically, society has tended to isolate and segregate individuals with disabilities, and despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem; (4) Unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination; (5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

Although the ADA seeks to remedy the same type of irrational “trait-based” discrimination, it also seeks to address a fundamentally different problem. The ADA requires covered entities to take reasonable measures to eliminate obstacles that prevent individuals with disabilities from taking full advantage of their inherent capabilities. Congress intended employers, state and local governments, and the operators of public accommodations, collectively, to make reasonable accommodations or modifications in policies, practices, and procedures and remove barriers to facilities, communication, and transportation to create an environment that permits individuals with disabilities to independently participate in society, to the maximum extent possible.¹⁷

The issue raised by this case is whether Congress intended its directive to provide a reasonable modification to require a public entity to perform, for the benefit of an individual, a task that the individual is not capable of performing once extrinsic obstacles have been eliminated. This type of modification is substantively distinct from the specific types of accommodations or modifications set forth in the regulations issued to implement both the Rehabilitation Act and the ADA.

Generally speaking, the accommodations or modifications deemed necessary to comply with the ADA, and the Rehabilitation Act of 1973, encompassed the elimination of nonessential requirements, criteria, functions, and barriers that, without valid justification, made it difficult, if not impossible, for a person with a disability to perform actions he or she is capable of performing independently. As

¹⁷ “The ADA does not only mandate that individuals with disabilities be treated the same as persons without such disabilities. Underlying the ADA's prohibitions is the notion that individuals with disabilities must be accorded reasonable accommodations not offered to other persons in order to ensure that individuals with disabilities enjoy “equality of opportunity, full participation, independent living, and economic self-sufficiency” § 12101(a)(8); see Willis v. Conopco, Inc., 108 F.3d 282, 285 (11th Cir.1997) (describing “the basic goal of the ADA” as “ensuring that those with disabilities can fully participate in all aspects of society”). This principle, explicit in the text of the Act's employment provisions in Title I, see 42 U.S.C. § 12112(b)(5)(A) (1995), and the Title II regulations, runs throughout the ADA. See Bledsoe, 133 F.3d at 820–25 (applying Title I reasonable accommodation mandate to Title II).” L.C. by Zimring v. Olmstead, 138 F.3d 893, 899 (11th Cir. 1998) aff'd in part, vacated in part, remanded sub nom. Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581, 119 S. Ct. 2176, 144 L. Ed. 2d 540 (1999)

the Supreme Court has noted, one of the main purposes of providing reasonable accommodations or modifications is to eliminate obstacles. See, Alexander v. Choate, 469 U.S. 287, 300, footnote 20 (1985).¹⁸ Congress directed that Section 202 be interpreted consistent with Choate. See Report of the House Committee on Education and Labor, H.R. Rep. 101-486(II), p.84 (1990). This is not the type of modification that the complainant seeks in this case.

The Judiciary Committee emphasized that the goal of the ADA is to eradicate the invisibility of the handicapped.” H.R. Rep. 101-485(III), p. 50. The Committee stated that the purpose of title II is to:

[Extend] the protections of Section 504 of the Rehabilitation Act to cover all programs of state or local governments, regardless of the receipt of federal financial assistance. By prohibiting discrimination against persons with disabilities in programs and activities of the federal government and by recipients of federal financial assistance, Section 504 ... has served not only to open up public services and programs ... but has also been used to end segregation. The purpose of title II is to continue to break down barriers to the integrated participation of people with disabilities in all aspects of community life. The Committee intends that title II work in the same manner as Section 504.¹⁹

Id., pp. 49-50 (1990).

¹⁸ In Alexander v. Choate, the United States Supreme Court considered the legislative history of the Rehabilitation Act and concluded that the respondent’s concept of meaningful access to services under the state’s Medicaid program was not mandated by the Section 504. The Court stated, “[i]n enacting the Rehabilitation Act and in subsequent amendments, Congress did focus on several substantive areas – employment, education, and the elimination of physical barriers to access – in which it considered the societal and personal costs of refusals to provide meaningful access to the handicapped to be particularly high. But nothing in the pre- or post-1973 discussion of § 504 suggest that Congress desired to make major inroads on the States’ longstanding discretion to choose the proper mix of amount, scope, and duration limitations on services covered by Medicaid....” 469 U.S., at 307 and footnotes 27-31.

¹⁹ Courts have read Section 504 and the ADA to impose identical requirements and consider claims in tandem. See, e.g., Rodriguez v. City of New York, 197 F.3d 611, 618 (2d Cir.1999).

Consistent with this statement of purpose, Section 202 of the ADA echoes Section 504 of the Rehabilitation Act²⁰ and Section 204 of the ADA direct the DOJ to base the title II regulations on existing Section 504 Rehabilitation Act regulations. These regulations include (1) 28 CFR Part 39 – the DOJ’s program accessibility and communications regulations, (2) 28 CFR Part 41 – issued by the Attorney General to coordinate the implementation and enforcement by all Federal Executive agencies, and (3) 45 CFR Part 84 - promulgated by the Department of Health, Education, and Welfare. (Compare - 28 CFR § 39.149 to 28 CFR § 35.149 (Program accessibility: Discrimination prohibited); 28 CFR § 39.150 to 28 CFR § 35.150 (Program accessibility: existing facilities), and 28 CFR § 39.151 to 28 CFR § 35.151 (Program accessibility: new construction and alterations); Also compare, 28 CFR § 41.51 and 45 CFR § 84.4 to 28 CFR § 35.130 (General prohibitions against discrimination)).

In Section 204 of the ADA, Congress specifically directed that the title II program regulations be consistent with the DOJ’s existing “program accessibility, existing facilities” regulations, 28 CFR § 39.150, and “communications” regulations, 28 CFR § 39.160. Congress also directed that these regulations be consistent with the DOJ’s analysis of those regulations contained in the DOJ’s Section-by-Section Analysis of its 28 CFR Part 39 regulations.

Of note, 28 CFR § 39.150 requires the DOJ to take actions to ensure that a disabled individual would have access to the facilities that housed its programs or activities, except for actions that would result in a fundamental alteration to a program or an undue administrative or financial burden to the agency.²¹ The title

²⁰ Subsection (a) of Section 504 of the Rehabilitation Act – “No otherwise qualified handicapped individual in the United States ..., shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance.” Public Law 93-113 (enacted, October 1, 1973), codified at 29 USC § 794.

²¹ The DOJ’s Section-by-Section Analysis and Response to Comments section of its Rehabilitation Act 28 CFR Part 39 states that,

The regulation applies to all programs or activities conducted by the Department of Justice. Under this section, a federally conducted program or activity is, in simple terms,

II accessibility regulation, 28 CFR §35.150, has been construed similarly. See, American Association of People with Disabilities v. Harris, 647 F.3d 1093, 1102-1104 (2011) (“[O]nly physical structures and permanent objects affixed to those structures are ‘facilities’ covered by the regulation.”).

The House Education and Labor Committee wrote that, “[t]he purpose of the ADA is to provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities and to bring persons with disabilities into the economic and social mainstream of American life.” House Education and Labor Committee report, H.R. Rep. 101-485(II) (1990)), p. 22 (1990). The Committee stated that Congress enacted the ADA to create civil rights protections for people with disabilities. H.R. Rep. 101-485(II), p. 40. The Committee believed that the overarching objective of this bill was to provide full access to society for people with disabilities. *Id.* 37-38.

Reviewing the summary of hearings held by the Committee, the collective sentiment expressed by the advocates for passage of the ADA was that ideological, psychological, and structural barriers needed to be eliminated so that individuals with disabilities would have the opportunity to realize their maximum potential and be fully integrated into society. *See, generally*, H.R. Rep. 101-

anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: those involving general public contact as part of ongoing agency operations and those directly administered by the Department for program beneficiaries and participants. Activities in the first part include communication with the public (telephone contacts, office walk-ins, or interviews) and the public’s use of the Department’s facilities (cafeteria, library). Activities in the second category included programs that provide Federal services or benefits (immigration activities, operation of the federal prison system). No comments were received on this section.

See Section 39.102, Application of the Part 39 Analysis. (Note: There is nothing in the legislative history of the ADA that suggests Congress, in mandating that the DOJ’s program accessibility regulations be extended to public entities, had contemplated regulating the provision of municipal refuse collection services at private residences.)

485(II), pp. 24-40 (1990).²² Eliminating such extrinsic barriers, at times, would require providing reasonable accommodations or modifications.

²² See, e.g., the following statements contained in the Report of the House Committee on Education and Labor, H. R. Rep, 101-485(II) --

"The U.S. Attorney General, Dick Thornburgh, on behalf of President Bush has testified that: Despite the best efforts of all levels of government and the private sector and the tireless efforts of concerned citizens and advocates everywhere, many persons with disabilities in this Nation still lead their lives in an intolerable state of isolation and dependence. (Testimony before House Subcommittee on Civil and Constitutional Rights, Ser. No. 58, October 11, 1989, p. 191.)" H.R. Rep. 101-485(II), p. 32.

"In sum, testimony indicates that the provision of various types of reasonable accommodations for individuals with various types of disabilities is essential to accomplishing the critical goal of this legislation—to allow individuals with disabilities to be part of the economic mainstream of our society." H.R. Rep. 101-485(II), p. 34.

"Former Senator Lowell Weicker quoted the 1986 report of the National Council on the Handicapped report Toward Independence: 'People with disabilities have been saying for years that their major obstacles are not inherent in their disabilities, but arise from barriers that have been imposed externally and unnecessarily. (Testimony before House Subcommittee on Select Education and Senate Subcommittee on the Handicapped, September 27, 1988, S. Hrng. 100-926, p. 3.)" H.R. Rep. 101-485(II), p. 35.

"Witnesses identified the major areas of discrimination that need to be addressed. The first is lack of physical access to facilities. Witnesses recognized that it is probably not feasible to require that existing facilities be completely retrofitted to be made accessible. However, it is appropriate to require modest changes. Numerous inexpensive changes can be made to make a facility accessible, including installing a permanent or portable ramp over an entrance *36 step; installing offset hinges to widen a doorway; relocating a vending machine to clear an accessible path; and installing signage to indicate accessible routes and features within facilities." H.R. Rep. 101-485(II), p. 35-36.

"Several witnesses also recognized that newly constructed build-ups should be fully accessible because the additional costs for making new facilities accessible are often nonexistent or negligible. According to Michael Oestreicher, who directs an architectural firm that designs barrier-free environments, there is absolutely no reason why new buildings constructed in America cannot be barrier-free **318 since additional cost is not a significant factor. He testified that -- If accessibility is part of the planning from the onset of a project, then that access costs no more or at the most marginally more than a project with no access. (Testimony before House Subcommittee on Select Education, Ser. No. 100-109, October 24, 1988, p. 99.)" H.R. Rep. 101-485(II), p. 36.

However, there is no indication that the advocates sought or that Congress intended the ADA to require a covered entity to perform a function for an individual that the person is not capable of performing as a result of his or her disability. There is no indication in any DOJ guidance that this type of modification or accommodation is required by title II. Furthermore, no court has ever interpreted the ADA, or the Rehabilitation Act, to require this type of accommodation.

While the Rehabilitation Act of 1973 aims to improve educational and vocational offerings, the ADA focuses on improving employment opportunities (requiring reasonable accommodations as long the individual is qualified and can perform the essential functions of the job) and removing external physical barriers that impede a individual's access to facilities and transportation. The Rehabilitation Act and the ADA also direct covered entities to provide auxiliary aids and services to address certain barriers to communication associated with hearing and sight impairments.

Congress mandated these types of actions so that individuals with disabilities could be less dependent on assistance from others and participate, more fully, in the economic, civic, and cultural world around them. Left unaddressed, external barriers, including failing to make reasonable efforts to communicate, kept disabled individuals segregated from mainstream society.

The House Education and Labor Committee noted --

[T]he unfortunate truth is that individuals with disabilities are a discrete, specific minority who have been insulated in many respects from the general public. Such individuals have been faced with a

"The lack of training provided for designers in our country on how to design for children, older people and people with disabilities, plus the lack of strong, specific, enforceable legislation requiring accessibility, are major impediments to accomplishing barrier free environments, according to witnesses. Oestreicher states that -- With good common sense, solid design precepts, and most importantly, strong input from disabled people, we can create barrier-free environments. (Testimony before House Subcommittee on Select Education, Ser. No. 100-109, October 24, 1988, p. 100.)" H.R. Rep. 101-485(II), p. 36.

range of restrictions and limitations in their lives. Further, they have been subjected to unequal and discriminatory treatment in a range of areas, based on characteristics that are beyond the control of such individuals and resulting from stereotypical assumptions, fears and myths not truly indicative of the ability of such individuals to participate in and contribute to society....

H.R. Rept. 101-485(II), p. 40 (1990). This is the ill that Congress sought to address.

