MULTI-STREAM WASTE COLLECTION INCLUDING RECYCLING AND BULK PICKUP AGREEMENT

THIS MULTI-STREAM WASTE COLLECTION INCLUDING RECYCLING AND BULK PICKUP AGREEMENT made at the Town of Placentia, in the Province of Newfoundland and Labrador, this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 2023.

BETWEEN: THE TOWN OF PLACENTIA, a statutory corporation under the *Municipalities Act*, 1999, SNL 1999, C. M-24

(hereinafter referred to as the “Town”)

AND: [NTD: Insert name of contractor], a body corporate organized and existing under the laws of the Province of Newfoundland and Labrador

(hereinafter referred to as “Contractor”)

WHEREAS the Town issued a Call for Bids for Multi-Stream Waste Collection Including Recycling and Bulk Pick-up, 2023-2025 on June 30, 2023 (the “Call for Bids”);

AND WHEREAS the Contractor submitted a bid in response to the Call for Bids, and it was determined that the Contractor was the lowest compliant bidder;

AND WHEREAS the Contractor has agreed to provide the Town with Multi-Stream Waste Collection Including Recycling and Bulk Pick-up in accordance with the terms and conditions contained herein;

NOW THEREFORE, IN CONSIDERATION OF the respective covenants and agreements of the parties herein contained and the sum of One Dollar ($1.00) now paid by each of the parties hereto to the other (the receipt and sufficiency whereof is hereby acknowledged by each of the parties hereto), it is agreed by and among the parties as follows:

1. Interpretation
   1. Capitalized words and phrases used herein shall, for all purposes of this Agreement and the Schedules hereto unless otherwise expressly stated have the meanings set out in Article 2 hereof.
   2. Headings and recitals are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
   3. Unless otherwise expressly stated, reference herein to a Schedule or an Article, section, paragraph, clause or other subdivision is a reference to such Schedule to this Agreement or to such Article, section, paragraph, clause or other subdivision within this Agreement.
   4. Reference in this Agreement to the “parties” shall mean the parties to this Agreement and a reference to a “party” shall mean one of the parties to this Agreement.
   5. Whenever the context so requires, terms used herein importing the singular number only shall include the plural and vice versa, and words importing any gender shall include all other genders.
   6. Any references in this Agreement to all or any part of any statute or regulation shall, unless otherwise expressly stated, be a reference to that statute or regulation or the relevant part thereof, as amended, substituted, replaced or re-enacted from time to time.
2. Definitions
   1. In this Agreement and in the Schedules hereto, unless there is something in the subject matter or context inconsistent therewith, the following terms and expressions shall have the following meanings:
      1. “Agreement” means this Multi-Stream Waste Collection Including Recycling and Bulk Pickup Agreement;
      2. “Call for Bids” shall have the meaning ascribed thereto in the recitals;
      3. “Collection Locations” shall have the meaning ascribed thereto in Section 4.1;
      4. “Collection Schedule” shall have the meaning ascribed thereto in Section 1.4(a) of Schedule “A” of this Agreement;
      5. “Commercial” means non-residential and: (i) relating to the pursuit of business; or (ii) any governmental or public department, body, or agency; as may be determined by the Town and communicated to the Contractor from time-to-time throughout the Term;
      6. “**Contract Price**” shall have the meaning ascribed thereto in Section 5.2;
      7. “Default” shall have the meaning ascribed thereto in Section 7.1;
      8. “Default Notice” shall have the meaning ascribed thereto in Section 7.2 of this Agreement;
      9. “Equipment” shall have the meaning ascribed thereto in Section 6.1;
      10. “Government Authority” means any federal, provincial or municipal government and any agency, authority, body, board, commission or entity thereof;
      11. “**Statutory Holiday**” means the statutory holidays observed by the Robin Hood Bay Regional Waste Management Facility;
      12. “H.S.T.” means sales tax commonly referred to as harmonized sales tax eligible pursuant to the Goods and Services Tax provisions of the Excise Tax Act (Canada) and includes any comparable sales tax levied under federal Canadian legislation;
      13. “Law” or “Laws” means the common law and any statute, regulation, ordinance, standard, code, order, permit, license, rule, by-law, guideline or policy of any Government Authority, as the same may be amended, substituted, replaced or enacted from time to time;
      14. “Loss” shall have the meaning ascribed thereto in Section 8.1 of this Agreement;
      15. “Person” means a natural person, corporation, partnership, association, business trust, trust, joint venture, company, firm or individual or any federal, provincial or municipal government; or any agency, trustee, executor, administrator or legal representative thereof;
      16. “Services” shall have the meaning ascribed thereto in Section 4.1;
      17. “Term” shall have the meaning ascribed thereto in Section 3.1; and
      18. “Town” means the Town of Placentia.
      19. “Waste” means:
          1. Household garbage (bagged in accordance with Robin Hood Bay Regional Waste Management Facility requirements) - which includes unmixed waste material.
          2. Mixed paper products (blue bag) – which includes newspapers, flyers, magazines, catalogues, envelopes, writing and computer paper, books, boxboard, egg cartons, paper bags, toilet paper and paper towel rolls, and corrugated cardboard;
          3. Containers (blue bags) – which includes aluminum, plastic bottles, tin cans, gable tops, and tetra paks; and
          4. Commercial cardboard – clean, corrugated, non-bagged carboard that is separated from other waste.
   2. References

The expression “this Agreement” is inclusive of all recitals, Schedules and all amendments hereto made in accordance with the terms hereof.

