

## AGREEMENT FOR GARBAGE HAULING AND DISPOSAL

THIS AGREEMENT FOR GARBAGE HAULING AND DISPOSAL (this "Agreement") is made and entered into this 1<sup>st</sup> day of August, 2021 by and between the TOWN OF ORDWAY, COLORADO, a statutory town organized and existing under and by virtue of the laws of the State of Colorado (hereinafter called "TOWN"), and WASTE CONNECTIONS OF COLORADO, (hereinafter referred to as "CONTRACTOR").

WHEREAS, TOWN has determined that it is in the best interests of its taxpayers that TOWN provide to said taxpayers, a solid waste removal service;

WHEREAS, CONTRACTOR has offered to provide trash removal service for an agreed upon amount as provided herein within the incorporated limits of TOWN; and

WHEREAS, said offer is also conditioned upon the fact that this Agreement will be exclusive and that CONTRACTOR will be the exclusive solid waste disposal service operating within TOWN.

NOW, THEREFORE, in consideration of the mutual covenants herein expressed, the parties hereto agree as follows:

1. Scope and Description of Right. CONTRACTOR has the exclusive right during the term of this Agreement to collect and haul for hire over the streets and alleys of TOWN, all Solid Waste generated and collected from public and private customers located within the incorporated limits of TOWN, including, without limitation, all personal residences, multi-family residences, businesses, and roll-off. This Agreement shall extend to any territory annexed to TOWN during the term of this Agreement. TOWN shall not, during the term of this Agreement, contract with any other party for the services to be provided under this Agreement.

2. Definition of Solid Waste. The waste materials to be collected and disposed of by the CONTRACTOR pursuant to this Agreement consist of all municipal solid waste (including garbage, refuse, animal and vegetable matter, small yard waste (tree and shrub limbs less than 4-feet in length, 1-inch in diameter and collectively weighing less than thirty-five (35) pounds, leaves, grass clippings), rubbish, trash, debris, and other waste materials generally generated within the incorporated limits of the TOWN ("Solid Waste"); provided, however, that this specifically excludes and the TOWN, residents and businesses within the TOWN shall not deposit in CONTRACTOR's equipment or place for collection by CONTRACTOR any radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, toxic or hazardous material as defined by applicable federal, state or local laws or regulations ("Excluded Waste"). Additionally, Solid Waste shall specifically exclude any construction and demolition debris, bricks and/or heavy concrete, heavy steel, tires, batteries, earth/soil, tree stumps, white goods, or industrial waste. Notwithstanding any other term contained herein, the Contractor shall have no obligation to collect any waste which is, or which the Contractor reasonably believes to be, Excluded Waste. Title to and liability for any Excluded Waste shall remain with resident/generator of such Excluded Waste, even if the Contractor inadvertently collects and disposes of such Excluded Waste. If the Contractor finds what reasonably appears to be discarded Excluded Waste, the Contractor shall notify the resident/business/generator, if such can be determined, that the Contractor may not lawfully collect

such Excluded Waste and leave a tag specifying the nearest location available for appropriate disposal.

3. Access Rights / Pavement. TOWN hereby grants to CONTRACTOR the right to utilize rights-of-way for the purpose of allowing CONTRACTOR to collect Solid Waste and to place and remove receptacles therefor; provided, that the right granted hereunder and the obligation of CONTRACTOR to provide such services is applicable only where there is a maintained road, street or alley allowing lawful access to a receptacle placed out for collection. CONTRACTOR shall have the right, until receipt of written notice revoking permission to pass is delivered to CONTRACTOR, to enter or drive on any private street, court, place, easement or other private property for the purpose of collecting or transporting Solid Waste pursuant to this Agreement. TOWN warrants that TOWN's pavement, curbing or other driving surface or any right of way reasonably necessary for CONTRACTOR to provide the services described herein are sufficient to bear the weight of all of CONTRACTOR's equipment and vehicles reasonably required to perform such services. CONTRACTOR will not be responsible for damage to any such pavement, curbing, driving surface or right of way, and TOWN agrees to assume all liabilities for any such damage, which results from the weight of CONTRACTOR's vehicles providing service within TOWN.