Section V

The United States Supreme Court, in Southeastern Community College v. Davis, 442 U.S. 397, 410 (1979), introduced the concept of “fundamental alteration” into the Rehabilitation Act jurisprudence – over a decade before the ADA was enacted. The Court held that section 504 of the Rehabilitation Act, which focused on providing various educational and vocational opportunities for individuals with disabilities, did not require the college make substantial modifications to its curriculum – full-time personal supervision when Davis attended patients and elimination of all clinical courses – because the complainant was not able satisfy certain requirements as a result her hearing impairment.

The “fundamental alteration” test established one means of determining whether a requested accommodation was not reasonable. It did not, however, set the standard for determining whether all requested accommodations were reasonable. That is to say, neither the Davis court nor any other court has held that a requested accommodation is deemed to be reasonable because it does not require the type of fundamental change at issue in the Davis case.

As the Supreme Court noted, the purpose of providing reasonable accommodations is to eliminate existing obstacles against the handicapped. See, Alexander v. Choate, 469 U.S. 287, 300, footnote 20 (1985). This signals another relevant factor to consider in determining whether an accommodation is reasonable. As previous stated, Congress directed that Section 202 of the ADA be

interpreted consistent with Choate. See Report of the House Committee on Education and Labor, H.R. Rep. 101-486(II), p.84.

In 1984, the DOJ added the concept of fundamental alteration to (1) the definition of "Qualified handicapped person" and (2) its "program accessibility: existing facilities" regulations (§§ 39.103 and 39.150, respectively) that applied, solely, to the DOJ's programs and activities – 28 CFR Part 39. (See endnote ii.) Based on the DOJ's own description, it inserted the concept into these provisions to comply with the Davis court's interpretation of section 504. See, Section-by-Section Analysis and Response to Comments for regulations §§ 39.103 and 39.150, as well as the Background section of the Supplementary Information to 28 CFR Part 39 Regulations (published at 49 FR 35724, Sept. 11, 1984).

The Davis court concluded, six years earlier, in the context of a specific professional education program, that it is possible to determine whether an accommodation or modification requested would require the elimination of an essential component of the curriculum. The Court labeled such a modification "fundamental" and not required by the Rehabilitation Act.

When the DOJ issued regulation § 39.150, it stated that "[t]he inclusion of subparagraph (a)(2) is an effort to conform the agency's regulation implementing section 504 to the Supreme Court's interpretation of the statute in Davis This subparagraph acknowledges ... that, in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory." DOJ Section-by-Section Analysis and Response to Comments to 28 CFR Part 39 Regulations (1984).

Addressing the definition of "qualified handicapped person" contained in regulation § 39.103, the DOJ wrote --

"The [DOJ] incorporated the [Davis] Court's language in the definition of 'qualified handicapped person' ... in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to

enable a handicapped applicant to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the ... definition allows exclusion of some handicapped people from some programs, it requires that a handicapped person who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.”

DOJ Section-by-Section Analysis and Response to Comments to 28 CFR Part 39 Regulations (1984) (emphasis added).

These regulations clearly reflect the DOJ’s commitment to apply the Davis court’s interpretation of fundamental alteration and undue burden to its own programs and activities. See, e.g., L.C. by Zimring v. Olmstead, 138 F.3d 893, 899 (11th Cir. 1998) aff’d in part, vacated in part, remanded sub nom. Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581, 119 S. Ct. 2176, 144 L. Ed. 2d 540 (1999)(“We cannot disregard the interpretive guidance contained in the appendix prepared by the federal agency charged with enforcing the ADA.”).

In the ADA title II regulations, the DOJ did not include the concept of “fundamental alteration” in the definition of “individual with a disability,” regulation § 35.104, but instead added it to regulation § 35.130(b)(7), which states that “[a] public entity shall make reasonable modifications in policies, practices and procedures when modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.”²³ In so doing, the DOJ was attempting to comply

²³ The DOJ did, however, include in the title II regulations the program accessibility provisions of the DOJ’s Rehabilitation Act regulations – cf. 28 CFR §§ 35.149 and 35.150 to 28 CFR §§ 39.149 and 39.150. The provisions are identical.

with the broadly worded Congressional directives that title II, among other things, be consistent with the DOJ's Rehabilitation Act regulations, incorporate certain title I and III provisions, and be interpreted consistent with Choate.

In this instance, the specific provision of the ADA that the DOJ aimed to implement in Regulation § 35.130(b)(7) is section 302(b)(2)(A)(ii), which states, "discrimination [by a public accommodation] includes ... a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations." The DOJ reasonably interpreted the Congressional directives to include in the title II regulations some version of the concepts of "reasonable modification" and "fundamental alteration" to programs, services, or activities offered by public entities. However, there is no specific guidance provided to determine, in the context of title II, what scope those terms encompassed.

The overall thrust of the Congressional directives is that title II be consistent with the Section 504 of the Rehabilitation Act, and the regulations issued to enforce that provision. These directives include –

- Extend the nondiscrimination policy in section 504 of the Rehabilitation Act of 1973 to cover all State and local government entities;
- Incorporate provisions of titles I and III which are not inconsistent with the regulations implementing Section 504 of the Rehabilitation Act of 1973, such as Section 102(b)(4) of the ADA;
- Incorporate the construction of discrimination contained in titles I and III, and make "forms of discrimination prohibited by section 202 be identical to those set out in the applicable provisions of titles I and III of this legislation;"
- Not lessen the standards in the Rehabilitation Act regulation incorporated in title II regulation under section 204 of the ADA; and
- Construe title II to require local and state government "activities which do not fit into the employment or public accommodation context [be] governed by the analogous section 504 regulations."

See, generally, H.R. Rep. 101-486(II), p.84 and H.R. Rep. 101-486(III), p.51).

Congress' directives and instruction that the title II regulations be consistent with the section 504 regulations, leads to the conclusion that Congress intended for the title II regulations to be interpreted consistent with the Davis court's fundamental alteration concept. Additionally, as previously noted, Congress clearly intended that title II be interpreted consistent with the decision in Choate, in which the Supreme Court noted that that Section 504 only requires reasonable accommodations to eliminate existing obstacles against the disabled.


Conclusion

In light of the above considerations, this tribunal concludes that neither the plain language of the ADA, its legislative history, its regulations or decisions interpreting the law, reveal that Congress intended the ADA to require a public entity to provide the type of service requested by the complainant. Congress only intended for the ADA to prohibit "trait-based" discrimination and to require covered entities to provide reasonable accommodations or modifications that minimize or eliminate obstacles which exist separate and distinct from an individual with a disability, and that unnecessary interfere with that individual's inherent capabilities.

Decision and Order

In light of the foregoing, I find in favor of the respondent. It is hereby ordered, in accordance with the provisions of subdivision (4) of subsection (d) of section 46a-54-88a of the Regulations of Connecticut State Agencies, that the complaint be, and hereby is, dismissed in its entirety.

It is so ordered this 1st day of October 2015.



Alvin R. Wilson, Jr.
Presiding Human Rights Referee

Endnotes

§84.21 Discrimination prohibited -- No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§84.22 Existing facilities -- (a) Accessibility. A recipient shall operate its program or activity so that when each part is viewed in its entirety, it is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) Methods. A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of §84.23, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that serve handicapped persons in the most integrated setting appropriate.

(c) Small health, welfare, or other social service providers. If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible.

(d) Time period. A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(e) Transition plan. In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons; (2) Describe in detail the methods that will be used to make the facilities accessible; (3) Specify the schedule for taking the steps necessary to achieve full accessibility under paragraph (a) and, if the time period of the transition plan is longer than one year, identify the steps that will be taken during each year of the transition period; and (4) Indicate the person responsible for implementation of the plan.

(f) Notice. The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

[42 FR 22677, May 4, 1977, as amended at 70 FR 24319, May 9, 2005]

§84.23 New construction.

(a) Design and construction. Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) Alteration. Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) Conformance with Uniform Federal Accessibility Standards. (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFSA) (appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantial equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[42 FR 22677, May 4, 1977, as amended at 55 FR 52138, 52142, Dec. 19, 1990]

ⁱⁱ The DOJ Rehabilitation Act Regulations, 28 CFR Part 39, were issued, in 1984, to implement the requirements of Section 504 of the Rehabilitation Act, codified at 29 U.S.C. § 794, to enforce nondiscrimination on the basis of disability in the programs or activities conducted by the agency.

28 CFR § 39.103 states that a "qualified handicapped person" means "(1) with respect to any agency program or activity under which a person is required to perform services or to achieve the purpose of the program or accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or (2) with respect to any other program or activity [conducted by the DOJ], a handicapped person who meets the essential eligibility requirements for participation in or receipt of benefits from, that program or activity."

28 CFR §39.130 General prohibitions against discrimination -- (a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency;

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap— (i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service; (ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; (iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others; (iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others; (v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or (vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would— (i) Subject qualified

handicapped persons to discrimination on the basis of handicap; or (ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would— (i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or (ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

28 CFR § 39.149 Program accessibility: Discrimination Prohibited – Except as other provided in § 39.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency."

28 CFR §39.150 Program accessibility: Existing facilities. -- (a) General. The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not— (1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons; (2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance

with §39.150(a) would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the Attorney General or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) Methods. The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) Time period for compliance. The agency shall comply with the obligations established under this section by December 10, 1984, except that where structural changes in facilities are undertaken, such changes shall be made by October 11, 1987, but in any event as expeditiously as possible.

(d) Transition plan. In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by April 11, 1985, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum— (1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons; (2) Describe in detail the methods that will be used to make the facilities accessible; (3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and (4) Indicate the official responsible for implementation of the plan.

APPENDIX A

STATE OF CONNECTICUT COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

THOMAS GEORGE,
Complainant,

CHRO No.: 0910466

V.

TOWN OF WEST HARTFORD,
Respondent.

APRIL 25, 2014

FILED/RECEIVED
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2014 APR 25 AM 9:23
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[Signature]

STIPULATED FACTS

The parties jointly stipulate to the following facts for purposes of the Public Hearing in this matter, to be decided based on the written briefs of the parties.¹

1. Dana Lee Hallenback was the Town of West Hartford's ("Town") Director of Public Works until his July 2009 retirement.
2. David Gabriele is the Town's Manager of Environmental Services, and he has held that position at all relevant times.
3. Prior to the 1990s, the Town collected residential refuse at either curbside or inside the yards of its residents.
4. In 1991, the Town began contracting with a third party vendor to provide curbside refuse collection.
5. After it began contracting with the vendor, no longer did the Town provide all residents with refuse pick-up other than at curbside.
6. The vendor provides residents with large trash barrels with wheels so that residents can roll the trash barrel to the curbside.
7. The vendor employs an "automated" collection system, meaning that the collection trucks automatically clutch and empty the trash barrels.

¹ The parties reserve the right to supplement this list. The parties also reserve the right to object to the relevance of these stipulated facts as to any portion of the legal claims or defenses.

8. The contract between the Town and the vendor sets forth a cost per household for its automated collection services, and also provides that the vendor will perform certain optional services at a set fee per household.
9. The cost of the automated services is paid for by the Town out of its general fund.
10. The costs of the optional services are borne by the households receiving such services.
11. One optional service under the contract is "rear yard collection."
12. Under the rear yard collection program, residents are not required to wheel their barrel to the curb.
13. Instead, so long as the resident pays a fee to the vendor, and so long as the trash barrel is in a position adjacent to a paved walkway or driveway, the vendor will wheel the barrel to the curb for emptying and then return the barrel to its previous position.
14. When automated collection was implemented, some residents voiced apprehension at the prospect of wheeling the barrels to the curb.
15. In response, the Town implemented a program to provide free rear yard refuse collection for residents who were mobility-impaired and whose income was at or below a specified level.
16. Initially, the program was available to mobility-impaired residents living alone whose income was at or below two times the federal poverty guidelines.
17. With those requirements, there were less than twenty (20) applications received annually for the program (residents were required to re-apply each fall for the next year).

18. In 2006, and in response to a complaint by a resident, the program's eligibility criteria were changed so that the income requirement did not apply to those residents older than eighty (80), making all mobility-impaired residents over the age of eighty (80) who were living alone eligible for the program.
19. For households with at least one resident younger than eighty (80), the household's income could not exceed 200% of the Federal Poverty guidelines based on the number of occupants per residency.
20. At all times, all household members were required to demonstrate mobility impairment.
21. The 2006 program changes resulted in an increase in the number of applications received, to over one hundred (100) for the 2007 collection year.
22. The program's annual cost increased by almost \$10,000 as a result, to over \$11,000.
23. In 2007, the terms of a new contract between the Town and its vendor, Paines Inc., increased the rear yard collection rate to \$18.75 per collection, per month.
24. In 2007, the Town reexamined its eligibility criteria.
25. In October 2007, the Town revised the program as follows: all household members would have to document an inability to bring trash to the curb; the income of those households with no members eighty (80) or older could not exceed 200% of the Federal Poverty guidelines based on the number of occupants per residency, while the threshold would be 500% for households with at least one member older than eighty (80).
26. The October 2007 policy re-imposed on applicants older than eighty (80) an income eligibility component.

