

SOLID WASTE COLLECTION AGREEMENT

THIS AGREEMENT dated the _____ day of _____ 20__.

BETWEEN:

(BLLP NTD: INSERT COMMUNITY AS PARTY HERE)
(hereinafter referred to as the “Community”)

OF THE FIRST PART

AND:

(hereinafter referred to as the “Contractor”)

OF THE SECOND PART

WHEREAS:

- A. The Community wishes to retain the Contractor to provide the Services on the terms and conditions herein contained; and
- B. The Contractor wants to provide the Services to the Community on the terms and conditions as herein contained.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the covenants herein contained, the Community and the Contractor covenant and agree each with the other as follows:

ARTICLE 1

1.1 Definitions

For the purposes of this Agreement, including the recitals hereto, each of the following expressions have the meanings ascribed to them in this Section 1 .1, unless the context otherwise requires:

- (a) “Agreement”, “hereto”, “herein”, “hereby”, “hereunder”, “hereof” and similar expressions when used in this Agreement refer to the whole of this Agreement which includes the attached Schedules and not to any particular Article or Section or portion thereof;
- (b) “Bylaw” means the Community’s Bylaw _____ and any amendments or replacement bylaws thereto **(BLLP NTD: INSERT BYLAW NUMBER)**;

- (c) “Commencement Date” means the ___ day of _____, 20__ **(BLLP NTD: INSERT DATE AGREEMENT BEGINS)**;
- (d) “Completion Date” means the ___ day of _____, 20__ **(BLLP NTD: INSERT DATE AGREEMENT ENDS)**;
- (e) “Confidential Information” means all data, information and material of a confidential nature provided or disclosed to the Contractor by or on behalf of the Community, as well as any and all information or material provided to the Contractor by or on behalf of the Community which is marked “CONFIDENTIAL”, and all copies thereof;
- (f) “Disposal Site” means that waste transfer station utilized by the Community and located on a portion of the lands legally described as _____ **(BLLP NTD: PLEASE INSERT LEGAL DESCRIPTION)**
- (g) “Hazardous Waste” includes but is not limited to any waste, regardless of amount, listed or characterized as hazardous by any federal or provincial law;
- (h) “Invoice” has that meaning as set forth in Schedule “B” attached hereto;
- (i) “Landfill” means the _____ **(BLLP NTD: INSERT COMMON NAME)** located at _____ **(BLLP NTD: INSERT MUNICIPAL ADDRESS)**;
- (j) “Operations Building” means the building located at _____ **(BLLP NTD: INSERT MUNICIPAL ADDRESS)**;
- (k) “Materials” means those materials to be collected and/or transported by the Contractor pursuant to Sections 1.0 through 1.3 of Schedule “A” in conjunction with the performance of the Services;
- (l) “RFP” means the Community’s Request for Proposals entitled Solid Waste Services Collection Proposal and, along with all addendums thereto, a copy of which is attached hereto as Schedule “D”;
- (m) “Services” means those Services to be provided and performed by the Contractor hereunder, as per the RFP and as more particularly described in Schedule “A” hereto;
- (n) “Term” means the period of time commencing on the Commencement Date and ending on the Completion Date;
- (o) “Terms of Payment” has the meaning prescribed in Schedule “B”; and
- (p) “Solid Waste Services Collection Proposal” means that Solid Waste Services Collection Proposal submitted by the Contractor in response to the RFP, a copy of which is attached hereto as Schedule “E”.

All capitalized terms not otherwise defined herein shall have the same meaning ascribed to them as in the Bylaw. In the event of a conflict between the RFP and this Agreement (including any Schedule attached hereto), the conflict shall be resolved in favor of this Agreement, or the applicable Schedule, as the case may be, save and except when the RFP contains a more restrictive term or condition, in which case, the RFP shall prevail. In the event of a conflict between Schedule "E" and this Agreement (including any other Schedule attached hereto), the conflict shall be resolved in favor of this Agreement, or the applicable other Schedule, as the case may be.

ARTICLE 2

2.1 Services

The Contractor shall provide the Services to the Community upon the terms and conditions contained herein, and the Schedules appended hereto.

2.2 Term

The Contractor shall continuously provide the Services throughout the Term, and any extension or renewal thereof, subject always to sooner termination as provided for herein.

The Community may, in its absolute discretion, decide to renew this Agreement at the end of the Term for a further ___ year term, upon the same terms and conditions herein contained, except as may be otherwise agreed to in writing by the parties. Should the Community wish to renew this Agreement, the Community will so advise the Contractor 6 months before the Completion Date. **(BLLP NTD: INSERT HOW MANY YEARS OR IF INAPPLICABLE, THIS SECOND PARAGRAPH CAN BE DELETED ENTIRELY)**

2.3 Performance of Work

The Contractor shall exercise the degree of care, skill and diligence normally used in performing services of a similar nature to those Services to be provided under this Agreement. All work done in performing the Services under this Agreement shall:

- (a) be supervised by competent and qualified personnel;
- (b) be performed in a workmanlike manner;
- (c) be performed to the Community's satisfaction;
- (d) comply with the requirements of this Agreement; and
- (e) be documented according to the Community's requirements in effect from time to time.

All work done in performance of the Services shall be subject to such review as the Community considers advisable or appropriate from time to time. Further, any work done by the Contractor in the performance of the Services which does not meet the requirements of this Agreement or is not to the Community's satisfaction may be rejected by the Community and shall require immediate and appropriate rectification by the Contractor at the Contractor's sole expense. No such review by the Community shall relieve the Contractor from the performance of its obligations hereunder. The Contractor shall cause all of its employees and approved subcontractors to be bound by all covenants and obligations of the Contractor hereunder.

2.4 Warranties and Representations of Contractor

The Contractor represents and warrants to the Community and acknowledges that the Community is relying upon such warranties and representations in entering into this Agreement, namely:

- (a) that it has sufficient skill, knowledge, expertise and resources, including qualified and competent personnel, to perform and provide the Services in accordance with the provisions of this Agreement;
- (b) if the Contractor is a corporate entity, the Contractor has been incorporated and organized under the laws of the Northwest Territories and is a valid and subsisting corporation in good standing under all applicable laws of the Northwest Territories;
- (c) if the Contractor is a corporate entity, the Contractor has the corporate power to carry on the business of provision of Services;
- (d) if the Contractor is a corporate entity, the Contractor is validly and properly registered and licensed under the appropriate laws of each and every jurisdiction in which the nature of its business makes such qualification necessary, and in particular, in order to carry out its obligations under the terms and provisions of this Agreement;
- (e) the Contractor is in good standing under any and all contracts, licenses and undertakings to which it is a party or subject to, as the case may be;
- (f) the Contractor is in full compliance with all laws and regulations of any public authority relating to the conduct of its business and has all required permits, licenses, certificates and authorizations necessary to carry on its business and to carry out its obligations under this Agreement and there are not any proceedings whatsoever, actual or pending, and whether concerning cancellation, extension or otherwise, relating to the said permits, licenses, certificates or authorizations;
- (g) there are no actions, suits, seizures or proceedings pending or threatened against the Contractor which might give rise to any legal proceedings or inquiries against the Contractor before any court, tribunal, commission, board or other agency, whether federal, provincial or municipal and which may affect the Contractor's ability to perform all the Services as set forth herein;

- (h) there is no pending or threatened grievance, labor dispute, work stoppage or strike, nor any charge or complaint against the Contractor before any court, tribunal, commission, board or other agency whether federal, provincial or municipal, involving any charge of unfair labor practice or relating to labor or employment issues or practices generally that will prevent the Contractor from performing the Services;
- (i) there is no claim, action or proceeding pending or threatened against the Contractor arising out of any statute, ordinance or regulation relating to the payment of wages or benefits, discrimination in employment or employment practices or occupational safety or health standards;
- (j) the Contractor has received, read and understands the Bylaw; and
- (k) the Contractor has relied completely on its own due diligence and investigations and assessments in entering into this Agreement and has not relied on any representations or inducements by the Community.

2.5 Maintain Warranties and Representations in Effect

In carrying out its obligations hereunder the Contractor shall do things in order that all of the warranties and representations given by the Contractor herein continue to remain in effect respectively during the term hereof.

