

ADDENDUM

RESIDENTIAL SOLID WASTE, YARD WASTE AND BULKY WASTE COLLECTION AGREEMENT

This Addendum to the Residential Solid Waste, Yard Waste and Bulky Waste Collection Agreement (“Addendum”) 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”) and shall be effective beginning July 1, 2019.

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, pursuant to the Agreement, on September 5, 2018, the City adopted Ordinance 18-39 which created Chapter 220, entitled “Residential Coordinated Collection”, adopting regulations related to the care of trash, the duties of property owners, defined services, adopted the fees for base level services, and described what happens when property owners fail to pay; and

WHEREAS, the City received a petition for a referendum to repeal Ord. 18-39 on October 16, 2018, which the City Council determined could not be placed on the ballot because it was preempted by State law and unconstitutionally interfered with the Agreement; and

WHEREAS, on February 7, 2019, the Petitioners in support of repeal of Chapter 220 (“Petitioners”) filed a lawsuit in Ramsey County District Court challenging the City’s decision not place Ord. 18-39 on the ballot, *Clark v. City of Saint Paul*, District Court File No. 62-CV-19-857 (hereinafter *Clark v. City*); and

WHEREAS, on May 30, 2019, Ramsey County District Court Judge Leonard Castro ordered the City to place Ord. 18-39 on the November 5, 2019 General Election ballot; and

WHEREAS, Judge Castro’s order also suspended Ord. 18-39 pending the election
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effective June 30, 2019; and

WHEREAS, the City has applied for a stay of Judge Castro's Order and Judge Castro has not ruled as of June 26, 2019; and

WHEREAS, the City has appealed Judge Castro's order to the Minnesota Supreme Court; and

WHEREAS, in recognition of the impact of Judge Castro's order, the City and the Consortium wish to amend the Agreement temporarily as set forth in this Addendum.

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

1. This Addendum is in effect for the "Effective Period", defined as the time beginning when Ord. 18-39 is suspended and ending on the earlier of the following: 1) a full suspension of Judge Castro's order in *Clark v. City*; 2) a final resolution of *Clark v. City* in which the Petition for repeal of Ord. 18-39 is not ordered to be placed on an election ballot; or 3) immediately following an election in which Ord. 18-39 is not repealed.
2. In the event that Judge Castro's order in *Clark v. City* is suspended, but then following that suspension, Ord. 18-39 is again suspended pending election, this Addendum will be reinstated and will then be in effect as provided in paragraph 1.
3. Consortium must not send any invoices to RDU's for Base Level Services during any quarter beginning during the Effective Period. Any deviation from this term is a breach and violation of the Agreement.
4. During the Effective Period, the City will pay Consortium Members for Services as indicated in this Addendum provided that Consortium Members submit Quarterly Invoices to the City and do not submit invoices to RDU's.
5. During any quarter beginning during the Effective Period, the following Sections of the Agreement and First Amendment to the Agreement are suspended: 2.15.5, 2.15.6, and 2.15.7.
6. During any quarter beginning during the Effective Period:
 - a. Consortium Members must submit Quarterly Invoices to the City as follows:
 - 1) Individual Consortium Members must submit a Quarterly

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Invoice to the City for each quarter that begins during the Effective Period. Quarterly Invoices must be submitted to the City on the 5th day of the quarter (or, if the 5th day falls on a legal holiday or a weekend, the day following the legal holiday or weekend).

