THE COUNTY OF CAMDEN, Plaintiff, v. FCR CAMDEN, LLC, d/b/a ReCOMMUNITY, Defendants.	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION CAMDEN COUNTY DOCKET NO.: CAM-L-003142-19 Civil Action

DEFENDANT'S BRIEF IN OPPOSITION TO PLAINTIFF'S ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINTS

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PRELIMINARY STATEMENT

Although the issuance of temporary restraints is confined to those circumstances where a party will suffer immediate and irreparable harm from a likely violation of its settled legal rights, the County of Camden (the "County") asks this Court to impose this extraordinary remedy against defendant FCR Camden, LLC ("FCR") in circumstances that are quite ordinary – to address claims of breach of contract that seek contract damages. This Court should refuse that unjustified request and direct that this case should proceed in the same manner as every other contract breach action filed in the Law Division.

The background of the current dispute is a contract between the County and FCR in which the County is to deliver source separated recyclables to FCR's recycling facility in the City of Camden. The problem results because the County and those Camden County municipalities that have elected to participate in this arrangement are delivering loads of recyclables to FCR's facility that are contaminated with waste materials. Under the parties' arrangements, FCR is entitled to reject loads of recyclables that contain more than 8% contamination.

The issue of waste contamination in recycling loads has now come to the forefront, prompted by restrictions imposed by China -- historically, the world's largest importer of recyclables -- on the importation of contaminated loads of recyclable materials. The resulting fundamental change in the recycling markets has affected every community in the United States, including the County and its municipalities. Although FCR has tried to work with the County and its municipalities to reduce the levels of contamination in their recycling loads and to otherwise partner with – then to adapt to the changed environment, those efforts have proved unsuccessful.

Because the County and its municipalities continue to routinely deliver recycling loads that are contaminated with excessive amounts of waste, FCR has developed inspection protocols designed to carefully assess which loads contain more than 8% of waste materials. FCR would be within its rights to reject each and every load found to contain more than 8% contamination, but it has instead defined a graduated process that merely provides notice to a municipality that occasionally delivers a non-compliant load and reserves more intensive inspections and, ultimately, the rejection of loads to those parties that repeatedly deliver contaminated loads. In those circumstances when a load is rejected because it contains more than 8% contamination, the delivering party will need to retrieve the load and make other arrangements. Or, as an accommodation, FCR is willing to agree to process the load itself or to take a highly contaminant load to a waste disposal facility, but only if the delivering party asks for that assistance and agrees in writing to pay the associated charges.

In this context, the County has no ability to establish any entitlement to temporary restraints. Focusing first on the County's inability to establish any reasonable likelihood of success on the merits, FCR is well within its rights to reject loads that exceed the 8% contamination threshold and to conduct inspections of incoming loads to determine if they exceed that threshold. In fact, the County is hard-pressed to argue to the contrary. The County also asserts that FCR is improperly altering the fee structure of the contractual relationship and imposing new fees, but that is simply not the case. FCR is not imposing any new fees. It is simply offering the County and its municipalities an additional service for rejected loads and will only invoice those municipalities that request that service and agree in writing to pay for it.

Nor does the County have any legitimate claim of irreparable harm. This is a contract action seeking contract damages, plain and simple. In the unlikely event that the County is able

to establish that FCR has breached its contract with the County, the County will be entitled to an award for any damages that it can prove. Clearly, there is an adequate remedy at law that precludes any legitimate claim of irreparable harm.

Moreover, the County's claim that the additional fees imposed by FCR will "wreak havoc" on the County's budget process is totally far-fetched. The County makes this claim in the most conclusory manner and without any factual support. In fact, in a worst-case scenario, if the County delivers nothing but contaminated loads and agrees to pay for the additional charges to process those loads, it would incur additional monthly costs of $1,297.07 -- hardly the type of expenditure that would "wreak havoc" on the County's budget.

Because the County cannot establish any substantial likelihood of success on its claim that FCR cannot inspect and reject non-compliant loads, and because the County cannot establish any valid claim of immediate and irreparable harm, this Court should refuse the County's request for temporary restraints.