2.6 Progress Reports

If required by the Community, the Contractor shall provide progress reports to the Community and/or attend progress meetings regarding the performance of the Services, in such form and detail and whenever and as often as requested by the Community.

At least once annually, the Contractor shall advise the Community as to the emerging trends and best practices that could be utilized by the Contractor when performing the Services. The Contractor will make recommendations to the Community regarding possible implementation of new practices for the efficient provisions of the Services.

2.7 Compliance with Legislation

In performing the Services hereunder (including, subject to Section 3.1 hereof, any portion thereof performed by any subcontractors), the Contractor shall comply with the provisions and requirements of all laws, rules and regulations by lawful authority applicable including, without limitation, all relevant legislation, codes, bylaws, regulations and ordinances and the Bylaw, including, without limitation, those obligations of Collectors contained therein.

Where two (2) or more laws, codes, bylaws, regulations, ordinances, policies, procedures or regulations are applicable to the Services, the more restrictive shall apply.

2.8 Permits and Licenses

The Contractor shall obtain, pay for and maintain in good standing during the Term, all at its own expense, all necessary permits or licenses required in connection with providing or performing the Services.

Prior to providing the Services and prior to receiving payment hereunder, the Contractor shall provide evidence of compliance with all requirements of the Northwest Territories with respect to Workers' Compensation including making all payments due thereunder. At any time during the Term when requested by the Community, the Contractor shall provide such evidence of compliance by itself and any of its subcontractors as aforesaid.

2.9 Breaches of the Bylaw

The Contractor shall notify the Community as to any and all breaches of the Bylaw which the Contractor becomes aware of as soon as reasonably possible thereafter.

ARTICLE 3

3.1 No Subcontractors

The Contractor shall not engage or retain any agent, subcontractor or any other third party for purposes of providing the Services hereunder, in whole or in part, without the prior written consent of the Community, and on terms and conditions satisfactory to the Community, in its sole discretion. The use of any agents, subcontractors or any other third parties by the Contractor with the Community's consent shall in no way relieve the Contractor from its responsibility and obligation to provide the Services in accordance with the provisions of this Agreement.

3.2 Removal of Personnel

The Contractor shall forthwith remove from the performance of the Services any officer, employee, agent or subcontractor who is, for any reason, unsatisfactory to the Community including, without limitation, a person who:

- (a) is charged with and convicted of a criminal offence;
- (b) fails, in the opinion of the Community or in the opinion of the Contractor, to carry out the work required in the performance of the Services in a satisfactory manner including, without limitation, causing any delays in the performance of the Services;
- (c) except as required in order to perform the Services, removes any property not belonging to the Contractor, its personnel or any agent or subcontractor, as the case may be, from the Community without the prior written consent of the Community; or

- (d) discloses or uses any Confidential Information contrary to the provisions of this Agreement, without the prior written permission of the Community;

and, in the case of Subsections (c) and (d) above, the Contractor shall take all reasonable steps to ensure that any property removed from the Community is promptly returned, or to restrain any further improper disclosure or use of the Confidential Information, as the case may be. Any costs or expenses associated with removal of any such officer, employee, agent or subcontractor shall be the responsibility of the Contractor.

3.3 Compliance with Policies

The Contractor shall ensure that its personnel and agents and subcontractors, when providing the Services, comply with all security, safety, emergency and access policies, procedures or regulations implemented by the Community from time to time.

ARTICLE 4

4.1 Payment

The Community shall pay the Contractor in accordance with the provisions of the Solid Waste Services Collection Proposal and Schedule “B” attached hereto. No payment by the Community shall relieve the Contractor from the performance of its obligations hereunder.

The compensation agreed herein to be paid to the Contractor for the work to be performed under this Agreement is the sole compensation to be paid to the Contractor for the discharge of the Contractor’s obligations under this Agreement and any other costs and expenses incurred in relation to the performance of this Agreement shall be the responsibility of the Contractor.

4.2 Excess Payments, Taxes

The Community shall not pay any amount exceeding the fees to be paid in accordance with Schedule “B” or make any payment for any work done by the Contractor after the Completion Date unless prior written authorization has been obtained by the Contractor from the Community. All customs duties, excise taxes (including Goods and Services Tax), federal, provincial and municipal taxes and other duties, taxes or charges of a similar nature, and all travel and living expenses of the Contractor are included in the fees to be paid to the Contractor, unless expressly stated otherwise.

4.3 No Payment for Costs, Expenses or Damages

The Community shall not be required to make any payment to the Contractor under this Agreement for any costs, expenses, losses or damages suffered or incurred:

- (a) in performing any work reasonably incidental to the performance of the Services;

- (b) as a result of any delays in performing the Services from any cause whatsoever with the exception of delays directly and solely caused by the Community, its servants or employees; or
- (c) to remedy errors or omissions for which, in the reasonable opinion of the Community, the Contractor is responsible.

The Contractor hereby waives any and all rights it may have, at law or in equity, to claim against the Community arising from any of the things set forth in this Section 4.3 and the Contractor is hereby forever estopped from denying the same.

4.4 Performance upon Failure of Contractor

Upon failure of the Contractor (including any of its employees, subcontractors and others for whom the Contractor is responsible in law) to perform any of its obligations under this Agreement the Community may, but shall not be obligated to, perform or engage a third party to perform any of those obligations, without prejudice to any other remedy or right it may have and the Contractor, immediately upon written demand, shall pay an amount equal to all costs and expenses incurred by the Community in association therewith, plus interest on that amount from the date the cost or expense is incurred until it is paid at the rate of 12% per annum. The Community may, in its sole discretion, set-off and deduct any such amount, together with interest, from any payment then or thereafter due by the Community to the Contractor, provided that such action shall not be deemed a waiver of any action that the Community may pursue to collect any costs or expenses incurred herewith that exceed the amounts owed to the Contractor.

4.5 Acceptance is Not Waiver

The acceptance by the Community, from time to time, of any statement of fees, costs, charges, reimbursable expenses or other amounts delivered by the Contractor or any payment of such amounts based thereon shall not be deemed to be a waiver by the Community of any of the Contractor's obligations or the Community's rights under this Agreement.

4.6 No Agency

Neither the Contractor nor any of its employees or subcontractors, shall in any way purport to be the agent of or act on behalf of the Community in any manner nor bind the Community in any manner whatsoever.

4.7 Insurance

Without in any way limiting the liability of the Contractor under this Agreement, the Contractor shall, during the Term, obtain and maintain in force and in good standing the following insurance from an insurer licensed to do business in the Northwest Territories:

- (a) standard automobile, bodily injury and property damage insurance providing coverage of at least \$5,000,000.00 inclusive and in respect of any one claim for

the injury to or death of one or more persons or damage to or destruction of property;

- (b) Environmental Impairment Liability insurance of at least \$5,000,000.00;
- (c) Comprehensive general liability insurance providing coverage of at least \$5,000,000.00 inclusive and in respect of any one claim inclusive for injury to or death of one or more persons and property. Coverage to include:
 - (i) non-owned automobiles;
 - (ii) independent contractors;
 - (iii) contractual liability, including liability arising pursuant to this Agreement;
 - (iv) a broad form property damage endorsement;
 - (v) products and completed operations coverage;
 - (vi) the inclusion of employees as additional insured; and
 - (vii) contingent employers liability coverage;
- (d) Workers' Compensation coverage for all employees, if any, engaged by the Contractor in accordance with the laws of the Northwest Territories;
- (e) Employer's liability insurance respecting employees, if any, of the Contractor with limits of liability of not less than \$5,000,000.00 per employee for each accident, accidental injury or death of an employee or any subcontractor engaged by the Contractor; and
- (f) such other insurance as the Community may from time to time reasonably require.

The Contractor shall ensure that all insurance coverage maintained by the Contractor in accordance with this Agreement shall name the Community and any other party designated by the Community as an additional insured, contain a severability of interests or cross liability clause, and shall provide that no such insurance may be cancelled without the insurer providing no less than 30 days' written notice of such cancellation to the Community. The Contractor shall, upon the request of the Community, furnish written documentation, satisfactory to the Community, evidencing the required insurance coverage.

The Contractor shall be liable for the cost of all insurance required to be obtained and maintained by the Contractor as set forth herein and for payment of all deductible amounts from such policies of insurance.

