

COMMERCIAL SOLID WASTE SERVICES FRANCHISE AGREEMENT

BETWEEN

VILLAGE OF LAKE BLUFF

AND

DATED: _____

**VILLAGE OF LAKE BLUFF, ILLINOIS
AGREEMENT – COMMERCIAL WASTE COLLECTION SERVICES**

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This **COMMERCIAL SOLID WASTE & RECYCLING SERVICES FRANCHISE AGREEMENT** ("*Agreement*") is made and entered into as of the ____ day of _____, 20__ by and between _____, (the "*Contractor*") and the Village of Lake Bluff, Illinois (the "*Village*").

PREAMBLE

WHEREAS, the Village, in order to protect the public health and welfare of its residents and commercial, industrial, multifamily residential, and institutional entities, has deemed it necessary to collect, transport and dispose of Commercial Materials; and

WHEREAS, the Village is authorized pursuant to the provisions of Section 11-19-1 of the Illinois Municipal Code (65 ILCS 5/11-19-1) to provide for the method or methods of collection, transportation and disposal of municipal waste located within its boundaries and to provide that the method chosen may be the exclusive method to be used within its boundaries; and

WHEREAS, the Village desires to provide municipal waste collection, transportation and disposal services to its residential, commercial, industrial, multifamily residential, and institutional entities, and to impose on its commercial, industrial, multifamily residential, and institutional entities rates and charges relating to such services; and

WHEREAS, the Village has determined that it is in the best interests of its commercial, industrial, multifamily residential, and institutional entities to contract with a single waste hauler to collect, transport and dispose of (or sell) Commercial Materials at a facility or facilities mutually agreed upon by the Village and the Contractor; and

WHEREAS, the Contractor, pursuant to the terms of this Agreement and on behalf of the Village, is willing to collect, transport and dispose of (or sell) Commercial Materials at a facility or facilities mutually agreed upon by the Village and the Contractor.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein contained:

**ARTICLE I
DEFINITIONS**

Section 1.1 Definitions

Whenever used in this Agreement, the following terms shall have the following meanings unless a different meaning is required by the context:

- a) "Agency" means the Solid Waste Agency of Lake County, known as SWALCO.
- b) "Blocked Container" means a container that requires emptying pursuant to the terms of this Agreement, but which cannot be emptied, through no fault of the Contractor, due to physical obstruction impeding ingress or egress around the container.
- c) "Breach" means a breach of this Agreement by either the Village or the Contractor, in a manner described in Sections 10.1 or 10.2 of this Agreement.
- d) "Commencement Date" has the meaning set forth in Section 3.1 of this Agreement.

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- e) "Commercial Materials" means Municipal Waste, Recyclable Materials, Organic Material and any other similar materials.
- f) "Commercial Service" has the meaning set forth in Section 2.1 of this Agreement.
- g) "Contractor" means _____, an (insert incorporating State) corporation, and its successors and assignees.
- h) "Customer" means an individual commercial, industrial, institutional entity, or building containing four or more residential dwelling units that is not otherwise receiving garbage, recycling, and/or organic material hauling services through a Village franchise agreement and that is authorized by law to receive such franchise services from the Village.
- i) "Event of Default" means a declaration of default by either the Village or the Contractor, as described in greater detail in Sections 10.3 and 10.4 of this Agreement.
- j) "Food Scraps" mean garbage that is capable of being composted and as further defined in 415 ILCS 5/3.197.
- k) "Landscape Waste" means all accumulations of grass or shrubbery cuttings, leaves, tree limbs, aquatic weeds, and other material accumulated as the result of the care of lawns, shrubbery, vines and trees, and as otherwise described at 415 ILCS 5/3.270.
- l) "Municipal Waste" means garbage, refuse, industrial, lunchroom or other waste, and other material described at 415 ILCS 5/3.290 resulting from operation of residential, municipal, commercial or institutional establishments and from community activities; provided, however, that "Municipal Waste" shall not include Recyclable Materials or Organic Material.
- m) "Organic Material" means food scraps as described at 415 ILCS 5/3.197, and Landscape Waste as defined herein.
- n) "Prior Rate" shall mean the rate paid by a Customer in the calendar month prior to the date on which the Contractor commenced the provision of Commercial Services to that Customer, for services similar to the Commercial Services.
- o) "Private Service" means the collection of refuse and waste by the Contractor from Customers, pursuant to separate agreements or arrangements between a Customer and the Contractor.
- p) "Recyclable Materials" means aluminum cans, tin, steel and bi-metal cans; clear, green and brown glass bottles and jars; newspapers, magazines, and mixed papers (junk mail, chipboard, white and colored paper, brown Kraft paper bags); corrugated cardboard, #1 PETE plastic containers and #2 HPDE plastic containers, #3-#5 plastic containers and bags, aseptic beverage containers, and any other material or materials which the Village and Contractor mutually identify as a "Recyclable Material" subsequent to the execution of this Agreement, pursuant to Section 8.1(d) of this Agreement.
- q) "Recycling Contamination" means when at least 10% of the contents of the recycling container includes material that is not included in the definition of Recyclable Materials.

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- r) "State" means the State of Illinois.
- s) "Transition Period" has the meaning set forth in Section 2.1 of this Agreement.
- t) "Village" means the Village of Lake Bluff, Illinois.
- u) "Village Code" means "The Lake Bluff Municipal Code" as amended.

Section 1.2 Rules of Construction

- a) Grammatical Usage and Construction. In construing this Agreement, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural, in any place in which the context so requires.
- b) Defined Terms. All capitalized words and phrases throughout this Agreement shall have the meanings set forth in Section 1.1 and the other provisions of this Agreement.
- c) Headings. The headings, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.
- d) Calendar Days. Unless otherwise provided in this Agreement, any reference in this Agreement to "day" or "days" shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a Saturday, Sunday, or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal holiday.

**ARTICLE II
SCOPE OF SERVICES**

Section 2.1 Commercial Services

Pursuant to this Agreement, the Contractor shall provide complete service for designated collection from commercial, industrial, multifamily residential, or institutional entities as well as transportation and disposal (or sale) of collected Commercial Materials at one or more facilities as determined by the Village (for the landfilling of Municipal Waste and the processing of Recyclable Materials) or as potentially determined by the Village (for Organic Material) from Customers (collectively, the "**Commercial Services**").

After July 1, 2022, or as soon thereafter as is permissible by law, the Contractor shall be the sole and exclusive franchisee of the Village to provide Commercial Services to Customers under this Agreement. Between the Commencement Date and the date that the exclusive franchise begins (the "**Transition Period**"), the Contractor shall provide Commercial Services pursuant to this Agreement to any Customer who requests Commercial Services prior to Contractor's exclusive franchise. Any Commercial Services so provided shall be pursuant to this Agreement and at the prices provided in this Agreement.

As of the Commencement Date, any provision of Commercial Services by Contractor to Customers, whether voluntary or mandated by the Village, shall only be as provided in this Agreement and at the rates of compensation provided in this Agreement. Contractor agrees that, no later than 60 days after the effective

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date of this Agreement, it will transition its existing Customer accounts to be governed by the terms of this Agreement.

Section 2.2 Private Services

The Contractor shall, on its own behalf (and not on behalf of the Village), provide for the collection, transportation and disposal of all Private Service waste in accordance with the provisions of Section 4.2 of this Agreement.

