

THE CORPORATION OF THE CITY OF ENDERBY

RESIDENTIAL REFUSE COLLECTION

THIS AGREEMENT made this ____ day of ____, 2__.

BETWEEN: THE CORPORATION OF THE CITY OF ENDERBY
(hereinafter called the "City")

619 Cliff Avenue
Box 400
Enderby, B. C. V0E 1V0

OF THE FIRST PART

AND:

(hereinafter called the "Contractor")

OF THE SECOND PART

WHEREAS the City is desirous of entering into a contract for the purpose of providing residential Refuse collection service within the City, and the Contractor is willing and able to provide residential Refuse collection services within the City on the terms, covenants and conditions hereinafter set forth;

NOW THEREFORE in consideration of the mutual terms, covenants and agreements herein contained THE PARTIES AGREE AS FOLLOWS:

SECTION 1 – GRANT OF CONTRACT

1.1 The City and the Contractor, on the terms set forth herein, hereby agree to enter into a contract for residential Refuse collection within the City.

SECTION 2 – TERM

2.1 Unless terminated in accordance with this Contract, the term of this Contract shall commence on the 1st day of January, 2015 and end on the 31st day of December, 2018.

SECTION 3 – FEES

3.1 The City covenants and agrees that, conditional upon the Contractor promptly, faithfully and properly fulfilling the terms and conditions set forth herein, it shall:

- a) pay the Contractor per the Schedule "A" rate;
- b) issue payment to the Contractor on a monthly basis, upon receipt of an invoice and within 30 days of the following month for which the services have been rendered;

- c) make no payment in accordance with the Contract until the City is in receipt of a WorkSafeBC Clearance Letter and all other requirements outlined in SECTION 5 of this Contract.
- d) conduct an annual survey of the number of residential units requirements and pay rates will be adjusted accordingly to reflect those changes.

SECTION 4 – COVENANTS OF THE CONTRACTOR

4.1 The Contractor covenants with the City:

- a) to perform the work and meet the minimum specifications as set forth in Schedule “A” - Operational Specifications;
- b) to observe, abide by and comply with all applicable laws, bylaws, orders, directions, and regulations of any competent authority having jurisdiction pertinent to the Contract;
- c) to not assign or sublet this Contract or any of its rights or obligations hereunder without obtaining the prior written consent from the City;
- d) that this Contract is **not** an agreement of employment. The Contractor is an independent Contractor and nothing herein shall be construed to create a partnership, joint venture or agency and neither party shall be responsible for the debts or obligations of the other. It is understood that this Contract is strictly between the City and the Contractor and their employees and/or its agents and/or their employees, and/or its Contractors and/or their employees. Should any differences arise between the Contractor and any of its employees and/or its agents and/or their employees and/or their Contractors and/or their employees, they shall be resolved directly between them and the Contractor in this connection;
- e) that the City shall not be responsible for payment of any of the following:
 - i. Employment Insurance
 - ii. Workers’ Compensation
 - iii. Canada Pension Plan
 - iv. Income Tax
 - v. Health and Welfare benefits
 - vi. Overtime
 - vii. Vacation pay
 - viii. Licenses
 - ix. Permits
 - x. Operation and maintenance of any equipment whatsoever used, rented, leased or owned by the Contractor in its business and the effective carry out of this contract.
 - xi. Any other Federal, Provincial or Municipal tariffs or taxes usually payable by the employer on behalf of the employee.

- f) To be in good standing and to provide WorkSafeBC coverage for all of its employees.
- g) To Indemnify, hold and save harmless the City from and against all claims, except the negligence of the City from losses, damages, costs, actions and other proceedings, made, sustained, brought or prosecuted in any manner, based upon, occasioned by or attributable to any injury, including death, property damage, infringement or damage arising from any act or omission of the Contractor, their employees, officers, volunteers, servants or agents or persons from whom the Contractor has assumed responsibility in the performance or purported performance of this Contract;
- h) That during the currency of the term of this Agreement, the Contractor shall put priority onto the City's contract over other residential refuse collection contracts.

SECTION 5 – INSURANCE COVERAGE

- 5.1 The contractor shall at their expense, throughout the term of the Contract secure, maintain and pay for a Comprehensive General Liability Insurance Policy or policies with a limit of not less than \$5,000,000.00 inclusive per occurrence for Bodily Injury and Property Damage. The policy or policies shall include but not necessarily be limited to the following coverage, including all premises and operations necessary or incidental to the performance of this Contract with the City being added as an additional named insured:
 - a) Contingent Employers Liability
 - b) Owners Protective Liability
 - c) "Broad Form" property damage on an occurrence basis, including loss of use of property
 - d) Contractual Liability assumed under this Contract
 - e) Cross Liability
 - f) Non-owned Auto
- 5.2 Every contract of insurance required to be maintained pursuant to the provisions of this Contract shall include a provision requiring the insurer to give the City 30 (thirty) days prior written notice before making any material change in said insurance, or termination, or cancellation thereof.
- 5.3 The policy or policies shall be underwritten by a responsible insurance company or companies licensed to do business in the province of British Columbia and who meet with the reasonable approval of the City.
- 5.4 The Contractor shall furnish the City with a Certificate or Certificates of Insurance as evidence that such insurance is in force, including evidence of any insurance renewal policy or policies. Every Certificate or Certificates of Insurance shall include Certification by the Insurer that the Certificate or Certificates of Insurance specifically conforms to all of the provisions required therein.