27. As a one-time accommodation for 2008 only, the Town implemented a "grandfather clause" that would allow previously-enrolled applicants who were eighty (80) or older to continue in the program for one additional year (2008) without providing financial documentation.
28. The grandfathered residents received letters in November 2007 placing them on notice that they would have to supply all required documentation, including financial documentation, in order to be approved for the 2009 program.
29. Mr. George was a Town resident, born in 1920.
30. As of January 2009, Mr. George was had a disability in the form of a mobility impairment, as that term is defined by the Americans with Disabilities Act.
31. As of January 2009, Mr. George had a disability in the form of a vision impairment, as that term is defined by the Americans with Disabilities Act.
32. Mr. George was one of those Town residents who were grandfathered into the rear yard collection program for only 2008.
33. In fall 2007, Mr. Gabriele spoke with Mr. George and explained that, the following year, Mr. George would be required to submit financial documentation demonstrating that his income was less than 500% of the Federal Poverty guideline.
34. Mr. George stated that he would supply this documentation.
35. In fall 2008, Mr. George submitted an application for enrollment in the 2009 rear yard collection program.
36. Mr. Gabriele spoke with Mr. George and explained that he would have to provide financial documentation in order to continue receiving free rear yard collection.
37. Mr. George informed Mr. Gabriele that he would not be proving this documentation.

38. In a follow-up letter dated January 6, 2009, Mr. Gabriele responded as follows:

We can no longer continue to provide you with this service without receipt of all the necessary documentation needed to determine eligibility.

Because you have decided to withhold the necessary financial documentation we will no longer provide your rear yard collection service. Your last collection will occur on January 15th, 2009. If you wish to continue receiving this service you may contract, for a fee, with Paine's Inc. . . . Also, if you decide to provide the needed documentation to determine your eligibility and you meet the requirements we will be more than willing to reinstate the service.

(True and accurate copy of letter attached as Exhibit A.)

39. Mr. George's Town-funded rear yard collection service ceased on January 15, 2009.
40. Mr. George never supplied any financial documentation to the Town.
41. Mr. George's rear yard collection service was never reinstated.
42. Mr. George did not meet the financial requirements of the Town's free rear yard refuse collection program.
43. On October 17, 2011, Mr. George passed away.
44. The Town has made inquiries of the municipalities of Hartford, Bridgeport, Middletown, Boston, Los Angeles, and Philadelphia, and they have all stated that they do not offer any sort of rear yard refuse collection to their residents.
45. Exhibit B is a true and accurate copy of the contract between the Town and Paine's Incorporated for refuse collection in effect as of February 2007, which remained in place as of January 2009.
46. Exhibit C is a true and accurate copy of a form letter sent in 2006 to applicants for the Town's free rear yard collection program.

47. Exhibit D is a true and accurate copy of a form letter sent in 2007 to applicants for the Town's free rear yard collection program.
48. Exhibit E is a true and accurate copy of a form letter sent in November 2007 to applicants for the Town's free rear yard collection program.
49. Exhibit F is a true and accurate copy of an Eye Report from the Board of Education Services from the Blind indicating that Mr. George is legally blind with an examination date of October 11, 1999.
50. On December 2, 2013, Carol Reid, the executor of Mr. George's estate, was substituted as the complainant.

**THE RESPONDENT,
Town of West Hartford**

James M. Sconzo / Jonathan Sterling
James M. Sconzo and *by RSKF*
Jonathan C. Sterling
CARLTON FIELDS JORDEN BURT, P.A.
One State Street, Ste. 1500
Hartford, CT 06103
(860) 392-5000 / Fax: (860) 392-5058

**THE COMPLAINANT,
Carol Reid**

Nancy B. Alisberg
Nancy B. Alisberg *by RSKF*
Managing Attorney
Office of Protection and Advocacy for Persons with Disabilities
60B Weston Street
Hartford, CT 06120-1551

THE CONNECTICUT COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES



Robin S. Kinstler Fox
Human Rights Attorney III
Commission on Human Rights
& Opportunities
25 Sigourney Street
Hartford, CT 06106

EXHIBIT A

DEPARTMENT OF
PUBLIC WORKS

Mr. Thomas George
71 Berkshire Road
West Hartford, CT 06107

Dear Mr. George

January 6, 2009

This letter is a follow up to our recent conversation regarding town assisted rear yard refuse collection service. We can no longer continue to provide you this service without receipt of all the necessary documentation needed to determine eligibility.

Because you have decided to withhold the necessary financial documentation we will no longer provide your rear yard collection service. Your last collection will occur on January 15th 2009. If you wish to continue receiving this service you may contract, for a fee, with Paine's Inc. You can contact them at 860-658-9481. Also, if you decide to provide the needed documentation to determine your eligibility and you meet the requirements we will be more than willing to reinstate the service.

David Gabriele



Environmental Service Manager
West Hartford Public Works



TOWN OF WEST HARTFORD 17 BRIXTON STREET
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WH 000163

EXHIBIT B

2007
CONTRACT DOCUMENTS

Solid Waste Services

By and Between

The Town of West Hartford

And

Paine's Incorporated



TOWN OF WEST HARTFORD

*Contract for Solid Waste Services
By and Between The
Town of West Hartford
and
Paine's Incorporated*

THIS Contract, by and between the Town of West Hartford, a municipal corporation having its territorial limits within the county of Hartford, state of Connecticut, acting herein by its Purchasing Agent, duly authorized, herein after referred to as the Town and Paine's Incorporated, 54 Floydville Road, East Granby, Connecticut, acting herein by its President, Michael Paine, duly authorized, hereinafter referred to as the Contractor.

IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, The Town and Contractor do mutually agree as follows:

The Contractor agrees to provide Solid Waste Services for the collection, transportation and discharge of acceptable residential and non-residential solid wastes and recyclable materials, as more fully described the Request for Proposal Documents For Solid Waste Services, Bid #5877RFP, addendum #1 dated November 28, 2006, Contract Service Expectations and Clarifications dated February 2, 2007 and the Contractor's offer in response to the Town's solicitation and attached hereto for reference and incorporated fully into this contract.

1. Scope of Services

- 1.1. These services shall include management, collection and transportation of all acceptable solid wastes, recycling, scrap metal and bulky material from residential, condominium, municipal and non-municipal educational and religious premises and properly discharge such material. Paine's Incorporated shall be responsible for providing and assuming all costs for labor, equipment, materials and all else whatsoever required to effect the aforementioned service, and shall be in compliance with all Federal, State, and local laws. Tipping fees are to be paid by the Town of West Hartford.
- 1.2. The relationship between the Town and Paine's Incorporated is expected to be a mutually beneficial partnering concept in which respective strengths in experience, technology and resources will be shared freely. The intent of this relationship is to constantly improve the efficiency and quality of service provided, including but not limited to Scope of Services defined herein.
- 1.3. West Hartford is a suburban community of 60,110 people with 210 miles of public and private roadway within its 22.2 square miles. The solid waste services encompassed in this contract include the management, collection, transportation and discharge of solid waste and recyclables from one, two and three family residences, condominiums, Town facilities, schools, religious institutions, transportation and discharge from the same aforementioned premises.
- 1.4. The contract will have a six (6) year contract term, with two (2) two year extensions for a possible (10) ten year contract term. Paine's Incorporated is responsible for providing and maintaining barrels. The Town will own the barrels at the end of the contract term. The Town will entertain the buyout option for barrels in event contract terms are not extended. The buyout is only applicable in 2013. If any of the extensions are exercised, the buyout is nullified.

Paine's Incorporated shall notify the Town in writing prior to January 2, 2013 of such desire to renew the Contract. The Town shall notify the Paine's Incorporated within ten (10) calendar days after adoption of the Budget Ordinance for the fiscal year commencing July 1, 2013 of its intent to renew the Contract.

2. Commencement of Services

The Contract term shall be for a period of six (6) years beginning on or about August 1, 2007, or such earlier date as mutually agreed upon, and terminating June 30, 2013 unless renewed upon mutual agreement of both parties and at the same terms and conditions of the original Contract.

The agreed upon date for the commencement of services for the collection, transportation and discharge of acceptable wastes and recyclable materials shall be October 1, 2007. Failure of Paine's Incorporated to commence services on the agreed upon dates shall result in the assessment of liquidated damages as more fully described in the Request for Proposal Documents.

3. Insurance

Paine's Incorporated shall provide insurance coverage as fully described in Article 3, Insurance Exhibit Refuse Collection Services of the Request for Proposal Documents. As required in said Request for Proposal Documents, each insurance policy required shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) calendar days prior written notice by certified mail, return receipt requested, has been given to the Town. However there shall not be any lapse in coverage as a result of such suspended, voided, canceled or reduced coverage of a particular policy or carrier. Evidence of replacement coverage for a policy suspended, voided, canceled or reduced shall be provided to the Town by Paine's Incorporated twenty-one (21) days prior to such events.

4. Performance and Labor and Materials Bond

4.1. Paine's Incorporated shall provide performance and labor and materials bonds annually issued by a surety company satisfactory to the Town and licensed to do business in the State of Connecticut, which bonds or renewals, extensions or replacements thereof shall remain in full force and effect for the term of the contract and any mutually agreed extensions thereto. The bond provided shall be subject to review by the Town's Corporation Counsel and Paine's Incorporated may be required to substitute an alternative form of bond if necessary to provide the Town with adequate security for the performance of Paine's Incorporated's obligations."

4.2. The performance bond will obligate the surety such that Paine's Incorporated shall well and truly keep, do and perform each and every, all and singular, the matters and things in said Contract as specified and at the times and in the manner prescribed, or the surety shall pay over, make good and reimburse the Town all loss and damage which the Town may sustain by reason of failure or default on the part of Paine's Incorporated under the provisions of the Contract. The labor and materials payment bond will obligate the surety such that Paine's Incorporated shall promptly pay for all materials furnished and labor supplied or performed in the prosecution of the work included in the contract.

4.3. Both the performance bond(s) and labor and material payment bonds(s) shall be in amounts equal to 100% of the combined annual total cost of solid waste services. At the commencement of each renewal bonding period, the amount of the bonds shall be adjusted to reflect 100% of the combined annual total cost of solid waste service, in accordance with the Consumer Price Index, comparable to the adjustment in the Cost of Doing Business Section of General Conditions, of the Request for Proposal Documents. In addition, each bond shall be endorsed to

state that coverage shall not be suspended, voided, canceled or reduced and there shall not be any lapse in coverage.

- 4.4. Paine's Incorporated shall provide ninety days written notice, sent certified mail, return receipt requested, of any decision not to renew or extend any performance of labor and material bond beyond the bonds' expiration date. However, there shall not be any lapse in coverage as a result of such decision not to renew or extend any performance of labor and material bond. Evidence of replacement coverage or a renewed, extended, or new bond shall be provided by Paine's Incorporated to the Town not less than eighty (80) calendar days prior to any bond expiration date. Failure to provide such evidence or such renewed, extended or new bond shall be deemed a failure to comply with the terms of the contract.
- 4.5. Paine's Incorporated shall increase the principal amount of the performance and labor and materials payments bond(s) in direct proportion to any increase in the value of the Contract resulting from such change orders.

5. ACCIDENT REPORTING

Paine's Incorporated shall be required to notify the Town's agent or designee within 24 hours an accident, as defined by the U.S. National Safety Council, DOT (for CDL licenses), DMV, and OSHA, involving a motor vehicle operated by Paine's Incorporated occurs. All accidents must be reported to the Town of West Hartford Police Department and the Director of Public Works. A copy of the Police Report shall be sent to the Director of Public Works within twenty four (24) hours of receipt of said report.

6. OTHER CONDITIONS- INDEMNIFICATION

The bidder is aware of and agrees that, if awarded the contract, he is bound by the following indemnification language:

- 6.1. To the fullest extent permitted by law, Paine's Incorporated shall release, defend, indemnify, and hold harmless the Town of West Hartford and the West Hartford Board of Education, their respective boards, commissions, officers, officials, employees, agents, representatives, and servants from any and all suits, claims, losses, damages, costs (including without limitation reasonable attorneys' fees), compensation, penalties, fines, liabilities or judgments or any name or nature for:
- 6.1.1. Bodily injury, sickness, disease, or death; and/or
- 6.1.2. Damage to or destruction of property, real or personal; and/or
- 6.1.3. Financial losses (including, without limitation, those caused by loss of use) sustained by any person or concern, including officers, employees, agents, subcontractors or servants of the Town, the Board of Education, or Paine's Incorporated, or by the public, which is cause or alleged to have been caused in whole or in part by the act (s) or omission(s) of Paine's Incorporated, its officers, employees, agents, or Subcontractors, in the performance of the contract or from the inaccuracy of any representation or warranty of Paine's Incorporated contained in the Contract Documents. This indemnity shall not be affected by other portions of the contract relating to insurance requirements.