Section 2.3 Excluded Services

Notwithstanding any provision of this Agreement to the contrary, the following services are not included within this Agreement:

- a) In general, solid waste collection, transportation and disposal from all single-family dwellings, two-family dwellings, and three-family dwellings.
- b) Temporary roll-off services;
- c) Temporary construction/demolition debris collection and disposal services; and
- d) Commercial Services otherwise exempt from this Agreement by the Village Code, as it may be amended from time to time.

Section 2.4 Exempted Services

Solid waste collection, transportation and disposal from any commercial, industrial, multifamily residential, and institutional customer within the Village are not included within this Agreement if the Village approves the exemption of any such services under the terms of the applicable provisions of the Village Code.

Section 2.5 Modification of Required Services

The Village reserves the right to adjust or expand the scope of the Commercial Services required under this Agreement to accommodate changes in the definition of Commercial Materials or changes in the scope of services provided by SWALCO upon thirty (30) days written notice to the Contractor. The Village and the Contractor agree to negotiate an equitable adjustment to the Contractor's compensation under this Agreement required as a result of any adjustment or expansion of the scope of the Commercial Services.

Section 2.6 Integration of RFP

The terms of the Request for Proposals issued January 6, 2021 ("**RFP**") are hereby incorporated as if fully set forth herein. Should any terms of the RFP directly conflict with the terms of this Agreement, the terms of this Agreement shall control.

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**ARTICLE III
TERM OF AGREEMENT**

Section 3.1 Term of Agreement

The initial term of this Agreement shall commence on April 1, 2021 ("*Commencement Date*"), and end on March 31, 2027. Upon the mutual written consent of both parties, this Agreement may be extended for up to five additional one-year renewal terms.

At the end of any contract term the Village reserves the right to extend this Agreement for a period of up to ninety (90) days for the purpose of transitioning to a new collection service provider.

**ARTICLE IV
SOLID WASTE COLLECTION AND DISPOSAL**

Section 4.1 Commercial Service

- a) Commercial Materials shall be collected by the Contractor in accordance with the schedule provided in Section 4.3 of this Agreement and transported in accordance with Section 4.4 of this Agreement.
- b) During the Transition Period, the Contractor shall provide Commercial Services to all Customers within the Village who request Commercial Services from Contractor prior to Contractor's exclusive franchise. Any Commercial Services so provided shall be pursuant to this Agreement and at the prices provided in this Agreement.
- c) After the conclusion of the Transition Period, the Contractor shall provide Commercial Services to all Customers within the Village except those who have a current exemption in accordance with Section 2.4 of this Agreement. A Customer with a current exemption may still voluntarily request that the Contractor provide Commercial Services pursuant to this Agreement.

Section 4.2 Private Service

- a) In addition to the Commercial Services provided by the Contractor under Section 4.1 of this Agreement, the Contractor may also make available to all Customers, Private Service for all types of solid waste not otherwise covered by this Agreement, including, but not limited to, Hazardous Waste as defined by the Resource Conservation and Recovery Act, 42 U.S.C. §§6901-6992k.
- b) For services provided pursuant to this Section 4.2, the Contractor agrees to keep available tractor loaders, trailers and other necessary equipment. Upon the request of a Customer, the Contractor shall furnish an estimate for the cost of removal of any materials in connection with Private Services to be provided by the Contractor.
- c) Nothing in this Agreement provides for exclusive rights of the Contractor to provide Private Service in the Village.

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Section 4.3 Schedule and Location of Collection

- a) Commercial Materials shall be collected in compliance with all applicable provisions of the Village Code, including, without limitation, Title 4, Chapter 2 of the Village Code. The Contractor acknowledges that the Village may amend certain provisions of the Village Code in conjunction with the Village's consideration of the award of this Agreement, and agrees to comply with the applicable provisions of the Village Code, as may be amended.
- b) Private Service waste shall be collected in accordance with the provisions of Section 4.2 of this Agreement on days to be mutually agreed upon by the respective Customer and the Contractor.
- c) The Village agrees to cooperate in providing information, if any, relating to property vacancies or any other information that will assist the Contractor in the performance of its obligations under this Agreement.
- d) The Contractor shall make its best effort to provide the level of service and the timing of that service as requested by the Customer.

Section 4.4 Disposal

- a) Municipal Waste.
 - 1) Municipal Waste shall be removed from the Village at the close of each day of collection and shall be disposed of at one or more SWALCO-designated lawfully operated pollution control facilities at the Contractor's sole cost and expense.
 - 2) The Contractor acknowledges that the SWALCO-designated facilities in operation as of the effective date of this Agreement are the Countryside Landfill in Grayslake, the Veolia/Zion Landfill in Zion, the Livingston Landfill in Livingston County, Illinois, the Lee County Landfill in Lee County, Illinois, and the Newton County Landfill in Newton County, Indiana. Notwithstanding the foregoing, the Village reserves the right to direct the Contractor to dispose of all Municipal Waste at an alternate pollution control facility.
 - 3) Notwithstanding the foregoing, the Village reserves the right to direct the location of disposal to another pollution control facility.
- b) Recyclable Materials.
 - 1) All Recyclable Materials shall be collected, separated and otherwise treated so as to facilitate the sale of Recyclable Materials to end-use markets or to Recyclable Material brokers. All collected Recyclable Materials shall be recycled regardless of the income received or the cost to the Contractor resulting from the sale of the Recyclable Materials.
 - 2) The Contractor shall deliver all collected Recyclable Materials to the SWALCO-designated recycling facility (the "***Designated Facility***"), if and when SWALCO enters into an agreement. As of the Commencement Date of this Agreement, SWALCO does not have an agreement in place with a recycling facility, therefore the Contractor shall choose its own facility to take the Village's Recyclable

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Materials to and notify the Village within 30 days of such location. Notwithstanding the foregoing, the Village reserves the right to designate an alternate Designated Facility.

- 3) The Contractor shall abide by the Rules and Regulations set forth by the Designated Facility. The Village may terminate this Agreement if the Contractor fails to abide by the Rules and Regulations set forth by the Designated Facility.
 - 4) No Recyclable Materials may be deposited in a landfill or waste incinerator.
- c) Organic Material.
- 1) All Organic Material shall be disposed of in a lawful manner.
 - 2) Not less than 60 days prior to the date on which the Contractor commences disposal of Organic Material at a particular location, the Contractor shall notify the Village in writing of the designation of such location. Notwithstanding the foregoing, the Village reserves the right to reject any proposed location, or to direct the location of disposal to an alternate Organic Material facility that, in the sole opinion of the Village, is more cost effective than the facility previously being used by the Contractor under this Agreement.
 - 4) No Organic Material may be disposed of at a landfill or solid waste incinerator, unless otherwise authorized by the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.) and approved in advance and in writing by the Village.
- d) In the event that the Village directs the disposal of any Commercial Materials to any alternate facility pursuant to this Section 4.4, the Village and the Contractor agree to establish an equitable adjustment to the Contractor's compensation under this Agreement as a result of an increase or decrease in realized costs.

Section 4.5 Solid Waste Collection Data

- e) The Contractor shall provide to the Village and SWALCO, on a quarterly basis broken down by month, a report on: (i) the quantity (in tons) of all commercial solid waste collected within the Village; (ii) recycling diversion data, including the quantity (in tons) of commercial recyclables and organic material recycled and composted, and the number of business accounts that have recycling containers; and (iii) a breakdown of the number of Customers.
- f) The Contractor shall prepare and deliver to the Village, at least once every 12 calendar months, a service matrix, which shall include, without limitation: the name, service address, billing address (if different), contact person, telephone number and fax number of each Customer; the type and quantities of containers located on each Customer's site; the frequency of collections from each site; and an itemization of the days of collections and the current service rate applicable to each Customer.
- g) The Contractor acknowledges and agrees that program data and other public information will be provided by the Village to each Customer upon request.