4. Enforcement of Exclusivity. Either party hereto may take such legal action as it deems appropriate against any third party to redress an infringement of CONTRACTOR's exclusive right to collect residential Solid Waste pursuant to this Agreement. TOWN shall use its best efforts to adopt ordinances, rules or regulations that have the effect of requiring third parties, including, without limitation, customers, to comply with the provisions of this Agreement, including, without limitation, the exclusiveness granted pursuant to this Agreement.

5. Destination of Solid Waste. CONTRACTOR agrees to deposit Solid Waste at a Subtitle D licensed landfill, transfer station or recycling center.

6. Rates, Facilities, and Furnishing of Service. TOWN shall pay CONTRACTOR the rate as set forth on Exhibit "A" attached hereto and incorporated by reference herein. Rates for roll-off services are included on Exhibit "A". Residential service is inclusive of all residential containers currently utilized as of the Effective Date. As of the Effective Date there are Four Hundred Sixty One (461) residential containers serviced. Residential service will be audited and adjusted on an annual basis and Exhibit "A" will be updated accordingly to reflect the appropriate rates for the actual number of residential containers. TOWN shall collect from residential and commercial customers and reimburse said fee to CONTRACTOR monthly. TOWN shall have the responsibility of collecting any extra charges from customers. TOWN and CONTRACTOR shall agree upon which of those customers are commercial and which are residential and in the event of disagreement, TOWN shall have the final decision as to which customers are residential and which are commercial. CONTRACTOR will provide Solid Waste service to each residence or business within the incorporated limits of TOWN. Solid Waste shall be placed by each residential and business customer within six (6) feet from the street. Said Solid Waste will be picked up by CONTRACTOR from the street. In some cases, CONTRACTOR may pick up Solid Waste from an alley; provided, however, that alley collection shall be determined by CONTRACTOR in its sole discretion. CONTRACTOR will provide each residential unit within the TOWN with a ninety-six (96) gallon

container for Solid Waste at the Rates set forth in Exhibit A, as such may be adjusted from time to time. CONTRACTOR will provide each commercial unit within the TOWN with the container size and service as provided on Exhibit A for Solid Waste at the Rates set forth in Exhibit A, as such may be adjusted from time to time. Title to the refuse containers shall remain with CONTRACTOR. CONTRACTOR shall collect and properly dispose of all Solid Waste from all residential units and multi-family units used for residential purposes located within the CITY, once each week, curbside with Ninety-Six (96) Gallon Cart service on the day or days selected by CONTRACTOR and communicated to the CITY and customers, except when a holiday, as set forth in Section 11 hereof, occurs on such service day, in which event the pick-up scheduled for that day will be postponed until the next regularly scheduled collection day, and except for emergencies resulting from a Force Majeure Event. CONTRACTOR shall collect and properly dispose of all Solid Waste from all commercial units within the CITY on the schedule agreed to by CONTRACTOR and such commercial customer (provided, however, such collection shall not be less than once per week) except when a holiday, as set forth in Section 11 hereof, occurs on such service day, in which event the pick-up scheduled for that day will be postponed until the next regularly scheduled collection day, and except for emergencies resulting from a Force Majeure Event. CONTRACTOR may change or alter the days of collection only after receiving prior consent from the CITY, which consent shall not be unreasonably withheld, conditioned or delayed. CONTRACTOR shall bear the cost to notify the customers of any changes in service days, if applicable. All Solid Waste generated from residential units must be placed in the Ninety-Six (96) Gallon Cart and be placed within five feet (5') of the roadway, as close as practicable without interfering with or endangering the movement of vehicles or pedestrians. CONTRACTOR shall have no obligation to: (i) collect any Solid Waste that contains Excluded Waste, (ii) collect any Solid Waste that is not placed in the Ninety-Six (96) Gallon Cart (for residential units) or the appropriate CONTRACTOR provided container for commercial units, or (iii) empty any Ninety-Six (96) Gallon Cart from a residential unit that is not placed out for collection by 6:00 am on the day of collection. In the event a Residential Unit generates more Residential Refuse than will fit in a Ninety-Six (96) Gallon Cart, the Customer at such Residential Unit may request that CONTRACTOR provide to such Customer, at the Rates provided for in Exhibit A, such additional Ninety-Six (96) Gallon Carts as may be necessary to accommodate all Residential Refuse generated by such Residential Unit. In addition to the above, each year CONTRACTOR shall provide TOWN with one (1) residential cleanup free of charge, at a centrally located site where residential customers can bring Solid Waste for disposal. This free cleanup shall only include the following: (a) three (30) 30-yard roll-off boxes, and (b) one (1) disposal dump for each roll-off box. Any additional equipment, services (including, but not limited to, additional disposal), or personnel requested by TOWN or necessitated by any cleanup shall be at cost to TOWN.

