

NANOOSE FIRST NATION COLLECTION SERVICE AGREEMENT

THIS AGREEMENT dated for reference the ____ day of _____, 2020

BETWEEN:

NANOOSE FIRST NATION, as represented by its Council, a First Nation named in the Schedule to the *First Nations Land Management Act*, with an office at 209 Mallard Way, Lantzville, BC, Canada, V0R 2H0

(the “**First Nation**”)

AND:

REGIONAL DISTRICT OF NANAIMO, a regional government, with an office at 6300 Hammond Bay Road, Nanaimo, BC V9T 6N2

(the “**RDN**”)

WHEREAS:

- A. Pursuant to section 263(1)(b)(i) of the *Local Government Act*, the RDN may enter into agreements with a public authority respecting activities, works or services within the powers of a party to the agreement, including the undertaking, provision and operation of activities, works and services;
- B. First Nations are defined as a public authority under the “Definition and Rules of Interpretation” section of the *Community Charter*, which applies to regional districts pursuant to section 2 of the Schedule of the *Local Government Act*;
- C. The parties wish to enter into this Service Agreement to provide for the delivery of the Collection Services by the RDN to the Reserve and its occupants;
- D. The First Nation Reserve is located within the RDN;
- E. The RDN provides a Solid Waste and Recycling Collection Service pursuant to Bylaw No. 1802, 2020;
- F. The RDN Board has passed a resolution approving this Agreement, a copy of which is attached as Schedule “A” to this Agreement;
- G. The First Nation has authorized the execution of this Agreement by way of a Band Council Resolution passed at a duly convened meeting of the Council held on the ____ day of _____, 2020, a copy of which is attached as Schedule “B” to this Agreement;

NOW THEREFORE in consideration of the terms and conditions contained in this Agreement, the sufficiency of which is acknowledged by both parties, the RDN and the Nanoose First Nation covenant and agree as follows:

1.0 DEFINITIONS

1.1 In this Agreement,

- “Assisted Set-Out Service”*** means the RDN, in consultation with the Contractor, will identify a location on the eligible Dwelling Unit and the Contractor will collect each Collection Cart from the agreed upon location, empty the Collection Cart into the collection vehicle and return the Collection Cart to the agreed upon location.
- “Automated Collection System”*** means the collection of Garbage and/or Recyclables and/or Food Waste using a specially designed vehicle with a mechanical apparatus which empties Collection Carts directly into the vehicle without requiring manual labour to empty the Collection Carts.
- “Banned Recyclables”*** means Recyclables not accepted under Recycle BC’s curbside collection of Packaging and Paper Product Recycling Program, as may be amended or replaced from time to time, which includes, but is not limited to:
- a) glass containers;
 - b) plastic bags and overwrap;
 - c) foam packaging; and
 - d) other flexible plastic packing.
- “Bi-Weekly”*** means every other week.
- “Bylaw”*** means the Regional District of Nanaimo *Residential Curbside Collection of Garbage, Food Waste and Recyclables Regulation and Charges Bylaw, 2020 No. 1802*, as amended from time to time.
- “Collection Cart”*** means a Garbage (cart with black lid) or Recyclables (cart with blue lid) or Food Waste (cart with green lid) container for automated collection that is owned by the Contractor, provided to each Residential Dwelling receiving Collection Service.
- “Collection Cart Set”*** means a complete set of three (3) wheeled carts to be solely used as receptacles for Garbage (black cart), Recyclables (blue cart) and Food Waste (green cart).