* 1. Schedules

The following Schedules are attached to and form part of this Agreement:

Schedule “A” – Description of Services

Schedule “B” – Historical Waste Collection Weights

Schedule “C” – Map of Collection Area

Schedule “D” – List of Equipment

1. Term and Termination
   1. The term of this Agreement shall commence on July 22, 2023, and shall expire on July 25, 2025 (the “Term”), unless extended in accordance with Section 3.2, or terminated earlier in accordance with Section 3.3.
   2. The Town may in its sole discretion extend the Term of this Agreement for up to up to one (1) additional year period following the expiration of the Term, under the same terms, conditions and price, on a pro rata basis, as the original contract. In the event that the Town elects to extend the Term, it shall provide the Contractor with a notice of extension on or before May 25, 2025.
   3. This Agreement may be terminated as follows:
      1. By the Town for any reason by giving the Contractor thirty (30) calendar days prior written notice;
      2. By the Town in the event of any Default of this Agreement by the Contractor, provided that the Town provides the Contractor with a Default Notice, and the Contractor fails to cure the Default within the time provided in the Default Notice; and
      3. By the Contractor in the event of a default of this Agreement by the Town, provided that the Contractor provides the Town written notice describing with reasonably specificity the nature of the default, and requests that it be cured within seven (7) calendar days, and the Town fails to cure such default within such time.
   4. In the event of termination in accordance with Section 3.3, the Town shall not be liable for any fees, charges, costs, expenses (including but not limited to legal expenses on a solicitor and own client basis), penalties or cancellation fees of any kind other than amounts due for Services provided up to the date of termination.
2. The Services and Contractor Obligations
   1. The Contractor shall provide the services described in Schedule “A” to this Agreement (the “Services”) during the Term and any extensions thereto. The Services shall be provided in respect of all residential and Commercial properties [**NTD: Town to confirm.**] contained in the area depicted in the map attached as Schedule “C” to this Agreement (the “Collection Locations”).
   2. The Contractor shall comply with and satisfy or cause to be complied with and satisfied the requirements of all Laws in respect of the performance of the Services including all rules, regulations, and policies of the Robin Hood Bay Regional Waste Management Facility and all other waste recovery facilities.
   3. Any fines, charges and/or fees charged to the Contractor are the sole responsibility of the Contractor. This includes, but are not limited to, landfill rate charges for source separated loads that are rejected at the processing facility and land filled at the per tonne rate.
   4. The Town shall have the authority to stop the progress of the Services in the event of an emergency affecting or threatening the safety of life, property or the environment.
3. Invoicing and Payment
   1. During the Term of this Agreement and any extensions thereto, the Contractor shall provide the Town with an invoice on or before the 4th day of each month in respect of the Services provided in the preceding month. To be payable by the Town, invoices shall be accompanied by:
      1. A log outlining the tonnage for the Town recorded on a daily basis using a truck with an onboard weigh scale, such as the Vulcan System or approved equivalent;
      2. A copy of all waybills for the period invoiced for;
      3. Dates of weather interruptions including how long collection was delayed;
      4. Any comments regarding the route or compliance issues which may require that the Town initiate communication with property owners or businesses; and
      5. Any incidents or events, as set out in Section 2.2 of Schedule “A”, that occurred on a given date.

[**NTD: Town to confirm.**]

* 1. Amounts charged on all invoices submitted by the Contractor shall be in the amount of the annual lump sum price submitted by the Contractor in its bid in response to the Call for Bids (the “**Contract Price**”) prorated on a monthly basis. Such price shall be all-inclusive, and shall include, without limitation, all labour and material costs, travel and carriage costs, insurance costs, costs of delivery, costs of installation and set-up, pre-delivery charges, operator costs, maintenance and fuel costs, and all other overhead including tipping fees and any other fees and charges required by Law. The Contract Price shall be in Canadian funds, exclusive of HST, and invoices shall include a separate itemization of HST.
  2. All invoices submitted by the Contractor shall provide for a ten percent (10%) holdback, which holdback shall be paid by the Town only after damages incurred during the Term of this Agreement and any extensions thereto have been repaired, and a waiver has been provided in accordance with the terms of this Agreement.
  3. All invoices submitted by the Contractor shall be forwarded to:

Town of Placentia

17 Patterson Drive

Placentia, NL A0B 2Y0

with copy to: townofplacentia@placentia.ca

1. Equipment, Personnel and Safety
   1. The Contractor shall supply all equipment required for purposes of performing the Services, including the primary equipment and backup equipment described in Schedule “D” to this Agreement (the “Equipment”). In the event that any item of the Equipment requires maintenance or repair, the Contractor shall promptly undertake such maintenance or repair, and may only use other equipment during the period in which such maintenance or repair is undertaken with the express written agreement of the Town. The Contractor shall immediately notify the Town in writing in the event that neither the primary equipment nor backup equipment are available for performance of the Services as a result of necessary maintenance or repair.
   2. All Equipment shall be maintained in excellent working condition, be fully insured, and comply with all applicable Laws, including without limitation, Laws related to the licensing of such Equipment.
   3. All Equipment shall be equipped with amber LED strobe lights mounted and visible from the front and rear of the Equipment, and back-up alarms which are to be utilized and visible/audible at all times when the Equipment is operational.
   4. All Equipment shall be equipped with a fire extinguisher (mounter, minimum 10lbs), and a first aid kit.
   5. All Equipment, shall be equipped with a cell phone at all times during waste collection hours.
   6. The Equipment shall be equipped with all necessary devices and controls to protect workers from projectiles and pinch point injuries.
   7. If the Equipment is a one-worker-operated vehicle, the vehicle shall have an infra-red braking device on the rear of the vehicle, or a remote television system.
   8. The Equipment shall be equipped with an onboard spill kit. In the event of a hydraulic, fuel, or other oil/fluid spills/leaks from the collection vehicle, the Contractor shall immediately cease operations and take immediate action to have the spill/leak area remediated to pre-spill conditions. The Contractor shall be responsible for all clean-up and disposal costs, and any other costs required to mitigate and/or remediate the spill/leak. Within 24 hours of a spill/leak, the Contractor shall notify the Town of the occurrence of the spill/leak and the details of the clean-up, disposal, and mitigation and remediation efforts undertaken by the Contractor, provided, however, that the Contractor acknowledges and agrees that the Contractor shall remain solely responsible for the clean-up and disposal of the spill/leak, including all disposal, mitigation and remediation costs.
   9. The Contractor shall make all Equipment available for inspection by the Town at any time during the Term of this Agreement and any extension thereto, upon notice from the Town of the Town’s desire to inspect the Equipment, provided however that the Town shall have no obligation to inspect the Equipment at any time.
   10. The Contractor shall not use fork trucks or portable dumpsters in performance of the Services.
   11. The Contractor may use smaller vehicles for collection of Waste on side roads. Such vehicles are required to have netting or be sufficiently enclosed to ensure there is no escape of Waste or debris from the vehicles. For greater certainty, side roads on which smaller collection vehicles may be used are limited to the following roadways, unless otherwise indicated in a written notice from the Town to the Contractor:
       1. Hillview
       2. Osbourne
       3. Mill Brook Road
       4. Davis Hill
       5. Station Road
       6. First Street
       7. Brook Lane
       8. Sampson’s Lane
       9. Fort Louis Ext.
       10. Blanche Street
       11. Old Castle Hill Road
   12. Prior to commencement of the Term, and prior to any extension thereto, the Contractor shall provide the Town with a list of all personnel who will be engaged in the performance of the Services, and shall provide copies of drivers’ licenses, including required endorsements, and all required training documentation. In the event that the Contractor engages new or additional personnel in the performance of the Services, the Contractor shall make the Town aware of such new personnel, and shall provide the Town with all required information and documents in respect of such personnel.
   13. Operators of all Equipment must be fully qualified, licensed and responsible for the Equipment they are operating, and trained in the operation of such Equipment. All Equipment shall be operated in a safe manner, respecting legal speed limits, and operators shall at all times be respectful and aware of pedestrian and vehicle traffic.
   14. All personnel engaged in the performance of the services shall be certified in Powerline Hazards training.
   15. The Contractor shall inspect equipment to ensure proper working order. In the event of mechanical breakdown, severe weather, personnel shortage, or other conditions, the Contractor shall make all necessary arrangements to provide the Services in accordance with the terms of this Agreement, and at no additional expense to the Town. The Contractor shall have at their disposal at all times sufficient Equipment and personnel to perform the Services in accordance with the terms and conditions of Schedule “A” to this Agreement.
   16. Prior to the commencement of the Term, and prior to any extensions thereto, the Contractor shall prepare and submit to the Town a safety plan related to the Services and ensure all personnel engaged in performance of the Services are aware of the content of the safety plan.
   17. Personnel operating the Equipment shall wear such personal protective equipment (PPE) as required by the Contractor’s safety plan, which shall require, at minimum, the wearing of reflective, high visibility safety vests when outside of any of the Equipment during the performance of the Services. All PPE shall be supplied by the Contractor at its cost.
   18. Contractor agrees that there shall be zero tolerance for any use of alcohol or drugs by any personnel engaged in the operation of the Equipment or otherwise performing the Services.
   19. The Contractor agrees that the Town reserves the right to install AVL equipment in any vehicle servicing the Town (at the Town’s cost).