6.1.4. To the fullest extent permitted by law, Paine's Incorporated agrees to release, defend, indemnify, and hold harmless the West Hartford Board of Education and the Town of West Hartford, their respective boards and commissions, officials, officers, employees, agents, representatives, and servants from any loss, claim, cost penalty, fine or damage that may arise out of the employees or Subcontractors to comply with any laws or regulations of the United States of America, the State of Connecticut, the Town of West Hartford, or their respective agencies. This undertaking shall not be affected by other portions of the contract relating to insurance requirements.

7. Consideration and Payment Terms

7.1. Change In The Cost of Doing Business

7.1.1. The cost to the Town for the services described in these Request for Proposal Documents as evidenced by Paine's Incorporated's proposal shall remain in effect from the date of the commencement of operation until one year afterwards.

7.1.2. The Total contract consideration payable to Paine's Incorporated for the successive years of the contract term hereof shall be adjusted upward or downward to reflect changes in the cost of doing business, as measured by fluctuations in the U. S. City Average Consumer Price Index (CPI) published by the U. S. Department of Labor, Bureau of Labor Statistics. At the start of each contract year the fee shall be increased or decreased in a percentage amount equal to the annual average of the net percentage change in the said CPI, computed as follows:

7.1.2.1. Beginning with the first month of the second year's contract, the net change shall be the difference between the annual average of said CPI for the twelve (12) month period prior to the first month of the commencement of operations and the annual average of said CPI for the 12 month period prior to the first month of the applicable year (ex. July 1 - June 30). This procedure will be repeated each year for the term of the contract. Adjustments shall be made on increments or decrements of one decimal point (0.1%) only. Fractions less than one tenth of one percent (0.1%) will not be considered in making adjustments. The CPI for a given month is not published until the middle of the following month. Therefore, the first month of a contract year will be adjusted retroactively.

7.1.2.2. It is understood and agreed that this formula will be applied to adjust any and all requirements for fluctuation in labor, material, fuel, insurance and all other cost of doing business. Paine's Incorporated shall accept payments adjusted in this manner as total contract consideration for services rendered.

7.2. Invoicing and Payments: Upon presentation of an accepted invoice, the Town will remit payment for services rendered for the period ending the last day of the month. Assuming the request for payment is made in accordance with appropriate provisions of the Contract Documents, payments will be rendered the first Friday after the fifteenth day of the calendar month during which the invoice has been submitted. The invoice shall delineate any adjustments due to extra work approved by the Town and beyond the requirement of the

contract documents and credits due to the assessment of liquidated damages or other credits provided for herein.

7.2.1. A Monthly invoice for services with separate prices for monthly trash collection, monthly recycling collection, monthly trash container (dumpster) collection, monthly recyclable container (dumpster) collection, municipal litter receptacle collection as well as a delineation for any additional services provided or alternates accepted from this RFP.

7.2.2. The Town shall pay and Paine's Incorporated shall receive compensation for services rendered as stated in Paine's Incorporated's bid offer attached hereto. Contract prices shall be adjusted beginning with the first month of the second year of the Contract in accordance with the Request for Proposal Documents.

7.2.3. Not later than the first work day of each calendar month Paine's Incorporated shall deliver to the Town's Agent, an itemized invoice for services performed during the previous month supported by such data substantiating Paine's Incorporated's right to payment as the Town may require. The Town shall have the right to withhold payment on disputed charges. The Town shall make payments to the Contract not later than the first Friday after the fifteenth day of the calendar month during which the invoice has been submitted. Delays in submitting the invoice will result in a corresponding delay in payment.

8. Standard of Performance

If Paine's Incorporated fails to provide services herein specified for a period in excess of two (2) consecutive, scheduled, working days or fails to provide services in a satisfactory manner, the Town may move as follows (provided such failure is not due to extreme weather conditions, an act of the United States or any state, fires, floods, act of God, epidemics, strikes, or other conditions outside Paine's Incorporated's control): (1) at its option, after written notice to Paine's Incorporated, take over and operate any or all of Paine's Incorporated's equipment used in the performance of the Contract; and (2) use and operate Paine's Incorporated's equipment itself until such matter is resolved and Paine's Incorporated is again able to carry out its' operation under the Contract. Any and all expenses incurred by the Town in taking over and operating Paine's Incorporated's equipment may be deducted by it from compensation due to Paine's Incorporated. However, no such deduction from compensation due shall limit the Town from seeking further compensation for direct or punitive damages sustained by such default of Paine's Incorporated.

During such period the liability of the Town to Paine's Incorporated for loss or damage to such equipment so used shall be that of a bailee for hire, ordinary wear and tear being specifically exempt from such liability.

Provided, however, if Paine's Incorporated is unable for any cause to resume performance at the end of 5 calendar days, all liability of the Town under the Contract to Paine's Incorporated shall cease and the Town shall, in addition to the remedies in (1) and (2) above, be free to negotiate with other Contractors for the operation of said service. Such operation with another Contractor or the Town shall not release Paine's Incorporated herein of his liability to the Town for such breach of the Contract.

8. Liquidated Damages

8.1. Paine's Incorporated shall pay the Town liquidated damages in amounts specified herein for each and every time Paine's Incorporated is in default in the performance of its responsibilities. The amount of liquidated damages, which sum is hereby agreed upon, not as a penalty, but as liquidated damages which the Town will suffer by reason of such default. Liquidated damages shall be assessed as follows:

8.1.1.1. \$25.00 per day per premise for each work day that any scheduled collection is not made

8.1.1.2. \$25.00 per each occasion that a resident is skipped but a Skip Tag is not issued.

8.1.1.3. \$25.00 per day for each work day that "Collection Vehicle" requirements are not adhered to

8.1.1.4. \$25.00 per day per dumpster for each work day that contractor owned dumpsters which are leaking or in disrepair are not repaired or replaced.

8.1.1.5. \$25.00 per each premise collected without prior authorization prior to 6:00 a.m. or after 6:00 p.m.

8.1.1.6. \$25.00 per day for each contractor owned dumpster not maintained in a clean and sanitary condition

8.1.1.7. \$25.00 per man per day for employees that are not properly uniformed

8.1.1.8. \$25.00 per received complaint which is not responded to within twenty-four hours or the next business day of a receipt of the complaint.

8.1.1.9. \$1,000 per occurrence for mixing material collected under the contract with material from other customers.

8.1.1.10. \$25.00 per day for each work day that reports and notifications are not submitted within stipulated time frames.

8.1.1.11. More than 25 violations per month will require a meeting with Town designees and a \$250 fine. Fine may be waived if contractor and Town are cooperating on a solution.

8.1.1.12. \$25 per occurrence for each appliance collected that is not in compliance with Section 9 of the RFP.

These liquidated damages shall be deducted from monthly payments assessed against the Town for services provided under the contract.

9. Right to Require Performance

9.1.1. The failure of the Town at any time to require performance by Paine's Incorporated of any provisions hereof shall in no way affect the right of the Town thereafter to enforce same. Nor shall waiver by the Town of any breach of any provisions hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

9.2. Permits, Laws, and Regulations

9.2.1. Paine's Incorporated will secure and pay for annual permits from the Connecticut Resource Recovery Authority and the Town of West Hartford for dumping at the Mid-Connecticut Project.

9.2.2. The Town of West Hartford will obtain approval for the inter-Town transportation of solid waste as required by the Department of Environmental Protection in Section 19-524-G of the Connecticut General Statutes or as amended.

9.2.3. Paine's Incorporated will comply with Section 7-161 of the Connecticut General Statutes or as amended which deals with the transport of municipal solid waste.

9.2.4. Paine's Incorporated shall give all notices and comply with all laws, ordinances, rules and regulations applicable to the service described in the Contract Documents.

9.3. Public Announcement of Scheduling Changes

9.3.1. Any change in days of collection which may be precipitated by holidays or other anticipated events shall be announced by Paine's Incorporated in a newspaper having local circulation. The announcement shall be placed in such a manner and size (minimum 2 1/2" x 3") so as to be readily observable. The announcement shall be placed at least one day prior to the original scheduled date for holiday service. Paine's Incorporated will be allowed to place an announcement for both acceptable solid waste and recyclable material collection.

9.4. Discontinued Services

9.4.1. Paine's Incorporated shall discontinue collection service at any location as set forth in a written notice sent to him by the Town. Upon further notification by the Town, Paine's Incorporated shall resume collection on the next regularly scheduled collection day.

In witness whereof, the parties hereto have set their hands on the day and year indicated.

DATE: February 29, 2007

Paine's Incorporated
54 Floydville Road
East Granby, CT 06026

BY: Michael R. Paine
Michael Paine
President
Duly Authorized

DATE: 2/23/07

Town of West Hartford
50 South Main Street
West Hartford, CT 06107

BY: [Signature]
Chris Johnson
Purchasing Agent
Duly Authorized

Service Expectations and Clarifications
Based on negotiations held February 2, 2007.

1. **Disposal of Resident's Old Barrel:** As a part of the educational process, resident's will be informed that plastic barrels are not recyclable and should be placed in the trash barrel. Metal barrels are recyclable and will be collected accordingly.
2. **New contract for dumpsters:** Contractor will inventory current dumpsters and at start of new contract will refurbish, repair, and/or replace dumpsters beginning with those most in need of replacement.
3. **New or Extra residences/collections:** Plan is to define actual number of collections (residential and non residential). Since award is based on per unit cost, an audit will be performed each February to determine the number of units charged effective July one of that year. (Bid is based on 21, 000 -- not actual homes collected).
4. **Illegal Dumps:** Contractor does not foresee major problem. Same day collections, small volume loads shall be done by the supervisor at no extra charge. Collections performed out of the daily trash district would be charged \$75.00 per truck hour. Collections performed on weekends/after hours will be charged \$250.00 per truck hour.
5. **What is the procedure for handling extra trash (outside the 95 gal barrel)?** Contractor prefers to use skip tag method of tracking. Contractor provides buffer by tracking violators. A household will be granted up to 2 opportunities, at which point the contractor will document with skip tags. Upon third offense, contractor will not collect extra trash and will leave a skip tag denoting the offense.
6. **Bulky & Metal:** Collection shall remain 5 days per week. There will be back up vehicle, in any event.
7. **Reporting:** All reports will be in Excel format.
 - a. Daily list of bulky and metal stops by refuse collection area;
 - b. Daily list of trash, recycling, bulky, metal or municipal litter barrels skipped and why; (skip tag report)
 - c. Daily list of addresses where trash problems and recycling problems will be left a tag which describes the problem.
 - d. Monthly report of air conditioners, freezers, dehumidifiers, and refrigerators collected and volume of CFC's removed from each;
 - e. Annual (fiscal year) report from contractor doing CFC removal;
 - f. Inventory of barrels including serial numbers. This list will be updated monthly and evaluated annually identifying the number of residential collections;
 - g. Any other formalized report required by Federal, State, or Local regulations; the Town will communicate with Paine's Inc, prior to any local regulation changes to identify, if any, potential cost impact of the regulation.
8. **Implementation: Roll out of new barrels:** The Plan is to utilize municipal property (schools or parks) to assist in rollout of new barrels. Contractor anticipated about 75 tractor trailer trucks to deliver all 21,000 barrels. Although they will not arrive at the same time, it does require a large amount of space. Plan will be better defined by implementation committee.

9. **Color of barrels:** Contractor recommends dark green. Town is OK with dark green but would like something to differentiate the two sizes. Suggest lid should be different color. Example - both barrels dark green, one with black lid, other with dark green lid.
10. **Additional Barrels for residents:** Residents will be mailed a brochure describing the new system and its options. If they return the appropriate section requesting an additional barrel, one will be delivered approximately 30 days after they receive the original barrel. The cost of the extra barrel will be \$85.00 per barrel. This is a direct contract with resident and contractor. This fee will be adjusted annually and billed and paid for by the resident.
11. **Litter Receptacles:** As a part of cost savings plan, contractor recommends converting Litter receptacles to automated process. Contractor provided a \$65.17 per litter receptacle per month price as alternate in RFP. Costs above 120 barrels will be configured at contractor charge plus \$6.00. Contractor may be required to provide invoices indicating costs.