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- h) Failure to report the data required by this Section 4.5 may result in the Village assessing the Contractor up to \$100, as stipulated liquidated damages and not as a penalty, for each day the required data is not submitted to the Village or SWALCO.

ARTICLE V
COMPENSATION

Section 5.1 Commercial Service

- a) For providing for, pursuant to this Agreement, the collection, transportation and disposal (or sale) of commercial refuse and recyclables at a facility or facilities determined by the Village, and for providing revenue collection services, the Contractor shall receive as compensation from each Customer the rates set forth in **Exhibit A** attached to this Agreement, except as otherwise provided in this Section. The Contractor shall not impose or assess any fuel surcharges, administrative fees, environmental fees or charge Customers any amounts in excess of the charges permitted in **Exhibit A**.
- b) One-Time Transition Period Adjustment. At the conclusion of the Transition Period, the charges as identified in **Exhibit A** shall increase by the percentage cost adjustment factor provided in **Exhibit A**.
- c) Annual Adjustment. On April 1, 2023 and on each twelve-month anniversary date thereafter (the “*Adjustment Date*”), the charges as identified in **Exhibit A** shall increase in the amount of 100% of the percentage increase of the CPI-U; provided, however, that no such annual increase may exceed three percent (3%) of the amount payable for the previous period.

The percentage increase in the CPI-U on each Adjustment Date shall be determined by comparing the CPI-U from January preceding the Adjustment Date (“*Most Recent CPI-U*”) to the CPI-U reported by the U.S. Department of Labor for January in the year immediately preceding the year of the Most Recent CPI-U. The CPI-U means the Chicago-Naperville-Elgin Consumer Price Index for all Urban Consumers, All Items, Issued by the Bureau of Labor Statistics of the United States Department of Labor (1982-84=100).

- d) The Contractor shall notify the Village in writing at least thirty (30) days prior to the effective date of any proposed increase in charges, and such increase shall not be effective until approved by the Village in writing as complying with the terms of the Agreement. The Village shall not be obligated to approve any proposed increase unless the Contractor is currently in compliance with the reporting requirements provided in Sections 4.5 and 8.1(c).
- e) Rate Grandfathering. Notwithstanding the rates set forth in **Exhibit A** to this Agreement, if a Customer's Prior Rate is lower than the applicable rate set forth in **Exhibit A**, as adjusted from time to time pursuant to this Section 5.1, that Customer shall not be charged more than its Prior Rate for the first twelve months of Commercial Services received under this contract. Thereafter, the Customer shall pay the applicable rate set forth in **Exhibit A**, as adjusted pursuant to this Section 5.1.
- f) Free Recycling Service. The Contractor acknowledges and agrees that pursuant to **Exhibit A** of this Agreement, there shall be no charge for the weekly collection of Recyclable Materials from any individual Customer using one 4 cubic yard container or smaller with

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once per week service. If Customers are sharing containers for Municipal Waste disposal or are part of a larger building or strip mall that has multiple Customers, each individual Customer within the building or strip mall shall be provided one 65-gallon toter, one 96-gallon toter or one 1, 1.5, 2 or 4 cubic yard container for recycling if requested. All other collections of Recyclable Materials shall be charged at the rates set forth in **Exhibit A** of this Agreement, including, without limitation, collections from Customers using multiple toters or containers.

- g) Waste In Excess of Container Capacity. The Contractor is responsible for determining if each Customer is receiving sufficient service in terms of frequency of collection and on-site containers. If the Contractor deems that the capacity of on-site storage at the site of a Customer is exceeded regularly, it shall recommend to the Customer an increase in collection frequency or an upgrade of the container size and notify the Village of this recommendation. If a Customer leaves Municipal Waste outside of the Municipal Waste container, the Contractor may charge an excess Municipal Waste fee as set forth in **Exhibit A** (this does not apply to the Recyclable Materials or Organics containers). If a Customer decides to change container size, such change shall be made at no cost to the Customer. If the Customer decides to change containers and not the size of the container it may be charged a delivery fee as set forth in **Exhibit A**.
- h) Labeling. All containers utilized for the collection of Commercial Materials shall be properly labeled to indicate what materials are and are not accepted in the container. The labels to be used for the containers shall be prior approved by the Village.
- i) Recycling Contamination. If the Contractor encounters Recycling Contamination in the recycling container, the Contractor is responsible for photographing (with a stamp identifying the date and time the photograph was taken) the contamination and notifying the Customer of the contamination issue and what items are not acceptable. After identifying five separate instances of Recycling Contamination within a calendar year, the Contractor may charge a Recycling Contamination fee as set forth in **Exhibit A**.
- j) Blocked Containers. In the event the Contractor is unable to provide collection services for any Commercial Materials container due to a Blocked Container, Contractor shall photograph the Blocked Container (with a stamp identifying the date and time the photograph was taken). If the Contractor encounters a Blocked Container three times with one year at the same Customer, the Contractor may notify the Village, providing the photographs required by this section. The Village will then notify the Customer of the Blocked Container concern and work with the Customer to avoid having a Blocked Container in the future.
- k) In the event that a Customer is unable to utilize any of the containers identified in **Exhibit A** of this Agreement, the Contractor shall charge that Customer pro-rated rates for the provisions of the Commercial Services, based upon the size and type of containers utilized by that Customer.

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**ARTICLE VI
REVENUE COLLECTION**

Section 6.1 Billing of Accounts

The Contractor shall, on a monthly basis, bill each Customer, an amount payable for the collection, transportation and disposal (or sale) of Commercial Service waste and recycling for the following month. Each bill shall be payable by the Customer within thirty (30) days. The Village shall not be liable for any claim arising from a Customer's failure to pay for Commercial Services.

Section 6.2 Private Service

The Contractor may, but is not required to, include as an item on each Customer's bill an amount payable to the Contractor for the collection, transportation, and disposal of Private Service waste. The Contractor shall retain all amounts collected from each commercial entity pursuant to this Section 6.3. Alternatively, the Contractor may bill Customer separately for Private Service. The Village shall not be liable for any claim arising from a Customer's failure to pay for Private Service.

**ARTICLE VII
TITLE TO COMMERCIAL MATERIALS**

Section 7.1 Title to Commercial Materials

The Contractor shall retain title to all Commercial Materials collected pursuant to this Agreement.

**ARTICLE VIII
RECYCLABLE MATERIALS**

Section 8.1 Recyclable Materials Collection Service

- a) Commercial Recycling Service. The Contractor shall collect, transport, and manage Recyclable Materials in accordance with Article IV of this Agreement.
- b) Disposition of Recyclable Materials. The Contractor shall retain all income (and fully bear all losses) resulting from the disposition of Recyclable Materials. Contractor acknowledges that the Solid Waste Agency of Lake County may in the future have a rebate program whereby the Agency receives certain funds from the Designated Recycling Facility and distributes a portion of these funds to its members, including the Village, and Contractor waives any claim to any portion of the funds collected by the Agency through this program.
- c) Recyclable Materials Collection Data. The Contractor shall provide to the Village and SWALCO a quarterly report, broken down by month, on the weight (in tons) of all Recyclable Materials collected from Customers under this Agreement. The report shall also contain an approximate count of the number of Customers from which Recyclable Materials have been collected, in order to determine participation and diversion rates. Failure to report the data required by this Section 4.5 may result in the Village assessing the Contractor up to \$100, as stipulated liquidated damages and not as a penalty, for each day the required data is not submitted to the Village or SWALCO.