<i>“Collection Day”</i>	means the day scheduled for collection of Garbage, Recyclables, Food Waste (or any combination of any of these services).
<i>“Collection Period”</i>	means a period of regular Collection Service, weekly or Bi-Weekly as set out in this Agreement.
<i>“Collection Service”</i>	means a service for the collection of residential Garbage, Recyclables, and Food Waste to be provided on the Reserve by the RDN pursuant to section 2.1 of this Agreement.
<i>“Commencement Date”</i>	means October 1, 2020.
<i>“Composting Facility”</i>	means a facility that composts Food Waste under contract with the RDN.
<i>“Construction and Demolition Waste”</i>	means waste produced from the construction, renovation, deconstruction and demolition of buildings, and other structures, but does not include Hazardous Waste or Recyclable Material.
<i>“Contamination”</i>	means the presence of Prohibited Waste, Construction and Demolition Waste or Yard and Garden Waste in Collection Carts, and: <ul style="list-style-type: none"> a) The presence of Garbage in Recycling or Food Waste carts; b) The presence of Recycling in Food Waste carts; or, c) The presence of Food Waste in Recycling carts.
<i>“Contractor”</i>	means the person or persons under contract with the RDN to collect Garbage, Recyclables and Food Waste on behalf of the RDN within the Reserve.
<i>“Dwelling Unit”</i>	means one (1) or more habitable rooms which constitute one (1) self-contained unit having a separate entrance, used or intended to be used for living and sleeping purposes for which is provided: <ul style="list-style-type: none"> a) cooking equipment or the facilities for the installation of cooking equipment; and b) one (1) or more bathrooms with a water closet, wash basin and shower or bath.
<i>“Educator”</i>	means a person who is appointed by the First Nation for the purposes set out in section 9.0 of this Agreement.
<i>“Environmental Management Act”</i>	means the Environmental Management Act (British Columbia), as amended, and any successor legislation and any regulations thereunder.

“Food Waste”

means compostable food material, and other materials accepted at a Composting Facility, generated within the Reserve including, without limitation:

- a) fruits and vegetables;
- b) meat, fish, shellfish, poultry and bones thereof;
- c) dairy products;
- d) bread, pasta and baked goods;
- e) tea bags, coffee ground and filters;
- f) soiled paper plates and cups;
- g) soiled paper towel and napkins;
- h) soiled wax paper;
- i) food soiled cardboard and paper;
- j) egg shells;
- k) all other cooked and raw food products;
- l) but excludes Yard and Garden Waste

“Garbage”

means all waste other than Recyclables and Food Waste but shall not include Construction and Demolition Waste, Yard and Garden Waste, human feces, Hazardous Waste, Prohibited Material or any other items determined by the General Manager from time to time.

“General Manager”

means a person appointed to the position of General Manager of the RDN or designate;

“Hazardous Waste”

means any chemical compound, mixture, substance or article defined as Hazardous Waste in the Hazardous Waste Regulation;

“Hazardous Waste Regulation”

means Hazardous Waste Regulation, BC Reg. 63/88 enacted under the Environmental Management Act;

“Industrial, Commercial and Institutional Waste”

means all Solid Waste resulting from the operation of Industrial, Commercial, Institutional sources.

“Manufactured Home”

means any structure, whether ordinarily equipped with wheels or not, that is designed, constructed or manufactured to be moved from one place to another by being towed or carried, and which is used as a Dwelling Unit or designed for use as a Dwelling Unit;

“Manufactured Home Park”

means land used for accommodating one or more Manufactured Homes, which are owned or being purchased or rented.

<i>“Multi-Family Dwelling Unit”</i>	means a Dwelling Unit located in a building which comprises of five (5) or more Dwelling Units used for residential purposes, or a combination of residential and non-residential uses; or a Manufactured Home Park, which comprises of five (5) or more Dwelling Units.
<i>“Nanoose Council” or “Council”</i>	means the lawfully elected Chief and councillors of the Nanoose First Nation.
<i>“Occupier”</i>	means the person or persons residing at the Residential Dwelling.
<i>“Owner”</i>	as defined by the Community Charter, S.B.C. 2003, C.26 as may be amended or replaced from time to time.
<i>“Parties”</i>	means the Nanoose First Nation and the RDN.
<i>“Physically Challenged”</i>	means a person who has physical disabilities and infirmities.
<i>“Private Collection Service”</i>	means a Garbage, Recyclables and/or Food Waste collection service, which is not operated by a Contractor, and includes any commercial containerized collection service or Industrial, Commercial and Institutional Waste collection service.
<i>“Prohibited Material”</i>	means waste as defined in the Regional District of Nanaimo Tipping Fee and Solid Waste Disposal Regulation Bylaw No. 1784, 2019 as Prohibited Waste;
<i>“Recyclables”</i>	means packaging and printed paper collected in single stream accepted at a Recycling Facility, in Category 1, Category 2, Category 3(a), Category 6 and Category 7, as set out in Schedule B [Categories and Examples of Packaging and Printed Paper).
<i>“RDN”</i>	means the Regional District of Nanaimo.
<i>“Recycling Facility”</i>	means a facility under contract with Recycle BC for the deposit, disposal or processing of Recyclables.
<i>“Regional Landfill”</i>	means the landfill site owned and operated by the RDN.
<i>“Residential Dwelling”</i>	means: <ul style="list-style-type: none"> a) a single family detached Dwelling Unit; b) in relation to a duplex, triplex or fourplex, each self-contained Dwelling Units; c) a Secondary Suite in a single family detached Dwelling Units; and d) a Manufactured Home situated in a Manufactured Home Park.