ARTICLE 5

5.1 Confidential Information

The Contractor agrees that Confidential Information constitutes valuable and proprietary information and materials of the Community which shall be kept strictly confidential, both during and after the Term, and shall only be used for the purpose of providing the Services hereunder. Such Confidential Information may only be disclosed by the Contractor to those of its officers, employees, approved agents or approved subcontractors who have a need to know such information for the purposes of this Agreement and the Contractor shall take appropriate steps, whether by instruction, agreement or otherwise to ensure that such officers, employees, agents and subcontractors, as the case may be, keep such information strictly confidential and otherwise comply with the provisions of this Section 5.1. No Confidential Information shall be copied or provided or disclosed to any other party without the prior written consent of the Community, which consent may be arbitrarily withheld. The Contractor acknowledges that it has no interest in the Confidential Information and shall surrender all Confidential Information in its possession or control (including all copies thereof) to the Community immediately upon termination or expiration of this Agreement or at any earlier time upon the Community's request.

Ownership of any work, information, records or materials, regardless of form, and including, but not limited to, any copyright, patent, industrial design process or trade mark, acquired or produced under this Agreement by the Contractor, or provided by the Community for use by the Contractor, as the case may be, vest with the Community. The Contractor shall treat any information required as a result of this Agreement in strict confidence and with the care and security required to ensure that it is not disclosed or made known to any person except with the written consent of the Community.

5.2 Freedom of Information and Protection of Privacy

Notwithstanding the termination or expiry of this Agreement, the Contractor acknowledges that information and records compiled or created under this Agreement which are in the custody of the Contractor are subject to the *Access to Information and Protection of Privacy Act*. If a request is received for any of these records, the Contractor shall forward the information and records, at the Contractor's expense, to the Community within five (5) calendar days of official notification by the Community.

5.3 Injunctive Relief

The parties agree that improper disclosure or use of the Confidential Information will cause irreparable harm to the Community, which harm may not be adequately compensated by damages. As a result, the parties agree that, in addition to all other remedies the Community may have and not in derogation thereof, the Community may seek and obtain from any court of competent jurisdiction injunctive relief in respect of any actual or threatened disclosure or use of any Confidential Information contrary to the provisions of this Agreement.

5.4 Return of Documents

Except as otherwise provided for herein, immediately upon termination or expiry of this Agreement, the Contractor shall promptly return all property, documentation and information in its possession relating to the provision of the Services and it shall not thereafter utilize any of it or reproduction of it in any manner whatsoever.

5.5 Litigation

The Contractor shall cooperate, at the expense of the Community, with the Community, both during and after the Term, in the bringing of or defending of any action or claim of any nature in respect of which the Community is a party or has an interest which arises in any manner whatsoever, directly or indirectly, in connection with the performance with the obligations hereunder by the Contractor.

ARTICLE 6

6.1 Termination for Default

- (a) This Agreement may be terminated at any time by the Community without cause by giving 14 days written notice to the Contractor, and the Contractor's right to consideration shall be limited to payment for the Services performed and not previously paid for. The Contractor specifically agrees that the notice and consideration set forth in this paragraph constitutes reasonable, fair and equitable notice and compensation for damages, if any that may be suffered by the Contractor as a result of the termination of this Agreement.

If such notice is given, the Contractor shall perform the Services up to and including the effective date of termination specified in the notice and shall, upon request, provide the Community with a written report on the Services rendered to the time of termination. Except for any such report, the Contractor shall not perform any further Services subsequent to the effective date of termination.

- (b) Without limiting the termination rights in Section 6.1(a) or Section 6.1(c) hereof, in the event that one of the following events occur, the Community may, at its sole option, provide to the Contractor, 5 days to remedy the event. Should the Contractor not remedy the event referred to in this notice, to the Community's absolute satisfaction, the Community may forthwith terminate this Agreement, without prejudice to any other right or remedy the Community may have, if:
- (i) the Contractor at any time fails to comply with any of the terms or conditions of this Agreement; or
 - (ii) any representation and warranty given by the Contractor hereunder is untrue or inaccurate; such termination to be effective on the date such notice of termination is received.

- (c) Without limiting the termination rights as contained in Section 6.1(a) or Section 6.1(b) hereof, in the event that one of the following events occur, the Community may, at its sole option, immediately terminate this Agreement, without prejudice to any other right or remedy the Community may have, if:
- (i) the Contractor at any time is adjudged or otherwise becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, if a receiver is appointed for the property of the Contractor, or if the Contractor ceases to carry on business in the normal course;
 - (ii) any of the goods and chattels of the Contractor shall be taken in execution or by attachment by any creditor of the Contractor; or
 - (iii) an order shall be made for winding up of the Contractor.

6.2 Payment upon Termination

The Community shall, in the event of termination of this Agreement, pay to the Contractor all amounts for completed work due to the Contractor in accordance with this Agreement, less any amounts which may be owing by the Contractor to the Community as provided for hereunder. The Community shall have no further liability of any nature whatsoever to the Contractor for any losses or damages suffered or sustained, either directly or indirectly, by the Contractor including, without limitation, loss of profit, as a result of the termination of this Agreement.

ARTICLE 7

7.1 Indemnity

The Contractor shall at all times and without limitation, indemnify and save harmless the Community, its elected officials, employees, contractors, agents and representatives from and against all liabilities, losses, costs, damages, legal fees (on a solicitor and his own client full indemnity basis), disbursements, fines, penalties, expenses, all manner of actions, causes of action, claims, demands and proceedings, all of whatever nature and kind which any of the Community, its elected officials, employees, contractors, agents and representatives may sustain, pay or incur or which may be brought or made against all or any of them, and whether or not incurred in connection with any action or other proceedings or claims or demands made by third parties, with respect to any occurrence, event, incident or matter caused by, and/or arising as a direct or indirect result of:

- (a) the misconduct, negligent action or negligent failure to act, as the case may be, of the Contractor and/or any of those persons for whom the Contractor is responsible at law (including, without limitation, any of its employees or subcontractors); or
- (b) the costs of repairs, clean-up or restoration paid by the Community and any fines levied against the Community or the Contractor; or

- (c) any breach, violation or non-performance of any representation, warranty, obligation, covenant, condition or agreement in this Agreement set forth and contained on the part of the Contractor to be fulfilled, kept, observed or performed, as the case may be; or
- (d) any breach of confidentiality on the part of the Contractor or any approved agent or approved subcontractor, or employee of the Contractor; or
- (e) any damages to third parties caused by, resulting at any time from, arising out of or in consequence of the misconduct, negligent action or failure to act of the Contractor and/or any of those persons for whom the Contractor is responsible at law (including, without limitation, any of its employees or subcontractors).

7.2 Release

The Contractor expressly releases the Community from any claims, damages, judgments, losses or awards caused by or arising from perils insured against or required to be insured against by the Contractor under this Agreement. Except for any valid claim that the Contractor may have against the Community for non-payment under the Agreement the Contractor shall not make or bring any claim, action, suit, proceeding or demand against the Community, its officials, officers, employees, servants, agents and contractors or any of same with respect to any occurrence, incident, accident or happening relating in any manner whatsoever to this Agreement and the rights and obligations arising therefrom which, without limiting the generality of the foregoing, shall include any claim, action, suit, proceeding or demand arising in tort or contract or otherwise.

7.3 No Liability

The Community shall not be liable to the Contractor or to any one claiming through the Contractor for any matter, cause or thing relating directly or indirectly to the state or condition of receptacles or Materials to be dealt with by the Contractor hereunder, all of such liability being hereby released by the Contractor.

ARTICLE 8

8.1 Dispute Resolution

Except where specifically excluded, if a dispute arises between the Community and the Contractor regarding the interpretation, application or operation of this Agreement or any part of it, the dispute shall be submitted to the dispute resolution processes described in the attached Schedule "C" before either party may take any other action or step or pursues any other available remedy in relation to the dispute, provided however that either party may take any steps required to be taken in order to preserve a cause(s) of action under the *Limitations of Actions Act* (Northwest Territories). This clause shall not limit the rights of the Community to serve notice pursuant to Section 6.1 at any time. Notwithstanding that the dispute resolution process is invoked, the parties will continue to perform their obligations described in this Agreement until such time as the dispute resolution process is complete.