- 2) Quarterly Invoices must be in one of the following formats:
 - a) PDF file, sent electronically; or
 - b) Quarterly Invoice Spreadsheet, in Microsoft Excel format, sent electronically.
 - 3) Quarterly Invoices must detail the following:
 - a) Either the RDU address or the property id number.
 - b) Name of property owner and billing address.
 - c) Cart size and service level.
 - d) List of Additional Service Options received and costs, except beginning in October of 2019 Temporary Subscription Options shall not be included in the Quarterly Invoice.
 - 4) Each Consortium Member must include a coversheet with the Quarterly Invoice that identifies the total amount requested for that Consortium Member that quarter. The prices for all Services for Quarterly Invoices shall be as indicated on Exhibit 4 to the Agreement.
- b. For all properly-submitted Quarterly Invoices, the City will issue a Monthly Payment to each Consortium Member for one-third of the total amount requested by that Consortium Member no later than the end of each service month. The City will pay a late fee of 5% of the amount owed for Services for any payments sent after the last day of the service month.
- c. If, during the Effective Period, but after the 5th day of the quarter (or, if the 5th day falls on a legal holiday or a weekend, the day following the legal holiday or weekend), one of the following occurs, the City must continue to issue Monthly Payments for the remainder of the quarter and the Consortium must continue to provide Services for the remainder of the quarter:
- 1) A full suspension of Judge Castro's order in *Clark v. City*.
 - 2) A final resolution of *Clark v. City* in which the Petition for repeal of Ord. 18-39 is not ordered to be placed on an election ballot.
 - 3) Immediately following an election in which Ord. 18-39 is not repealed.
- d. The Consortium may submit Quarterly Invoices to the City for the following services under the Agreement:
- 1) Base Level Services
 - 2) The following Additional Service Options:

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- a) Overflow Trash Bags beyond the contents of the first Trash Cart.
 - b) Return Fee or Off-Day Service Pickup.
 - c) Cart Size Change Fee
 - d) Extra Cart
 - 3) In July of 2019 only, the Consortium may submit and the City will pay Quarterly Invoices that include all Additional Service Options as defined in the Agreement, including Temporary Subscription Options as defined below.
 - e. Consortium shall not include Additional Service Options in the Quarterly Invoice to the City, but will offer the following Additional Service Options as “Temporary Subscription Options” to RDU’s provided that the RDU contacts the relevant Consortium Member to request such Services and pays in advance for the Services.
 - 1) Walk-up Service for non-eligible RDU’s.
 - 2) Yard Waste Subscription Service.
 - 3) Compostable Bags of yard Waste without Subscription.
 - 4) Bulky Waste in addition to Bulky Base Services per calendar year.
 - f. Consortium may accept any payment method authorized in the Agreement, but is permitted to limit payment options for Temporary Subscription Options to credit card payment only.
 - g. Consortium must continue any Temporary Subscription Options that have been paid for prior to the Effective Period for the scope of the pre-payment. Any Services beyond the scope of the pre-payment may require another pre-payment.
 - h. The City may audit any Quarterly Invoice submitted by any Consortium member to verify the accuracy of the Quarterly Invoice. Such audit may include contacting RDU’s to verify that the Quarterly Invoice accurately reflects the service level, and frequency of base level services and any Additional Service Options being billed for in the Quarterly Invoice. If the City has a reasonable basis to believe that the Quarterly Invoice is inaccurate, the City will contact and involve both the RDU and applicable Consortium Member in its investigation. Following such investigation, for all errors verified by the City, the City may make adjustments at the time of the next Monthly Payment.
 - i. Adjustments made to monthly payments following invoice audit and investigation shall not be considered an unpaid balance and shall not be subject to a late fee.
 - 7. If an RDU submits a payment, in whatever form to any Consortium Member for Services during the Effective Period in which a Quarterly Invoice has been or will be submitted to the City, Consortium will provide a refund within 60 days of receipt of payment.
 - 8. If an RDU is entitled to a refund or credit on any Quarter 2 2019 invoice prior to
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the Effective Period, Consortium Member shall provide such refund to the RDU no later than 60 days following the beginning of the Effective Period.

9. Any term in the Agreement or First Amendment to the Agreement not amended by this Addendum remains in full force and effect.
10. All terms of the Agreement related to payment for Services for the Second Quarter of 2019 remain in full force and effect.
11. The Consortium will continue Services for the remainder of any quarter in which bills were submitted to RDU's prior to Judge Castro's Order or when Judge Castro's Order was stayed, and any quarter that began during an Effective Period.

IN WITNESS WHEREOF, the City and Consortium have caused this Addendum to be executed and attested by their duly authorized officers, all as of the date first above written.

CITY OF SAINT PAUL

By_____

Date: _____

Melvin Carter, Mayor

By:_____

Date: _____

John McCarthy, Finance Director

By:_____

Date: _____

Kathy Lantry, Public Works Director

APPROVED AS TO FORM:

City Attorney

ST. PAUL HAULERS, LLC

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By _____
Romack Franklin, Organizer

Date: _____