COUNTERSTATEMENT OF FACTS[1]

A. FCR and its Recycling Center

FCR operates a recycling center located at 2201 Mt. Ephraim Avenue in Camden, New Jersey. Under State regulations, FCR is only authorized to operate as a recycling center for receiving, storing, processing and transferring source separated Class A recyclable materials. These Class A recyclable materials include such items as newspapers, glass bottles and jars, aluminum cans and corrugated cardboard. See N.J.A.C. 7:26A-1.3 (definition of Class A recyclable material). Although these materials may be combined together in a single receptacle,

[1] Except when indicated to the contrary, the factual statements in this Counterstatement of Facts are supported by the Certification of Steve Hastings submitted herewith (the "Hastings Cert.").

they must be "source separated", meaning that they have been separated at the source (*i.e.*, by the resident) from household trash and other types of solid waste. See N.J.A.C. 7:26A-1.3 (definition of "source separated recyclable materials").

Class A recycling centers like that operated by FCR are not authorized to operate as a Material Recovery Facility. Under State regulations, Material Recovery Facilities are authorized to accept mixed loads of solid waste and recyclable materials and to process those loads by sorting the waste from the recyclables. Under the State regulations, Material Recovery Facilities are solid waste facilities and must gain a solid waste facility permit. See N.J.A.C. 7:26-2B.1(a)(4) (rules governing materials recovery facilities); N.J.A.C. 7:26-2B.5 (additional design requirements for materials recovery facilities).

B. FCR's Relationship with Camden County

FCR is serving the County and certain of its municipalities (the "Participating Municipalities") as the result of a bidding process implemented by the County for the marketing of single-stream recyclable materials. The Request for Proposals ("RFP") issued by the County on March 22, 2017 -- which is attached to the Certification of Joseph T. Carney ("Carney Cert.") as Exhibit B -- sets forth the various parameters of the County's bidding process.[2] The County's RFP sought "a vendor to receive, sort, process, and market commingled, single stream recyclable materials collected curbside and delivered to vendor's facility by, or on behalf of, participating municipalities." Id. at 9 (emphasis added). Of particular relevance to the current dispute, the

[2] The County conducted its procurement pursuant to the competitive contracting provisions in the Local Public Contracts Law. N.J.S.A. 40A:11-4.1 et seq. This form of procurement process, which does not follow the strict procedures of the Local Public Contracts Law but allows for negotiation, can be employed in a series of defined circumstances, including when "any good or service . . . is exempt from bidding pursuant to [N.J.S.A. 40A:11-5]." N.J.S.A. 40A:11-4.1(1)(i). Because N.J.S.A. 40A:11-5 contains an exemption from public bidding for procurements covering "[t]he marketing of recyclable materials recovered through a recycling program," the County was authorized to proceed to implement a competitive contracting procurement. N.J.S.A. 40A:11-5(1)(s).

County required that the Scope of Services submitted by each bidder define "[a]ny causes for rejection of loads delivered by or on behalf of, municipalities/Camden County[.]" Id. at 10.

On April 13, 2017, FCR submitted its response to County's RFP, which is attached to the Carney Cert. as Exhibit D. As required by the RFP, FCR's Response included a Scope of Services which, among other things, addressed the causes for the rejection of loads. Id. at 13-14. FCR responded that "**Rejections can occur if a load is delivered with more than 8% residue or any Hazardous Materials. Rejection rights are necessary to assure waste and hazardous materials are not delivered under our Class A permit. A Class A facility is prohibited from accepting these materials. It remains the responsibility of the delivering party to remove these non-conforming materials.**" [Emphasis added]

In addition, FCR's Response advised that it would "**utilize an inspection system for the recyclable material in each incoming truck. Loads containing excessive amounts of contamination or any amount of hazardous or dangerous materials are unacceptable and may be rejected.**" Id. at 17 (emphasis added). FCR further informed that it would "create a paper and picture 'trail' when unacceptable materials are delivered" and provide timely feedback to the source of the contaminated load. Ibid.

Ultimately, the County determined to accept FCR's proposal, and the County and FCR entered into a contract dated May 22, 2017 (the "Contract"), which is attached to the Carney Cert. as Exhibit F. The Contract term was for three years commencing on May 1, 2017, with two one-year options to renew. Under the Contract, FCR agreed not only to serve the County, but also those municipalities in the County that chose to join into the contractual arrangement. Id., ¶2. Using bold type, the Contract made clear that **"Under no circumstances shall Camden**

County as the Lead Agency be responsible or liable for any purchases on behalf of any System Member." Id., ¶5(a) (emphasis in original).