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- d) The Village shall have the right to add materials to the list of Recyclable Materials listed in Section 1.1(o) of this Agreement, pending the availability of disposal or resale markets for the added materials and the prior approval of the Contractor.
- e) The Contractor, pursuant to this Agreement, shall ensure that all Recyclable Materials collected are properly processed and marketed. No collected Recyclable Materials shall be landfilled or incinerated.
- f) The Contractor agrees to meet periodically with representatives from the Village and the Lake Bluff business community to: (1) review the provision of commercial recycling pursuant to this Agreement; and (2) discuss the implementation of alternative approaches, programs and partnerships to improve the quality, quantity, and efficiency of commercial recycling and other sustainability initiatives within the Village.

Section 8.2 Recycling Marketing and Education

The Contractor shall make reasonable efforts to encourage all Customers to participate in the weekly collection of Recyclable Materials and/or Organics. Such reasonable efforts shall include, without limitation, meeting personally with representatives of each eligible Customer to provide each such Customer with information regarding Recyclable Materials and Organics services under this Agreement. It is expected that: (a) by April 1, 2023 and at the end of each service year thereafter, at least 60% of all Customers will be receiving services from Contractor for the weekly collection of Recyclable Materials and/or Organics, and (b) by April 1, 2025 at least 75% of all Customers will be receiving services from Contractor for the weekly collection of Recyclable Material and/or Organics. In the event that the Customer participation rate in the service providing weekly collection of Recyclable Materials does not average at least 75% [as reflected in the quarterly reports to be provided pursuant to Section 8.1(b)], then Contractor shall meet with the Village on a quarterly basis to review recycling participation among Customers and identify additional steps and programs that Contractor shall undertake to enhance participation among Customers in the collection of Recyclable Materials.

**ARTICLE IX
CUSTOMER SERVICE STANDARDS**

Section 9.1 Service Options; Changes in Service

The Contractor at its expense, shall be required to develop, print and distribute to all existing Customers, prior to July 1, 2021, and to all new Customers establishing regular service during the term of this Agreement, a brochure approved by the Village explaining the solid waste and recycling programs provided under this Agreement and the procedures for the Customers to modify or cancel the services provided by the Contractor. The brochure shall be updated and distributed whenever there is a change in the service or programs provided, or as directed by the Village.

Section 9.2 Office and Telephone

The Contractor shall maintain an office and toll-free telephone number for receipt of service calls or complaints, and shall be available for such calls on all business days from 7:00 a.m. to 5:00 p.m. The Contractor shall retain the services of at least one temporary full-time customer service representative to handle the addition of Customers to the Contractor's service base during the first ninety days of the term of this Agreement. Additional customer service representatives shall be added as necessary to meet the minimum customer service standards set forth in Section 9.3 of this Agreement.

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Section 9.3 Minimum Customer Service Standards

- a) Complaints Generally. The Contractor shall cooperate with the Village in minimizing complaints from the Customers. A consistent pattern of failure to address complaints, or violations of Sections 9.3(a) through 9.3(h) of this Agreement (defined as having two or more complaints per month that is referred to the Village per Section 9.3(c)), shall entitle the Village to exercise the remedies provided to it pursuant to Section 9.3(h) and/or Article X of this Agreement.
- b) Initial Response. The Contractor shall give prompt and courteous attention to all Customer complaints that it may receive. The Contractor shall respond personally to every Customer from whom a complaint is received within twenty-four (24) hours; except that if the Contractor receives a complaint about a missed scheduled collection, then the Contractor shall immediately investigate such complaint and, if such scheduled collection was not made in accordance with the terms of this Agreement, then the Contractor shall cause such collection to be made within twenty-four (24) hours or the next business day after receipt of such complaint. Contractor acknowledges the importance, in particular, that it resolves missed scheduled collections without the involvement of the Village.

If the Contractor does not respond within the twenty-four (24) hour timeframe, the Village may hire a private hauler to perform the service and the Contractor shall be liable for compensating the Village for the costs associated with the private hauler's services.

Where any dispute arises between a Customer and the Contractor as to the manner of placing waste or the nature of the contents or the like, the Contractor shall, and does hereby agrees in the specific instance to, remove the waste even though, in its opinion, it is improperly placed or contained. Thereafter, the Contractor may seek resolution of any dispute through court, mediation, or arbitration proceedings, at its election.

- c) Referral to Village. If the Contractor is unable to resolve a complaint in a manner satisfactory to both the Contractor and the Customer, then the Contractor, within forty-eight (48) hours after receipt of such complaint, shall deliver notice of such complaint to the Village Administrator or his/her designee, which notice shall include the name and address of the Customer, the date and hour the complaint was received, the nature of the complaint, and the Contractor's response to the complaint. The Village Administrator or his or her designee shall arbitrate each such complaint, and the Village Administrator's or his or her designee's decision concerning each such complaint shall be final and binding on the Contractor and the Customer.
- d) Answering Calls. During normal business hours and under normal operating conditions, a customer service representative employed by the Contractor shall answer the telephone access line. Ninety percent (90%) of the calls made to the customer service center shall be answered within thirty (30) seconds. The thirty (30) second maximum includes wait time or time spent 'holding' for a customer service representative.
- e) Busy Signals. Customers placing calls to the customer service center shall receive a busy signal no more than five percent (5%) of the time.
- f) Transferring Calls. During normal business hours, if after initially addressing a Customer's concern, the customer service representative determines that the call should be transferred

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to another representative of the Contractor, the Customer shall be connected with a customer service representative within thirty (30) seconds thereof.

- g) Hang-ups. Incoming telephone calls from Customers shall not exceed an abandonment rate of five percent (5%).
- h) Compliance Rate. During normal business hours, the minimum standards set forth in this Section 9.3 shall be met no less than ninety percent (90%) of the time, measured on a monthly basis. Reports shall be provided to the Village on a monthly basis providing a log of inquiries received and action taken to address each complaint and call. The Contractor shall also distribute to the Village a log providing data which tracks the customer service representatives' adherence to the standards set forth in Section 9.3(a) through 9.3(g) of this Agreement, as the Village may request in its discretion, on a monthly basis. The Village reserves the right to audit the Contractor's complaint procedures as required by this Section 9.3. If the records and/or audit indicate a clear failure of the Contractor to comply with the minimum standards set forth in Sections 9.3(a) through 9.3(g) of this Agreement, then the Village reserves the right to require the Contractor to implement modifications to its customer service center to bring it into compliance with the requirements of this Section 9.3.

Section 9.4 Cleanliness

- a) Generally. Contractor shall perform the work in a clean and orderly fashion and shall not cause to be deposited, or allow to remain, any Solid Waste, Landscape Waste, or Recyclable Materials at any pick-up area during performance of the Work. Contractor shall replace all container covers and shall replace all containers to their proper locations. Contractor shall take all reasonable actions to avoid clutter and damage, as a result of its operations, to curbs, streets, alleys, pavement, utilities, adjoining property, and all property of the Village. Contractor shall leave all property affected by its operations in a clean condition.
- b) Cleanup of Spills. Contractor shall immediately clean up any Solid Waste, Landscape Waste, or Recyclable Materials that it may have caused to spill onto private premises, parkways, streets, alleys or other public places, in a neat and workmanlike manner. If such materials or fluids are not cleaned up within eight hours after being reported to Contractor (verbally or in writing), the Village may perform the cleanup and bill the cost to Contractor. All charges levied against the Contractor under this Section 9.4(b) shall be remitted to the Village within 30 days after receipt of an invoice therefor.

