

**FIRST AMENDMENT TO
RESIDENTIAL SOLID WASTE, YARD WASTE AND BULKY WASTE
COLLECTION AGREEMENT**

This First Amendment to Residential Solid Waste, Yard Waste and Bulky Waste Collection Agreement (“First Amendment”) is made between the City of Saint Paul, a municipal corporation (hereafter “City”), and St. Paul Haulers, LLC, a Minnesota limited liability company (hereinafter “Consortium” and each member of the St. Paul Haulers, LLC, a “Consortium Member”) effective this ___ day of December, 2018.

RECITALS.

WHEREAS, the City and Consortium have entered into a Residential Solid Waste, Yard Waste and Bulky Waste Agreement dated November 14, 2017, (the “Agreement”); and

WHEREAS, Section 2.15.5 requires that Consortium Members invoice RDUs on the 20th day of the month prior to the first day of Services for each quarterly period; and

WHEREAS, Section 2.15.7 states that after ninety (90) days of non-payment, each Consortium Member shall cease collection efforts, notify the City of nonpayment, and bill the City for each RDU’s unpaid account balance for the previous quarter; and

WHEREAS, Section 2.15.8 states that if a Consortium Member followed the billing and collection process described in Section 2.15 of the Agreement, including providing the City with copies of the all Notices of Non-Payment sent to each non-paying RDU (collectively, “NP RDUs”), and provides required documentation of collection efforts, the City will take over collection efforts and pay the Consortium Member amounts due for all NP RDUs semiannually, on March 1 or September 1 of each year of the Agreement (each, a “Payment Date”) as provided in Exhibit 9 (referred to herein as the “Billing Timeline”); and

WHEREAS, these timing requirements in the Agreement require Consortium Members to bill RDUs for Services in one quarter before Consortium Members have submitted evidence of non-payment for RDUs for the prior

quarter which create problematic billing issues for the Consortium Members;
and

WHEREAS, Section 2.15.5 of the Agreement states that payments are due ten (10) business days from the date the quarterly invoice for trash collection is sent to an RDU (each a “Quarterly Invoice”); and

WHEREAS, Section 2.15.6 of the Agreement states “Invoices not paid by the due date are subject to a 5% monthly late fee which shall be imposed on the Original Notice of Non- Payment, which shall be sent when payment has not been received by the end of the first month of service for the period being billed (for example, an invoice dated September 20 not paid by October 4 would incur its first late fee on October 31)”;

WHEREAS, based on the ambiguities in Sections 2.15.5 and 2.15.6 when read together (the “Late Fee Ambiguity”), the parties disagree as to whether the 5% monthly late fee on the invoice amount (the “Late Fee”) can be imposed for payments that occur between the due date and the end of the first month of service for the period being billed; and

WHEREAS, the City and the Consortium have come to an agreement to revise the Billing Timeline and resolve the Late Fee Ambiguity and desire to amend the Agreement on the terms set forth in this First Amendment.

NOW THEREFORE, in consideration of the promises, covenants and agreements made herein, the City and the Consortium hereby agree as follows:

1. Any Late Fee assessed an RDU in 2018, for failure to pay the invoice for trash collection services for the period of October 1, 2018 – December 31, 2018 (each a “Q4 Invoice”) prior to November 1, 2018 shall be waived and the Consortium Member who assessed such Late Fee shall either refund the RDU within 30 days of the effective date of this Amendment or place a credit on the RDU’s next invoice. Late Fees may be imposed on any unpaid balance from a Q4 Invoice existing on November 1, 2018.
2. Notwithstanding the Agreement as amended below, Consortium Members may again assess a Late Fee on any unpaid balance from a Q4 Invoice existing on November 20, 2018.
3. Notwithstanding the Agreement as amended below, Consortium Members may again assess a Late Fee on any unpaid balance from a Q4 Invoice existing on December 20, 2018.

4. On or before January 31, 2019, the City will verify, without further review, that each Consortium Member has provided all required documentation and satisfied all collection attempt requirements described Sections 2.15.9, 2.15.7 and 2.15.8 for each Consortium Member Notice of Non- Payment submitted to the City by January 5, 2019. However, the City may investigate (the “City Investigation”) any alleged accounting, billing, or numerical errors for which it has documented evidence, which may consist solely of the documents described herein, for such allegations, and may make any necessary adjustments to any payment due to any individual Consortium Member at the time of the next Payment Date in September of 2019. Notwithstanding the foregoing, any City Investigation, shall not delay, defer or postpone any payments due to any Consortium Member pursuant to any amounts listed on any Notice of Non-Payment submitted to the City by January 5, 2019.