<i>“Reserve”</i>	means Nanoose IR No. 06821, which is a reserve within the meaning of the <i>Indian Act</i> (Canada).
<i>“Secondary Suite”</i>	means an additional Dwelling Unit, located within a Residential Dwelling, whether or not the Secondary Suite is permitted under the RDN Zoning Bylaw 500 or the respective local government authority, as may be amended or replaced from time to time.
<i>“Solid Waste”</i>	means refuse that originates from residential, commercial or institutional sources or refuse specified to be included in the RDN’s Solid Waste Management Plan pursuant to the Environmental Management Act.
<i>“Townhouse Complex”</i>	means a building or buildings containing three or more strata titled Dwelling Units, where each Dwelling Unit has a separate entrance at first story level.
<i>“Unserviceable”</i>	means a Residential Dwelling determined to be unserviceable in accordance with section 6.2 of this Agreement.
<i>“Yard and Garden Waste”</i>	means vegetation removed from gardens, lawns, shrubs and trees, including prunings from shrubs and trees.

2.0 PROVISION OF SERVICES

- 2.1 The RDN will provide to the First Nation a Collection Service, on the Reserve, for Food Waste, Recyclables and Garbage on the terms and conditions set out in this Agreement.
- 2.2 The First Nation will cause every Owner or Occupier of a Residential Dwelling on the Reserve who utilizes the Collection Service to comply with the provisions of this Agreement.

3.0 TERM

- 3.1 This Agreement will commence on the 1st day of October, 2020, and will terminate on the 30st day of September, 2030, unless terminated sooner as provided in this Agreement.

4.0 INDEMNIFICATION

- 4.1 The First Nation hereby agrees to release, indemnify and save harmless the RDN and its directors, officers, employees, volunteers, agents and contractors from and against all claims, demands, complaints, actions, causes of action, suits, damages, losses (including personal injury and death), liabilities, expenses and costs (including, without limitation, actual legal fees and disbursements) (collectively, the “**Damages**”), arising from or in relation to the provision or the failure to provide the Collection Services, except to the extent that such Damages arise from any wilful misconduct or gross negligence of the RDN, its employees, contractors, and agents.

- 4.2 Notwithstanding section 4.1 of this Agreement, the First Nation will not indemnify the RDN for any Damages arising from or in relation to the inspection, investigation or prosecution by the RDN of any alleged violation of the Agreement.

5.0 INSURANCE

- 5.1 The First Nation shall take out and maintain, during the term of this Agreement, commercial liability insurance to cover the provision of the Collection Services as set out in this Agreement, in the amount of not less than five (5) million dollars per single occurrence, naming the RDN as an additional insured party thereto, and shall provide the RDN with a certificate of insurance upon request by the RDN.
- 5.2 The policy of insurance referred to under section 5.1 shall contain a separation of insurer's cross liability clause in favour of the RDN and shall also contain a clause requiring the insurer not to cancel or to change the insurance without first giving the RDN thirty (30) days prior written notice.
- 5.3 If both the First Nation and the RDN have claims to be indemnified under any insurance required by this Agreement, the indemnity will apply first to the settlement of the claim of the RDN and the balance, if any, to the settlement of the claim of the First Nation.