If the Town chooses to purchase the litter receptacles directly, the cost of the service only will be \$57.49 per litter receptacle per month.
12. **Define collection processes one way and narrow streets:**
 - Driver may get out and move barrel to the collection side;
 - Use rear loader with automated attachment;
 - Third option is to review collection dates and move all problem streets to a Friday collection. All will be finalized with the implementation team.
13. **Animal Control:** Although not a part of original RFP, is it possible for contractor to provide animal carcass disposal? Contractor unsure but will call around and see if there are options for the Town.
14. **Communication:** What is the preferred chain of communication? Contractor would prefer that all communication begins with their office; allowing for tracking and follow up. Town would like to provide in-town Supervisor with desk in DPW office. This will allow for constant communication between partners making way for quicker and more efficient services. Town will utilize Supervisor's cell phone as means communications, however contractor would prefer all initial communications go through their office. Follow up may be direct with Supervisor.
15. **Space Provide by Town:** The Town will provide contractor with approximately 40' x 50' of storage space for extra barrels at the DPW yard and access to an office desk.
16. **Price Reduction:** Paine's agrees to a reduction of the RFP Part 1A, Automated Collection from \$6.90 per household to \$6.82 per household for a reduction of \$.08 for the Town awarding the entire RFP to Paine's Inc. Paine's further agrees to a reduction of the RFP Part 1A, Automated Collection from \$6.82 per household to \$6.76 per household, providing an additional reduction of \$.06 for the Town awarding the automated litter receptacle collection instead of the manual litter receptacle collection.

PAINES INC.
RECYCLING & RUBBISH REMOVAL



Recycled Paper

December 27, 2006

Chris Johnson, Purchasing Agent
Town of West Hartford
Purchasing Division, Room 223
50 South Main Street
West Hartford, CT 06107

Re: Request for Proposal: Solid Waste Services

Dear Mr. Johnson:

We at Paine's appreciate the opportunity to submit a bid for the solid waste and recycle collection for the Town of West Hartford. We have completely reviewed the request for proposal prepared by the Town and are confident that we at Paine's will be able to meet and exceed your recycling and trash removal needs.

Our knowledgeable and experienced professionals are available to answer any questions about your needs today, as well as discuss your waste disposal and recycling options of tomorrow.

Paine's is a company that takes our Mission Statement very seriously. We realize that we need to "Provide Excellence in Service, Satisfaction and Value". We also realize and accept the challenge that Paine's customers will get a Company that is committed to doing a better job today than we did yesterday and intends to meet that commitment both today and tomorrow.

Thank you for this opportunity to serve your needs. If you should have any further questions regarding this proposal please feel free to contact me personally at (860) 658-9481.

In conclusion, and most importantly, Paine's is a company that for over 75 years has put the customer's needs first. We continue to demonstrate this through accountability, dependability, and just plain simple courtesy to each and every customer.

Sincerely,

A handwritten signature in cursive script that reads "Michael R. Paine".

Michael R. Paine
President

Qualification Statement:

Paine's was started in 1929 by Albert I. Paine to service Simsbury. We have since grown to provide a full range of services to the majority of Hartford and Litchfield Counties. The basic premise which we have built our business and reputation on is that each and every Paine's customer can rely on our competent and dependable quality service.

Today the management at Paine's consists of second and third generation family members. The second generation is represented by Don while Russ, Molly, Jean, and myself comprise the third. Our "two generations" of knowledge and experience are available to answer any questions about your needs today, as well as your waste disposal and recycling options of tomorrow. Some of the services Paine's can offer are as follows:

1. Fully automated residential refuse collection.
2. Radio-dispatched residential, recycling, commercial and roll-off vehicles.
3. Detailed computerized billing systems.
4. Recycling programs for office paper, corrugated paper, newsprint, glass and metal.
5. Equipment sales, service and rentals.
6. Compactors and containers from 14 gallon (recycling bins) to 53 cubic yard roll-offs.
7. On-going customer consultation regarding your waste disposal and recycling questions.

In 1986, Paine's became the first company in New England to provide automated service to our customers. Currently, we are servicing over 32,000 customers on a weekly basis using automated collection methods. A partial list of our customers includes; Town of Granby, Town of Wethersfield, Town of Windsor Locks, Town of Canton transfer station, Town of Simsbury and East Granby Recycling drop off centers.

Due to our competitive pricing and commitment to both quality and a high level of customer satisfaction, our service record is one which we are very proud of.

Instructions for Proposals:

Paine's Incorporated is pleased to submit the following proposal to the Town for the town-wide collection of refuse and recyclables.

2.9 Please find attached our detailed programs and plans.

- Contract Implementation and Transition Plan
- Resident Education Plan
- Distribution and Maintenance Program
- Non-processible and Bulky Waste Operational Plan
- Metal and Appliance Operational Plan
- Automated Municipal Litter Receptacles Plan
- Collection from Narrow and Private Roads Plan
- Ongoing Operational Plan

2.10 Please find letters and contact information from:

- Town of Granby - Automated Customer since 1992
- Town of Wethersfield - Customer since 1997, Automated since 2004
- Town of Windsor Locks - Automated customer since 2004

2.11.1 There will be five (5) Residential Automated trash routes per day (5 days per week). There will be five (5) Residential Recycle routes per day (5 days per week). There will be daily collection of the Municipal litter barrels. There will be collection of the Municipal front load containers per the Town's schedule. There will be a daily scheduled collection of metal and bulky items.

2.11.2 There will be a professional assigned to each collection route except the non-processible and metal collection routes which will have two individuals.

2.11.3 The following collection vehicles are planned to be utilized on the regularly scheduled routes. Paine's expects to replace vehicle on a six year life cycle program.

Material	Qty	Year & Make	Capacity
Trash (Auto)	5	2007 Condor Freightliner	31 cubic yards
Trash (FL)	1	2007 Condor Freightliner	40 cubic yards
Recycle	5	2007 International	42 cubic yards
Recycle(FL)	1	2004 Mack	40 cubic yards
Trash (RL)	1	2007 Condor Freightliner	25 cubic yards

2.11.4 The residential automated collection barrels will be Schaefer 95 or 65 gallons which meet all RFP specifications and requirements. See the attached manufacturer literature; warranty information.

2.11.5 The following spare collection vehicles are available in the event of a breakdown.

Material	Qty	Year & Make	Capacity
Trash (Auto)	1	1998 Volvo	30 Yards
Recycle	1	1999 Freightliner	40 Yards
Bulky/Metal(RL)	1	2002 Freightliner	25 Yards
Trash (FL)	1	2001 Mack	40 Yards

2.11.6 All of our vehicles are stored and maintained at our garage and maintenance facility at: 54 Floydville Road, East Granby, CT.

2.12 Please see attached Insurance Certificate that complies with all RFP requirements and specifications.

2.15 Paine's Incorporated submits this response to the Town of West Hartford's RFP without collusion or unethical behavior with any other individual, group or company.

2.16 Paine's Incorporated does not discriminate against person or group of persons on the grounds of sex, race, color, religion, or national origin in any manner prohibited by the law of the United States, State of Connecticut or the Town of West Hartford.

2.17.1 Paine's will pick up the items described after being notified by the Town.

- 2.17.3 Paine's rate for Emergency hourly pickup rates will be \$250.00 per hour per vehicle, (with two Paine's employees), subject to an annual CPI escalator.
- 5.0 Paine's currently handles and follows these procedures in regards to all incidents and accidents.
- 7.0 Please see Operational Plan.
- 7.16.2 Paine's will mail an initial general information brochure to all homes in West Hartford. There will also be specific information that will deal with second barrel charges. The procedure will be that a resident will request a second barrel; they will be quoted the Town approved rate. Paine's will mail an invoice to the resident payable in 25 days, for the next 12 months. In the event that the invoice is not paid within 25 days, a second invoice will be sent out that will state that in the event payment is not received within 10 days the second barrel will be removed and that an additional charge of \$25.00 will be added for redelivery of the second barrel.
- 7.17.2:2 Paine's will comply with the Town start times and will also meet those start times for the litter barrel collections.
- 7.18.2 Paine's will be leaving the empty recycle bins upside down after they are emptied so that residents will know that they have been emptied.
- 7.18.3 Please see attached plan for municipal litter barrel collection during busy/peak periods.
- 7.18.4 Please see attached plan for collection on narrow or private roads and automobile obstructions.
- 7.23.1 Paine's has several thoughts to share with the Town to improve the communication about holiday collection notices.
- 11.1 Please see Paine's Safety Manual.

- 11.2 Paine's requires that all of our drivers be in compliance with the DOT rules and regulations.
- 12.1 Paine's supervisor will coordinate the overall daily collection of various materials described in the RFP. He/she will also interact with the Town and the residents about any concerns or issues that may come up with the daily operations.
- 12.2 Paine's office will have the equipment and will be Staffed to handle the described volume of telephone calls for this job.
 - 12.2.2 Please see attached current examples of the skip tags used currently in other Towns.
- 18.5.2 The individuals to be contacted about this RFP and are authorized to negotiate and contractually bind the Company are:
 - Michael R. Paine, President
 - Russell A. Paine, Vice President
 - Telephone # 658-9481 Fax # 844-3008
- 18.7.1 Please see attached.
- 18.7.2 Please see attached.
- 18.7.3 Please see attached.
- 18.7.4 Please see attached.
- 18.7.5 Please see attached.
- 18.7.6 Please see attached.
- 18.7.7 Paine's will provide access, with reasonable notice, to our Financial Statements and our accountant, to answer any questions that the Town may have.
- 18.7.8 Paine's looks forward to sharing with the Town of West Hartford our experience and the various technological programs that allow our people to deliver a superior value added service.

19. Paine's is excited and looks forward to having a dialogue with the Town of West Hartford about our partnering together. We believe that when two parties cooperate and share their concerns and expectations, the task of providing exceptional services to the residents of West Hartford becomes a more obtainable goal.
21. No corporate officer, employee or individual from Paine's has discussed or colluded with anyone with regards to this Bid # 5877RFP

Revised Bid Forms:

Addendum #2

Part II

2. Residential curbside collection of non-processible and bulky waste :

Unit Price per month per premise price is based upon the service being available to the estimated number of residential premises of 21,000.

3. Residential curbside collection of metal items and material:

Unit Price per month per premise price is based upon the service being available to the estimated number of residential premises of 21,000.

4. Unit Price per Hour for Supplemental Residential curbside collection of bagged leaves:

Unit Price per month per premise price is based upon the service being available to the estimated number of residential premises of 21,000. Paine's will be using our truck with a driver and a driver's assistant.

5. Unit Price per Hour for Supplemental Residential curbside collection of bagged yard waste:

Unit Price per month per premise price is based upon the service being available to the estimated number of residential premises of 21,000. Paine's will be using our truck with a driver and a driver's assistant.

6. Unit Price for Supplemental Automated Litter barrel collection:

Unit Price per month per premise price is based upon the service being available to the estimated number of litter barrels of 58. Paine's will be using our truck with a driver and collecting a four day per week schedule (M-W-F-Sat). The automated barrel we propose will have a capacity of 60 gallons.



Customer Supplemental Education Plan

It has always been our goal at Paine's to establish open lines of communication with our customers. This communication will provide the feedback needed to provide excellence in service, satisfaction and value.

Paine's web-site:

- Installation of a separate tab on Paine's web site dedicated to the Town of West Hartford to include the following information:
 - Description of services
 - Scheduled collection days
 - Time collections begin
 - Description of barrel placement
 - Loading of barrel
 - Picture to show correct placement of barrel and loading level
 - Barrel sizes and selection process, including pictures to show the difference between the two sizes
 - Disposal and collection of old barrels

Customers without access to internet:

- Sample barrels will be placed in key areas around town with a written description of the equipment and the service. Suggested key areas could include: school lobbies, town hall, senior centers, DPW and other high traffic areas.
- Informational spot on Public TV is a good way to get the information to the residents describing the different types of services and showing barrel placement, loading, when to have barrel out at the curb, barrel features and sizes available. We have found this type of media to be very useful in getting the information to the Town residents.

Town notification:

- As mentioned in our implementation plan, approximately 130 days prior to the start of the contract, a customer education mailer/barrel selection card will be sent to all residents. Included in this mailer will be a description of how automated service works, including the two (2) different size barrels available. Customers wishing to receive the 65 gallon barrel will be required to return the mailer with their choice otherwise we will

Customer Supplemental Education Plan

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automatically deliver the 95 gallon to the residence. Residents wanting a 95 gallon barrel will need to do nothing. Other rules regarding placement of the barrels so as not to be obstructed from pick up from items such as mailboxes, planters, parked cars, proper loading and the correct placement of the recycle bin in relation to the trash barrel, will also be addressed. Included in this mailer will be instructions for scheduling either a bulky, metal or CFC collection and a date when Paine's will be assuming these duties.

- Approximately 45 days prior to the start of the project, a reminder notice will be printed in the paper that the barrels will soon be arriving and that automated collection will begin on the agreed upon start date. At that point refuse will only be collected in the automated barrels and instructions will be listed on how the residents can dispose of their old barrels should they desire.
- Additional customer education will be provided through skip tags. These tags will be left when trash, recycle, bulky, metal or CFC pick-up is not completed. Listed on these tags will be the reason why and instructions to call Paine's office for additional clarification or explanation.