Section 9.5 Customer Service Survey

The Contractor will, every other calendar year, conduct a customer service survey to assess the Contractor's service performance under the Agreement, in a form, of a content, and administered in a manner to be approved in advance by the Village. The results shall be furnished to the Village.

Section 9.6 Liaison

The Contractor shall designate in writing a person to serve as agent for the Contractor and liaison between the Contractor and the Village.

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**ARTICLE X
BREACH; EVENTS OF DEFAULT AND REMEDIES**

Section 10.1 Breach by Contractor

Each of the following shall constitute a Breach on the part of the Contractor:

- a) A consistent pattern of failure by the Contractor to respond timely to and address Customer complaints in keeping with the customer service standards in Article IX and as further defined in Section 9.3(a).
- b) Failure of the Contractor to pay, within thirty (30) days after notice from the Village of nonpayment, amounts which are undisputed or which are due to the Village under this Agreement;
- c) Repeated failure of the Contractor to comply with Section 9.3(h) of this Agreement;
- d) Failure of the Contractor to perform in a timely fashion any obligation under this Agreement not referenced within Sections 10.1(a) or 10.1(b) of this Agreement, except that such failure shall constitute a Breach only if such failure remains uncured for seven (7) business days after notice to the Contractor from the Village of such failure; provided however, that this seven (7) day notice with opportunity to cure shall not be required in the event of persistent and repeated failure to perform; or
- e) Any of the following: (1) The Contractor's being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property, (2) a bankruptcy, reorganization, insolvency, arrangement or similar proceeding being instituted by the Contractor under the laws of any jurisdiction, (3) a bankruptcy, reorganization, insolvency, arrangement or similar proceeding being instituted against the Contractor under the laws of any jurisdiction, which proceeding has not been dismissed within one hundred twenty (120) days, (4) any action or answer by the Contractor approving of, consenting to or acquiescing in any such proceeding, or (5) the levy of any distress, execution or attachment upon the property of the Contractor which shall (or which reasonably might be expected to) substantially interfere with its performance under this Agreement.

Section 10.2 Events of Default and Remedies of Village

- a) If a Breach occurs under Section 10.1 of this Agreement, the Village may declare an Event of Default or Breach and may thereafter exercise any one or more of the following remedies:
 - 1) The Village may terminate this Agreement immediately, upon notice to the Contractor. Subject to the provisions of subparagraph (5) below, upon such termination, the Contractor shall cease providing all services under this Agreement.
 - 2) The Village may seek and recover from the Contractor any unpaid amounts due the Village along with all of its substantiated costs for the failure of the Contractor to perform any obligation under this Agreement, and all damages, whether based

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upon contract, work stoppage, strike, Contractor negligence (including tort), warranty, delay or otherwise, arising out of the performance or non-performance by the Contractor of its obligations under this Agreement, and whether incidental, consequential, indirect or punitive, resulting from the Breach.

- 3) The Village may (A) call upon the sureties to perform their obligations under the performance bond, or (B) in the alternative, after releasing the sureties from their obligations under the performance bond, take over and perform the required services by its own devices, or may enter into a new agreement for the required services, or any portion thereof, or may use such other methods as shall be required in the opinion of the Village for the performance of the required services.
 - 4) The Village shall have the power to proceed with any right or remedy granted by federal laws and laws of the State as it may deem best, including any suit, action or special proceeding in equity or at law for the specific performance of any covenant or agreement contained herein or for the enforcement of any proper legal or equitable remedy as the Village shall deem most effectual to protect the rights aforesaid, insofar as such may be authorized by law.
 - 5) Upon any such termination of this Agreement, the Contractor shall, for a period to be determined by the Village in its sole and absolute discretion, but not longer than six (6) months, continue to perform the contractual services during which period the businesses shall pay the Contractor its scheduled compensation.
- b) No Waiver; Remedies Not Exclusive. No remedy by the terms of this Agreement conferred upon or reserved to the Village is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Village. No delay or omission to exercise any right or power accruing upon any Event of Default or Breach shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or Breach or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default or Breach shall extend to or shall affect any subsequent default or Event of Default or Breach or shall impair any rights or remedies consequent thereto.
- c) Liquidated Damages for Missed Pickups. If the Contractor misses a collection, the collection must be corrected within 24 hours or the next business day after the complaint is received, or a charge of \$50 per missed collection will be charged to the Contractor as stipulated liquidated damages; provided, however, that the Contractor shall not be charged under this Section 10.2(c) for collections missed due to a labor dispute involving the Contractor's labor force if the missed collection is rectified within seven (7) days after the missed collection. All charges levied against the Contractor under this Section 10.2(c) shall be credited to the affected Customer's account within 30 days after receipt of an invoice therefore.
- d) Work Stoppage. In the event of a strike or other labor stoppage, Contractor shall notify the Village within 24 hours after commencement of the strike or labor stoppage. If such strike or labor stoppage does not end within seven (7) business days of such notification, the Contractor will provide the Village with refuse collection dumpsters located in at least four (4) geographic locations for Customer drop-offs, which locations shall be mutually acceptable to the parties. In the event of a strike, that does not end within 14 days of

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notification, the Village and the Contractor agree to negotiate an equitable reduction to the Contractor's compensation under this Agreement applied as a credit to Customer invoices.

- e) Damage to Property. Contractor shall promptly, and without charge to the Village, repair or restore, at its own expense and to a condition equal to that existing before the occurrence and satisfactory to the Village, any damage done by Contractor to any property, public or private, as a result of the Work. If Contractor fails to promptly repair or restore any such damage, then the Village may, after 48 hours written notice to Contractor, itself cause such repair or restoration to be made, with its own forces or with forces hired for that purpose, and charge all costs related thereto to Contractor. If the Village determines, in its sole discretion, that such damage has created a dangerous situation requiring immediate response, then the Village may cause such repair or restoration to be made without notice to Contractor and charge all costs related thereto to Contractor. All charges levied against the Contractor under this Section 10.3(d) shall be remitted to the Village within 30 days after receipt of an invoice therefor.

- f) This Section 10.2 shall survive the termination of this Agreement.

Section 10.3 Force Majeure

Neither the Contractor nor Village shall be liable for failure to perform their duties or for any resulting damage or loss if such failure is caused by a catastrophe, terrorism, riot, war, fire, accident, pandemic or epidemic, act of God, or other similar contingency that is beyond the reasonable control of the Contractor or the Village including without limitation: extraordinary inclement weather; explosion; widespread lack of adequate fuel, power, raw materials, labor or transportation facilities; material changes in governmental laws, regulations, requirements, orders, or actions, the impact of which is unrelated to Contractor, the Village, or Contractor's or the Village's performance, or failure to perform; national defense requirements; injunctions or restraining orders; and labor trouble and strike. In the event the Contractor asserts a right to suspend performance under this Section, the Contractor shall (i) within twenty-four (24) hours after it has knowledge of the effective cause, notify the Village of the cause for suspension, the performance suspended and the anticipated duration of suspension and (ii) advise the Village when the suspending event has ended and when performance will be resumed. Once the suspending event ends, the Contractor shall promptly resume performance. Changes in recycling markets or market prices are specifically excluded from the above force majeure contingencies contemplated in this section.