- 5.5 Maintenance of such insurance and the performance by the Contractor of their obligations under this clause shall not relieve the Contractor of liability under the indemnity provisions herein.
- 5.6 The foregoing insurance provisions shall not limit the insurance required by Municipal, Provincial or Federal Law.
- 5.7 It shall be the full responsibility of the Contractor to determine their own additional insurance coverage, if any, including WorkSafeBC, that is necessary and advisable for its own protection, and/or to fulfill its obligations under this Contract. Any such additional insurance shall be provided and maintained by the Contractor at their own expense.

SECTION 6 – DEFAULT / CANCELLATION

- 6.1 If the Contract hereby granted is taken in execution or attachment by any person or the Contractor commits an act of bankruptcy, becomes insolvent or is petitioned into bankruptcy or voluntarily enters into an arrangement with his creditors, the City may, in addition to any other remedy which may be available to it in law or equity, terminate this contract upon twenty-four (24) hours notice given in accordance with this Contract.
- 6.2 If the Contractor
- a) fails to operate in strict compliance with the provisions of the Operational Specifications outlined in Schedule "A" of this Contract; or
 - b) fails to make payments due to its suppliers or its operators; or
 - c) disregards applicable legislation or regulations or reasonable directions of the City or its servants or agents;
- then the City may notify the Contractor in writing that it is in default of the Contract.
- 6.3 Upon receipt of a Notice of Default, the Contractor shall immediately take all such actions as are reasonably required to rectify the default within three (3) business days of receipt of the Notice or Default. Thereafter the City may correct the problem by any method at its disposal and deduct the total costs thereof from any monies owing the Contractor.
- 6.4 Where the default would reasonably take more than three (3) business days to rectify and the Contractor has commenced within three (3) days all of the steps reasonably required to rectify the default, then the Contractor shall be permitted such time to remedy the default as is reasonably necessary, provided the Contractor does not abate its efforts to remedy the default.
- 6.5 If the Contractor fails, neglects or refuses to remedy or commence to remedy a default within three (3) business days of receipt of a Notice of Default, then the City may, in addition to and without prejudice to any other remedy available to the City, terminate this Contract.

- 6.6 In the event that the City terminates this Contract pursuant to the provisions of Section 6, the Contractor shall be liable to the City for the cost of completing the work, including all direct costs plus an additional charge of fifteen (15%) percent of all direct costs as reasonable compensation for overhead and administration, from the date of termination to the end of the Term. In addition the Contractor shall be liable for all of the costs of the City enforcing or attempting to enforce the Contract including, without limiting the foregoing, legal costs of the City or a Solicitor. The City shall be entitled to set off any such claim against any sum due by the City to the Contractor.
- 6.7 Both the City and the Contractor shall have the right at any time and for any reason to terminate this Contract upon 180 days written notice of termination given to the other.
- 6.8 Notwithstanding the above, the City may terminate this Contract without notice or payment in lieu of notice in the event of any breach by the Contractor, his crews or staff of the terms of this Contract.

SECTION 7 – MUNICIPAL POLICIES

- 7.1 The City shall have the right from time to time to unilaterally amend the provisions of Schedule “A” hereto and upon receipt of notice of such amendments, the Contractor shall thereafter operate the residential refuse collection in accordance with Schedule “A” as amended.
- 7.2 The City has a unilateral right to amend the provisions of Schedule “A” which shall include the right to increase or decrease the frequency of service for the collection of residential refuse collection.
- 7.3 If as a result of such amendments the Contractor’s costs of service for the collection of refuse increases or decreases, the Contractor and City shall attempt to negotiate an amendment to the remuneration payable to the Contractor under this Contract to reflect such amendments.
- 7.4 If no agreement concerning such remuneration is reached within a period of thirty (30) days after notice of the amendments has been given by the City to the Contractor, the matter of changes to such compensation shall be referred to arbitration under the provisions of the Commercial Arbitration Act (British Columbia) except that the venue of the arbitration shall be Vernon, British Columbia and the British Columbia International Commercial Arbitration Centre Rules for Domestic Commercial Arbitration Proceedings shall not apply.

SECTION 8 – NOTICE

- 8.1 Where service of a notice or a document is required under this Contract the notice or document shall be in writing and shall be deemed to have been delivered:
- a) to the City to the offices of the City of Enderby during regular business hours and left in the possession of the Corporate Officer of the City, or if

sent by mail, addressed to the City at the address specified in this Contract;

- b) to the Contractor to the offices of the Contractor during regular business hours and left in the possession of an Officer or Director of the Contractor, or if sent by mail, addressed to the Contractor at the address specified in this Contract.

