

SOLID WASTE DELIVERY AGREEMENT

THIS AGREEMENT is made and entered into between the Sanitary Board of the Western Lake Superior Sanitary District, 2626 Courtland Street, Duluth, Minnesota 55806, hereinafter referred to as the "District", and City of Duluth, 411 West First Street, Duluth, MN 55802, hereinafter referred to as the "Collector."

WITNESSETH:

WHEREAS, the District operates a solid waste transfer station near 27th Avenue West in Duluth and Carlton County operates a transfer station at 1950 Highway 210 in Twin Lakes Township (collectively referred to as the "Transfer Station");

WHEREAS, the District has a joint powers agreement with Carlton County concerning disposal of waste at the Carlton County Transfer Station; and

WHEREAS, the District has authority pursuant to Minn. Stat., Chap. 458D. to enter into an Agreement with Collector for the delivery of solid waste to the Transfer Station;

WHEREAS, The District has an agreement with the City of Superior, Wisconsin ("City") for the disposal of waste at the City land disposal facility (Solid Waste Facility Operation License #2627) which expires on June 30, 2024, with extensions to be negotiated by the City and the District through the end of operational life of the Disposal Facility. It is anticipated that the Disposal Facility will have some remaining available capacity after July 1, 2024.

NOW, THEREFORE, in consideration of the promises and mutual agreements hereinafter set forth, District and Collector agree as follows:

1. TERM OF THE AGREEMENT

This Agreement shall commence December 6, 2022, and terminate on June 30, 2024, but may be extended by the parties' option through the end of operational life of the Disposal Facility, unless sooner terminated as provided in Section 12.

2. DEFINITIONS

Capitalized terms used but not defined herein shall have the meanings given them in the District's Solid Waste Ordinance, as amended from time to time.

3. LICENSES.

The Collector has obtained and will maintain all necessary licenses, permits and other authorizations required by the District, including a Collector's license from the District, and each municipality or township within the counties in which it operates (if required by the unit of government), the Minnesota Pollution Control Agency (MPCA) and any other governmental agency having jurisdiction over its activities. A Collector operating outside the District boundaries must be properly licensed, if applicable, by the local municipality or county in which it operates.

4. DELIVERY OF ACCEPTABLE WASTE

The Collector agrees to deliver to the Transfer Station all Mixed Municipal Solid Waste which is Acceptable Waste, as defined in the District's Solid Waste Ordinance, as amended from time to time. Recyclable Materials that are separated from Mixed Municipal Solid Waste for beneficial reuse are exempted from this delivery requirement. This Agreement includes Acceptable Waste the Collector collects in the District boundaries or within South St. Louis, Cook, Carlton or Lake counties. In the event Collector violates this Section, Collector shall pay the current Tip Fee (as determined in Section 5) per ton of such Acceptable Solid Waste not delivered to the Transfer Station.

5. PAYMENT PROCEDURES

A. Payment for Waste Delivered to the District Transfer Station.

- a. A statement for all Acceptable Waste delivered by the Collector to the District Transfer Station during each calendar month will be mailed to Collector within five (5) business days after the end of such month. All such statements shall be paid on a Net 30 basis.
- b. If any payment or any part thereof remains unpaid following the due date, the WLSSD may charge a late fee of 7.15% or interest finance charge of 0.6% on the amount unpaid from its due date until paid. If a particular Collector is found to be thirty (30) days or more in arrears in full payment of an invoice or a fee or interest, neither that Collector nor any vehicle of that Collector will be allowed to discharge Acceptable Waste at the Transfer Station, at the discretion of the Executive Director.
- c. The Collector may be required to prepay cash to enter the District Transfer Station if its account is not current.