5. Section 2.15.5 of the Agreement shall be deleted in its entirety and replaced as follows:

Quarterly Invoices shall be dated the 5th day of the first month of Services (or the next business day if the 5th day falls on a weekend or holiday) for each quarter. The Consortium Members shall send Quarterly Invoices by mail or email based on the preference of the RDU. RDUs shall remit payment in full within twenty (20) days of the date of the Quarterly Invoice. Such invoice shall include any unpaid charges for Additional Service Options provided during the preceding quarter. If an RDU disputes the charges in any Quarterly Invoice, such RDU must notify the invoicing Consortium Member in writing detailing such dispute within thirty (30) days of the date of any such Quarterly Invoice. Consortium Members are not required to refund any charges for an RDU who failed to provide written notice of a disputed charge within thirty (30) days of the Quarterly Invoice. An RDU shall have conclusively agreed to any invoiced amounts upon failure to deliver a written notice of an objection to such invoiced amount within thirty (30) days after the date of the Quarterly Invoice.

6. Section 2.15.6 of the Agreement shall be deleted in its entirety and replaced as follows:

A 5% monthly late fee (the “Monthly Late Fee”) shall be assessed on all past due balances on Quarterly Invoices existing at the end of each month of Service for each quarter. The Monthly Late Fee shall appear on the

Original Notice of Non-Payment, which shall be sent at the beginning of the second month of the quarter being billed (for example, an invoice dated January 5 not paid by January 31st would incur its first late fee on February 1st). The Consortium Member shall send Periodic Notice(s) of Non-Payment to each RDU every 30 days after the date of the Original Notice of Non-Payment for the remainder of the quarter. The Monthly Late Fee shall be imposed only for the first three months of nonpayment of any Quarterly Invoice.

7. Section 2.15.7 of the Agreement shall be deleted and replaced in its entirety as follows:

On or before the fifth day of each quarter, each Consortium Member shall: cease collection efforts against any RDU that has an unpaid balance for the previous Quarterly Invoice (each referred to herein as a “NP RDU”); notify the City of nonpayment; and bill the City pursuant to the terms of this Section 2.15.7 for all amounts due from each NP RDU for the prior quarter. Notwithstanding the foregoing, Consortium Members may indicate on the RDU invoices the amount of unpaid balances remitted to the City for reimbursement for the prior quarterly period. The list of all NP RDUs and amounts due to each Consortium Member shall be listed on a Consortium Member Notice of Non-Payment, sent to the City on the dates shown on the Billing Timeline. Each Consortium Member Notice of Non-Payment sent to the City shall include, for each NP RDU, the Original Notice of Non-Payment, the two (2) Periodic Notices of Non-Payment, the Documentation of Collection Attempts and the Delinquent List as described in section 2.15.10. The Consortium Member shall immediately notify the City of any payments received from NP RDUs, which are specifically earmarked as payment for any amount which was previously tendered by the Consortium Member to the City for reimbursement pursuant to this Section 2.15.7. At such time the City sends a City Notice of Non-Payment to the RDU, the City will send a copy of the same to the applicable Consortium Member.

8. The Billing Timeline, Exhibit 9 of the Agreement, is deleted and replaced in its entirety as attached.
9. Except as specifically modified herein, all terms and conditions of the Agreement shall remain in full force and effect. This First Amendment together with the Agreement contains the entire agreement between the parties.

IN WITNESS WHEREOF, the City and Consortium have caused this First

Amendment to be executed and attested by their duly authorized officers, all as of the date first above written.

CITY OF SAINT PAUL

By _____
Melvin Carter, Mayor

Date: _____

By: _____
Todd Hurley, Finance Director

Date: _____

By: _____
Kathy Lantry, Public Works Director

Date: _____

APPROVED AS TO FORM:

Deputy City Attorney

ST. PAUL HAULERS, LLC

By _____
Romack Franklin, Organizer

Date: _____