C. The Issue of Contaminated Recycling Loads

Following the entry of the Contract, there has been a greatly increased focus on a global basis concerning waste contamination in the stream of recyclables. China, which was the world's largest importer of recyclables and whose purchases had dominated the recycling markets, has implemented a new national policy that prevents importation of all recyclables except those meeting the strictest contamination standards. China's actions triggered a global change in recycling markets. The result is an extraordinary new emphasis on minimizing the amount of waste in what is claimed to be a load of recyclable materials.

Like all other communities in the United States, Camden County and its municipalities are not immune from these global developments. As the current service provider for the County and the Participating Municipalities, FCR has attempted to work in good faith with the County and its towns to address this new challenge.

On the one hand, FCR has worked cooperatively with the County and the Participating Municipalities in an attempt to improve the quality of the stream of recyclables brought to its facility. On the other hand, FCR has repeatedly advised the County and the Participating Municipalities that it is unable to continue to accept recyclables that are contaminated beyond the governing 8% threshold.

FCR's dialogue with the County and the Participating Municipalities over these issues has been extended and extensive, commencing as far back as February 2018 and including meetings on February 23, 2018, May 3, 2018, October 30, 2018, April 19, 2019 and June 5,

2019. The published agendas for two of these meetings is attached as Exhibit A to the Hastings Cert.

Of particular note, FCR conducted a recycling composition audit to demonstrate the extent of noncompliance with the 8% residue threshold. On March 30, 2019, FCR segregated a sample of approximately 150 tons of materials delivered to its facility by the County and the Participating Municipalities. After clearing the facility's processing equipment of all material, FCR -- in the presence of County and municipal representatives -- then processed this sample of materials and calculated the percentage of non-recyclable material. As the County and municipal officials saw for themselves, 17.51% of the sampled materials delivered by the County and the Participating Municipalities did not qualify as recyclables. That is more than twice the 8% threshold for residue.

D. FCR Develops and Implements Its Procedures Document

Despite FCR's outreach to the County and the Participating Municipalities, there has been no improvement in the predicament faced by FCR, with the County and the Participating Municipalities continuing to deliver contaminated loads. As a result, FCR has developed a comprehensive set of Inspection, Notification and Rejection Procedures, which are attached to the Carney Cert. as Exhibit G (the "Procedures Document"). These procedures are necessary to ensure that recycling loads delivered to the FCR's facility are, in fact, recycling loads and do not contain excessive quantities of waste. These procedures are designed to govern the inspection process and to make sure that FCR makes accurate assessments of the level of contamination in loads of recyclables delivered to its facility on a truck-by-truck basis so that it does not erroneously reject conforming loads. The procedures are also designed to ensure that a municipality delivering an occasional non-compliant load is treated leniently, reserving increased

attention to those that repeatedly deliver contaminated loads. Finally, the Procedures Document does not seek to impose any fees on the County or its municipalities. The Procedures Documents makes clear that charges for disposing or processing contaminated recycling would only be invoiced if the County or a Participating Municipality agree in writing to pay the associated charges.

As noted, the Procedures Document includes a series of steps.

First, if a truck enters the facility with hazardous waste or with a load containing solid waste, the load will be automatically rejected. The Procedures Document defines a load containing waste as "any load that contains exceedingly high levels [of] municipal solid waste." Id.

Second, beyond that automatic rejection procedure, FCR may perform visual inspections of incoming loads that appear to have contamination in excess of 8%. These visual inspections will be performed using a grid inspection process that is detailed in the Procedures Document. During the visual inspection process, the contaminated load will be photographed and other pertinent information regarding the load will be assembled.

In each case where the visual inspection determines that the incoming load exceeds 8% contamination, the County or the Participating Municipality will be notified of the issue. In these cases, the load will nevertheless be processed by FCR.

However, when the County or a Participating Municipality delivers more than two contaminated inbound loads in any two-week period, FCR reserves the right to direct that party's subsequent inbound loads to a separate tip floor where the loads will be inspected under a Thorough Audit Process ("TAP"). The Procedures Document details how the TAP will be conducted. As a general matter, FCR will take a sample of a minimum of 200 pounds from

multiple areas of the unloaded material. It will then remove waste materials in the sample in order to determine if the percentage of contamination exceeds 8%.

Loads examined under the TAP that prove out to contain 8% or less of residue will be processed by FCR. However, loads that exceed the 8% threshold will be rejected.