Barrel Delivery:

- As part of the cart delivery process, an informational flyer will be left under the lid of each barrel to explain automated service and the time line for the start of the contract.
- Instruction will also be printed for anyone who would like to dispose of their existing barrels to place them into the new automated barrel for disposal.

Customer Service:

- All phones at Paine's are answered by an individual and not an automated attendant between the hours of 7:30 AM and 4:00 PM. After 4:00 PM, the resident may leave a message on our recorder and their call will be returned the following morning.
- All Paine's customer service employees are trained on all the requirements for each contract so that they may answer resident's questions quickly and efficiently. Paine's takes pride in empowering our employees in making educated and informed decisions for the betterment of the company and our customers.



West Hartford Operational Plan

Daily Operations (Automated trash and recycling):

- At 4:30 AM the Operations Manager arrives to open the office. At this point all answering machine messages are entered into the call book. The messages will then be evaluated and delegated to the appropriate route driver's route. These tasks are placed on the notes section of the driver's route sheet.
- The notes are a cover sheet on the route list that shows all special tasks that need to be completed on that day's route. For example, barrel delivery, swap, damage repair or missed stops are the types of things that would be found on this sheet.
- The drivers will arrive at 5:15 AM to start and perform a pre-trip inspection of their vehicle.
- The drivers will report to the Operations Manager to check in and receive any important information.
- Spare drivers are also in at this time to cover any call outs.
- The drivers leave for the route at 5:30 to facilitate a 6:00 AM start.
- The drivers will work on the same route every week so that they familiarize themselves with the area and to promote customer familiarity.
- The General Manager is in as a redundant back up to the Operations Manager.
- During the work day, communication between drivers and the office are completed via our state of the art 2-way radio system.
- Any time a driver has an issue on the route; it will be called into the Operations Department via 2-way radio. These issues would be things like barrel damage to be repaired the following week, barrel swaps that could not be completed because the barrel was not out, all accidents and close calls will be entered as well. The call will be recorded into the Ops Log. The Ops Log is a Microsoft Access based program we use internally to ensure issues are tracked and ultimately resolved. Once entered into the Ops Log, it is the responsibility of our customer service staff to resolve the issues.
- During the day, as calls are taken on issues in Town, they will immediately be communicated to the Crew Leader for delegation and resolution.
- The route Manager and/or the Operations Manager will be available to respond to any urgent issues that may arise. Both have company supplied cell phones plus radio dispatched vehicles.
- Near the end of the route day there is communication between the crew leader and the drivers to ensure all routes are completed and all extra tasks are completed.
- The crew leader will communicate to Operations that the route is complete and the vehicles will be leaving town.

West Hartford Operational Plan

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- At this point all issues will be placed on the notes for the following day.

Litter barrel collection:

- The litter barrel collection will be performed 7 days a week for manual collection and 4 days a week for automated.
- These collections will be performed before the start of the day to ensure there are as few vehicles as possible blocking the barrels.
- All issues with the collection will be called into the Operations Department and recorded in the Ops Log for resolution.

Bulky, Metal and CFC collection:

- Every day at 2:00 PM we will receive the Excel spread sheet from the Towns web based program. This sheet will be imported into Microsoft Map Point for optimization.
- The optimized report will be sent to the Operations Department for the next day's collection.
- The report will be taken by the driver the next morning and the collection will be performed in the order on the report. The driver will record the time each stop was collected and any issues that arise on the route such as items not out or items not collected.
- Any trouble will be recorded on a skip tag and a copy will be kept on file here at Paine's.
- All appliances containing CFC's will be transported to a centralized location and issued a number. The appliances' CFC's will be pumped out by a reputable firm and disposed of in an environmentally safe manner.
- The reputable firm will produce a report of all appliances pumped and include the assigned number.
- At the end of the route, the driver will turn in the report to Operations along with weight tickets.
- The following day the drivers report will be e-mailed to the Town.

Accident procedures:

- When an accident occurs the drivers are trained to follow Paine's Accident Procedure:
 1. Do not move the vehicles
 2. If there are others involved in the accident, approach them to determine if there are any injuries.
 3. Call operations and the 2-way radio and report that you have been involved in an accident.
 4. The dispatcher at that point will make a general announcement that the radio is to be kept clear until the all clear is issued.
 5. The driver will then report if there are any injuries, the exact location, are there any spills, the damage to all vehicles involved and will the services of a wrecker be required.
 6. If our vehicle requires repair, our maintenance vehicle and staff will be dispatched.
 7. A manager will be dispatched to the scene and the police will be called immediately.
 8. The driver has then been trained to stay clear of others involved to avoid potential confrontation..

West Hartford Operational Plan

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9. Upon arrival of the Police, the driver has been trained to follow the instruction of the Police as to the moving of the vehicles.
10. The driver has been trained to answer all questions asked by the Police truthfully.
11. Upon arrival, the manager will perform a complete investigation of the accident.
12. If it is determined the driver requires a drug test, the driver will be transported immediately to the test site.
13. All accidents will be reported to the Town whether or not Paine's driver is at fault.
14. The manager's and the Police reports will be reviewed and discussed and the route cause of the accident will be determined.
15. All corrective action appropriate to reducing this type of incident in the future will be discussed not only with the driver involved but all drivers.
16. If it is determined our driver is at fault disciplinary action will be taken.



West Hartford Project Implementation Plan

Scope of Work:

- Once an award is made, a meeting will be scheduled within a week with the Town of West Hartford and Paine's, Inc. to discuss and finalize all expectations and timelines for the implementation of the contract. The following actions will then take place based on contract start date:
 - Ordering of all equipment to ensure meeting of project timelines
 - Develop barrel selection/customer education mailer and allow for Town review
 - Receiving Town provided Resident Mailing List
 - Development of Route Lists
 - Hiring and training of new and existing employees

Customer Education:

- Customer education is one of the most important components to make this a smooth transition from manual to automated collection. Through the barrel selection/customer education mailer, similar to the ones we have authored for the Town of Windsor Locks and the Town of Wethersfield, we intend to address the most frequently asked questions that residents have. During normal business hours, 7:30 AM thru 4:00 PM, residents may also call the Paine's office directly to speak with a person to have any additional questions answered. After 4:00 PM, they may leave a message on our recorder and their call will be returned the following morning.
- Approximately 150 days before the start date of the contract, a complete mailing list of all residents will be provided by the town. To ensure that we order the correct number of each size barrel, it is required that we receive this list within 2 weeks of our request. Mailers to the residents will be sent the following week or approximately 130 days prior to the start of the contract with a required return deadline date of 10 days.
- Included in the customer education mailer will be information on the process to schedule either a bulky or metal collection.
- Please see separate supplemental customer education program

West Hartford Implementation Plan

Distribution and Maintenance Program:

- Barrels will be delivered to all residents at least one (1) week prior to the start date of the contract. An additional informational card will be included with each barrel to reiterate proper placement of barrels, the date to start using, time to have barrel by curbside, etc.
- Barrels will be distributed by route days. Assuming the first collection day falls on a Monday they will receive their barrels first, then Tuesday and so forth. A complete listing of each address with the barrel size to be delivered will be given to our barrel delivery team. They will deliver each barrel and record the barrel serial number next to each address. This listing can also be shared with the Town. The West Hartford Police Dept. will be notified of delivery areas daily. Areas of high traffic will be avoided during peak travel times.
- Please see our separate maintenance program for the barrels.

Transition from Current Hauler:

- The present Hauler will be contacted 60 days prior to the beginning of the project. A meeting will be requested and a Town representative will be invited to discuss all potential issues. At that time, the present hauler will also be made aware of cart delivery dates in an effort to encourage a smooth transition.

Training:

- Drivers will be given copies of their route sheets two (2) weeks prior to the start of the contract so that they can familiarize themselves with daily expectations, high traffic areas, narrow and private roads and any other areas of concern. All staffing will include a mixture of present Paine's employees and new candidates hired through the interview process that we feel will deliver the highest quality of service and value to the Town.
- Training will start for the office staff upon awarding of the contract so that they are capable of answering residents' questions and to make the transition as smooth as possible.

Start of the Contract:

- A progress meeting will be scheduled with the Town of West Hartford three (3) months prior to the start of the contract to discuss and finalize all details. Additional meetings may be scheduled by either party at mutually agreed upon intervals during this transitional period.
- A designated individual will be in the Town of West Hartford to address any concerns and to verify proper implementation of all types of collections. All trucks will be equipped with two-way radios for enhanced communication. Drivers will be required to make detailed notes and suggestions upon collecting all routes for the first time. These

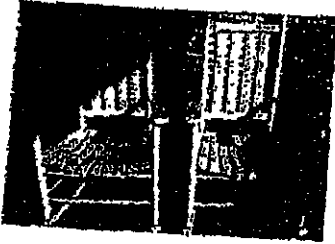
Paine's, Inc.
P. O. Box 307

West Hartford Implementation Plan

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notes will help to improve safety and efficiency. All suggestions will be examined by Paine's Management and then agreed upon updates will be made.

- A meeting will be held with the Town of West Hartford no later than after the first week of service is provided to discuss any issues or concerns.



Bulky Waste and Non-Processible Collection Plan

Scheduled collections will be performed by two (2) Paine's employees using a rear loader. Using our years of experience from performing these types of collections, and in an effort to simplify the collection process for the customer, the service will be provided as follows:

Collections:

- Collection of bulky and non-processible items will be performed on same day as refuse and recycling collection.
- Customers will be required to have materials curbside by no later than 6:00 AM on their scheduled collection day.

Permits:

- When customer calls Paine's to schedule a pick-up, credit card number will be requested in order to issue a permit number. Residents may also go online to the Town's website and utilize their credit card to purchase one or more permits. All requests for pick-ups from the residents to Paine's must be paid for by credit card and entered into the Town's web based system. In the event that a customer would like to pay by cash or check, they will be instructed that all such payments must be done at the Town Customer Service Desk or at the Public Works Dept. Paine's will not accept cash or check payments.

Scheduling:

- Residents will be directed to call Paine's to schedule pick-up no later than 2:00 PM the day prior to their scheduled collection day. Any calls received after 2:00 PM will be scheduled for the following week. Any resident that has a Monday pick-up will need to call by 2:00 PM the prior Friday. Material left curbside that does not have a permit number will not be collected.
- Customers calling to schedule a pick-up will provide their name, refuse collection day, permit number, (keeping in mind that separate numbers are given for bulky vs metal pick-ups), daytime phone number, address, and a detailed list of the bulky items to be collected. Town approved pricing will be quoted based on the volume of material to be

Bulky and Non-Processable Collection Plan

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picked up; Current pricing is \$20.00 for up to 2 cubic yards or what would fit into a standard size pickup truck. All permits must be used within 2 weeks of being obtained and are valid for one time use.

Reporting:

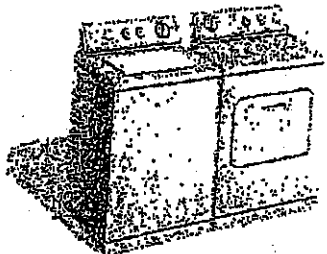
- All scheduled daily collections will be compiled into a Microsoft Excel or other mutually acceptable program for the daily collection report. This report will be completed by the end of the work day on the day prior to scheduled pick-up and given to route driver the next morning to ensure quality and effective service.

Record Keeping:

- Drivers will record the pick-up time of each individual stop, notes about any materials left behind, skip tags left, stops that were not out at the scheduled time, as well as any other problems encountered. This collection information will be recorded the next business day for each collection into the daily collection report.
- Each report will have its' own separate datasheet in the program to differentiate between types of pick-ups.

Disposal:

- Bulky and Non-processable items will be transported to the Hartford Landfill for disposal and a completed daily collection report will be faxed to the Town of West Hartford on the following business day.



Metal and Appliance Collection Plan

Scheduled collections will be performed by two (2) Paine's employees using a rear loader. Using our years of experience from performing these types of collections, and in an effort to simplify the collection process for the customer, the service will be provided as follows:

Collections:

- Collection of metal items and appliances will be performed on same day as refuse and recycling collection.
- Customers will be required to have materials curbside by no later than 6:00 AM on their scheduled collection day.

Permits:

- When customer calls Paine's to schedule a pick-up, credit card number will be requested in order to issue a permit number. Residents may also go online to the Town's website and utilize their credit card to purchase one or more permits. All requests for pick-ups from the residents to Paine's must be paid for by credit card and entered into the Town's web based system. In the event that a customer would like to pay by cash or check, they will be instructed that all such payments must be done at the Town Customer Service Desk or at the Public Works Dept. Paine's will not accept cash or check payments.