- d. During the first year of the term of this Agreement, the Collector shall pay the tip fee for all waste delivered to the District Transfer Station as follows:
 - i. Sixty-Three Dollars and Eight Cents (\$63.08) for each ton of Mixed Municipal Solid Waste;
 - ii. Sixty-Five Dollars and Eight Cents (\$65.08) for each ton of Mixed Waste;
 - iii. Sixty-Seven Dollars and Eight Cents (\$67.08) for each ton of Mixed Municipal Solid Waste and Mixed Waste from outside of the District;
 - iv. An additional Ten Dollars (\$10.00) for each ton of waste delivered after the Collector is found to be Noncompliant under the Solid Waste Ordinance;

The amount of the tip fee is the same amount charged to all Collectors which have signed a Solid Waste Delivery Agreement with the District. On the first day of July of each year thereafter, the amount charged for each ton of Acceptable Waste delivered to the Transfer Station shall be increased or decreased by a percentage equal to the percentage increase or decrease in the cost to the District of transferring, transporting and disposing of a ton of Acceptable Waste pursuant to the District's Agreement with its contractors for such services. In addition, Collector shall pay all applicable taxes, including but not limited to Wisconsin solid waste, landfill or recycling fees or taxes, not otherwise included in the Tip Fee.

- e. The Collector shall pay any fees or additional charges for Unacceptable Waste delivered to the Transfer Station including, but not limited to, tires, appliances, banned electronics or other waste on which the District has imposed a fee for removal once the waste is delivered to the Transfer Station.

B. Payment for Waste Delivered to the Carlton Transfer Station.

- a. Collector executes this Agreement in exchange for receiving the lowest rate given to Collectors for solid waste disposal at the Carlton Transfer Station, as established by Carlton County, and recognizes that a Collector not executing this Agreement will be charged an additional fee per ton for disposal of District waste at the Transfer Station. The amount of the Tip Fee will be set by Carlton County.

- b. Collector shall promptly pay Carlton County the Tip Fee for all waste delivered to the Transfer Station, and any additional fees as may be assessed by the District or Carlton County.
- c. During the term of this Agreement, the Collector shall pay:
 - i. An additional Ten Dollars (\$10.00) for each ton of waste delivered after the Collector is found to be Noncompliant in accordance with the District Solid Waste Ordinance; and
 - ii. An additional Five Dollars (\$5.00) for each ton of waste delivered to the Carlton Transfer Station that is generated outside of the District boundaries.

Collector shall also pay all applicable taxes, including but not limited to Wisconsin solid waste, landfill or recycling fees or taxes, not otherwise included in the Tip Fee.

6. INDEPENDENT CONTRACTOR

The Collector shall select the means, method, and manner of performing the activities or services described herein. Nothing is intended or should be construed in any manner as creating or establishing the relationship of co- partners between the parties hereto or as constituting the Collector as the agent, representative, or employee of the District for any purpose or in any manner whatsoever. The Collector is to be and shall remain an independent contractor with respect to all activities or services performed under this Agreement. Any and all claims that may or might arise under the Unemployment Compensation Act or the Workers' Compensation Act of the State of Minnesota on behalf of said personnel, arising out of employment or alleged employment, including, without limitation, claims of discrimination against the Collector, its officers, agents, contractors, or employees shall in no way be the responsibility of the District, and the Collector shall defend, indemnify, and hold the District harmless from any and all such claims.

7. INDEMNIFICATION

A. Indemnification of Collector.

The District agrees to defend, indemnify, and hold harmless the Collector against liability for removal or remedial actions required under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Minnesota Environmental Response and Liability Act (MERLA) for a release or threatened release of hazardous substance from Mixed Municipal Solid Waste delivered by the Collector pursuant to this Agreement to the Transfer Station, not rejected by the District or its

contractor, and not rejected by the disposal facility utilized by the District. It is further understood and agreed that the District's duty to indemnify the Collector shall be null and void with respect to any portion of Mixed Municipal Solid Waste which constitutes Unacceptable Waste that the Collector knowingly deposits at the Transfer Station. The Collector shall cooperate to give timely notice of the claim and to assist in investigation and defense of the claim.

The District shall provide legal representation through legal counsel of its choice for the defense of claims asserted against the District, the Collector and/or other waste collectors if those claims are indemnified by the District under this section. In its sole discretion, the District may choose to provide legal representation through common counsel or separate counsel to represent the Collector for said claims. The Collector shall be solely responsible for defending claims or portions of claims not indemnified by the District under this section.

In the event that any legal conflict develops in the continued representation of the District and other waste collectors, the Collector may consent to have the common counsel continue to represent it under this section. Nothing in this Agreement shall prevent Collector from retaining, at the Collector's sole expense, its own counsel for the defense of claims indemnified by the District under this section in the event a conflict of interest exists.