7. Rate Increases. Beginning on August 1, 2023 and on every subsequent August 1<sup>st</sup> thereafter during the Term of this Agreement, CONTRACTOR shall be entitled to an annual two and half percent (2.5%) increase in the rates on Exhibit "A". In addition, CONTRACTOR reserves the right to request at any time, and from time to time, increases in the rates on Exhibit "A" as a result of increases in disposal costs outside of CONTRACTOR's control.

8. Limitations on Collection. Accounts requiring return trips due to customer's failure to timely set out his container or for reasons within the control of the customer will be assessed a charge in

addition to regular charges. CONTRACTOR may refuse to pick up materials from locations where, because of the condition of the streets, alleys or roads, it is impracticable to operate vehicles. CONTRACTOR may refuse to drive onto private property when, in CONTRACTOR's sole judgment, driveways or roads are improperly maintained or without adequate turn coverage or contain other unsafe conditions. CONTRACTOR may refuse service when a customer fails to comply with applicable waste regulations. CONTRACTOR may refuse to enter on private property when, in CONTRACTOR's sole judgment, the weight of the collection vehicle may damage the driveway.

9. Collection of Fees. TOWN may charge its residents and businesses differently than the fees set forth in Exhibit "A". Regardless of the fees charged to its residents and businesses, TOWN shall remit the fees agreed to in Exhibit "A" for residential customers to CONTRACTOR on a monthly basis. Payment terms are net thirty (30) days.

10. Insurance. CONTRACTOR agrees, prior to the commencement of this Agreement, to obtain and maintain, at its own expense, in force and effect throughout the term of this Agreement, such insurance as will enable CONTRACTOR to indemnify TOWN and its representatives and agents from claims (1) under workman's compensation and other employee benefit laws, (2) for bodily injury and death, and (3) for property damage, in each case to the extent arising out of any action of CONTRACTOR or any subcontractor employed by CONTRACTOR. CONTRACTOR will hold TOWN harmless from any liability arising from any negligent acts of CONTRACTOR, its agents or employees, to the extent such acts are undertaken in a normal course of business of CONTRACTOR.

11. Holidays. CONTRACTOR is not required to collect Solid Waste on the following holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. It is the CONTRACTOR's discretion whether to provide service on these specific dates.

12. Independent Contractor. It is agreed that TOWN is only interested in the results obtained and that CONTRACTOR shall perform all services required under this Agreement as an independent contractor. CONTRACTOR is, for all purposes arising out of this Agreement, an independent contractor and none of its officers, agents, or employees shall be deemed to be employees of TOWN.

13. Subleasing and Contracting. CONTRACTOR shall have the right to sublet and contract with other duly licensed collectors, with TOWN'S consent (which consent shall not be unreasonably withheld, conditioned or delayed), for the collection and disposal of Solid Waste within TOWN, but CONTRACTOR shall be held responsible for the services furnished by any other subcontractor and for proper disposal of the Solid Waste and trash hauled from TOWN, and CONTRACTOR shall indemnify and hold TOWN harmless from any liability caused by such subcontractor(s).