ARTICLE XI
INSURANCE AND INDEMNIFICATION

Section 11.1 Insurance

- a) The Contractor shall maintain for the duration of this Agreement and any extensions thereof, insurance issued by a company or companies qualified to do business in the State of Illinois and that meet the requirements set forth in **Exhibit B**. The Contractor shall provide the Village with a certificate and policies of insurance indicating that such insurance coverage meets the requirements contained in **Exhibit B**. The Contractor shall also provide Customers with a certificate of insurance upon request by the Customer.

- b) Insurance premiums shall be paid by the Contractor and shall be without cost to the Village.

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Section 11.2 Indemnification

Contractor agrees, at its sole cost and expense, to unconditionally indemnify and hold harmless and defend the Village and the Village's former, current and future elected and appointed officials, trustees, agents, contractors, employees, representatives, attorneys and insurers and/or successors in interest of any kind (the "*Village Indemnitees*") for and from any and all claims, actions, omissions, losses, injuries, lawsuits, counterparts, debts, dues, obligations, judgments, awards, demands, liens, costs, expenses, attorneys' fees and liability for damages of any kind and causes of action of any kind and nature (including but not limited to all liabilities, claims, suits, costs and expenses which the Village or Village Indemnitees may hereafter incur, become responsible for, or pay out as a result of death or bodily injuries to any person, destruction or damage to any property, contamination of or adverse effects on the environment), whether known or unknown at this time, whether present or future or contingent, that are brought or filed against the Village, and/or the Village Indemnitees, by any person or entity arising out of, relating to, connected with, or in any way associated with the following: (a) Contractor's breach of any term or provision of this contract; (b) any negligent or willful act or omission of Contractor, its employees, agents, or subcontractors in the performance of this Agreement; (c) the violation or alleged violation by Contractor, its employees, agents, or subcontractors of any federal, state or local law, regulation, statute, ordinance, license, or permit and (d) the release, threatened release or presence of contaminants (which shall include but not limited to hazardous waste, hazardous substances and any material which any governmental agency or unit having appropriate jurisdiction shall determine from time to time is harmful, toxic, or dangerous) which occurs during the performance (or failure to perform) of this Agreement, including transportation and/or disposal of the Commercial Materials and/or from or on the site(s) or facility(ies) utilized for disposal of the Commercial Materials. In the event that any such claim, action, cause of action or lawsuit is brought or filed, the Village and Village Indemnitees shall have the right to determine the attorney(s) of its choice to represent and defend their interests in any legal or administrative action in the event that a conflict exists which prevents the same defense counsel from representing the Contractor and the Village or Village Indemnitees, all at the Contractor's expense pursuant to this Agreement. Notwithstanding any other provision in this Agreement to the contrary, the duration of the indemnification hereunder shall be indefinite and survive the expiration of this Agreement.

**ARTICLE XII
MISCELLANEOUS**

Section 12.1 Non-Assignability

The Contractor shall not assign this Agreement or any part thereof without the prior written consent of the Village. Approval, if any, for such assignment shall be made by the corporate authorities of the Village. The Contractor shall not assign or subcontract this Agreement or the work hereunder, or any part thereof, to any other person, firm, or corporation without prior written consent of the Village, but the Contractor may perform its obligations hereunder through its subsidiaries or divisions. Such assignment shall not relieve the Contractor from its obligations or change the terms of Agreement.

Section 12.2 Equal Employment Opportunity

- a) In the event of the Contractor's noncompliance with the provisions of this Section 12.2, the Illinois Human Rights Act or the Illinois Department of Human Rights Rules and Regulations, the Contractor may be declared ineligible for future contracts or subcontracts with the State or any of its political subdivisions or municipal corporations, and this

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Agreement may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation.

- b) During the performance of this Agreement, the Contractor agrees as follows:
- 1) That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military service; and further, that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such under-utilization.
 - 2) That, if it hires additional employees in order to perform this Agreement or any portion hereof, it will determine the availability (in accordance with the Illinois Department of Human Rights Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not under-utilized.
 - 3) That, in all solicitations or advertisements for employees placed by the Contractor or on the Contractor's behalf, the Contractor will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military service.
 - 4) That the Contractor will send to each labor organization or representative thereof with which it is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Contractor's obligations under the Illinois Human Rights Act and the Illinois Department of Human Rights Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Contractor in its efforts to comply with such Act and Rules and Regulations, the Contractor will promptly notify the Illinois Department of Human Rights and the Village, and will recruit employees from other sources when necessary to fulfill the Contractor's obligations thereunder.
 - 5) That the Contractor shall submit reports as required by the Illinois Department of Human Rights Rules and Regulations, furnish all relevant information as may from time to time be requested by the Illinois Department of Human Rights or the Village, and in all respects comply with the Illinois Human Rights Act and the Illinois Department of Human Rights Rules and Regulations.
 - 6) That the Contractor shall permit access to all relevant books, records, accounts and work sites by personnel of the Village and the Illinois Department of Human Rights for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Illinois Department of Human Rights Rules and Regulations.

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- 7) That the Contractor shall include, verbatim or by reference, the provisions of this Section 12.2 in every subcontract it awards under which any portion of the Agreement obligations are undertaken or assumed, so that such provisions will be binding upon each subcontractor. The Contractor will promptly notify the Village and the Illinois Department of Human Rights in the event any subcontractor fails or refuses to comply therewith. In addition, the Contractor will not utilize any subcontractor ineligible for contracts or subcontracts with the State or any of its political subdivisions or municipal corporations.
- c) During the term of this Agreement, the Contractor shall comply in all respects with the Equal Employment Opportunity Act. The Contractor shall have a written equal employment opportunity policy statement declaring that it does not discriminate on the basis of race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military service. Findings of non-compliance with applicable State or federal equal employment opportunity laws and regulations may be sufficient reason for revocation or cancellation of this Agreement.

Section 12.3 Performance Bond

The Contractor shall furnish a performance bond for the faithful performance of this Agreement, in substantially the form provided as *Exhibit C*, to be executed by a responsible surety company and to be in the penal sum of Two Hundred Fifty Thousand Dollars (\$250,000). Such performance bond shall be furnished annually by the Contractor for the following year of this Agreement and shall indemnify the Village against any loss resulting from any failure of performance by the Contractor. The initial bond shall be posted on or before the Commencement Date, and each successive bond shall be posted not later than January 1 of each successive calendar year. In lieu of furnishing a performance bond, the Proposer may demonstrate its ability to furnish an unconditional letter of credit to be delivered at Closing in favor of the Village, in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) drawn on a national or state-chartered bank acceptable to the Village. Any performance security required under this Section shall be in such form and with such provisions as are acceptable to the Village, in the Village's sole discretion.