ARTICLE 9

9.1 Survival of Obligations

The provisions of this Agreement which, by their context, are meant to survive the expiry or earlier termination of this Agreement shall so survive for the benefit of the Community and be binding upon the Contractor.

9.2 Schedules

The following Schedules attached hereto shall form part of this Agreement and are incorporated herein by reference:

- Schedule "A" – Services
- Schedule "B" – Terms of Payment
- Schedule "C" – Dispute Resolution Procedure
- Schedule "D" – RFP
- Schedule "E" – Solid Waste Services Collection Proposal

9.3 Notices

Any notice provided for or permitted to be given pursuant to this Agreement shall be in writing and shall, except in the event of an interruption in postal service during which time all notices must be delivered, be sufficiently given if delivered or sent by prepaid registered mail addressed to the party for whom the same is intended to the address for notice for such party as follows:

- (a) to the Community (**BLLP NTD: INSERT CONTACT INFO FOR COMMUNITY**):

Telephone: (____) _____

Fax: (____) _____

Attention: _____

- (b) to the Contractor:

Telephone: (____) _____

Fax: (____) _____

Attention: _____

Any notice delivered shall be deemed to be received when left during normal business hours at the office set forth above and any notice sent by prepaid registered mail shall be deemed to have been received on the third normal delivery day following the posting thereof. Either party shall be entitled to change its address for notice to another existing address by notice in writing to the other. The word "notice" in this Section 9.3 includes any request, statement, report, demand, order or other writing in this Agreement provided or permitted to be given by the Community to the Contractor or by the Contractor to the Community.

9.4 Assignment

The Contractor shall not assign this Agreement or any portion thereof without the prior written consent of the Community, which consent may be arbitrarily withheld.

9.5 GST Exclusive

All amounts payable by the Community to the Contractor hereunder will be exclusive of any goods and services tax ("GST") and the Community will, in addition the amounts payable hereunder, pay to the Contractor all amounts of GST applicable thereon. The Contractor's GST number is _____. **[BLLP NOTE: fill in GST number.]**

9.6 Waiver

No consent or waiver, express or implied, by the Community to or of any breach or default by the Contractor in the performance by the Contractor of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of obligations by the Contractor hereunder. Failure on the part of the Community to complain of any act or failure to act of the Contractor or to declare the Contractor in default, irrespective of how long such failure continues, shall not constitute a waiver by the Community of its rights hereunder.

9.7 No Agency

Nothing in this Agreement, nor in any acts of the Community and the Contractor pursuant to this Agreement, shall be construed, implied or deemed to create an agency, partnership, joint venture or employer and employee relationship between the Community and the Contractor.

9.8 Whole Agreement

The provisions of this Agreement constitute the entire agreement between the parties and supersede any prior agreements, letters of intent or understanding, whether written or oral, between the parties with respect to the matters contemplated herein. No terms, conditions, warranties, promises or undertakings of any nature whatsoever, express or implied, exist between

the parties with respect to this Agreement except as herein set forth. This Agreement may be amended, changed or modified only by further written agreement between the parties.

9.9 Partial Invalidity

If any term, condition or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, condition or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, condition or provision shall be separately valid and enforceable to the fullest extent permitted by law.

9.10 Time of Essence

Time shall be of the essence of this Agreement.

9.11 Expiration of Time

In any case where the time limited by this Agreement expires on a Saturday, Sunday or statutory holiday in the Northwest Territories, the time limited shall be extended to and shall include the next succeeding day which is not a Saturday, Sunday or legal holiday in the Northwest Territories.

9.12 Further Assurances

Each of the parties to this Agreement shall at the request of the other party hereto, execute and deliver any further documents and do all acts and things as that party may reasonably require to carry out the full intent and meaning of this Agreement.

9.13 Independent Legal Advice

The Contractor acknowledges having read this Agreement and prior to executing the same acknowledges and agrees that it has been advised by the Community to obtain independent legal advice. By executing the within Agreement the Contractor confirms that it had the opportunity to seek independent legal advice prior to executing the within Agreement and has either:

- (a) obtained such independent legal advice; or
- (b) has waived the right to obtain such independent legal advice.

9.14 Governing Law

This Agreement shall be governed by the laws in force in the Northwest Territories and the courts of the Northwest Territories shall have exclusive jurisdiction with respect to any dispute, matter or thing arising herefrom.

9.15 Singular. Plural and Gender

Wherever the singular, plural, masculine, feminine or neuter is used throughout this Agreement the same shall be construed as meaning the singular, plural, masculine, feminine, neuter, body politic or body corporate where the fact or context so requires and the provisions hereof and all covenants herein shall be construed to be joint and several when applicable to more than one party.

9.16 Headings

The headings in this Agreement have been inserted for reference and as a matter of convenience only and in no way define, limit or enlarge the scope or meaning of this agreement or any provision hereof.

9.17 Counterparts

This Agreement may be executed and delivered in any number of counterparts, by facsimile copy, by electronic or digital signature or by other written acknowledgement of consent and agreement to be legally bound by its terms. Each counterpart when executed and delivered will be considered an original but all counterparts taken together constitute one and the same instrument.

9.18 Enurement

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors, assigns or approved assigns, as the case may be.

IN WITNESS WHEREOF the parties hereto have affixed their corporate seals by the hands of their proper officers.

[NAME OF COMMUNITY]

Per:

Signature of Authorized Signing Officer

Printed Name of Authorized Signing Officer

Position of Authorized Signing Officer

[NAME OF CONTRACTOR]

Per:

Signature of Authorized Signing Officer

Printed Name of Authorized Signing Officer

Position of Authorized Signing Officer

Per:

Signature of Authorized Signing Officer

Printed Name of Authorized Signing Officer

Position of Authorized Signing Officer

[BLLP NOTE: USE IF CONTRACTOR IS AN INDIVIDUAL]

SIGNED, SEALED and DELIVERED by NAME)
OF SIGNATORY, in the presence of:)

Signature)

Printed Name)

Address)

Occupation)

NAME OF SIGNATORY (s)

AFFIDAVIT VERIFYING
CORPORATE SIGNING AUTHORITY

CANADA) I, **<FULL NAME>**
) of the **<City/TOWN>** of **<NAME>**, in
NORTHWEST TERRITORIES) the Northwest Territories
) MAKE OATH AND SAY THAT:
TO WIT:)

1. That I am an officer, director or agent of **<NAME OF CORPORATION>**
named in the within or annexed instrument.

2. That I am authorized by **<NAME OF CORPORATION>** to execute the
instrument without affixing a corporate seal.

SWORN BEFORE ME at the **<City/TOWN>**)
of **<NAME>**, in the Northwest Territories this)
<DATE> day of **<MONTH>**, **<YEAR>**)
)
)
)
_____)
A COMMISSIONER FOR OATHS IN AND)
FOR THE NORTHWEST TERRITORIES)

SCHEDULE "A"

(BLLP NTD: THIS SCHEDULE SHOULD BE CHANGED TO ACCURATELY REFLECT THE ACTUAL SERVICES THE CONTRACTOR WILL PERFORM – THIS IS SIMPLY A SUGGESTION OF THE TYPE OF SERVICES THAT MAY BE REQUIRED)

1.0 RECYCLABLES COLLECTION

- (a) The Contractor shall, on a weekly basis from Tuesdays to Fridays, and in the manner prescribed by the Bylaw, collect from all residential properties not exceeding 12 familial units, all co-mingled recyclable materials (including paper, glass, tin metals, cardboard and plastics), from the collection point and deliver it to a processing facility of the Contractor's choosing, which processing facility shall receive the Community's prior written approval. The Contractor shall be entitled to retain all revenues received from the disposal of the aforesaid co-mingled recyclable materials;
- (b) Immediately upon the collection thereof, all co-mingled recyclable materials collected by the Contractor shall become the sole property of the Contractor;
- (c) The Contractor shall empty all Community supplied green boxes or occupant supplied receptacles of similar shape and size containing co-mingled recyclables materials from collection points that do not exceed 23 kilograms in weight. Should the Contractor encounter a receptacle that is placed in a manner contrary to the Bylaw, or contains any material other than those contemplated within Section 1.0(a) above, the Contractor shall nevertheless collect all co-mingled recyclable materials contemplated within Section 1.0(a) above, and shall affix a Community supplied educational tag which shall prescribe the appropriate location for such receptacle and/or the appropriate contents thereof, as applicable. The Contractor shall not be obliged to collect any materials not contemplated by Section 1.0(a) above;
- (d) The Contractor shall, on a weekly basis, collect all co-mingled recyclable materials collected by the Community from the Operations Building, and deliver it to a processing facility of the Contractor's choosing, which processing facility shall receive the Community's prior written approval; and
- (e) The Contractor shall keep and maintain a detailed record of the volume and tonnage of all co-mingled recyclable materials collected by the Contractor, which record shall also detail the volume and tonnage of each subcategory of co-mingled recyclable material collected by the Contractor, and shall provide the Community with access to such record upon written request made by the Community. Notwithstanding that no written request has been made of the Community, the Contractor shall provide such reports to the Community on an annual basis.