   20. The Contractor shall not engage any unfit person or anyone not skilled in the work assigned to them for purposes of performing the Services.
   21. The Contractor shall ensure that all personnel are respectful of persons and property which they come in contact with in performing the Services.
   22. The Contractor shall ensure that all personnel operating the Equipment have and maintain a current, valid Newfoundland and Labrador driver’s license with any endorsements necessary for the operation of such Equipment, and have a minimum of 2 years’ operating experience in respect of the Equipment being operated. Newly licensed drivers and drivers with learner’s licenses shall not be engaged in the performance of the Services. Classes of licenses shall be the correct type of license for the Equipment being operated.
   23. The Contractor agrees that, upon request by the Town, the Contractor shall remove from their assignment any personnel who, in the opinion of the Town, is guilty of improper or illegal conduct, is impaired, or is otherwise not qualified to perform the work assigned to such personnel.
   24. Prior to the commencement of the Term, and prior to any extensions thereto, the Contractor shall prepare a work plan for approval by the Town.
   25. The Contractor shall provide the Town with contact names and phone numbers of all personnel engaged in the performance of the Services.
   26. The Contractor shall provide a phone number and email address at which members of the public can contact the Contractor concerning general inquiries and issues related to the Services. The phone number shall be monitored from 9:00 am to 5:00 pm Monday to Friday excluding statutory holidays.
   27. Prior to the commencement of the Term, and prior to any extensions thereto, the Contractor shall provide the Town with a Clearance Certificate from the Workplace Health, Safety and Compensation Commission.
2. Default
   1. Any of the following events shall constitute a default of the Contractor (each being a “Default”):
      1. any failure of the Contractor to comply with any term or condition of this Agreement, including without limitation, any failure of the Contractor to perform the Services in accordance with the terms and conditions of this Agreement;
      2. if Contractor files a petition commencing a voluntary liquidation, reorganization, or an arrangement pursuant to The Companies Creditors Arrangement Act or any other Law, or shall be adjudicated an insolvent or be declared bankrupt or insolvent under The Bankruptcy and Insolvency Act or any other Law relating to bankruptcy, insolvency, winding up or adjustment of debts, or shall make an assignment for the benefit of creditors under such Law, or shall admit in writing its inability to pay its debt generally as they become due, or if a petition commencing an involuntary case proposing its liquidation or reorganization pursuant to any bankruptcy law shall be filed in any court and Contractor shall consent to or acquiesce in the filing thereof or such petition or answer shall not be discharged or denied within thirty (30) days after the filing thereof;
      3. if a custodian, receiver, trustee or liquidator (i) of the Contractor or (ii) for all or substantially all of the assets of Contractor is appointed in any proceeding brought against the Contractor and is not discharged within thirty (30) days after such appointment or if the Contractor consents to or acquiesces to such appointment; or
      4. if the Contractor abandons the work, or makes an assignment of this Agreement without the written consent of the Town.
   2. In the event of a Default by the Contractor, the Town may give written notice of the Default (“Default Notice”) to Contractor specifying the details of the Default. If the Contractor has commenced to remedy such default in an expeditious manner, and the Default is remedied to the satisfaction of the Town within seven (7) days of the delivery of the Default Notice, then the Default specified in the Default Notice shall be deemed to be remedied. For greater certainty, nothing in this Section 7.2 shall alter or impact the obligation of the Contractor to perform the Services in accordance with the terms of this Agreement and the timelines applicable to the performance of the Services. In the event a Default Notice is issued in respect of a failure of the Contractor to perform the Services in accordance with the timelines set out in this Agreement, any further failure to perform the Services in accordance with the timelines set out in this Agreement will constitute a Default which is not capable of being remedied, and which shall provide the Town with the right to terminate the Agreement in its sole discretion.
   3. In the event of a Default by the Contractor, and a failure of the Contractor to remedy the Default in accordance with Section 7.2, the Contractor shall be liable to the Town for any Loss incurred by the Town in connection with such Default.
   4. The Town acknowledges that it has received performance security from the Contractor in the amount of $10,000.00 (the “Performance Security”). The Contractor acknowledges and agrees that the Performance Security may be applied against any Loss incurred by the Town in connection with this Agreement. [**NTD: Town to confirm.**]
   5. The remedies provided in this Agreement in favour of the Town are not exclusive, but are cumulative and may be exercised concurrently or consecutively, and are in addition to all other remedies existing at Law or in equity.
3. Indemnity
   1. The Contractor covenants and agrees to indemnify and save the Town harmless from and against any loss, damage, claim, demand, action, cause of action, suit or cost, of any nature whatever (each a “Loss”), arising out of or in relation to this Agreement and the performance of the Services by the Contractor. The Contractor shall defend at its own expense any and all such loss, and shall pay all legal charges, costs and other expenses arising therefore.
   2. Notwithstanding the foregoing, the Contractor agrees that the Town may at its discretion retain its own solicitors to defend its interests in any such suit or claim, and the legal costs of such defence shall be paid by the Contractor.
4. Representations and Warranties of Contractor