At that point, the County or Participating Municipality delivering the rejected load must choose between three options. First, since the load does not qualify for processing under the Contract, the delivering party can pick up and remove the load and make other arrangements. Second, if the load is so contaminated that it needs to be disposed of at a solid waste facility, the delivering party can ask FCR to make those arrangements, agreeing to pay associated charges for those services. Third, if the load exceeds the 8% residue threshold but can still be processed by FCR, the delivering party can ask FCR to process the load at its facility, agreeing to pay an agreed-upon surcharge to process the contaminated load. Importantly, and as noted above, the charges paid by a delivering party to FCR under these second and third options will only be incurred if the delivering party asks FCR to provide these services and agrees in writing to pay for them.

The Procedures Document also provides guidance on how FCR may respond to persistent violations in the future. The Procedures Document explains that if the County or a Participating Municipality has three loads rejected in a 60-day period, FCR, in its sole discretion, may refuse to accept additional incoming loads until receiving assurances that only conforming loads will be delivered in the future. FCR also reserved its right to terminate the Contract with the County or a Participating Municipality for breach if the party is unwilling or unable to cease delivering contaminated loads. Finally, the Procedures Document advises that, should the County or a

Participating Municipality not pay a fee that they agreed to pay within 30 days of the invoice, FCR may consider refusing additional incoming loads from that party.

FCR informed the County of its intent to implement the procedures in the Procedures Documents on July 26th and began implementing the procedures in the Procedures Document on Monday, August 5, 2019. On the first two days of operations (i.e., August 5 and 6), no loads were automatically rejected as containing hazardous waste or solid waste. Seven loads were subject to a visual inspection and found to contain contamination in excess of the 8% threshold. These loads were calculated to contain 37%, 36%, 32%, 25%, 18%, 18% and 17% contamination. Photos were taken, and the delivering party will receive notice of the noncompliance from FCR.

None of these seven non-compliant loads were delivered by the County itself. In fact, the County itself delivers only a limited number of loads to FCR's facility. In the first seven months of 2019, the County delivered only 121.06 tons of recyclables to FCR's facility representing deliveries of 17.29 tons in an average month.

In sum, FCR has strived to address a difficult situation caused by the changes in the global recycling market and to do so in a deliberate and measured manner that is consistent with its legal responsibilities. Its initial approach was to work to educate the County and the Participating Municipalities as to the new realities in the recycling market and to attempt to work cooperatively towards a reasonable accommodation. When those efforts did not bear satisfactory results, and only after months and months of continuing dialogue, did FCR carefully develop and implement specific procedures, which it had described in a general manner in its RFP Response, allowing it to inspect and reject recycling loads containing more than 8% contamination. These procedures assess the amount of contamination in incoming loads of recyclable materials on a

truck-by-truck basis and define a graduated response when loads turn out to be contaminated. The procedures being implemented by FCR affirm the company's responsibility to perform the services that it agreed to -- the processing of recyclable materials with less than 8% contamination -- and seek to ensure that the County and the Participating Municipalities do not use FCR's services beyond that agreed-upon scope.

ARGUMENT

THE COUNTY HAS FAILED TO ESTABLISH A CLEAR AND CONVINCING CASE FOR THE ISSUANCE OF TEMPORARY RESTRAINTS.

A. The Governing Standard

It is well established that a "party seeking temporary injunctive relief [must] show that he or she has 'a reasonable probability of success on the merits; that a balancing of the equities and hardships favors injunctive relief; that the movant has no adequate remedy at law and that the irreparable injury to be suffered in the absence of the injunctive relief is substantial and imminent; and that the public interest will not be harmed.'" Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div. 2012) (citing Waste Mgmt. v. Union County Utils. Authority, 399 N.J. Super. 508, 519-20 (App. Div. 2008)). Although the County recognizes the applicability of this established standard, its discussion omits two key principles that govern this Court's consideration of its application.

First, the County ignores that "each of these factors must be clearly and convincingly demonstrated[.]" Waste Mgmt. v. Morris County Municipal Utilities Auth., 433 N.J. Super. 445, 452 (App. Div. 2013). This heavy burden of proof helps insure that temporary restraints are only employed in compelling circumstances.

Second, the County fails to recognize the well-settled principle that the extraordinary equitable remedy of a temporary injunction should be reserved for circumstances where a remedy at law is inadequate. As explained in Delaware River & Bay Auth. v. York Hunter Const., Inc., 344 N.J. Super. 361, 364-65 (Chan. Div. 2001),

> "It is universally accepted that '[t]he availability of adequate monetary damages belies a claim of irreparable injury.' Frank's GMC Truck Center v. General Motors Corp., 847 F.2d. 100, 102 (3rd. Cir. 1988). This is because economic injury is not irreparable. Sampson v. Murray, 415 U.S. 61, 90 (1974). 'Harm is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages.' Crowe v. De Gioia, supra, 90 N.J. at 132-33. 'In other words, plaintiff must have no adequate remedy at law.' Subcarrier Communications, Inc. v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997)."