1.1 KITCHEN WASTE AND YARD WASTE COLLECTION

- (a) The Contractor shall, on a weekly basis from Tuesdays to Fridays, and in the manner prescribed by the Bylaw, collect from all residential properties, all kitchen waste and yard waste contained in yard/kitchen waste receptacles, from the collection point to the Disposal Site, or to a processing facility of the Contractor's choosing, which processing facility shall receive the Community's prior written approval;
- (b) The time period referred to in Section 1.1(a) above shall run approximately from the first Tuesday of April, to and including the last Friday of October. Notwithstanding the foregoing, the Contractor acknowledges that this is an approximation only, and the time period referred to in Section 1.1(a) above, is subject to alteration by the Community in its sole and absolute discretion;
- (c) The Contractor shall remove all kitchen waste and yard waste contained in yard/kitchen waste receptacles from collection points that do not exceed 23 kilograms in weight. Should the Contractor encounter a yard/kitchen waste receptacle that is placed in a manner contrary to the Bylaw, or contains any material other than acceptable kitchen waste or yard waste, the Contractor shall affix a Community supplied educational tag which shall prescribe the appropriate location for such receptacle and/or the appropriate contents thereof, as applicable. The Contractor shall not be obliged to remove any yard/kitchen waste receptacles that contain unacceptable kitchen waste or yard waste, as the case may be (**BLLP NTD: will have to confirm appropriateness with client**); and
- (d) The Contractor shall keep and maintain detailed records of the volume and tonnage of all kitchen waste and yard waste collected by the Contractor, and shall provide the Community with access to such records upon written request made by the Community. Notwithstanding that no written request has been made by the Community, the Contractor shall provide such reports to the Community on an annual basis.

1.2 **CARDBOARD BIN DROP-OFF AND REMOVAL**

- (a) The Contractor shall place Community approved cardboard receptacles at the Disposal Site, and upon 48 hours' notice from the Community, shall empty same in a processing facility of the Contractor's choosing, which processing facility shall receive the Community's prior written approval, and return such receptacle the same day;
- (b) The number of cardboard receptacles placed at the Disposal Site shall be determined by the Community in its sole discretion; and
- (c) The Contractor shall keep and maintain detailed records of the volume and tonnage of cardboard hauled by the Contractor, and shall provide the Community with access to such records upon written request made by the Community. Notwithstanding that no written request has been made by the Community, the Contractor shall provide such reports to the Community on an annual basis.

1.3 **SOLID WASTE TRANSFER**

- (a) The Contractor shall, upon 48 hours' notice from the Community, transport 40 yard roll-off receptacles, or similar container prescribed by the Community, from the Disposal Site to the Landfill, or other processing facility of the Contractor's choosing, which processing facility shall receive the Community's prior written approval;
- (b) The number of 40 yard roll-off receptacles at the Disposal Site shall be determined by the Community in its sole discretion;
- (c) The Contractor shall ensure empty 40 yard roll-off receptacles are placed at the Disposal Site when 40 yard roll-off receptacles are in transit to the Landfill, or other processing facility as aforesaid. Should there be a 24 hour period within which an empty 40 yard roll-off receptacle is not provided for at the Disposal Site when 40 yard roll-off receptacles are in transit to the Landfill, or other processing facility as aforesaid, the Community shall be entitled to levy a charge of \$200.00 per 24 hour period, as a genuine pre-estimate of liquidated damages for breach of this Section, which sum shall be deducted from any payment owed to the Contractor hereunder, without prejudice to any of the Community's rights or remedies provided for herein, at law or in equity, including without restriction those which would entitle the Community to perform instead of the Contractor so performing; and
- (d) Throughout the Term of this Agreement, the Contractor shall keep and maintain detailed records of the volume and tonnage of Waste hauled by the Contractor, and shall provide the Community with access to such records upon written request made by the Community. Notwithstanding that no written request has been made of the Community, the Contractor shall provide such reports to the Community on an annual basis.

1.4 **TERMS AND CONDITIONS OF GENERAL APPLICATION TO THE SERVICES:**

- (a) Materials shall not include, and the Contractor will use its best efforts to ensure that it does not contain radioactive, volatile, highly flammable, explosive, bio-medical, toxic or Hazardous Waste.
- (b) The Community reserves the right, from time to time, to re-designate any processing facility to which Materials collected by the Contractor are to be delivered hereunder upon 30 days' written notification to the Contractor.
- (c) Payment of disposal costs will be adjusted in accordance with arrangements made by the Community and the applicable landfill authority.
- (d) All loads of Materials to be collected by the Contractor hereunder must be tacked and weighed on a scale by the Contractor at its sole cost, with the Contractor

maintain a log of such weights. Loads delivered to the Disposal Site will be weighed at the Disposal Site's scale. It will be the Contractor's responsibility to see that his personnel adhere to the applicable scale usage procedures.

- (e) Except as expressly permitted in writing by the Community, the Contractor shall not commingle different categories of Materials with one another, or with any other waste materials.
- (f) The collection schedule provided for herein and in the Bylaw must be strictly followed in spite of weather conditions. If adverse weather prevents scheduled collection, the Contractor shall immediately notify the Community if collection will not proceed and, upon improved conditions, shall as soon as reasonably practicable resume the collection schedule, as distributed by the Community, by using extra equipment, manpower and overtime, if required, all at the Contractor's sole cost.
- (g) The Services collection area(s) and/or schedule may be amended by the Community at any time during the term of this Agreement. The Contractor shall observe and be bound by all such changes to the collection area(s) and/or schedule made by the Community from time to time. Should the Community initiate changing the collection area(s) and/or schedule, the Community shall advise all occupants affected by such change.
- (h) The Contractor shall forthwith notify the Community of any and all interruptions the Contractor encounters when carrying out the Services.
- (i) Any other receptacle other than that prescribed by the Bylaw or this Schedule will not be serviced and will be left undisturbed at curbside.
- (j) In the event that any dispute arises between the occupants and the Contractor with respect to the collection of Materials, the Community shall be the sole arbiter in the settlement of any such matters in dispute and the decision shall be final and binding upon all parties concerned.

1.5 **ADVERTISING**

- (a) The Contractor is prohibited from displaying any advertisements on its vehicles, other than its own corporate logo's or insignia, without the express approval of the Community, which approval may be withheld in its absolute discretion.
- (b) The Contractor shall participate in and cooperate with such educational or promotional initiatives respecting any aspect of the waste collection or recycling programs being carried on by the Community, as directed by the Community from time to time.

1.6 COMPLETION OF SERVICES

- (a) The Contractor shall complete 100% of each day's collection. The Contractor shall return to collect any missed Materials or receptacles, including waste receptacles within 24 hours.
- (b) A missed collection from a residential property unrectified within 24 hours, or a failure to affix an educational tag as provided for herein, will entitle the Community to levy a charge of \$20.00 per 24 hour period, or occurrence, as applicable, as a genuine pre-estimate of liquidated damages for breach of this Section, such sum to be deducted from any payment owed to the Contractor hereunder, without prejudice to any of the Community's rights or remedies provided for herein, at law or in equity, including without restriction those which would entitle the Community to perform instead of the Contractor so performing.
- (c) The Contractor shall notify the Community forthwith of any missed Services collections.
- (d) The Contractor shall remedy any breach of this Agreement on the day it occurs. If the breach is not known until the next day, the Contractor will remedy the breach within 24 hours of notification.
- (e) The Contractor shall provide the Services between the hours of 8:00am and 10:00pm, Tuesdays through Fridays, including all statutory holidays, save and except for Christmas Day and New Year's Day, unless otherwise herein stated.
- (f) The Contractor must maintain accurate records pertaining to the number of hours worked by the Contractor, number of collection personnel used, number of pick-ups per day, per area as, when and in such form as may be requested by the Community.