The Contractor represents and warrants to and in favour of the Town, and hereby acknowledges that the Town is relying on all of the representations and warranties made by Contractor, as follows:

* + 1. Formation and Status – Contractor is a company duly incorporated under the laws of the Province of Newfoundland and Labrador and is duly and validly subsisting under the laws of the Province of Newfoundland and Labrador and is legally qualified and has all the requisite power and authority to own its assets and to carry on its business in the Province of Newfoundland and Labrador;
    2. Power, Authority and Capacity – Contractor has all requisite power, authority and capacity to execute and deliver this Agreement, and to perform any and all of its obligations hereunder, including without limitation, performance of the Services;
    3. Authorization and Enforceability – This Agreement has been and all other agreements instruments and documents provided by the Contractor, including without limitation, the Contractors bid in response to the Call for Bids, upon their execution and delivery will be duly and validly executed and delivered by the Contractor and are, or when executed and delivered will constitute, legal, valid and binding obligations of the Contractor enforceable against it in accordance with the respective terms; and
    4. Other Business – Contractor has not carried on, invested in, participated in or otherwise undertaken any business and is not carrying on, investing in, participating in or otherwise undertaking any business which would materially adversely affect its ability to perform the Services.

1. Insurance
   1. The Contractor shall obtain and maintain continuously for the duration of the Term of this Agreement or any extensions thereto, at its sole cost and expense, Commercial General Liability Insurance with a minimum limit of two million dollars ($2,000,000.00) for combined single limit bodily injury and property damage, per occurrence, and annual aggregate, covering damages resulting from bodily injury (including death), or personal injury or property damage (including loss of use or occupancy) arising out of or related to the performance of the Services. The Commercial General Liability Insurance shall continue to be maintained by the Contractor for a period of at least two (2) years following the expiration of the Term of this Agreement and any extensions thereto, or such earlier termination of this Agreement as may occur in accordance with the provisions of this Agreement.
   2. Proof of the above noted Commercial General Liability Insurance shall be provided to the Town prior to the commencement of the Term of this Agreement, and prior to any extensions thereto, and shall include extensions of coverage to include:
      1. The Town as an additional insured;
      2. Contractual Liability;
      3. Employer’s Liability;
      4. Non-owned Automobile Liability;
      5. Contractor’s Protective Liability; and
      6. Personal Injury.
   3. The Contractor shall obtain and maintain continuously for the duration of the Term of this Agreement and any extensions thereto, at is sole cost and expense, Automobile Liability Insurance insuring all licensed vehicles owned, leased or operated by the Contractor with a minimum limit of two million dollars ($2,000,000.00) per occurrence.
   4. The Contractor shall notify the Town immediately upon any change or cancellation of such coverage, and provide written confirmation and proof of such coverage to the Town yearly or otherwise upon request. All insurance policies shall be endorsed to provide a minimum advance written notice of not less than 30 days in the event of cancellation, termination or reduction in coverage or limits, with such notice to be made by the insurer to the Town.
   5. The Contractor shall not do or omit to do or suffer anything to be done or omitted to be done which will in any way impair or invalidate any policies of insurance of the Contractor. The Contractor acknowledges that failure to renew the insurance as needed is deemed to be a Default under this Agreement. Upon such Default, the Town has the right to obtain any necessary insurance, and the Contractor agrees to pay any resulting costs incurred by the Town.
   6. The Contractor acknowledges and agrees that, in the event of damage to private property, the Town may provide the Contractor’s contact information and the Contractor’s insurance information to the owner of the damaged property, and may advise the owner of the damaged property to pursue any claims for damages directly with the Contractor or its insurer.

[**NTD: Town to confirm.**]

1. Notices
   1. Any notice required or permitted to be given or made pursuant to this Agreement shall be in writing and shall be considered to have been received by the addressee on the date of delivery, if delivered by hand during business hours to any individual representative of a party specified below, or on the first business day following confirmed transmission by email:
      1. to the Town at:

Town of Placentia  
17 Patterson Drive  
Placentia, NL  
A0B 2Y0  
  
  
Attention: Jonathan Galgay, CAO  
Telephone: 709.227.2151 Ext. 230  
Email: jgalgay@placentia.ca

* + 1. to Contractor at:

[Insert Address]

Attention:   
Telephone:   
Email:

* + 1. Each party may change its address and email for the purposes of this Article 11 by notice to the other pursuant hereto.

1. General
   1. Amendments in Writing

No amendment, variation or waiver of the provisions of this Agreement shall be effective unless made in writing and signed by each of the parties hereto, either individually by counterpart, or collectively. Any amendment, variation or waiver shall take effect on the date specified in the amendment, variation or waiver, or, if not so specified, on the date on which the last party executes and delivers the amendment, variation or waiver.

* 1. Waiver
     1. Any waiver by any party of all or part of any provision or the breach of any provision of this Agreement or the other agreements shall be in writing and shall:
        1. affect only the matter specifically identified in the waiver and shall not extend to any other provision or breach; and
        2. extend only to the party to whom such waiver is expressly granted and shall not be construed as waiver in favour of any other party in respect of such provision or breach and shall not prejudice the rights of any other party from insisting upon performance of such provision.
     2. Unless otherwise expressly stated, the failure of any party to give notice to the other party, or to take any other steps in exercising any right in respect of any provision or the breach of any provision of this Agreement of the other agreements shall not operate as a release or waiver of that right or as a release of the other party from its obligations and liabilities, not shall any single or partial exercise of any right preclude any other or future exercise of that right or the exercise of any other right, whether in law or in equity or otherwise.
     3. Unless otherwise expressly stated herein, the acceptance by any party of the payment or performance of any obligation after the breach or non-fulfilment by the other party of any provision of this Agreement or the other agreements shall not constitute a waiver of the provisions of this Agreement or of the other agreements.
  2. Enurement

This Agreement shall be binding upon and shall ensure to the benefit of the parties hereto and their respective successors and assigns.

* 1. Severability

If any portion of this Agreement or the application thereof to any circumstance shall be held invalid or unenforceable, unless such invalid provision is fundamental to the efficacy of this Agreement, the remainder of the provision in question, or its application of any circumstance other than that to which it has been invalid or unenforceable, and the remainder of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by Laws.

* 1. Governing Law

Except in respect to such legal rights which have been waived herein, this Agreement shall be governed by the Laws in force in the Province of Newfoundland and Labrador and the parties hereto submit to the exclusive jurisdiction of the courts of Newfoundland and Labrador with respect to all claims and proceedings arising out of or related to this Agreement.

* 1. Assignment

The Contractor acknowledges and agrees that it may not assign its this Agreement or any of its obligations hereunder, except with the written consent of the Town.

* 1. No Partnership, Joint Venture or Agency
     1. Nothing in this Agreement or otherwise, nor in the conduct of any party, shall in any manner whatsoever, constitute or be intended to constitute the Contractor as the agent or representative or fiduciary of the Town, not constitute or be intended to constitute a partnership or joint venture between the Contractor and the Town. The Contractor shall not have the authority to make nor shall it make any statements, representations or commitments of any kind, or take any action that would bind the Town, except as expressly provided in this Agreement, or as otherwise authorized in writing.
     2. The Contractor for all purposes under this Agreement and in relation to any aspect of the performance of its obligations in respect of the performance of the Services shall have responsibility for and control over the details and means of performing such obligations in accordance with the terms and conditions of this Agreement.
  2. Further Assurances

Each of the parties shall, from time to time, at its own cost and expense, execute or cause to be executed all such further documents and do or cause to be done all things which are necessary to give effect to the provisions of this Agreement.

* 1. Confidential Information

This Agreement and all related dealings between the Contractor and the Town are subject to the *Access to Information and Protection of Privacy Act, 2015*. The Contractor shall identify any information supplied in confidence for which it wishes confidentiality to be maintained by the Town. The confidentiality of such information will be maintained by the Town, except as required by Law or by order of a court or tribunal.