Section 12.4 Equipment to be Used by Contractor

- a) Contractor shall furnish, and maintain in a neat, clean, and sanitary condition, enclosed modern collection equipment approved by the Village for use in performing the Work. Contractor may use replacement, open trucks on a temporary basis in case of emergency, but only with the prior express written approval of the Village. No vehicle used in the performance of this contract shall have a gross vehicle weight rating (GVWR) of greater than 55,000 pounds. All vehicles shall be maintained in good working order and appearance, free of rust, and shall be clean at the start of each collection day. In the event that any vehicle is not properly operable, a substitute vehicle shall immediately be provided that complies with the terms herein. All vehicles shall display the name of the Contractor, a local phone number, and a vehicle identification number that is clearly visible on both sides. No vehicle shall be operated on a Village street that leaks any fluids from the engine or compaction mechanism. All vehicles shall be fully enclosed and operated in such a way that no Solid Waste leak, spill or blow off the vehicles. Should any Solid Waste leak, spill or blow off a vehicle due to the vehicle operator's failure to properly monitor the load or to close opening, or due to failure of any mechanism, the Contractor shall be responsible for collecting or cleaning up such litter or fluids. If such litter or fluids are not cleaned up after notice (verbal or written) from the Village, the Village may clean up same, and the

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Village may bill the cost to the Contractor for services rendered. Drain plugs, if available, shall be kept closed except during collections in rainy weather. All vehicles shall be made available for inspection during regular business hours at the request. Contractor may use replacement, open trucks on a temporary basis in case of emergency, but only with the prior express written approval of the Village

- b) Contractor acknowledges the desire of the Village to promote the use of alternative fuels and agrees to give priority to the Village in deploying its vehicles that use fuels other than conventional gasoline and diesel.
- c) Containers used in connection with the provision of Commercial Services by the Contractor pursuant to this Agreement shall be operable, safe and free of graffiti. Contractor shall replace any container in disrepair of this sort within three (3) days of notification by the Village or the Customer. Containers with plastic lids that are ill-fitted or warping shall be replaced within three (3) days of notification by the Village, in order to maintain a tight-fitting seal to prevent access by pests. All containers shall clearly show Contractor's logo and a unique inventory control number that is cross-referenced to the service matrix. Contractor is encouraged to install RFID tags on carts and containers to assist with collection tracking.
- d) All equipment used by Contractor for the provision of Commercial Services and Private Services pursuant to this Agreement shall be properly licensed by the State and shall conform to all federal and State equipment safety standards.

Section 12.5 Compliance with Laws

- a) Notwithstanding any other provisions in this Agreement, the Contractor shall comply at all times with all applicable federal, State and municipal laws, ordinances and regulations at any time applicable to the Contractor's operations under this Agreement, with no increase to the Contractor's compensation as set forth in this Agreement.
- b) The Contractor shall obtain, at its own expense, all permits and licenses required by law or ordinance and maintain the same in full force and effect.

Section 12.6 Care and Performance

- a) The Contractor shall undertake to perform all services rendered hereunder in a neat, thorough and competent manner, without supervision by the Village, and to use care and diligence in the performance of all specified services and to provide neat, orderly, uniformed and courteous employees and personnel on its crews.
- b) The Contractor shall be liable to the Village for damage to Village rights-of-way caused in connection with the provision of the Commercial Services or Private Services, ordinary wear and tear excepted.
- c) To the extent that the Contractor or its employees or agents violate any provisions on the Village Code, the Contractor shall be liable for fines due under the Village Code arising in the course of its provision of services under this Agreement.

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- d) The Contractor acknowledges, and the Parties agree that, with respect to the Commercial Services to be provided to Customers under this Agreement, the Customers are third-party beneficiaries of this Agreement.

Section 12.7 No Alcohol or Drugs

The Contractor shall prohibit and use its best efforts to enforce the prohibition of any drinking of alcoholic beverages or use of illegal drugs by its drivers and employees while on duty or in the course of performing their duties under this Agreement.

Section 12.8 Governing Law

This Agreement and the rights of the Village and the Contractor under this Agreement shall be interpreted according to the internal laws, but not the conflict of laws rules, of the State of Illinois.

Section 12.9 Severability

The provisions of this Agreement shall be interpreted when possible to sustain their legality and enforceability as a whole. In the event any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, in whole or in part, neither the validity of the remaining part of such provision, nor the validity of any other provisions of this Agreement, shall be in any way affected thereby. The unenforceability of any provision of this Agreement in a specific situation shall not affect the enforceability of that provision in any other situation.

Section 12.10 Entire Agreement

This Agreement sets forth the entire agreement of the Village and the Contractor with respect to the provision of the Commercial Services and compensation therefore, and there are no other understandings or agreements, oral or written, between the Village and the Contractor with respect to the Commercial Services and the compensation therefore, nor was the making and execution of this Agreement induced by any representation, statement, warranty, agreement, or action other than those expressed or explicitly referenced herein.

Section 12.11 Notices

All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier or (iii) by certified mail, return receipt requested, and deposited in the U.S. mail, postage prepaid. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each party shall have the right to change the address or addressee, or both, for all future notices and communications to the other party but no notice of a change of address or addressee shall be effective until actually received.

Notices and communications to the Village shall be addressed to, and delivered at, the following address:

Village of Lake Bluff
40 E. Center Avenue
Lake Bluff IL 60044
Attention: Village Administrator

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Notices and communications to the Contractor shall be addressed to, and delivered at, the following address:

Address
Attention:

With a copy to:

Address
Attention:

Section 12.12 Publicity

The Village’s name, insignia or associated marks; photographs of the Village or any other publicity pertaining to the provision of the Commercial Services shall not be used in any magazine, trade paper, newspaper, or other medium without the express written consent of the Village.

Section 12.13 No Interpretation against Drafter

This Agreement has been negotiated by all Parties and shall not be construed against any Party as the drafter of this Agreement.

Section 12.14 Independent Contractor

Contractor acknowledges and agrees that the relationship of the parties hereunder shall be that of independent contractor and that neither Contractor nor its employees shall be deemed to be an employee of the Village for any reason whatsoever. Neither Contractor nor Contractor's employees shall be entitled to any Village employment rights or benefits whatsoever. Contractor is only authorized to operate pursuant to this Agreement and shall not be deemed an Agent of the Village when engaging in the activities authorized hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives, all on the day and year first above written.

CONTRACTOR

VILLAGE OF LAKE BLUFF

By: _____

By: _____

Its: _____

Its: _____

ATTEST:

ATTEST:

By: _____

By: _____

Its: _____

Its: _____

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EXHIBIT A

SCHEDULE OF INITIAL RATES AND PRICES

<TO FOLLOW>

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EXHIBIT B

MINIMUM INSURANCE PROVISIONS

A. Insurance Requirements

The Contractor shall procure and maintain the following insurance during the entire term of the agreement described in Section 3.1:

<u>Type of Insurance</u>	<u>Required Minimum Coverage</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000 per accident \$1,000,000 disease (policy limit) \$1,000,000 disease (each employee)
3. Commercial General Liability, including "occurrence" coverage for: premises and operations, independent Contractors protective, contractual liability, broad form property damage and XCU hazards, products and completed operations (including broad form property damage), personal injury liability, and owner's protective liability.	\$3,000,000 per person per occurrence for bodily injury \$5,000,000 per occurrence for bodily injury \$1,000,000 per occurrence for property damage.
4. Business Auto liability (including owned, non-owned and hired vehicles and coverage for environmental liability)	\$3,000,000 per person \$5,000,000 per accident for bodily injury \$1,000,000 per accident for property damage
5. Umbrella/Excess liability (to apply as excess over 2, 3 and 4 above)	\$5,000,000 per occurrence \$5,000,000 annual aggregate

B. Miscellaneous Provisions

1. The insurance policies set forth in Sections A3 and A5 of this Exhibit B shall continue to be maintained for a period of two (2) years following the termination of the Agreement.
2. Equivalent insurance must be maintained by each subcontractor of the Contractor.
3. All insurance companies must be reasonably acceptable to the Village and may include self-insurance obtained by the Contractor. Minimum insurance carrier requirements include a current rating from A.M. Best Co., Inc. (or any successor publication of comparable standing within the industry) of "A VIII" and a license to do business in the State of Illinois.
4. All liability coverages shall be written on an occurrence basis.
5. Prior to commencing Services under the agreements, the Contractor shall deliver, or cause to be delivered, to the Village certificates of insurance (and other evidence of insurance

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requested by the Village) which the Contractor is required to purchase and maintain pursuant to this Schedule. The Contractor shall deliver certificates of renewal or replacement policies or coverage no less than ten (10) days prior to the effective date of each renewal or replacement policy or coverage.