6.0 COLLECTION SERVICES

- 6.1 The RDN agrees to provide Collection Services to Dwelling Units that are located on the Reserve. Notwithstanding the foregoing, the Collection Services will not be provided to:
- a) Industrial, Commercial and Institutional properties;
 - b) Multi-Family Dwelling Units; and
 - c) Unserviceable Dwelling Units.
- 6.2 A property shall be considered Unserviceable for the purposes of this Agreement if it contains a Dwelling Unit that the General Manager deems cannot be safely, efficiently and legally serviced from the street by reason of one or more of the following:
- a) grade;
 - b) road configuration;
 - c) physical condition of the road or lane or other access route, including but not limited to the narrowness of the road;
 - d) conflict with other bylaws or regulations (whether of the RDN or the First Nation);
 - e) public safety;
 - f) operational constraints; or
 - g) the presence of any unsafe person, animal, natural or other hazard(s) on or in the vicinity of the Dwelling Unit or the property where the Dwelling Unit is situated.

- 6.3 The Collection Services provided by the RDN are subject to the provisions set out in section 7.0 in this Agreement.
- 6.4 The RDN will provide Collection Services as of the Commencement Date for the collection, removal and disposal of Residential Garbage, Recyclables and Food Waste by the way of the Automated Collection System or manual labour, or a combination thereof, for Dwelling Units on the Reserve, which includes collection of up to:
- a) one Garbage Collection Cart;
 - b) one Recyclables Collection Cart; and
 - c) one Food Waste Collection Cart

per Collection Period as specified in section 6.5.

- 6.5 The Collection Periods for the Collection Services provided by RDN are as follows:
- a) Food Waste will be collected each week;
 - b) Garbage will be collected Bi-Weekly; and
 - c) Recyclables will be collected Bi-Weekly (alternating to Garbage collection).
- 6.6 The frequency of the provision of the Collection Service as specified in section 6.5 is subject to change from time to time without notice, as determined by the General Manager in their sole discretion, or as otherwise necessary to respond to environmental, emergency or other unforeseeable circumstances.
- 6.7 Pursuant to section 10.1 of this Agreement, all Collection Carts supplied by the Contractor in connection with the Collection Service shall remain the property of the Contractor until September 30, 2020, and the property of the RDN thereafter. The Collection Carts shall remain on the property of the Dwelling Unit to which they were issued, and the Contractor and/or RDN shall have the right to inspect, alter, remove, or replace the Collection Carts at any time.
- 6.8 The RDN will provide the following default Collection Carts to each Dwelling Unit using the Collection Service, unless otherwise requested by an Owner or Occupier and agreed to by the RDN in writing.

	Residential Dwelling	Garbage Cart	Recyclables Cart	Food Waste Cart
a)	each single family dwelling unit	One 100L	One 240L	One 100L
b)	each single family dwelling unit with a secondary dwelling unit	One 240L	One 360L	One 100L

- 6.9 The First Nation shall cause each Owner or Occupier to only use the Collection Cart within the capacity limits for the Collection Carts set out in section 6.8 of this Agreement.

- 6.10 The First Nation hereby acknowledges and agrees that the Contractor will not collect excess volumes of Food Waste, Recyclables or Garbage where they exceed the capacity of the Collection Cart stated in Section 6.8 of this Agreement.
- 6.11 The First Nation may request a change in Collection Cart size for a Dwelling Unit once within a 12 month period. The First Nation shall pay a Cart Exchange Fee equal to \$50.00 per Cart Exchange(s) per Dwelling Unit pursuant to this section 6.11.

Additional Waste for Owner or Occupiers receiving Collection Service:

a) Garbage

1. A Dwelling Unit with a 100L Garbage Collection Cart who requires additional Garbage capacity may request an upsized 240L Garbage Collection Cart from the RDN, and if such capacity increase is accepted by the RDN then the First Nation agrees to pay an additional fee equal to \$6.25 per Dwelling Unit per month.
2. A Dwelling Unit with a Secondary Suite with a default 240L Garbage Collection Cart who requires additional Garbage capacity may request an additional cart in any of the Garbage Collection Cart sizes offered by the RDN, and if such capacity increase is accepted by the RDN then the First Nation agrees to pay an additional fee equal to:
 - i. \$13.75 per Secondary Suite per month for a 80L Garbage Collection Cart
 - ii. \$14.58 per Secondary Suite per month for a 100L Garbage Collection Cart
 - iii. \$20.83 per Secondary Suite per month for a 240L Garbage Collection Cart

b) Recyclables

1. A Dwelling Unit with a 100L Recyclables Collection Cart who requires additional Recyclables capacity may request an upsized 240L or 360L Recyclables Collection Cart from the RDN, free of charge.
2. A Dwelling Unit with a 240L Recyclables Collection Cart who requires additional Recyclables capacity may request an upsized 360L Recyclables Collection Cart from the RDN, free of charge.
3. A Dwelling Unit with a Secondary Suite with a 360L Recyclables Collection Cart who requires additional Recyclables capacity may Request an additional cart in any of the sizes offered by the RDN, free of charge.