8.2 Where service is by mail the notice or document shall be conclusively deemed to have been received on the fifth (5th) day after its deposit in a Canada Post Office at any place in Canada. Where service is by hand delivery the notice or document shall be deemed to have been received one (1) working day after delivery.

SECTION 9 – MISCELLANEOUS

- 9.1 This Contract shall supersede all communications, negotiations and agreements, either written or verbal, made between the parties in respect of matters pertaining to this Contract prior to its execution and delivery.
- 9.2 Any dispute arising from time to time between the parties hereto with respect to the interpretation or affect of any of the provisions of this Contract shall be referred to arbitration pursuant to the Commercial Arbitration Act (British Columbia) except that the venue of the arbitration shall be Vernon, British Columbia and the British Columbia International Commercial Arbitration Centre Rules for Domestic Commercial Arbitration Proceedings shall not apply.
- 9.3 The terms and provisions of this Contract shall extend to, be binding upon and inure to the benefit of the parties hereto and their successors, heirs, and permitted assigns.
- 9.4 If any section of this Contract or any part of a section is found to be illegal or unenforceable, that part of the section, as the case may be, shall be considered separate and severable and the remaining parts or sections, as the case may be, shall not be affected thereby and shall be enforceable to the fullest extent permitted by law.
- 9.5 In this Contract, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a Corporation.
- 9.6 The captions and headings contained in this Contract are for convenience only and are not to be construed as defining or in any way limiting the scope or the intent of the provisions hereof.
- 9.7 All schedules attached to this Contract form an integral part of this Contract.
- 9.8 The Contractor acknowledges having received and read a copy of this Contract executed by the City at the time of signing said Contract.
- 9.9 No remedy conferred upon or reserved to the City is exclusive of any other remedy herein or provided by law, but such remedy shall be cumulative and shall

be in addition to any other remedy herein or hereafter existing at law, in equity, or by statute.

- 9.10 Upon mutual agreement, the Contract in its entirety can be extended for an additional year at a rate agreed upon by both parties.

RESIDENTIAL REFUSE COLLECTION

SCHEDULE "A" – OPERATIONAL SPECIFICATIONS

1. GENERAL

- a) The Contractor shall in a good and workmanlike manner, provide residential Refuse collection at street boulevards, curbsides and areas owned by the City and listed in this Contract, and shall provide such service in conformity with and to the standards set out in this Contract.
- b) The Contractor and his employees and agents shall at all times exercise good public relations in the performance of duties outlined in this Contract.
- c) The Contractor shall supply, at his own expense, all equipment, manpower, materials including fuel and oil for the complete execution of the duties contained herein.
- d) The Contractor shall at all times during the term of his Contract be in possession of a valid and subsisting Business License or Intermunicipal Business License issued to him by the City authorizing him to carry out and perform the works required to be performed under this Contract.
- e) The Contractor shall co-ordinate all work so as to create a minimum of inconvenience to traffic and pedestrians.
- f) The Contractor shall ensure proper lighting is installed on all vehicles, equipment and machinery to adequately warn of his presence at all times.
- g) The Contractor shall at all times be responsible for the safety of his employees in the work and the service provided, and for the safety, adequacy, efficiency and sufficiency of his machinery, equipment, apparatus and his employees and his method of completing the work and providing the service under this Contract.
- h) The City will take all reasonable steps to ensure the streets are not in disrepair such that the collection is impeded or prohibited. The Contractor will ensure that the refuse bags are safely secured in a truck or container to avoid falling or breaking open on the streets or private properties. The Contractor will clean up any material that has fallen or has most probably fallen from the Contractors vehicle onto City streets or private properties.
- i) Collection operations shall not be undertaken in any week before 7:00 a.m. or after 5:00 p.m. in residential areas.
- j) Refuse collection will be on the Monday of each week. In the event that a residence or residences are missed, the Contractor shall return and pickup the missed refuse the same day.
- k) Statutory Holidays for the purpose of this Agreement, will be defined as Christmas Day, Boxing Day, and New Years Day. If a collection day falls on a Statutory Holiday, collection service will be provided the following day.
- l) The City of Enderby will attempt to give five (5) days notice of change of service required and reserves the right to add or delete areas and/or frequency.
- m) The Contractor shall provide to the City a current copy of the following documents prior to commencing work for each Contract year:

- i. City of Enderby Business License or Intermunicipal Business License
- ii. WorkSafeBC registration number and clearance letter
- iii. Certificate of Insurance
- iv. Federal Goods & Services Tax number

n) Schedule "A" Rate:

Residential refuse rate of _____ plus GST per month per unit for 2015, _____ for 2016, _____ for 2017, and _____ for 2018 based on 1063 residential pickups every week.

Actual costs for tipping fees related to the Enderby Residential Refuse will be reimbursed to the contractor based on a monthly reconciliation with receipts from the landfill and will be paid monthly.

IN WITNESS whereof the parties hereto have executed this Contract on the day and year written above.

**THE CORPORATE SEAL OF THE
CITY OF ENDERBY** was hereunto
Affixed in the presence of:

MAYOR

ADMINISTRATOR

SIGNED, SEALED AND DELIVERED
In the presence of:

CONTRACTOR

WITNESS