1.7 LIMITATION OF COLLECTION

- (a) The Contractor will make all reasonable efforts to collect the Materials.
- (b) Under no circumstances will Materials be allowed to be thrown over vehicles or onto other property. The Contractor shall not back up to collect Materials except as absolutely required.
- (c) If the Contractor encounters an impassable obstruction for any reason including without limitation utilities, or other contractors working on the street, it will notify the Community immediately to make arrangements and will return at least once that day to attempt to collect the affected Materials. Upon the Contractor's return to attempt again to collect the affected Materials, if the Contractor again encounters an impassable obstruction, the Contractor shall identify and record the obstruction for the Contractor's future reference and further, shall inform the Community with the details of same.

- (d) In the event that roads become impassable due to active road construction or repair by the Community, the Community will advise the Contractor at least 7 days in advance of such activity, where practical, and the Contractor will, at no cost or charge to the Community, prepare an alternate route plan or schedule for collection of Materials.
- (e) Obstructions such as cars parked on the street, snow banks, ditches and the like shall not be considered as impassable obstructions.
- (f) The Contractor should be aware that in some locations, entrance onto residential properties may be required to service such locations. If the Contractor is unable to effect collection due to obstructions, the driver shall make at least one call back on the same day after an interval of not less than one hour. If collection is still not possible, the nature and identification of the obstruction shall be recorded by the driver for future reference, and reported immediately to the Community.

1.8 **REPORTS AND STATISTICS**

- (a) The Contractor will maintain records and statistics of complaints, field observations including missed Services collections, contamination issues or placement issues and will supply the Community with such records as required as part of the performance of this Agreement.
- (b) The Community may direct the Contractor as to the format of such reports. All such reports will be signed by the Contractor.

1.9 **TEMPORARY ROAD CLOSURES**

- (a) Where utilities or other contractors, including those of the Community, are working on the street, the Contractor will return to that street later when access has improved or been restored. The Contractor will co-operate with other contractors where necessary in order to complete collection.
- (b) In those cases where, due to the temporary closing of any road or limited access as a result of construction or for any other reason, the Contractor will be required to ensure that the necessary action is taken to collect Materials.

1.10 **CONTAINERS**

All receptacles, including waste receptacles, shall be placed in an upright position in the same location in which they were located prior to collection. Care shall be used not to damage receptacles. Receptacles that are damaged by the Contractor, or are thrown into the collection vehicles, shall be replaced before the next collection day by receptacles of equal quality by the Contractor at the Contractor's sole expense and to the satisfaction of the Community.

1.11 NUMBER OF COLLECTION VEHICLES

- (a) The Contractor shall at all times provide, maintain and operate a sufficient number of vehicles as determined by the Community to properly perform the Services.
- (b) The Contractor shall keep a sufficient number of spare vehicles in the Contractor's yard to ensure that, in the event of a breakdown, the performance of the Services will not be interrupted.
- (c) The Contractor will be required to supply whatever additional vehicles are necessary to adequately handle any additional collections required under this Agreement. Such supply will not increase or decrease any payments to be made to the Contractor.
- (d) If, in the opinion of the Community, the Contractor does not have sufficient number of regular or spare vehicles to properly provide service in accordance with this Agreement, the Community will have the right to instruct the Contractor, at any time after the beginning of the Contractor's operations, to increase the number of regular or spare vehicles to ensure that the performance is in accordance with the terms of this Agreement. The Contractor shall receive no additional compensation over and above the contract prices as a result of any requirements for these resources.
- (e) When additionally hired vehicles are required, the Contractor will immediately supply to the Community the identification numbers of any of these spare vehicles to be used or any further subsequent changes during that day of collection. Otherwise, the Contractor will be charged with the landfill fees for those vehicles not listed for that day's operation.
- (f) The Contractor must utilize vehicles that are totally dedicated to this Agreement only and identified as such to the satisfaction of the Community.

1.12 TYPE OF COLLECTION VEHICLES

- (a) All vehicles supplied under the Agreement must meet the provisions of all applicable federal and provincial legislation which are in effect on the day of the manufacture of each vehicle.
- (b) All vehicles must be fitted with necessary and functioning safety devices and must pass any required provincial inspection prior to the commencement of this Agreement. Any deficiencies shall be corrected at the cost of the Contractor.
- (c) The vehicles are to be properly constructed and maintained to eliminate the depositing of Materials or liquids onto the streets during the performance of the Services. It is the Contractor's responsibility to immediately clean up any debris or liquid which falls from the vehicle onto the street.

- (d) Each vehicle shall carry hand tools (brush and shovels) to facilitate the sweeping up of any Materials which may be spilled.

1.13 MAINTENANCE OF COLLECTION VEHICLES

- (a) The Contractor will be responsible for maintenance of the collection vehicles and shall produce certificates of inspection by authorized inspectors upon being requested to do so, the inspection being made immediately following the request by the Community. All expenses incurred in these inspections will be borne by the Contractor. All equipment used in the execution of this Agreement shall be mechanically sound.

1.14 CLEANLINESS OF COLLECTION VEHICLES

- (a) All vehicles purchased, acquired or supplied by the Contractor must be kept clean, well painted and disinfected inside and out at all times so as not to cause any offence, odoriferous or otherwise to the public.
- (b) The washing of the vehicles shall be done on a weekly basis with a proper cleaning solution.
- (c) The Community may levy a charge of breach of this Section of \$100.00 per vehicle, as a genuine pre-estimate of liquidated damage for breach of this Section 1.14, which sum shall be deducted from any payment owed to the Contractor should the Contractor, in the Community's opinion, without prejudice to any of the Community's rights or remedies provided for herein, at law or in equity.

1.15 IDENTIFICATION OF COLLECTIONS VEHICLES

- (a) The Community may require the Contractor to display such markings or descriptions on the Contractor's vehicles, as the Community deems necessary.
- (b) The name of the Contractor shall be affixed upon all vehicles. Each vehicle will be numbered, this information to be on the front, rear and both side panels. Any additional hired vehicles which may be required during peak periods shall be subject to a similar identification system.

1.16 EXCESS LOADING OF COLLECTION VEHICLES

- (a) The Contractor shall at all times abide by all applicable road bans which may be in affect from time to time.
- (b) Where, in the opinion of the Community, equipment used by the Contractor is causing or is likely to cause damage to any private or public roadway, the Community may direct the Contractor, at its own expense, to make changes in, or substitutions for such equipment, to use alternate routes for hauls, to alter loading or to remove the cause of such damage in some other manner to the satisfaction of

the Community. The Contractor will be responsible for the consequences of the overload of vehicles.

- (c) Where, in the opinion of the Community, the operator working on behalf of the Contractor is causing or is likely to cause damage to any private or public roadway through the course of their work, the Community may direct the Contractor to replace such operator at its own expense. The Contractor will be responsible for the total repair or replacement costs for damaged roadways.
- (d) The Community shall not be required to pay under this Agreement, or otherwise, for any load that exceeds the maximum load size prescribed in Section 1.16(a) above. In addition the Community may, in its absolute discretion, levy a \$500.00 overweight charge as a genuine pre-estimate of liquidated damages for breach of this Section against the Contractor, which sum shall be deducted from any payment owing to the Contractor, without prejudice to any of the Community's rights or remedies provided for herein, at law or in equity.

1.17 **PROVISION OF COMPACTORS**

- (a) On or before May 30, 2015, the Contractor shall supply, in good working order, a cardboard compactor to be placed on the concrete pad located at the Disposal Site, and capable of full operation utilizing the three-phase power supplied at the Disposal Site.
- (b) The cardboard compactor shall be solely used by Community personnel.
- (c) Charges for electricity consumed by the operation of the cardboard compactor shall be borne by the Community.
- (d) Periodic maintenance and repair of the cardboard compactor shall be carried out by the Contractor at the Contractor's sole cost and expense.
- (e) The Contractor shall ensure that adequate cardboard compactor bin capacity is available at the Disposal Site to service daily demand.
- (f) The Contractor shall empty the cardboard compactor's bin in the applicable processing facility, and return same within the same business day upon 48 hours' notice from the Community.