c) Food Waste

1. There is no permitted upsize nor downsize options for the Food Waste Collection Cart.

- 6.12 The First Nation hereby acknowledges and agrees that the Collection Carts supplied by the Contractor in connection with the Collection Service shall not be used for any purpose other than its intended use, which is the disposal of Garbage, Recyclables and Food Waste permitted under the Collection Service.
- 6.13 Where the Owner or Occupier is Physically Challenged and unable to comply with section 7.4 of this Agreement, and does not have an able-bodied person assisting them with their household activities, the Physically Challenged Owner or Occupier may apply to the General Manager for Assisted Set-Out Service from the RDN. On application for the Assisted Set-Out Service, if the General Manager determines in their sole discretion that the Physically Challenged Owner or Occupier requires such assistance, then the Contractor will be directed to provide the Assisted Set-Out Service. The General Manager may cancel the Assisted Set-Out Service, at their sole discretion, by providing advance written notice to the RDN of such cancellation. The General Manager may, at their discretion, obtain the necessary information to confirm that the Owner or Occupier is Physically Challenged or otherwise requires Assisted Set-Out Service including but is not limited

The RDN shall have no obligation to provide the Assisted Set-Out Service if, on the designated Collection Day, the Collection Carts are enclosed within any building or gated area or are otherwise not freely accessible. The RDN is not responsible for any property damage as a result of providing the Assisted Set-Out Service.

If the RDN provides Assisted Set-Out Service to a Dwelling Unit then the First Nation will pay a monthly fee equal to \$10.00 per Dwelling Unit per month.

7.0 WASTE COLLECTION SET-OUT REQUIREMENTS

- 7.1 For the purposes of this section 7, RDN includes RDN's employees, contractors and agents.
- 7.2 The First Nation shall cause every Owner or Occupier of Dwelling Units serviced by the Collection Service to:
- a) separate Garbage, Recyclables and Food Waste and place them in the applicable Collection Cart, without Contamination or Banned Recyclables and not to exceed the weight limit or capacity specified on the Collection Cart and under this Agreement;
 - b) only use the Collection Carts provided by the Contractor in connection with the Collection Service to deposit Garbage, Recyclables and Food Waste, respectively; and

- c) be limited to the applicable number and size of Collection Carts supplied under section 6.8 of this Agreement.

7.3 The RDN shall have no obligation to provide the Collection Services unless on designated Collection Days, the Owner or Occupier of Dwelling Units serviced by the Collection Service:

- a) places Collection Carts with the lids in the closed position, no earlier than 5 AM and no later than 8 AM:
 - 1. on the shoulder of the road or lane or along the curb in front of the Dwelling Unit or on the property adjacent to the property line abutting the road or lane from which the Collection Service is provided; and
 - 2. such that the Collection Carts can be conveniently handled from the ground level and readily assessable from such road or lane;
- b) with the exception of the Food Waste Collection Cart equipped with the gravity lock, which should be in the locked position at all times, ensures all latching devices, if any, are unlatched by 8 AM;
- c) places all Collection Carts with a minimum one (1) metre of clearance space on all sides of each Collection Cart, with three (3) metres of clearance space above each Collection Cart, and with one and half (1.5) metres of clearance space from parked vehicles; and
- d) removes all Collection Carts from the road, lane, or sidewalk, after collection, no later than 10 PM on each designated Collection Day.

7.4 Collection Carts shall at all times be kept on the property of the Residential Dwellings for which they are assigned and under no circumstances shall they be kept, encroach upon or project over any street, lane or public place except for the purposes outlined in Section 7.3 of this Agreement.

7.5 The First Nation shall cause each Owner or Occupier of the Dwelling Unit serviced by the Collection Service to at all times maintain all Collection Carts in a good, clean and sanitary condition, without overflow and free from any liquids.