6. All insurance coverage required to be purchased and maintained shall contain a provision or endorsement providing that the coverage afforded will not be cancelled, materially reduced or altered or renewal refused until at least thirty (30) days' prior written notice has been given to the Village by certified mail.
7. The Contractor shall be responsible for promptly reporting all claims to the appropriate insurer on behalf of itself, the Village and the additional insured's set forth below.
8. The insurance policies set forth in Sections A3, A4, and A5 of this Exhibit B shall be endorsed to include the Village, the directors, officers, employees, agents and members of the Village, SWALCO and the directors, officers, employees, agents and members of SWALCO as additional named insured's for all activities of the Contractor in the performance of the Agreement. Such insurance is to be primary and non-contributory with any insurance secured and maintained by such additional named insureds.

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APPENDIX C

FORM OF PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that

[insert full name and address of proposer here:] _____

as Principal (hereinafter called the “Agreementor”),

and [insert full name and address of surety here:] _____

(hereinafter called the “Surety”),

as Surety, a corporation organized and existing under the laws of the State of

_____,
hereinafter called Surety, are held and firmly bound unto the VILLAGE OF LAKE BLUFF as Obligee, hereinafter called the Village, in the full and just sum of **TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000)**, for the payment of which sum of money well and truly to be made, the AGREEMENTOR and Surety bind themselves, and their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents, said amount to include payment of actual costs and damages and for attorneys' fees, engineering fees, accounting fees, consulting fees, court costs, interest, and any other fees and expenses resulting from or incurred by reason of the AGREEMENTOR’s failure to promptly and faithfully perform its agreement with the Village, said agreement being more fully described below, and to include attorneys' fees, court costs, and other expenses necessarily paid or incurred in successfully enforcing performance of the obligation of Surety under this bond.

WHEREAS, the AGREEMENTOR has entered into a written agreement dated _____, 2021, with the Village entitled “COMMERCIAL SOLID WASTE COLLECTION SERVICES AGREEMENT” (the “Agreement”), the terms and conditions of which are by this reference incorporated herein as though fully set forth herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the AGREEMENTOR shall well, truly, and promptly perform all the undertakings, covenants, terms, conditions, and agreements of the said AGREEMENTOR under the Franchise Agreement, including, but not limited to, the AGREEMENTOR’s obligations under the Agreement: (1) to provide and perform, in the manner specified in the Franchise Agreement, all necessary work, labor, services, transportation, materials, equipment, apparatus, machinery, tools, fuels, information, data, and other means and items necessary for the collection of all municipal waste, landscape waste, and recyclable materials from all Customers, as provided in the Agreement; (2) to procure and furnish all permits, licenses, and other governmental authorizations necessary in connection therewith and to comply with the laws of the State of Illinois and ordinances and regulations of the Village in connection therewith; (3) to procure and furnish the Performance Bond and all certificates and policies of insurance specified in the Agreement; (4) to pay all applicable federal, state, and local taxes; (5) to indemnify the Village against any loss resulting from any breach or failure of performance by the AGREEMENTOR under the Agreement; (6) to do all other things required of the AGREEMENTOR by the Agreement; and (7) to provide, perform, and complete all of the foregoing in a proper and workmanlike manner and in full accordance and compliance with, and as required by, the Agreement; all of which is herein referred to as the "Work," then this obligation shall be null and void; otherwise it shall remain in full force and effect.

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For purpose of this bond, a claimant is defined as one having a direct agreement with AGREEMENTOR or with a subagreementor of Agreementor to provide, perform, or complete any part of the Work.

AGREEMENTOR and Surety hereby jointly and severally agree that every claimant who has not had all just claims for the furnishing of any part of the Work paid in full, including, without limitation, all claims for amounts due for materials, lubricants, oil, gasoline, rentals of or service or repairs on machinery, equipment, and tools consumed or used in connection with the furnishing of any part of the Work, may sue on this bond for the use of such claimant, may prosecute the suit to final judgment for such sum or sums as may be justly due such claimant, and may have execution therein; provided, however, that Village shall not be liable for the payment of any costs or expenses of any such suit. To the extent applicable, the provisions of 30 ILCS 550/1 and 30 ILCS 550/2 shall be deemed inserted herein, including the time limits within which notices of claim must be filed and actions brought under this bond.

AGREEMENTOR and Surety hereby jointly agree that Village may sue on this bond if Village is held liable to, or voluntarily agrees to pay, any claimant directly, but nothing in this bond shall create any duty on the part of Village to pay any claimant.

Surety, for value received, hereby stipulates and agrees that no changes, modifications, alterations, omissions, deletions, additions, extensions of time, or forbearance on the part of either the Village or the AGREEMENTOR to the other in or to the terms of said Agreement; in or to the schedules, plans, drawings, or specifications; in or to the method or manner of performance of the Work; or in or to the mode or manner of payment therefore shall in any way release the AGREEMENTOR and Surety or either or any of them, or any of their heirs, executors, administrators, successors, or assigns, or affect the obligations of Surety on this bond, all notice of any and all of the foregoing changes, modifications, alterations, omissions, deletions, additions, extensions of time, or forbearance, and notice of any and all defaults by the AGREEMENTOR or of the Village's termination of the AGREEMENTOR, being hereby waived by Surety.

Notwithstanding anything to the contrary in the foregoing paragraph, in no event shall the obligations of Surety under this bond in the event of the AGREEMENTOR's default be greater than the obligations of the AGREEMENTOR under the Franchise Agreement in the absence of such AGREEMENTOR default.

In the event of a default or defaults by the AGREEMENTOR, the Village shall have the right to reimburse itself from the proceeds of this bond for any and all costs, expenses, losses, damages, liquidated damages, liabilities, suits, judgments, awards, attorneys' fees, and administrative expenses incurred, suffered, or sustained by the Village and/or chargeable to the AGREEMENTOR under the Franchise Agreement or this bond. In addition, the Village shall have the right to take over and complete the Franchise Agreement upon 30 calendar days' written notice to Surety, in which event Surety shall pay the Village all costs incurred by the Village in taking over and completing the Franchise Agreement or, at its option, the Village may instead request that Surety take over and complete the Franchise Agreement, in which event Surety shall take reasonable steps to proceed promptly with completion no later than 30 calendar days from the date on which the Village notifies Surety that the Village wants Surety to take over and complete the Franchise Agreement.

The Village shall have no obligation to actually incur any expense or correct any deficient performance of the AGREEMENTOR in order to be entitled to receive the proceeds of this bond.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Village or the heirs, executors, administrators, or successors of the Village.

[Signature page follows.]

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Signed and sealed this _____ day of _____, 2021.

Attest/Witness:

AGREEMENTOR

By: _____

By: _____

Title: _____

Title: _____

Attest/Witness:

SURETY

By: _____

By: _____

Title: _____

Title: _____