* 1. Entire Agreement

This Agreement embodies the entire agreement between the parties with respect to the performance of the Services. Unless otherwise expressly stated, this Agreement supersedes all prior agreements, understandings or writings among the parties, whether written or oral and whether legally enforceable or not, in respect of the performance of the Services. Subject to applicable Laws, no party shall be bound by or be liable for any statement, representation, promise, warranty, inducement, agreement, obligation or understanding of any kind or nature not set forth in this Agreement, the Call for Bids, or the Contractor’s bid in response to the Call for Bids.

* 1. Time

Time shall be of the essence of this Agreement.

* 1. Counterparts

This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed and delivered, shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

[Remainder of page intentionally left blank. Signature page to follow]

**IN WITNESS WHEREOF** the parties hereto have duly executed this Multi-Stream Waste Collection Including Recycling and Bulk Pickup Agreement as of the date first above written.

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | THE TOWN OF PLACENTIA | |
|  | Per: |  |
| Witness |  | Name: |
|  |  | Title: |
|  |  | I/We have the authority to bind the Town |
|  |  | **[NTD: Insert name of Contractor]** | |
|  | Per: |  |
| Witness |  | Name: |
|  |  | Title: |
|  |  | I/We have the authority to bind the corporation |

Schedule “A” – Description of Services

1. The Services
   1. The Contractor shall perform the Services during the Term and any extensions thereto. The Services shall be performed in respect of all residential and Commercial properties . contained within the boundaries of the Town, as depicted in the map attached as Schedule “C” to this Agreement.
   2. The Contractor shall adhere to the highest performance standards of waste collection and disposal to ensure continual operations within the Town. Without limiting the generality of the foregoing, the Contractor shall adhere to the performance standards set out in Article 2 of this Schedule “A” (the “Performance Standards”). A material failure to meet the Performance Standards will constitute a breach of the Agreement on the part of the Contractor.
   3. Any changes in routing affecting the time of collection initiated by the Contractor through the course of the Contract must receive approval by the Town before they become effective and the Contractor shall be responsible for advising the affected property owners in writing at least one (1) week prior to the change in the hours of collection at no cost to the Town.
   4. The Contractor shall:
      1. In consultation with the Town, develop a schedule that will provide for the weekly collection of Waste for each residential and Commercial property within the boundaries of the Town (the “Collection Schedule”). The Collection Schedule shall provide for the collection of Waste from each property, recurring on the same day of the week, every week. Where collection is scheduled on a Statutory Holiday, the Contractor shall choose an alternate day or series of days, in the same week, to perform the collection. The Contractor shall notify the Town of the alternate day or series of days at least one (1) week in advance of the alternate collection date.
      2. Ensure that Waste is collected between the hours of 8:00 am and 7:00 pm.
      3. Ensure that all Waste collected by the Contractor is disposed of at the Robin Hood Bay Regional Waste Management Facility within 24 hours of collection.
      4. Pick up and deliver the Waste directly to the appropriate facility uncontaminated without storing the Waste at an interim storage site. If the split vehicle leaks from chamber to chamber or the vehicle is contaminated from previous loads, the Contractor shall wash out the vehicle to minimize risk of contamination. It is the Contractor’s responsibility to ensure that there is no contamination between waste streams
      5. On each weekly collection day, collect all Waste properly bagged in accordance with Robin Hood Bay Regional Waste Management Facility requirements (up to a bag limit of 6 bags), boxes, or tied in bundles that are less than 22 kg and less than 1.5 m in length and placed at roadside, or contained in a bin, by all households within the boundaries of the Town.
      6. On each weekly collection day, collect all Waste contained in bags, boxes, or tied in bundles that are less than 22 kg and placed at roadside, or contained in a bin, by all participating businesses and community buildings such as churches, fire halls, and museums in the communities.
      7. Provide and affix courtesy tags to Waste that is disposed of by a property owner/resident that is not compliant with applicable Laws. Courtesy tags shall indicate the nature of the non-compliance.
      8. Ensure that personnel close garbage box covers without slamming them.
      9. Provide bulk waste pickup services two (2) times per twelve-month period. The Contractor shall develop a schedule for bulk waste pickup, to be approved by the Town. The schedule shall identify which streets will be collected on each day. A bulk waste pickup service is to be completed for the whole Town within a period of five (5) days. The Contractor shall provide a summery identifying the weight of bulk materials collected during each bulk waste pickup service. The Contractor shall be responsible for separating all materials transported to Robin Hood Bay or other designated site.
         1. Acceptable bulk pickup items include:
            1. Mattresses
            2. Sofas, chairs, furniture
            3. Bathroom fixtures
            4. Carpet tied in rolls (less than 1.5 m, less than 22 kg)
            5. Tree limbs tied in bundles (less than1.5 m, less than 22 kg)
            6. Glass, securely packaged and marked
            7. Other bulk items normally associated with a household
            8. Renovation debris less than 22 kg in weight and less the 1.5 m long
            9. Refrigerators, washers, dryers, and additional household appliances.
            10. Removable car parts that are less than 22kg, all fluids such as oil, lubricants and antifreezes must be removed prior to collection.
            11. Iron
            12. White Metals
         2. Unacceptable bulk pickup items include:
            1. Brick
            2. Televisions, Computers and other items accepted under the Electronics Program Recycling Association program
            3. Concrete