14. Contracting with Other Municipalities. Nothing herein contained shall prevent CONTRACTOR from contracting with other municipalities; provided, however, that contracting with any other municipalities by CONTRACTOR does not effect the performance and ability of CONTRACTOR to comply in full with this Agreement.

15. Commencement of Service. CONTRACTOR hereby agrees to commence furnishing service in TOWN beginning August 1, 2021 (the "Effective Date"). CONTRACTOR shall furnish service in the entire incorporated limits of TOWN during the term of this Agreement.

16. Term. The initial term of this Agreement shall be three (3) years from the date of the Effective Date (the "Initial Term"). Upon the expiration of the Initial Term and each Renewal Term (as defined below), this Agreement shall be automatically renewed on the same terms and conditions for additional successive three (3) year terms (each a "Renewal Term"); unless and until either of the parties hereto notifies the other in writing at least sixty (60) prior to the expiration of the Initial Term or the then-current Renewal Term, but not more than one hundred eighty (180) days prior to the expiration of the Initial Term or the then-current Renewal Term, as applicable, of its intention not to renew the Agreement.

17. Frequency of Pick up of Solid Waste. Pick-up of residential Solid Waste (96 gallon containers) shall be on a specified day, on a weekly basis, as determined by CONTRACTOR, conditioned upon no adverse weather conditions or other impairments. However, if pick up is delayed or impaired, than the same shall resume on the following day or as soon as conditions reasonably permit. The time of pick up or collection shall be between sunrise to sunset or other acceptable working hours as determined by CONTRACTOR. Roll off services will be provided within two (2) weeks of request. If CONTRACTOR is unable to provide the roll off service requested by TOWN within two (2) weeks of the request, the TOWN is free to use another hauler for the original service request.

18. Litter or Spillage. Any litter or spillage caused by CONTRACTOR during pick-up by moving properly prepared Solid Waste from curb to dumpster to truck shall be CONTRACTOR's responsibility.

19. Default. In the event a party shall violate or be in default of any of the covenants, terms, or provisions of this Agreement, the non-defaulting party shall be entitled to cancel and terminate this Agreement by giving sixty (60) days written notice to cure to the defaulting party, and if such listed violation or default is not cured by the end of such sixty (60) days, this Agreement shall terminate and be at an end.

20. Resolution of Disputes. CONTRACTOR agree to attempt to resolve any disputes in Solid Waste disposal service with the customer and if said disputes cannot be resolved, to contact TOWN to attempt to resolve such disputes.

21. Compliance with Law. CONTRACTOR will provide to TOWN solid waste management services as defined by Colorado statutes. In addition, CONTRACTOR agrees to comply and fulfill any and all federal, state, and local responsibilities for integrated solid waste management on behalf of TOWN, including any filings required by any federal, state, or local agency.

22. Binding Provisions. This Agreement shall be binding upon the legal representatives, successors or assigns of the parties hereto.

23. Attorney's Fees. If any legal action is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary reimbursement in addition to any other relief to which the party may be entitled.

24. Uncontrollable Circumstances. CONTRACTOR shall not be liable for delays in its performance hereunder due to Uncontrollable Circumstances to the extent such occurrence is beyond the reasonable control of CONTRACTOR and CONTRACTOR makes prompt, diligent and continuous efforts to resume performance. For purposes of this Section 24, "Uncontrollable Circumstances" shall mean: the landfill to which Solid Waste is being hauled is closed for two consecutive working days; riots; war or emergency declared by the President, Congress or the Governor of Colorado and affecting TOWN or CONTRACTOR; sabotage; acts of terrorism; civil disturbance; insurrection; explosion; natural disasters such as floods, earthquakes, landslides and fires; strikes, lockouts and other labor disturbances; or other similar or dissimilar events which are beyond the reasonable control of CONTRACTOR.

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