As discussed infra, this principle has strong applicability in the present circumstances where the County has sued for breach of contract and damages and is now seeking the issuance of temporary restraints.

B. The County Has Failed to Clearly and Convincingly Demonstrate a Likelihood of Success on the Merits.

There is no fair dispute that FCR is firmly within its legal rights to reject loads of source separated recyclables delivered by the County and the Participating Municipalities that contain in excess of 8% waste contamination. As the County's Verified Complaint acknowledges, its RFP required bidders to state the causes for rejection of loads delivered by or on behalf of the County and the Participating Municipalities. Verified Complaint, ¶23. Although the County concedes that FCR addressed this question in its response to the RFP, the County cannot bring itself to include the key portion of FCR's response. In its Verified Complaint, the County avers:

> "In the Proposal, FCR Camden states that rejection rates are necessary and that it is the responsibility of the delivering party to remove non-conforming materials[.]" [Id., ¶43].

In fact, FCR's response was far more specific. It stated that

> "Rejections can occur if a load is delivered with more than 8% residue or any Hazardous Materials. Rejection rights are necessary to assure waste and hazardous materials are not delivered under our Class A permit. A Class A facility is prohibited from accepting these materials. It remains the responsibility of the delivering party to remove these non-conforming materials." [Carney Cert., Exh. D at ¶¶13-14.]

Although avoiding this key language establishing an 8% threshold for waste contamination in recycling loads, the County does not argue that FCR is under any legal responsibility to accept loads exceeding the 8% contamination threshold. Rather, it asserts that FCR is acting illegally in two respects. Neither of these contentions withstands scrutiny.

First, the County challenges the inspection protocol in the Protocols Document because it was not set forth in FCR's response to the RFP. See Verified Complaint, ¶89. To be clear, the County is not claiming that FCR lacks the authority to reject contaminated loads. Nor does it deny that FCR's RFP response stated that it would inspect incoming loads. Indeed, FCR could not implement its right to reject contaminated loads without first inspecting incoming loads. Nor does the County argue that the inspection procedures set forth in the Procedures Document are inadequate. As a result, the County's legal position boils down to a request that the County and the Participating Municipalities be allowed to deliver contaminated loads with impunity -- because the County argues that FCR cannot implement a carefully-designed inspection protocol to ferret out those loads that exceed the 8% contamination threshold.

Plainly, there is no basis for the County's assertion that FCR's inspection protocols are legally invalid. FCR possesses the right to examine the loads that the County and the Participating Municipalities are delivering to its facility and to reject loads containing more than 8% contamination. In fact, if the County's position were correct, FCR would lack any ability to

ensure that it is operating as a Class A recycling center and is not functioning as an unpermitted Material Recovery Facility.

The County's second legal argument is that FCR is imposing new fees on the County and the Participating Municipalities that are not authorized in the Contract. That is simply not the case. As is its right, FCR is inspecting incoming loads delivered by the County and the Participating Municipalities and, through a carefully-designed process, rejecting loads with more than 8% contamination. At that point, it is the responsibility of the County or the Participating Municipality that delivered the load to make other arrangements. In making those arrangements, the delivering party can retrieve the contaminated load and enlist the assistance of other parties to process the load. Or, it can ask FCR to assist and voluntarily enter into a written agreement to pay FCR for that assistance.

Thus, FCR is not imposing any new fees. The only new fees will be agreed-upon fees incurred by those parties who ask FCR for assistance with rejected loads and confirm in writing that they are willing to pay for that assistance.[3]

In sum, the County is unable to present any colorable legal claim challenging FCR's actions, much less make a clear and convincing showing of the likelihood of success on the merits. FCR is well within its legal rights to inspect incoming loads and to reject those that