7.6 The First Nation shall cause the Owner or Occupier of the Dwellings Unit serviced by the Collection Service to notify the Contractor if a Collection Cart is damaged or stolen. If a Collection Cart is stolen or damaged due to the neglect of the Owner or Occupier, as determined by the General Manager in their sole discretion, the First Nation shall reimburse the RDN for its costs of repair or replacement to the Collection Cart within 30 days of receipt of an invoice from the RDN in accordance with this Agreement.

- 7.7 Where the Owner or Occupier of a Dwelling Unit serviced by the Collection Service is not in compliance with any of the provisions of this Agreement, the RDN may, at its sole discretion, refuse to provide the Collection Services to the Dwelling Unit of that Owner or Occupier.
- 7.8 In the event the RDN does not collect a Food Waste, Recyclables or Garbage at a Dwelling Unit that has been designated for Collection Services, by reason set out in this section 7, the First Nation will still be required to pay Fees in accordance with section 12.0 of this Agreement as if the Food Waste, Garbage or Recyclables had been collected.

8.0 RIGHT OF ACCESS

- 8.1 The First Nation hereby authorizes the RDN its employees, contractors and agents to enter upon the Reserve on common areas at any time for the purposes of providing the Collection Services set out in this Agreement and for the purposes of determining the routes for the collection. Any employee, contractor or agent of RDN as well as any vehicles required for the purposes of the provision of Collection Services will not be considered as trespassing if they have entered onto the Reserve for the purposes of providing Collection Services set out in this Agreement.
- 8.2 The permission to enter upon the Reserve for the purpose of providing the Collection Services will continue without reservation or restriction during the term of this Agreement and will be considered as a licence only and not as the granting or the conveyance or conferring on the RDN any right, estate or interest in title to any portion of the Reserve and will terminate upon the termination of this Agreement.
- 8.3 Nothing contained in this Agreement shall prejudice or affect the rights and powers of the RDN in the exercise of its functions under any public or private statutes, bylaws, orders or regulations, all of which may be fully and effectively exercised as if this Agreement had not been executed and delivered by the First Nation.

9.0 EDUCATOR

- 9.1 The First Nation agrees to appoint an Educator who will act as a resource to residents of the Reserve (including the Owners and Occupiers) regarding the Collection Services and will also act as a communications liaison between the parties. The role of the Educator will be to inform the users of the Collection Services (including the Owners and Occupiers) about how and under what conditions the Collection Services will be provided to ensure high participation and satisfaction by the users of the Collection Services.
- 9.2 The RDN will provide initial training to the Educator about the Collection Services, including, cart placement, information about acceptable materials for collection as well as the instances where collection may be refused by RDN if it does not meet the waste collection set-out requirement as detailed in section 7.0 of this Agreement.

- 9.3 Without limiting section 9.2, the Educator will inform residents of the Reserve what constitutes Food Waste, Recyclables and Garbage including items that, if included in any Food Waste, Recyclables or Garbage Collection Carts, would constitute a basis of refusal to collect by RDN. The Educator will also teach residents on the Reserve how to sort Recyclables.

10.0 COLLECTION CARTS

- 10.1 RDN agrees to provide one (1) Collection Cart Set to each Dwelling Unit designated for Collection Service under this Agreement in accordance with the Fees set out in section 12.0 of this Agreement.

11.0 NOTIFICATION OF CHANGES TO THE COLLECTION SERVICES

- 11.1 In the event that the Bylaw changes in a way that affects RDN's ability to provide the Collection Services within the terms and conditions set out in this Agreement or the laws applicable to Food Waste, Recyclables or Garbage changes, the RDN reserves the right to change the terms and condition of the Collection Services as set out in this Agreement to bring the provision of Collection Services into accordance with the new Bylaw or other laws.
- 11.2 The RDN will provide thirty (30) days written notice to the First Nation and Educator of any amendments to the Bylaw that will affect the terms and conditions of the Collection Service as set out in this agreement.