The Collector agrees to notify the District within 30 days of receipt of all claims on which the Collector may seek indemnification by the District.

- B. No Waiver of Immunities. Nothing in this Agreement shall constitute a waiver or diminution by the District of any immunities or statutory limitations on liability; provided, however, solely between District and Collector such immunities or statutory limitations shall not apply to the District's indemnification obligation set forth above.

8. SUCCESSORS

This Agreement shall be binding on the Collector and its successors and assigns. Collector will not give, sell or transfer all or substantially all of its assets (or interest therein) to any third party unless such third party agrees to assume Collector's obligations hereunder.

9. MERGER AND MODIFICATION

It is understood and agreed that the entire Agreement between the parties is contained herein, and that this Agreement supersedes all oral and written agreements and negotiations between the parties relating to the subject matter hereof. All modifications of this Agreement shall only be valid if in writing and signed by the parties hereto.

10. SURVIVAL OF REPRESENTATION AND WARRANTIES

The representations, warranties, covenants and agreements of the parties under this Agreement, and the remedies of either party for the breach of such representations, warranties, covenants, and agreements by the other party shall survive the execution and termination of this Agreement.

11. DEFAULT

A. Collector Default.

The following shall constitute a default by the Collector:

- a. Failure to comply with all applicable laws, ordinances, rules and regulations relating to solid waste hauling, including the District's Solid Waste Ordinance;
- b. Failure to make timely payment of all fees payable pursuant to this Agreement; or
- c. Failure to fulfill any of its other obligations under this Agreement.

B. District Default.

The following shall constitute a default by the District:

- a. Failure to fulfill any of its material obligations under this Agreement; or
- b. Failure to accept waste at the Transfer Station for a period of more than 30 consecutive days.

C. Opportunity to Cure.

No event of default set forth in this Article shall give rise to the right to terminate unless and until: (1) written notice is given to the defaulting party, specifying that a particular event of default exists which will, unless corrected within a thirty (30) day period of time, constitute a material breach of the Agreement on the part of the defaulting party; and (2) the defaulting party has not corrected such default within such period of time.

12. TERMINATION

- A. This Agreement may be terminated at any time by mutual agreement of the parties.
- B. Either party may terminate this Agreement by reason of the default of the

other party, unless the default has been cured within the thirty (30) day period following notice of the default as provided in Section 11, Section C.

- C. Either Part may terminate this Agreement without cause and upon thirty (30) days written notice.

13. SAFETY EQUIPMENT

Any employee or agent of the Collector shall comply with OSHA and all WLSSD safety policies and procedures when the employee or agent is outside of a Collector vehicle on the WLSSD Transfer Station tip floor. At a minimum Contractor employees and agents will wear hard hats, safety glasses, Class 2 safety vest/jacket and steel toe shoes/boots.

14. FORCE MAJEURE

If the District or Collector is delayed, hindered or prevented from performing any act required hereunder by reason of fire, explosion, strike, lockouts, labor troubles, inability to procure materials, failure of power, restrictive government laws or regulations, the act, failure to act or default of another party or other reason beyond its control and which could not have been reasonably anticipated by such party, then performance of the act shall be excused for the period of delay.

15. NOTICES

Any notice or demand which must be given or made by a party hereto under the terms of this Agreement shall be in writing, and shall be sent by receipted delivery service at the addresses stated at the beginning of this Agreement. Notices to Collector should be sent to the attention of Cheryl Skafte, Parks and Grounds Maintenance Supervisor, 110 N. 42nd Ave W., Duluth, MN 55807.

16. APPLICABLE LAW

This Agreement, together with all of its paragraphs, terms and conditions, is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder will be those courts located in St. Louis County.

17. SEVERABILITY

The provisions of this Agreement shall be deemed severable. If any part of this Agreement is found by a court of competent jurisdiction to be void, invalid, or unenforceable, such a finding shall not affect the validity and enforceability of the remainder of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first above written.

SANITARY BOARD OF THE WESTERN LAKE SUPERIOR SANITARYDISTRICT:

By: _____

Its: _____

COLLECTOR:

By: _____
Mayor

Attest:

By: _____
City Clerk

Date: _____

Countersigned:

City Auditor

Approved as to Form:

City Attorney