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[3] The County relies heavily on the unpublished case, American Asphalt Company, Inc. v. County of Gloucester, No. A-4360-09T3, 2011 WL 1119064 (App. Div. Mar. 29, 2011) to argue it is likely to be successful on the merits. There, the Appellate Division held that the plaintiff contractor was not entitled to a price increase where the contract was clear as to price, and the reference in the contract to DOT specifications (which might have allowed for a price escalation) was only for the purpose of ensuring the contractor provided the correct type of asphalt material to the County. See id. at 5-8. FCR's position is wholly different; it is not arguing that the Contract is ambiguous or that it is entitled to some "back door" price increase. Cf. id. at 8 ("[T]he bid proposal's generic allusion to DOT Specifications did not…impose a linguistic 'back door' duty upon the County to allow price escalation."). Rather, FCR is merely enforcing an existing right -- to reject loads containing more than 8% residue. And new fees will be charged by FCR only if the County or a Participating Municipality enters into a new written agreement covering the handling of rejected loads.

exceed the 8% contamination threshold. The Protocols Document simply describes the methodology to be employed by FCR. It also advises the County and the Participating Municipalities that FCR will not exercise its right to reject every load exceeding the 8% threshold, but will employ a gradual approach that provides leniency to those parties occasionally delivering non-conforming loads. Moreover, FCR will not charge the County or any Participating Municipality any fee that they have not agreed to. The Protocol Document merely advises the County and Participating Municipalities that FCR is willing to assist with rejected loads for a fee if they so desire.

C. The County Has Failed to Clearly and Convincingly Demonstrate that the Equities Justify Temporary Restraints.

Plain and simple, the County's Verified Complaint asserts a claim of contract breach and seeks damages as redress. This is thus an action filed in the Law Division seeking a remedy at law. Although the County has tacked a request for interim restraints onto the Law Division action, there is no harm that cannot be addressed at the end of the day by an award of money damages. In a straightforward application of black letter law, the Court should find that the County cannot establish irreparable harm because the injuries that it claims can be addressed, if justified, through a monetary judgment.

The County seeks to sidestep this fundamental impediment to its request for temporary restraints by claiming that "[t]he assessment of new fees . . . will wreak havoc on the County's budget." Pb13. Putting aside the fact that FCR will not be imposing any new fees on the County that the County does not agree to incur, this assertion can be quickly pierced.

The County does not supply the Court with any certification on this issue. It does not share with the Court what the County's financial exposure might be during the short window that temporary restraints might be in force. It does not share with the Court any information on the

County's budget nor provide any factual support for its assertion that the amount of money at issue will truly "wreak havoc" on the County's budget. Nor does the County explain to the Court why any unanticipated expenditure pertaining to this matter cannot be handled through the sort of routine budgetary adjustments that the County must make all the time when it must pay unanticipated bills.

In fact, the County's claim is mere hyperbole. The fact of the matter is that the County barely uses FCR's facility. For the first seven months of 2019, the County delivered an average of 17.29 tons each month. Even if every load that the County delivered to FCR exceeded the contamination threshold, the County could employ one of the options made available to FCR and pay a surcharge of $75 per ton on each ton it delivers to FCR's facility. In this worst case scenario, the County would be charged an average of an additional $1,297.07 per month. That type of expenditure would hardly "wreak havoc" on the County's budget.

Not only is the County unable to present any credible claim of irreparable harm whatsoever, but the balance of the equities favors the rejection of the County's extraordinary request for temporary restraints. Just like a private litigant, the County is in no position to come to court and seek to force a third party to provide services to which it never agreed. Here, FCR committed itself to processing recyclables and has the right to reject loads contaminated with waste in excess of the 8% threshold. The County and the Participating Municipalities have no legitimate basis to insist that FCR do any more than that. They certainly are not entitled to employ a contract designed to handle a stream of recyclables and deliver loads of mixed waste. Indeed, FCR's facility is not legally authorized to accept and process loads of mixed waste.

Taking all of these factors together, the County has simply failed to make a clear and convincing showing that the equities demand temporary restraints. The County's asserted

grievance can surely be addressed through an award of monetary damages should the County ever be able to establish the validity of its claim. The County's assertion that FCR's "new fees" will "wreak havoc" on its budget is totally unsupported and lacks all credibility. And, finally, there is no legitimate basis for the County to insist that FCR provide a service to which it never agreed.

CONCLUSION

Because the County has failed to make the required clear and convincing showing that it is likely to succeed on the merits and that the equities require the issuance of the extraordinary remedy of temporary restraints, the Court is respectfully requested to deny the County's application. Moreover, the Court is respectfully requested to refrain from entering the Order to Show Cause even without temporary restraints and, instead, to direct that the County's contract action be handled according to the Law Division's standard procedures.

Respectfully submitted,

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By: _____
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Dated: August 7, 2019