Scheduling:

- Residents will be directed to call Paine's to schedule pick-up no later than 2:00 PM the day prior to their scheduled collection day. Any calls received after 2:00 PM will be scheduled for the following week. Any resident that has a Monday pick-up will need to call by 2:00 PM the prior Friday. Material left curbside that does not have a permit number or was not called in to schedule a pick-up will not be collected.
- Customers calling to schedule a pick-up will provide their name, refuse collection day, permit number, (keeping in mind that separate numbers are given for metal vs bulky pick-ups), daytime phone number, address, and a detailed list of the metal items to be

Metal and Appliance Collection Plan

Page 2 of 2

collected. Town approved pricing will be quoted based on the volume of material to be picked up. Current pricing is \$20.00 for up to 2 cubic yards or what would fit into a standard size pickup truck. All permits must be used within 2 weeks of being obtained and are valid for one time use.

Reporting:

- All scheduled daily collections will be compiled into a Microsoft Excel or other mutually acceptable program for the daily collection report. This report will be completed by the end of the work day on the day prior to scheduled pick-up and given to route driver the next morning to ensure quality and effective service.

Record Keeping:

- Drivers will record the pick-up time of each individual stop, notes about any materials left behind, skip tags left, stops that were not out at the scheduled time, as well as any other problems encountered. This collection information will be recorded the next business day into the daily collection report.
- Appliances containing CFC's will be issued a number and the appliance will be loaded into a vehicle and transported to a central location. The CFC will then be removed by a reputable contractor and a written record to correlate each issued GFC number to each permit number will be made into the collection report. Once the Freon abatement has been completed by the contractor, they will issue a report to Payne's that the material has been disposed of in compliance with all applicable regulations.
- Each report will have its' own separate datasheet in the program to differentiate between types of pick-ups.

Disposal:

- Metal items will be transported to J. W. Greene's for disposal and a completed daily collection report will be faxed to the Town of West Hartford on the following business day.



Barrel Maintenance Plan

Barrels chosen for this RFP should require minimal maintenance. In the event a barrel does need maintenance, the issue will be resolved in the following manner:

Driver/Supervisor Reports:

Minor damage due to normal wear and tear but container still serviceable:

- The drivers have been trained to examine the barrels for damage when they are serviced.
- The driver carries spare barrel parts to perform minor repairs on the spot. (ie: replace wheels)
- If the barrel has a crack in the lid or in the body but is still serviceable, the driver will make a note to replace it on the next collection day and a service tag will be left for the customer so that they are aware of the process.

Major damage due to normal wear and tear but still serviceable:

- If the driver has a spare barrel, the barrel will be swapped and the serial numbers will be recorded.
- If the driver does not have a spare barrel, the driver will make a note to replace it on the next collection day and a service tag will be left for the customer.

Major damage due to normal wear and tear and not serviceable:

- If the driver has a spare barrel, the item will be swapped and the serial numbers will be recorded.
- If the driver does not have a spare barrel, the driver will contact the route supervisor and request the barrel be swapped out promptly. The serial numbers will be recorded.

Customer Reports:

Minor damage due to normal wear and tear but container still serviceable:

- The customer will be informed that any minor mechanical issue with the barrel will be resolved on their next pick-up day.
- The driver will be issued a note to examine the barrel and perform minor repairs.
- If the driver cannot repair the barrel, the driver will swap it out and record the serial numbers
- If the driver is unable to swap the barrel, the route supervisor will swap and record the serial numbers.

Barrel Maintenance Plan

Page 2 of 2

Major damage due to normal wear and tear:

- Customer will be informed that barrel will be swapped within 24 hours of the call.

Either Driver/Supervisor or Customer Reports:

Major damage not due to normal wear and tear (ie: cart damaged by fire):

- If the driver has a spare barrel, the item will be swapped and the serial numbers will be recorded.
- If the driver does not have a spare barrel, the driver will contact the route supervisor and request the barrel be swapped out promptly. The serial numbers will be recorded. The resident will be charged \$75.00 for the replacement barrel and its' delivery.

It is our intent to request a storage location in town where several of each size barrel will be stored in an effort to expedite the turn around on damaged barrels.

The goal of this plan is to avoid, whenever possible, the need for the customer to call with a barrel issue. It is the responsibility of our drivers and supervisor to report any barrel issues and get them resolved as quickly as possible so as not to inconvenience the residents.



Litter Receptacles Collection Plan

The collection of the (58) town wide litter receptacles will be performed on a daily basis using the appropriate vehicle and completed as follows:

Collection:

- The collection will begin at 6:00 AM 7 days a week
- The driver will be issued a route that addresses the busiest areas first.
- Driver will park the truck as close to the barrel as possible and put on all emergency warning beacons
- Service will then be performed by emptying the Municipal litter receptacle into an automated wheeled barrel which will then be emptied into the appropriate disposal vehicle.

Disposal:

- All vehicles used will be permitted to unload at CRRA in Hartford

Emptying during peak hours:

- This collection will be performed using the appropriate vehicle therefore making access to these receptacles safer and easier during high traffic times. Collections will be performed as described above, keeping in mind that extra caution and safety measures will be taken to prevent accidents.
- Driver will park the truck as close to the barrel as possible and put on all emergency warning beacons
- Municipal litter receptacle will be emptied into an automated wheeled barrel which will then be emptied into the appropriate disposal vehicle.

Automated litter receptacles:

- If the automated option is selected, the collection will be performed on Monday Wednesday, Friday and Saturday.
- These collection days will provide more service than is presently in place:
 - {4X60 Gallons = 240 gallons per barrel per week}
 - {7X32 Gallons = 224 gallons per barrel per week}
- The collection will be performed at 6:00 AM in an effort to minimize blocked receptacles and to cause the least disruption to the town and its' residents.

Litter Receptacles Collection Plan

Page 2 of 2

Benefits:

- One less vehicle driving in town 3 out of 7 days thereby creating less truck traffic in congested areas
- Larger capacity of containers, less chance for them to become overloaded
- Cost benefit to the town as proposed on our bid sheets



Plan to Negotiate Private and Narrow Roads

In an effort to supply our service to as many customers as possible, our drivers must be trained and capable of negotiating small/private roadways without causing damage. There are several different types of drives that create issues:

Roads without cul-de-sac:

- Driver will need to back down entire length of road to lower the chance that someone will pull in behind them
- Driver will put on emergency beacons and check for obstructions both front and back waiting for gap in traffic
- The rear vision camera will engage once truck is put in reverse to eliminate as many blind spots as possible.
- 4-way flashers will be put on
- While backing up, the driver will weave back and forth slightly to keep the picture from the camera changing and also the view from the rear view mirrors to help eliminate blind spots
- Once at the end of the road, driver will shut off 4-way flashers before starting the collection process
- Since the truck can only perform collections from the right side, driver will get out of the vehicle and roll any barrels or recycling from the left side to the right side for service. Once emptied, they will be returned to the left
- Driver will wear ANSI approved high visibility clothing and will take extreme care when walking in front of vehicle to stay clear of traffic

Narrow roadways:

- By selecting a Labrie Right Hand Fully Automated Truck for this project, this issue can be addressed. The automated arm is mounted flush with the side of the truck therefore requiring less road clearance. This system also allows the driver to get as close to the barrel as necessary in order to perform the service.

Plan to Negotiate Private and Narrow Roads

Page 2 of 2

- Roadways that are too narrow for our truck to negotiate and is under 100 feet, our driver will walk in collect the barrel, empty it and return it to its' original position.
- For roadways that need to be serviced but are too narrow for our truck to negotiate and are over 100 feet, the stop/stops will be collected with a pick up truck. The driver will get the material out of the barrel and place it in a spare barrel in the back of the pick up. The pick up will then drive to the fully automated truck where the material will be off loaded.
- For particularly challenging areas, a rear loader vehicle equipped with a barrel tipper will be used. This vehicle will have a driver and driver's assistant working together as a team to safely negotiate these difficult thoroughfares.

By working together, and in conjunction with the Town of West Hartford, we feel we can find solutions to any issues or concerns that may arise.



Paine's Technology

At Paine's, technology is used as a tool to accelerate improvement. We are aware that there is no substitute for good old fashion human involvement.

Paine's web site:

- Our web site was designed to provide information to our customers. The site is also equipped with contact information directing them to call if they have any additional questions that they cannot find answers to.
- We have control in-house to put time dated messages on the site to help communicate to our customers. For example, if routes are behind due to high volumes of material, poor road conditions, or delays.
- A means of communication

GPS vehicle tracking:

- Track the routing of our vehicle to ensure efficiency and safety by limiting the miles traveled.
- Monitor of speed to ensure our drivers travel at a safe speed.
- As a means to resolve customer disputes.
- Track unauthorized vehicle use.
- Real Time vehicle tracking

2-Way Radio Communications:

- Repeater based system
- Multiple frequency and tower capability
- Vehicle id transmitted with each transmission
- Ability to page the radio to determine if it is on or the driver is out of the cab.

Computers and software:

- Modern computers
- State of the art billing software from Encore Computing
- Complete compliment of Microsoft Office products.



Paine's Value Added

1. Bio Diesel
 - Lower emissions
 - Quieter running engines
 - Less dependency on foreign oil
 - Domestic product
 - Renewable Fuel
2. Informed and pleasant employees answering the phones
 - 7:30 AM till 4:00 PM the phone is answered by a person
 - Employees empowered to make decisions
 - If the question can not be answered, the call is transferred to someone who can.
 - Operations Log where drivers and customer concerns are tracked and addressed daily
3. Any voice mails answered promptly
4. E-mails followed up on promptly
5. First in the area to go automated
 - First company in New England to use automated collection
 - Twenty years of experience in automated collections
6. First in the area to offer recycling
7. National spokes company for automated products (Trucks and barrels)
 - Our experience is valued by our vendors to the point we have been selected by Schaefer and Labrie to endorse their products
8. Superior insurance and DOT safety rating
9. Superior DOT out of service rating
10. All employees paid hourly to encourage safe operation.
 - Promotes team work
 - Encourages and empowers our people to solve issues on the route improving our product quality at every level.
11. Required safety training regiment
 - All Paine's drivers receive an extensive safety training regiment.
 - Recurrent training to all employees
12. Monthly safety training
 - This training is reserved for seasonal and topical issues.
13. Continuous research on the best products available
 - At Paine's, we are continuously researching the best products to get the job done safely and with the optimum efficiency.
14. Equipment is selected based on value not price alone
 - Paine's truck specification is one that is unique. We require larger brakes, better transmissions, larger engines, better maneuverability and more

*Paine's Value Added**Page 2 of 2*

creature comforts to keep our drivers alert and comfortable. We make sure to provide our people with the right tools to do their jobs as safely as possible.

- Rear vision cameras.
 - GPS tracking
 - Purchase extended warranties on equipment
 - Office and maintenance facility is protected with a back-up generator system
 - State of the art radio communications
 - Verizon network for cell phone communication
 - State of the art, expandable phone system and internal voice mail system.
 - Key personnel have mobil e-mail
 - State of the art computers and soft ware
15. PFPF with a large safety element
- PFPF or Paine's Pay for Performance is our review system that is based on just that performance. If a driver has an accident, the ramifications are severe.
 - These reviews are conducted throughout the year on a quarterly basis.
16. Progressive discipline
- A three strikes and you are out system of discipline is used where first a written warning is issued. If the behavior continues, a warning is issued with a suspension; and if the behavior is not corrected, the employment of this person is terminated.
 - Paine's has the option of reducing the number of steps in this process depending on the severity of the infraction.
17. Large maintenance facility with inside storage
- Most of Paine's trucks are stored inside to protect them from the elements and keep them clean during the winter season.
 - Maintenance computer system to track repairs and provide automatic maintenance scheduling.
18. Two (2) shifts of mechanics
- Having two (2) shifts of mechanics we have the opportunity to reduce breakdowns through regularly scheduled maintenance practices that reduce and potentially resolve minor issues before they become large ones.
 - Communication between the mechanics and drivers is essential to keep the fleet working as smoothly as possible.
19. Finally, Paine's has a dedicated group of motivated employee's who all take our Mission Statement seriously and are committed to customer service.

Our Mission Statement

Paine's has the same values as we have for over 75 years:
 Treat customers and employees with respect
 Provide excellence in service, satisfaction and value

Paine's, Inc.

12/27/06

RF #58772

SCHEDULE OF BIDSPART I

Collection, Transportation and Discharge of Acceptable Solid Waste and Recyclable Materials.