- (g) For every 24 hour period where the cardboard compactor is out of service, and an alternative acceptable to the Community has not been provided, the Community will be entitled to levy a charge of \$200.00 per 24 hour period, as a genuine pre-estimate of liquidated damages for breach of this Section, which sum shall be deducted from any payment owed to the Contractor hereunder, without prejudice to any of the Community's rights or remedies provided for herein, at law or in equity.
- (h) On or before May 30, 2015, the Contractor shall supply, in good working order, a garbage compactor to be placed on the concrete pad located at the Disposal Site, and capable of full operation utilizing the three-phase power supplied at the Disposal Site.
- (i) The garbage compactor shall be used solely by Community personnel.
- (j) Charges for electricity consumed by the operation of the garbage compactor shall be borne by the Community.
- (k) Periodic maintenance and repair of the garbage compactor shall be carried out by the Contractor at the Contractor's sole cost and expense.
- (l) The Contractor shall ensure that adequate garbage compactor bin capacity is available at the Disposal Site to service daily demand.
- (m) The Contractor shall empty the garbage compactor's bin in the applicable processing facility, and return same within the same business day upon 48 hours' notice from the Community.
- (n) For every 24 hour period where the garbage compactor is out of service, and an alternative acceptable to the Community has not been provided, the Community will be entitled to levy a charge of \$200.00 per 24 hour period, as a genuine estimate of liquidated damages for breach of this Section, which sum shall be deducted from any payment owed to the Contractor hereunder, without prejudice to any of the Community's rights or remedies provided for herein, at law or in equity.

1.18 SAFETY RESPONSIBILITIES

- (a) The Contractor shall be bound by and observe all applicable Federal, Provincial and municipal legislation and related regulations, all as amended from time to time.
- (b) The Contractor shall be deemed at all times throughout the Term, and any renewal or extension thereof, the "prime contractor" for the purposes of the *Safety Act* (Northwest Territories). The Contractor shall have employer responsibilities for the safety of its personnel and any agents or subcontractors, and all property of

the Contractor or its personnel, agents or subcontractors while providing the Services. The Community shall not be responsible for any personal property, tools or equipment that the Contractor or its personnel, agents or subcontractors may use when providing the Collection Services.

- (c) The contractor shall provide safety reports and statistics including the reports of claims, damages and incidents.
 - (i) All vehicle collisions will be reported to the Community immediately.
 - (ii) All incidents involving residents, employee injuries and service delivery will be reported to the Community.
 - (iii) Copies of all claims and reported damages must be submitted to the Community in written form for each occurrence.
 - (iv) The Contractor will maintain records of safety inspections, hazard assessments, incidents and claims and will supply the Community with such records as required as part of the performance of this Agreement.
 - (v) The Community may direct the Contractor as to the format of such reports. All such reports will be signed by the Contractor.
- (d) The Contractor shall provide a copy of their Health and Safety Manual/Program with Certificate of Recognition, if available. The Contractor shall review, sign and comply with the Community's "Contractor Safety Agreement" on an annual basis.

1.19 **SPILLAGE AND LEAKAGE**

- (a) Any and all fluid, substances, hydraulic or oil spills must be reported to the Community immediately. As soon as a spill starts, the vehicle will cease operations immediately until the Contractor's foreman arrives on site.
- (b) Dry-all, sorb-all or other absorbent will be laid down immediately. As soon as the absorbent has absorbed the spillage or leakage, it is to be scraped from the road or affected property. If residue still remains, the Contractor will apply another layer of absorbent and will leave the site in a clean and tidy condition. Failure to respond immediately to this kind of spill may result in asphalt or other damage for which the Contractor will be responsible.
- (c) If necessary, at the Community's discretion, a power wash or black-topping will be utilized at the Contractor's expense.

1.20 **PERSONNEL**

- (a) The Contractor shall ensure that all employees are provided with a neat, clean and distinctive work uniform, including protective footwear, traffic safety vests, gloves, and eye protection acceptable to the Community which is to be worn at all times while on duty. The uniform will be in the company colors of the Contractor.
- (b) During inclement weather, adequate rain wear shall be available.
- (c) The Contractor shall provide sufficient drivers trained in the operation of the vehicles, familiar with routes, schedules and able to operate the vehicles safely and efficiently.
- (d) For this purpose, the Contractor will implement a full training program to ensure the drivers' complete familiarization with operations, public relations, and policy and complaint procedures.
- (e) The Contractor shall discipline any vehicle operator or other employee found to be in breach of the terms and conditions of this Agreement or in breach of the law or the subject of consistent complaints.
- (f) Any employee not meeting the criteria in this clause or soliciting or accepting any gratuity for work done under this Agreement shall be summarily removed from the work.

1.21 SUPERVISION OF OPERATION BY CONTRACTOR

- (a) The Community shall be provided with the address and telephone number of the Contractor's representatives who may be contacted and must be available during all collection times, on matters related to this Agreement and who shall have overall responsibility for the Agreement.
- (b) The Contractor shall have on duty a route supervisor on all collection days.
- (c) The foremen must thoroughly understand the Agreement and be thoroughly experienced in carrying out the Services. They shall receive instructions from the Community on the Contractor's behalf and must be able to communicate adequately with the Community.
- (d) The Contractor's foremen shall further ensure that all complaints regarding the collection will be answered. They will also follow any instructions from the Community to ensure adequate, courteous, prompt and efficient service.
- (e) The Contractor shall ensure that the foreman has available a vehicle for his own use to ensure adequate, efficient response to any concerns involving collection operations.

1.22 COMMUNICATIONS

- (a) The Contractor shall establish regular contact with the Community's designated representative verbally, through email, or in person, in order to coordinate route scheduling and any other accommodations the Contractor must make in light of Community undertakings to ensure there are no interruptions in the provision of the Services by the Contractor.
- (b) The Community shall maintain a telephone to be attended at all times during the Community's normal office hours to which all Community's queries and complaints regarding Services performed pursuant to this Agreement may be directed. The Contractor shall supply and maintain a telephone to be attended by a competent representative at all times during the Community's normal office business hours to which the Community may convey complaints regarding Services performed pursuant to this Agreement. Complaints deemed legitimate by the Community must be rectified without delay to the satisfaction of the Community.
- (c) The Community reserves the right, in the event that a legitimate complaint is not satisfactorily corrected by the Contractor, within 24 hours from the time that the Contractor received such complaint, all as determined by the Community, to take necessary action to remedy the complaint and charge the complete cost of remedial work, plus applicable administrative and operating costs to the Contractor and to set-off and deduct such amount from any payment(s) due to the Contractor.
- (d) The Contractor shall maintain a complete log, including names and addresses, of all complaints and inquiries received and the action taken to rectify the matters in question. A copy of the log shall be provided to the Community upon request.
- (e) The Contractor shall report to the Community immediately any refusal by it or its employees to collect any Materials placed for pickup which the Contractor feels are contrary to the terms of this Agreement. The Community shall have exclusive authority to determine an appropriate solution to resolve such refusals, which solution shall be binding upon the Contractor.

SCHEDULE "B"

1. TERMS OF PAYMENT

On satisfactory performance of the Services, and strictly in accordance with the provisions of the Agreement and the rates contained in the Solid Waste Services Collection Proposal, the Contractor will be paid as follows:

- (a) On the first business day of each calendar month, an invoice shall be submitted to the Community by the Contractor in respect of Services provided during the immediately preceding calendar month. Each invoice shall, in respect of such month:
 - (i) detail the volume and tonnage each type of Materials transported;
 - (ii) contain the number of Residential Properties the Contractor attended;
 - (iii) disposal fees incurred in conjunction with disposal at Community approved processing facilities, if any, and in respect of disposals at the Landfill; and
 - (iv) such other information and particulars as reasonably required by the Community.

(an "Invoice")

- (b) Subject to the verification of each Invoice by the Community, acting reasonably and all other terms and conditions of the Agreement including, without limitation, the Services being satisfactory to the Community, the Community shall pay the Contractor the amount of each Invoice within 30 days of receipt of same.