12.0 FEES

- 12.1 In addition to any other fees and charges set out in this Agreement, including without limitation the fees describes in sections 6.11 and 6.13 of this Agreement, the First Nation agrees to pay fees to the RDN for the Collection Services (collectively, the "**Fees**") in an amount equal to:
- a) \$13.75 per Dwelling Unit per month for a 80L Garbage Collection Cart
 - b) \$14.58 per Dwelling Unit per month for a 100L Garbage Collection Cart
 - c) \$20.83 per Dwelling Unit per month for a 240L Garbage Collection Cart
- 12.2 The First Nation agrees to an annual adjustment of the Fees based on the Consumer Price Index consistent with the escalation clause in Schedule 2 (Collection Service Fee) of the RDN's agreement with the Contractor. The calculation shall take effect in the first quarter of each year immediately upon the RDN providing notice to the First Nation. The First Nation will pay a lump sum retroactive payment to January 1st for any increase in the Fees to cover the months already paid at the previous year's Fee, and will adjust the billing for the remaining months of the year as of that date.
- 12.3 The number of Dwelling Units for the purposes of section 12.1(a) will be determined as follows:

- a) at the Commencement Date of this Agreement, the Parties agree that there are seventy-six (76) Dwelling Units designated for Collection Services;
- b) the First Nation may increase or decrease the number of the Dwelling Units designated for Collection Service in accordance with section 12.3(c); or
- c) in order to increase or decrease the number of Dwelling Units designated for Collection Services, the First Nation must provide the RDN with written notice at least 2 weeks prior to the first business day of the month in which the increase or decrease is intended to take effect (the "Notice"). The Notice to the RDN must identify the address of each Dwelling Unit being designated for Collection Services and each Dwelling Unit undesignated for Collection Services.

13.0 PAYMENT FOR COLLECTION SERVICES

- 13.1 The First Nation agrees to pay to the RDN each month of the term of their Agreement to the RDN the Fees for the Collection Services as set out in this Agreement including, without limitation, as well as the amount of any fees for Collection Cart exchanges or capacity increase under section 6.11 or for Assisted Set-Out Services under section 6.13.
- 13.2 The RDN will provide invoices on the first day of every month to the First Nation setting out its Fees for the Collection Services, and the First Nation will pay such invoices within thirty (30) days of receipt. Any amount outstanding after the expiration of the thirty (30) day period will be subject to an interest charge as set out in section 13.3.
- 13.3 The parties agree that if there is a default in any payment required to be made to the RDN under this Agreement, the amount in arrears will bear interest at the rate of prime as set by the RDN's bankers plus one percent per annum.

14.0 STANDARD OF COLLECTION SERVICES

- 14.1 The RDN will provide the Collection Services provided for under this Agreement to the same standard and quality as such services are ordinarily provided by the RDN to residents and occupants of the Electoral Areas within the RDN that are subject to the Bylaw.

15.0 DEFAULT OR NON-PERFORMANCE

- 15.1 In the event that either party (the "**Defaulting Party**") is in breach of, defaults, or otherwise fails to perform or observe any of the covenants or obligations (the "Breach") set out herein, the other party may deliver written notice of such Breach to the Defaulting Party.
- 15.2 If the Defaulting Party does not cure or otherwise perfect the Breach, and upon the expiry of not less than one (1) month from the date of the written notice referred to in section 15.1 hereof, the other party may immediately terminate this Agreement.

16.0 DISPUTE RESOLUTION

16.1 If the parties to this Agreement are unable to agree on the interpretation or application of any provision hereof, or are unable to resolve any other issue in dispute pertaining to this Agreement, on notice by either party to the other, the parties agree:

- (a) first to promptly, diligently and in good faith, take all reasonable measures to negotiate an acceptable resolution to the disagreement in dispute;
- (b) second, if the parties are unable to negotiate a resolution under paragraph (a) within sixty (60) days of the notice of dispute or disagreement, to request the assistance of a mediator, and such mediator to be mutually agreed upon by the parties within thirty (30) days of receipt by a party of a written notice requiring mediation, failing which the mediator will be appointed by the BC International Commercial Arbitration Centre (BCICAC). Such mediation will be conducted under the Commercial Mediation Rules of the BCICAC unless otherwise agreed by the parties; and
- (c) third, if the parties are unable to resolve the dispute in accordance with paragraph (b), to refer the matter in dispute to arbitration to a single arbitrator pursuant to the *Arbitration Act* (BC) or any successor legislation on the understanding and agreement that the decision of the arbitrator will be final and binding on the parties. If the parties are unable to agree on a single arbitrator and hear the dispute within sixty (60) days following the termination of the mediated negotiations set out in paragraph (b), an arbitrator will be appointed by the BCICAC.