A. Automated Collection, Transportation and Discharge of Acceptable Solid Waste

1. Base Bid - Premises with Residential containers

<u>Estimated Premises</u>	<u>Unit Price Per Month Per Premise in Words</u>	<u>Numerical Unit Price Per Month Per Premise</u>	<u>Extended Total Price Per Month</u>	<u>Extended Total Price Per Year</u>
21,000	<u>six dollars and ninety cents.</u>	<u>\$ 6.90</u>	<u>\$ 144,900.00</u>	<u>\$ 1,738,800.00</u>
		<u>6.76</u>		

2. Base Bid - Premises with Non-Residential containers (i.e. dumpsters)

<u>Estimated Collections Per Month</u>	<u>Unit Price Per Collection in Words</u>	<u>Numerical Unit Price Per Month</u>	<u>Extended Total Price Per Month</u>	<u>Extended Total Price Per Year</u>
200	<u>thirteen dollars and sixty seven cents</u>	<u>\$ 13.67</u>	<u>\$ 12,303.00</u>	<u>\$ 147,636.00</u>

3. Base Bid - Provision of Rolloff Containers for special Municipal Events

<u>Estimated Events</u>	<u>Unit Price Per Event in Words</u>	<u>Numerical Unit Price Per Event</u> (for bid purposes assume 1 event per month, twelve per year)	<u>Extended Total Price Per Year</u>
<u>per month</u> 1	<u>one hundred fifty dollars and no cents</u>	<u>\$ 150.00</u>	<u>\$ 1,800.00</u>

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Michael R. Paine, President

Michael R. Paine

Russell A. Paine, Vice President

Russell A. Paine

Paine's, Inc.

12/27/06
RF #5877F

B. Collection, Transportation and Discharge of Recyclable Materials

1. Base Bid -- Collection, Transportation and Discharge of Recyclable Materials From Premises with Residential Containers.

Estimated Premises	Unit Price Per Month Per Premise in Words	Numerical Unit Price Per Month Per Premise	Extended Total Price Per Month	Extended Total Price Per Year
21,000	three dollars and fifty cents	\$ 3.50	\$ 73,500.00	\$ 882,000.00

2. Base Bid -- Collection, Transportation and Discharge of Recyclable Materials From Premises with non-residential containers.

Estimated Collections Per Month	Unit Price Per Month Per Collection in Words	Numerical Unit Price Per Month Per Collection	Extended Total Price Per Month	Extended Total Price Per Year
240	thirteen dollars and sixty seven cents	\$ 13.67	\$ 3,280.80	\$ 39,369.60

6.83 PER 95 BARRIL
SECONDO P.U.

\$ 13.67

\$ 59.19
4.33
WEEKS

Michael R. Paine, President
Michael R. Paine
Russell A. Paine, Vice President
Russell A. Paine

Paine's, Inc.

12/27/06
RFP #5877E

PARTIAL ALTERNATES:

1. Alternate bid for Optional Public Solid Waste Services (Note: The prices offered for optional services will not be taken into consideration in determining the lowest responsible bidder). Contractor shall base alternates for Six (6) (up to 10) year contract.

Optional Backyard Collection of Acceptable Solid Waste and Recyclable Materials From Premises with Residential Containers.

Unit Price Per Month Per Premise In Words	Numerical Unit Price Per Month Per premise
<u>eighteen dollars and seventy five cents</u>	<u>\$ 18.75</u>

NOTE: The price for optional backyard collection shall reflect all costs, overhead and profit for the additional level of service above and beyond the cost of services stated in Part I of the Schedule of Bids.

2. Proposal for residential curbside collection of non-processible and bulky waste and delivery to CRRA or Town designated site.

Unit Price Per Month Per Premise In Words	Numerical Unit Price Per Month Per premise
<u>fifty four cents</u>	<u>\$.54</u>

3. Proposal for residential curbside collection of metal items and material, and delivery to Town designated facility.

Unit Price Per Month Per Premise In Words	Numerical Unit Price Per Month Per premise
<u>seventy two cents</u>	<u>\$.72</u>

4. Proposal for supplemental residential curbside collection of bagged leaves and delivery to Town designated facility.

Unit Price Per hour Per Premise In Words	Numerical Unit Price Per hour
<u>point zero zero sixty two cents</u>	<u>\$ 130.00</u>
(\$.0062)	

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Michael R. Paine, President
Michael R. Paine
Russell A. Paine, Vice President
Russell A. Paine

Paine's, Inc.
12/27/06
RFP #5877F

5. Proposal for Supplemental residential curbside collection of yard waste and delivery to Town Designated facility.

<u>Unit Price Per Hour</u> <u>Per Premise In Words</u>	<u>Numerical Unit</u> <u>Price Per Hour</u>
<u>point zero zero sixty</u> <u>two cents (\$.0062)</u>	<u>\$ 130.00</u>

8125.

6. Proposal for automated Municipal litter receptacle collection.

<u>Unit Price Per Month</u> <u>Per Barrel In Words</u>	<u>Numerical Unit</u> <u>Price Per Month</u> <u>Per barrel</u>
<u>sixty five dollars and</u> <u>seventeen cents</u>	<u>\$ 65.17</u>

7. In event contract is only six years, contractor shall indicate buy out cost of barrels only.

6th year buyout total lump sum of: \$ 237,116.00

Total lump sum buyout in words two hundred thirty seven
thousand one hundred sixteen dollars and no cents

Michael R. Paine, President
Michael R. Paine
Russell A. Paine, Vice President
Russell A. Paine

EXHIBIT C

Dear Resident:

You have applied for rear yard refuse collection. Eligibility for this program is based upon meeting the following requirement:

1. A significant mobility impairment exists which prevents the household from taking the trash to the curbside.

You must also meet one out of the following two requirements in order to qualify:

2. The financial situation of the household prevents the purchase of the services of an individual or business to perform this task. The financial guidelines are based on 200 % of the Federal Poverty guidelines based on the number of occupants per residency.
3. You must be 80 years or older and living alone.

Financial guidelines are as follows:

Individual household \$19,600.00 per year or less.
Two person household \$26,400.00 per year or less.
Three person household \$33,200.00 per year or less.

In order to determine your household's eligibility for the program, you must complete the enclosed form, APPLICATION FOR REARYARD REFUSE COLLECTION, and have your physician complete the Certification of Disability. In order to verify your household's income you should attach a copy of the most recent Federal Income Tax Return for each household member. If you or a household member is not required to file a Federal Income Tax Return, you must provide us with other forms of verification of your income. This includes, but is not limited to Social Security award letters, interest and dividend statement, and so forth. All sources of income must be documented.

Please send both completed forms and supporting financial documentation to the:

Town of West Hartford
Department of Public Works
17 Brixton Street
West Hartford CT 06110
Attn: Rear Yard Refuse Collection

If you do not meet the requirements listed above and are not eligible for this program, you still have several options. You may contact Waste Materials Trucking Company and schedule a rear pickup through them. There will be a fee involved and you can contact them at (860) 675-9682 to inquire about this option. You may also contact any private contractor to help you, or ask a family member or neighbor to help you bring your trash up to the curb on your pickup day.

Should you have any questions, please contact David Gabriele at 561-8111.

Sincerely,

Dana Lee Hallenbeck
Director of Public Works

policy/rear yard

EXHIBIT D

October __, 2007

Dear Resident,

We have recently approved your application for town sponsored rear yard refuse and recycling collection. Due to the overwhelming number of applications for this service, the Town found it necessary to reexamine the qualifications for acceptance. In addition to disability, the program has been amended to also include an income limit, and any household earning more than the designated income limit will no longer be eligible. While we regret having to make this decision, it has become necessary in order to provide the collection service to as many of the qualified residents as possible.

Unfortunately, we must also enact the changes retroactively on previously accepted households. This is not a decision we have made lightly and we apologize for any inconvenience it may cause you.

1) A disability must exist for all members of the household that prevents the household from bringing their refuse and recycling to the curb.

Changes in program qualifications are as followed:

2) Income requirements

- a. For households in which every member is under eighty years old, total household income must not exceed two times the federal poverty income level corresponding to the family size.
- b. For households in which at least one member is over eighty years old, total household income must not exceed five times the federal poverty income level.

See enclosed income table.

Disabled households who exceed the income level cutoff and households without a disability will not be eligible for town sponsored rear yard collection service.

While we already have verification of your disability status and age, we must reevaluate your application to verify income level eligibility. Please submit W-2 Forms or other income records for each member of the household to:

The Department of Public Works,
17 Brixton Street,
West Hartford, CT 06110

If verification is not received or if your household's income exceeds the limit, you will be unable to receive rear yard collection. Please black out account and social security numbers on all documents submitted.

If you have any questions please call (860) 561-8100.

Sincerely,

Dana Hallenbeck

2007 POVERTY LEVEL GUIDELINES FOR REAR YARD PICK UP

FAMILY SIZE	Poverty Level	PERCENT OF POVERTY	
		200%	500%
1	\$10,210	\$20,420	\$51,050
2	\$13,690	\$27,380	\$68,450
3	\$17,170	\$34,340	\$85,850
4	\$20,650	\$41,300	\$103,250
5	\$24,130	\$48,260	\$120,650
6	\$27,610	\$55,220	\$138,050
7	\$31,090	\$62,180	\$155,450
8	\$34,570	\$69,140	\$172,850

**For family units of more than 8 members, add \$3,480 to the Poverty Level for each additional member.

EXHIBIT E

Dear Resident:

The Town of West Hartford's rear yard collection program offers assistance to occupants of residential housing units where the Town provides refuse and recycling collection and where a physical disability and financial need prevent the occupants from bringing their household refuse and/or recyclables to the curbside for collection.

Program eligibility runs from January 1 to December 31 and must be renewed annually each November.

Those qualifying for the program will have their refuse and /or recycling containers collected from an open area on or immediately adjacent to their driveway.

The first requirement is disability:

There must be doctor's written certification, for each member of the household, that a physical disability exists which prevents them from taking their household refuse and/or recycling containers to and from the curbside.

Then you must also meet one of the following two requirements:

- 1) The total household income must be less than 2 times the current Federal Poverty Income Guidelines, or
- 2) At least one occupant of the household must be 80 years of age or older, provided that total household income does not exceed 5 times of the current Federal Poverty Income Guidelines. Households with incomes exceeding 5 times the current Federal Poverty Income Guidelines are not eligible for participation in the program.

In order to determine your household's eligibility for the program, you must provide:

- A completed, APPLICATION FOR REAR YARD REFUSE COLLECTION (Enclosed)
- CERTIFICATE OF DISABILITY, completed by a physician, for each member of the household (Enclosed)
- Copy of most recent Federal Income Tax Return for each household member

If you or household members are not required to file a Federal Income Tax Return, you must provide us with other forms verifying household income. This includes, but is not limited to Social Security award letters, interest and dividend statements, and so forth. All sources of income must be verifiable. **Please black out all account and social security numbers on the documents provided.**

- Please attach verification of age for all members of the household.** Acceptable forms of documentation include a copy of your driver's license, a passport or a birth certificate.

Please send both completed forms and supporting documentation to:

Town of West Hartford
Department of Public Works
17 Brixton Street
West Hartford CT 06110
Attn: Rear Yard Refuse Collection

If you do not meet the requirements listed above and are not eligible for this program you still have several options. You may contact Paine's Inc. at 860-658-9481 and contract with them for a rear yard pickup. You may also contact any private contractor to help you, or ask a family member or neighbor to help you bring your trash and recycling to the curb on your collection day.

Should you have any questions, please contact the Public Works Department at 561-8100.

Sincerely,

Dana Lee Hallenbeck
Director of Public Works

Revised 10/4/07

tjn

EXHIBIT F

BOARD OF EDUCATION AND SERVICES FOR THE BLIND

184 Windsor Avenue
Windsor, CT 06095

Confidential

EYE REPORT

Section 10-305 of the Connecticut General Statutes requires reporting of legally blind persons: "Each physician and optometrist shall report in writing to the Board of Education and Services for the Blind within thirty days each blind person coming under his private or institutional care within this state. The report of such blind person shall include the name, address, and degree of vision. Such reports shall not be open to public inspection." This includes:

1. All cases where vision with best correction is 20/200 or less in the better eye.
2. All cases regardless of visual acuity if the visual field is reduced to a diameter of 20 degrees or less, with test object of 3 MM at test distance of 330 MM

Name of Patient: Thomas C. George
First, Middle, Last

Address: 71 Berkshire Road West Hartford, CT 06107
Number and Street, City or Town, State and Zip Code

DOB: 01-27-20 Sex: M SS#: [REDACTED] Tel. #: 860-521-2087

ACUITY WITH BEST CORRECTION		
	Distance	Near-Working Vision
O.D.	20/300	J/16
O.S.	Count fingers	J/ 20/400

Date of Onset Of Blindness 5/30/95

Field Limitation? Yes No
If yes, widest degree of Field

Obstacles XX Contact Lenses

In your opinion, is patient legally blind? X Yes No If yes and test is better than 20/200, explain.

Diagnosis: Age-related macular degeneration both eyes, Cataract right eye and Pseudophakia left eye.

Note any physical limitation to activity because of eye condition:

Prognosis: Stable Deteriorating ✓

Remarks, recommendations:

Date of Exam: 10-11-99

Signature *DA Hill* M.D./O.D.

Address 85 Seymour Street, #522
Hartford, CT 06106

Print or Type Doctor's Name: David A. Hill, M.D.

Telephone: 860-527-6473