            4. Earthen materials including stumps and large trees
            5. Tree limbs tied in bundles (more than1.5 m, more than 22 kg)
            6. Roof shingles
            7. Tires
            8. Cardboard or paper products
            9. Liquids
            10. Recyclables in blue bags
            11. Animal Carcasses.
            12. Household Hazardous waste like paint, chemicals, etc.
            13. Special wastes
            14. Fishing nets
            15. Car wrecks and removable car parts that is greater than 22 kg,
            16. Car chassis’ and frame,
            17. Car wrecks and removable car parts that do not have all fluids such as oil, lubricants and antifreezes removed; and
            18. Creosote blocks.
         3. Bulk pickup will be limited to 500lbs/226kgs or one half ton pickup load per property.
      10. Initiate, organize, direct and supervise the necessary resources to achieve the Performance Standards during the Term of the Agreement;
      11. Supply all required Equipment, labour, tools, facilities and materials required to perform the Services;
      12. Investigate and respond to complaints and inquiries from members of the public concerning the performance of the Services;
      13. Respond to, investigate and resolve any inquiries or complaints from a member of the public regarding damage to private property caused by the performance of the Services;
      14. Immediately report to the Town in writing any inquiries or complaints from a member of the public regarding damage to private property caused by the performance of the Services, and provide the Town a written description of the action taken to respond to such inquiries or complaints upon completion of such action and request by the Town;
      15. Repair any damages to Town property and private property, including without limitation, any damages to sod, shrubbery, trees, fences, curbs, right-of-way infrastructure, guardrails, signage, vehicles, buildings and structures, caused by performance of the Services within 30 days of the occurrence of such damage, failing which the Town may make such repairs at the Contractor’s expense, provided however that repair of any urgent or safety related damages shall be completed within 24 hours of a complaint received in respect of such damage, failing which the Town may make such repairs at the Contractor’s expense;
      16. Upon completion of the aforementioned repairs or corrective action, provide a waiver and release to the Town in a form satisfactory to the Town signed by both the Contractor and the owner of the damaged property indicating that the damage has been repaired to the satisfaction of the owner, and absolving the Town from any Loss.
      17. Inspect Equipment regularly to ensure proper working order, and immediately repair or replace any equipment which breaks down or otherwise requires repairs;
      18. Not engage in any confrontation or discourteous behaviour with members of the public while performing the Services, and shall refer such matters to the Town;
      19. At the Contractors sole cost and expense, provide a storage area or yard for storage of the Equipment, which storage area or yard shall be within the Town of Placentia, unless otherwise agreed in writing by the Town;
      20. Ensure that all personnel and operators engaged by the Contractor for purposes of performing the Services are properly trained in waste collection operations including in winter conditions, have all required safety training, and are knowledgeable of the Performance Standards;
      21. Initiate, organize, direct and supervise the necessary resources to ensure compliance with the Performance Standards;
      22. Maintain 24-hour supervisory coverage, which shall include having a supervisor available to receive calls and respond to emails from the Town at all times;
      23. Provide one (1) email address and one (1) telephone number that can be used by the Town to contact the on-duty supervisor at all times; and
      24. Be COR (Certificate of Recognition) certified, and shall provide proof of such certification to the Town upon request.
2. Performance Standards
   1. The Contractor shall ensure that 100% of the residential and Commercial properties scheduled to have their waste collected on any given day, pursuant to the Collection Schedule, have their waste collected on that day.
   2. The Contractor shall maintain a log that contains a record of all instances of:
      1. Disposal of Waste by a property owner that does not comply with applicable Laws, including the address and nature of the non-compliance;
      2. Confrontations with residents or owners of property within the Town;
      3. Collections of more than six (6) bags of Waste;
      4. Any and all property damage that occurs while performing the contract, including but not limited to damage to the property of:
         1. The Town;
         2. The Contractor;
         3. Residents, property owners, businesses, and individuals
      5. Any and all personal injuries that occur while performing the contract, including but not limited to personal injury to:
         1. Town staff and representatives;
         2. Employees and independent contractors of the Contractor;
         3. Any other individual
   3. The following occurrences will be considered to be a breach of the Performance Standards:
      1. Collection of Waste outside of the hours set out in Section 1.4(b) of Schedule “A” above;
      2. Failure to collect Waste from a property on the day specified in the Collection Schedule;
      3. Failure to collect Waste as directed by the Town;
      4. Failure to respond to a complaint as directed by the Town within 24 hours of direction;
      5. Failure to dispose of waste at specified facilities;
      6. Failure to collect a route;
      7. Storage of Waste, temporarily or permanently, at a non-approved facility;
      8. Discourtesy and/or inappropriate behaviour towards Town representatives, or property owners/residents;
      9. Contractor’s staff scavenging Waste, including recyclable materials;
      10. Failure to resolve damage claim to property within thirty (30) days of occurrence;
      11. Collecting Waste beyond geographical limits imposed under the Agreement;
      12. Improper declaration of Waste weights;
      13. Failure to submit reports or required documents or use courtesy tags;
      14. Failure to identify and properly report daily data;
      15. Failure to clean up spillage.

For greater certainty, the foregoing list is not exhaustive.