2. COLLECTION RATES

The applicable collection rates for the Services, exclusive of any applicable Goods and Services Tax, shall be as follows:

3. ANNUAL BONUSES

- (a) Should the Community receive Community complaints that total less than 0.15% of the annual number of individual Services collections performed by the Contractor, the Contractor shall be entitled to a bonus of 2% of the payments made by the Community in relation to the Services contemplated by Sections 1.0 and 1.1 of Schedule "A" over that same year.
- (b) Should the Contractor breach Section 1.3(c) of Schedule "A" fewer than 5 times within a calendar year commencing on the Commencement Date, and every calendar year thereafter, the Contractor shall be entitled to receive a bonus of 2% of the annual 40 yard roll-off receptacle rental rate, as calculated by _____.

- (c) Should the cardboard compactor provided by the Contractor be out of services for less than 5, 24-hour periods within a calendar year commencing on the Commencement Date, and every calendar year thereafter, the Contractor shall be entitled to receive a bonus of 5% of the annual cardboard compactor lease rate, as calculated by _____.

4. ADJUSTMENT

The collection rates payable by the Community shall be adjusted on an annual basis, commencing on the first anniversary of the Commencement Date, and every anniversary thereafter throughout the Term and any renewal or extension thereof, based upon increases in the Northwest Territories Consumer Price Index, as calculated by Statistics Canada, for that applicable year, up to a maximum of 5%.

SCHEDULE "C"

THE DISPUTE RESOLUTION PROCEDURE

1. In this Schedule, the following words and phrases have the following meanings:
 - (a) "Arbitrator" means the person appointed to act as such to resolve any Dispute;
 - (b) "Arbitration" means a process whereby each of the Parties, with or without legal counsel, agrees to jointly engage and meet with an Arbitrator who will render a binding decision in respect of any Disputes;
 - (c) "Dispute" means the disagreements or controversies between the Parties described within Section 8.1 of this Agreement;
 - (d) "Disclosed Information" means the information disclosed by a Party for the purpose of settlement, negotiation, Mediation or Arbitration;
 - (e) "Mediation" means a process whereby a Representative of each Party, with or without legal counsel, agrees to jointly engage the services and meet with a Mediator to participate in a mediation, conciliation or similar dispute resolution process;
 - (f) "Mediator" means the person appointed to facilitate the resolution of a Dispute between the Parties;
 - (g) "Party" means a party to the agreement to which this Dispute Resolution Procedure is attached, and "Parties" means more than one of them; and
 - (h) "Representative" means an individual who holds a senior position with a Party and who has full authority to settle a Dispute.

2. Dispute Process

In the event of any Dispute, the Parties agree that prior to commencing litigation, they shall undertake a process to promote the resolution of a Dispute in the following order:

- (a) first, by negotiation;
- (b) second, by way of Mediation; and
- (c) third, by arbitration, if mutually agreed to in writing at the time of the Dispute, by the Parties.

3. Negotiation

A Party shall give written notice (“Dispute Notice”) to the other Party of a Dispute and outline in reasonable detail the relevant information concerning the Dispute. Within 7 days following receipt of the Dispute Notice, the Parties shall each appoint a Representative, who shall meet and attempt to resolve the Dispute through discussion and negotiation. If the Dispute is not resolved within 30 days of receipt of the Dispute Notice, the negotiation shall be deemed to have failed.

4. Mediation

If the Representatives cannot resolve the Dispute within such 30 day period, then the Dispute shall be referred to Mediation. Any one of the Parties shall provide the other Party with written notice (“Mediation Notice”) specifying the subject matters remaining in Dispute, and the details of the matters in Dispute that are to be mediated. If the Mediation is not completed within 60 days from the date of receipt of the Dispute Notice, the Dispute shall be deemed to have terminated and failed to be resolved by Mediation.

5. Arbitration

If the Mediation fails to resolve the Dispute and if both Parties so agree in writing, at the time of the dispute, the Dispute shall be submitted to binding Arbitration. One of the Parties shall provide the other Party with written notice (“Arbitration Notice”) specifying the subject matters remaining in Dispute and the details of the matters in Dispute that are to be arbitrated. If the other Party agrees to proceed to Arbitration, such Dispute shall proceed to Arbitration. A failure to respond to the Arbitration Notice shall be deemed to constitute a refusal to proceed with Arbitration.

The Arbitrator shall conduct the Arbitration in accordance with the commercial arbitration rules (the “Rules”) established from time to time by the ADR Institute of Canada Inc., unless the Parties agree to modify the same pursuant to any arbitration agreement. The *Arbitration Act* (Northwest Territories) shall apply to all Arbitrations but if there is a conflict between the Rules and the provisions of the Act, the Rules shall prevail.

The Arbitrator shall proceed to hear and render a written decision concerning any Dispute.

The Arbitrator has the right to award solicitor-client costs against the unsuccessful Party and to award interest but does not have the right to award punitive, consequential or other exemplary damages.

The Arbitrator’s decision is final and binding but is subject to appeal or review by any court of tribunal on points of law.

6. Participation

The Parties and their Representatives will participate in good faith in the negotiation, Mediation and, if applicable, Arbitration processes and provide such assistance and Disclosed Information

as may be reasonably necessary and notwithstanding that litigation may have commenced as contemplated in this Schedule.

7. Location

The place for Mediation and Arbitration shall be _____ (BLLP NTD: INSERT LOCATION), unless otherwise agreed to by the parties in writing.

8. Selection of Mediator and Arbitrator

If the Parties are unable to agree upon the appointment of a single Mediator or Arbitrator within 10 days after receipt of the Mediation Notice or Arbitration Notice, either of the Parties may request that a single Mediator or Arbitrator, as the case may be, of suitable training and experience and who in respect of the subject matter of the Dispute has a reasonable practical understanding, be appointed by the executive director or other individual fulfilling that role for the ADR Institute of Canada, Inc. The executive director shall be requested to make this determination within 5 days of receipt of the request.

9. Costs

Subject to the decisions of the Arbitrator pursuant to clause 5 of this Schedule in the case of an Arbitration, the Parties shall bear their respective costs incurred in connection with the negotiation, Mediation and, if applicable, Arbitration except that the Parties shall equally share the fees and expenses of the Mediator and Arbitrator and the cost of the facilities required for Mediation and Arbitration.

10. Disclosed Information

All Disclosed Information shall be treated as confidential and neither its delivery nor disclosure shall represent any waiver of privilege by a Party disclosing such Disclosed Information. Subject only to the rules of discovery, each Party agrees not to disclose the Disclosed Information to any other person or for any other purpose. Such Disclosed Information cannot be used in any subsequent proceedings without the consent of the Party who has made the disclosure. The Parties agree that any Representative, Mediator and, if applicable, Arbitrator shall not be subpoenaed or otherwise compelled as a witness in any proceedings for the purpose of testifying with respect to the nature or substance of any dispute resolution process that may arise in relation to any matter that is a subject of this agreement. Nothing in this dispute resolution procedure shall require a Party to disclose information that is subject to confidentiality provisions with third parties.

11. Litigation and *Limitations Act*

No Party shall commence litigation concerning the Dispute until the negotiation and Mediation processes have concluded. The Parties agree that during the time any Dispute is subject to the negotiation and Mediation processes, the limitation periods set forth in the *Limitation of Actions Act* (Northwest Territories) shall be stayed. The limitation periods shall be reinstated once the Mediation terminates or is deemed terminated so that each of the Parties shall have the respective

rights and remedies that were available to them before the commencement of these processes. Any Party may commence litigation on any date, if necessary, to preserve its legal rights and remedies if the commencement of litigation after that date would otherwise be banned by any applicable limitation period or if the commencement of litigation is otherwise necessary to prevent irreparable harm to that Party.

12. Confidentiality

The Parties agree that there is a real risk that substantial damage to a Party's commercial interests may result if Disclosed Information or confidential information is obtained by third parties because a Dispute becomes the subject matter of litigation. The Parties agree not to contest or oppose, directly or indirectly, an application by a Party to the court, that the court's file relating to such litigation, including this agreement and supporting financial information, be sealed upon commencement of the litigation (subject always to the parties' respective obligations pursuant to any statute).

SCHEDULE "D"

[APPEND RFP AND ADDENDUM]

SCHEDULE "E"

[APPEND SOLID WASTE SERVICES COLLECTION PROPOSAL SELECTED]