16.2 Unless otherwise agreed or decided by the arbitrator, costs shall be shared equally.

17.0 TERMINATION

17.1 In addition to any other right of termination under this Agreement but provided that section 16 has not been invoked, then either party may terminate this Agreement for convenience by providing not less than 6 months written notice. The First Nation agrees to pay RDN such reasonable Fees as may have been incurred up to the date of termination.

17.2 Except as specifically provided in this Agreement, neither the First Nation nor the RDN will be entitled to any compensation or damages as a consequence of any termination of this Agreement by the other party.

18.0 NOTICE

18.1 All notices given hereunder shall be made in writing and delivered personally, by registered mail, by courier, or by facsimile or electronic transmission as follows:

If to the First Nation: Nanoose First Nation
209 Mallard Way

Lantzville, BC, V0R 2H0
Email: kbob@nanoose.org
Attn: Environment Coordinator

If to the RDN: Regional District of Nanaimo
6300 Hammond Bay Road
Nanaimo, British Columbia V9T 6NC
Email: vschau@rdn.bc.ca
Attn: Zero Waste Coordinator, Solid Waste Services

The date of receipt of any such notice shall be deemed to be: (i) the date of delivery if delivered personally or by courier, (ii) five days after the date of mailing if mailed, or (iii) on the date of transmission if sent by facsimile or other electronic transmission during regular office hours, or if that date is not a business day, the next business day.

19.0 CONFIDENTIAL INFORMATION

- 19.1 The RDN agrees that any of the First Nation's information obtained or used by the RDN, its employees, contractors, and agents, in the course of providing the Collection Services will be kept confidential by the RDN and will not be used without the prior consent of the First Nation for any purpose other than the provision of the Collection Services or as required by law, including the *Freedom of Information and Protection of Privacy Act*.

20.0 FORCE MAJEURE

- 20.1 The RDN will not be liable for its failure to perform any of its obligations under this Agreement due to a cause beyond its reasonable control including without limitation acts of God, fire, flood, pandemic outbreak, explosion, strikes, lockouts or other industrial disturbances, laws, regulations, or orders of any duly constituted governmental authority, each of which will be a force majeure event.

21.0 GOVERNING LAW

- 21.1 This Agreement will be governed and construed in accordance with the laws of British Columbia and Canada and the parties hereto attorn to the jurisdiction of the courts of British Columbia.

22.0 AMENDMENT AND WAIVER

- 22.1 No amendment, waiver, or variation of the terms, conditions, covenants, and agreements set out herein will be of any force or effect unless the same is reduced to writing by both parties hereto, and no waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will it constitute a continuing waiver unless otherwise explicitly provided.

23.0 ENTIRE AGREEMENT

- 23.1 This Agreement, including the Schedules attached to it, constitutes the entire Agreement between the RDN and the First Nation with respect to the subject matter hereof and may not be modified except by subsequent Agreement in writing executed by the RDN and the First Nation.

24.0 TIME OF ESSENCE

- 24.1 Time is of the essence in this Agreement.

25.0 INTERPRETATION

- 25.1 Whenever the singular or masculine is used in this Agreement, the same shall be deemed to include the plural or the feminine or the body politic or corporate where the context or the parties so require.

26.0 ASSIGNMENT

- 26.1 Neither party may assign this Agreement or the benefit thereof, without the prior written consent of the other party at its sole discretion.

27.0 SEVERABILITY

- 27.1 The invalidity of any provision of this Agreement will not affect any other provision of it, but the Agreement will be construed as if the invalid provision had been omitted.

28.0 BINDING EFFECT

- 28.1 This Agreement shall ensure the benefit of and be binding upon the parties and their respective heirs, administrators, executors, successors and permitted assignees.

IN WITNESS WHEREOF THE PARTIES hereto have executed this Agreement as of the day and year written on page 1.

THE REGIONAL DISTRICT OF NANAIMO

By: _____
Name:
Title:

By: _____
Name:
Title:

NANOOSE FIRST NATION

By: _____
Name:
Title:

By: _____
Name:
Title:

Schedule A
RDN Resolution

[See attached.]

Schedule B
First Nation Band Council Resolution

[See attached.]