* 1. The Contractor will be deemed not to have failed to meet the standard set out in Section 2.3(b) of Schedule “A” above if:
     1. Collection is scheduled on a Statutory Holiday;
     2. The Town and the Contractor agree to reschedule Waste collection as a result of inclement weather and/or unsafe conditions;
     3. A collection is missed, in the opinion of the Town, as a result of a property owner putting their Waste out for collection late;
     4. The Town directed to Contractor not to collect all or part of a day’s collection;
     5. Waste is not collected due to a resident putting out waste for collection that is non-compliant with applicable Laws.
  2. The Contractor shall pay the Town the amount(s) indicated in the table below in respect of each breach of the Performance Standards. The Contractor shall pay the Town the sum(s) indicated in the table based on the number of incidents which have occurred during the Term. The amount shall be due and payable immediately upon the occurrence of the breach, and may be set off by the Town against any amounts owing to the Contractor under the Agreement. The Contractor and the Town agree that the amounts indicated in the table below represent a genuine pre-estimate of the damages which the Town will suffer as a result of each breach of the Performance Standards, and agree that such amounts are not a penalty, and are reasonable in the circumstances. The Town’s rights under this provision are cumulative and in addition to any other rights and remedies the Town may have in relation to a breach of the Agreement or Performance Standards by the Contractor.

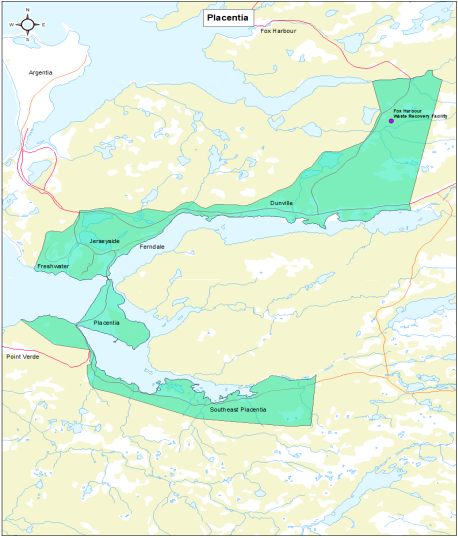
|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Breach | $250 | $500 | $750 | $1,000 |
| Collections Performed Outside Specified Times | 1 instance | 2  instances | 3 instances | >3  instances |
| Collecting on Unspecified Days | 1 instance | 2 instances | 3 instances | >3  instances |
| Failure to Collect Waste as directed by the Town | N/A | 1 load | 2 to 4 loads | > 4 loads |
| Failure to Respond to Complaint as Directed by the Town within 24 hours | 1 to 5  incidents | 6 to 9  incidents | 10 to 15  incidents | >15 incidents |
| Failure to Return for Missed Collection as Directed by the Town within 24 hours. | 1 to 7  incidents | 8 to 15  incidents | 16 to 23  incidents | > 23  incidents |
| Failure to Dispose of Waste at Specified Facilities | 1 incident | 2 to 3  incidents | 4 to 5  incidents | >5 incidents |
| Failure to Collect a route/routes | 1 incident | 2 to 3  incidents | 4 to 5  incidents | >5 incidents |
| Discourtesy / Inappropriate behaviour | 1 to 4  incidents | 5 to 10  incidents | 11 to 15  incidents | > 15  incidents |
| Successful Bidder’s Staff Scavenging Recyclable Material | 1 to 4  incidents | 5 to 10  incidents | 11 to 15  incidents | > 15  incidents |
| Failure to Resolve Damage claim to Property within Allowable Time | 1 to 3  incidents | 4 to 6  incidents | 7 to 9  incidents | > 9 incidents |
| Collecting Waste Beyond Imposed Limits | 1 to 3  incidents | 4 to 6  incidents | 7 to 9  incidents | > 9 incidents |
| Improper Declaration of Town Weights | 1 to 3  incidents | 4 to 6  incidents | 7 to 9  incidents | > 9 incidents |
| Failure to Submit Reports or Required Documents or use courtesy Tags | 1 to 2  incidents | 3 to 5  incidents | 6 to 9  incidents | > 9 incidents |
| Failure to Identify and Properly Report Daily Data | 1 to 2  incidents | 3 to 5  incidents | 6 to 9  incidents | > 9 incidents |
| Failure to Clean Up Spillage | 1 to 3  incidents | 4 to 6  incidents | 7 to 9  incidents | > 9 incidents |

* 1. The Contractor shall, prior to the commencement of the Services and throughout the duration of the Term of the Agreement, obtain all permits necessary for performance of the Services, if any, and comply with all applicable Laws, including without limitation the Highway Traffic Act, the Occupational Health and Safety Act and the Environment Act and all regulations to such legislation.

Schedule “B” – Historical Waste Collection Weights

|  |  |  |  |
| --- | --- | --- | --- |
| **Month** | **Garbage (Tonnage)** | **Recycling (Tonnage)** | **Bulk (Tonnage)** |
| Sept. 2019 | 89.21 | 3.99 |  |
| Oct. 2019 | 124.76 | 5.07 | 18.58 |
| Nov. 2019 | 89.97 | 3.43 |  |
| Dec. 2019 | 116.23 | 3.29 |  |
| Jan. 2020 | 81.70 | 3.06 |  |
| Feb. 2020 | 85.49 | 2.59 |  |
| Mar. 2020 | 79.14 | 3.10 |  |
| Apr. 2020 | 134.34 | 4.48 |  |
| May 2020 | 95.99 | 3.78 |  |
| June 2020 | 103.95 | 4.12 | 39.43 |
| July 2020 | 114.41 | 3.89 |  |
| Aug. 2020 | 86.28 | 3.63 |  |

Schedule “C” – Map of Collection Area



Schedule “D” – Equipment List

Equipment List:

|  |  |  |  |
| --- | --- | --- | --- |
| **Make** | **Model** | **Year** | **Comments** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**Equipment Attachments:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Make** | **Model** | **Year** | **Comments** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**Backup Equipment:**

|  |  |  |  |
| --- | --- | --- | --- |
| **MAKE** | **Model** | **Year** | **Comments** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |