

CURBSIDE COLLECTION SERVICE AGREEMENT

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

BETWEEN:

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

(the “**RDN**”)

AND:

The **CITY OF PARKSVILLE**, a municipal government, with an office at 100 Jensen
Avenue East, Parksville, BC, Canada, V9P 2H3

(“**Parksville**”)

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 the RDN or Parksville, including the undertaking, provision and operation of activities, works and services;
- B. The parties wish to enter into this Agreement for the administration of the Collection Services delivered by the RDN to Parksville’s residents;
- C. The RDN provides Collection Services under Residential Curbside Collection of Garbage, Food Waste and Recyclables Regulation and Charges Bylaw No. 1802, 2020.

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 Parksville covenant and agree as follows:

1.0 DEFINITIONS

- 1.1 All capitalized terms used in this Agreement and not otherwise defined herein shall have the respective meanings set forth in the Bylaw.
- 1.2 In this Agreement,

| | |
|------------------------------------|--|
| <i>“Bylaw”</i> | means the Regional District of Nanaimo <i>Residential Curbside Collection of Garbage, Food Waste and Recyclables Regulation and Charges Bylaw, 2020 No. 1802</i> , as amended from time to time, a copy of which is attached hereto as Schedule C. |
| <i>“Collection Cart”</i> | 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. |
| <i>“Collection Service”</i> | means a service for the collection of residential Garbage, Recyclables, and Food Waste to be provided within the Service Area by the RDN pursuant to the Bylaw. |
| <i>“Commencement Date”</i> | means October 1, 2020. |
| <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 Service Area. |
| <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>“General Manager”</i> | means a person appointed to the position of General Manager of the RDN or designate; |
| <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 RDN and City of Parksville. |
| <i>“RDN”</i> | means the Regional District of Nanaimo. |

“Residential Dwelling”

means:

- 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.

“Secondary Suite”

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.

“Service Area”

means that portion of the RDN situated on Vancouver Island and Gabriola Island (excluding the City of Nanaimo) in which the Collection Service are to be provided, as designated by the General Manager from time to time.

2.0 TERM

- 2.1 This Agreement shall commence on the 1st day of October, 2020, and will terminate on the 30th day of September, 2023, unless terminated sooner as provided in this Agreement.

3.0 RENEWAL

- 3.1 Parksville shall notify the RDN in writing on or before the 31st of May, 2023 if it wishes to renew the Agreement for a further period. Parksville and the RDN can propose terms to be included in the renewal, if any. The renewal shall be conditional upon agreement by the RDN to all the terms and conditions of the renewal.

4.0 INDEMNIFICATION

- 4.1 Parksville 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.

5.0 INSURANCE

- 5.1 Parksville shall take out and maintain, during the term of this Agreement, commercial general liability insurance from the Municipal Insurance Association of British Columbia 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 RDN and its Contractor agrees to carry its own respective statutory workers' compensation insurance and automobile liability insurance, if appropriate.
- 5.3 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.
- 5.4 If both Parksville 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 Parksville.

6.0 RDN OBLIGATIONS

- 6.1 The RDN shall provide Collection Services to Residential Dwellings located within the Service Area in accordance with the terms and conditions of the Bylaw.
- 6.2 The RDN shall provide all Collection Services to Parksville in a competent, careful and professional manner equivalent to the standard of Collection Services provided by the RDN within the Electoral Areas; and
- 6.3 The RDN shall designate the General Manager, subject to direction by the RDN Board, as the primary contact with Parksville with respect to the Collection Services.
- 6.4 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 or laws applicable to Food Waste, Recyclables or Garbage changes set out in the Bylaw, the RDN reserves the right to change the terms and condition of the Collection Services as set out in the Bylaw to bring the provision of Collection Services into accordance with the new Bylaw or other Laws.
- 6.5 The RDN will provide thirty (30) days written notice to Parksville of any amendments to the Bylaw that will affect the terms and conditions of the Collection Service as set out in the Bylaw.

7.0 PARKSVILLE OBLIGATIONS

- 7.1 Parksville acknowledges and agrees that the RDN shall administer and enforce the Bylaw and Parksville hereby directs the RDN to provide the Collection Services and exercise the powers contained within the Bylaw for and on behalf of Parksville.

- 7.2 Parksville agrees to pay Fees to the RDN for the Collection Services as per Schedule A of the Bylaw.
- 7.3 The number of Dwelling Units for the purposes of section 7.2 will be determined as follows:
- a) at the Commencement Date of this Agreement, the Parties agree that there are 5340 Dwelling Units designated for Collection Services;
 - b) Parksville may increase or decrease the number of the Dwelling Units designated for Collection Service in accordance with section 7.3 (c); or
 - c) in order to increase or decrease the number of Dwelling Units designated for Collection Services, Parksville must provide the RDN with written notice via the RDN online portal, no less than 2 weeks prior to the first business day of the month in which the increase or decrease is intended to take effect. The notice to the RDN must identify the address of each Dwelling Unit being designated for Collection Services and their respective Collection Cart selections, and each Dwelling Unit undesignated for Collection Services.
- 7.4 Parksville shall invoice its residents for the Fees payable on account of the provision of the Collection Services. Parksville acknowledges and agrees that it shall hold any and all such Fees paid by its residents on account of the provision of the Collection Services “in trust” for the RDN. The RDN acknowledges and agrees that the Fees collected by Parksville pursuant to this Agreement may be combined with other utilities (water and/or sewer) invoiced by Parksville.

8.0 PAYMENT FOR COLLECTION SERVICES

- 8.1 Parksville agrees to pay to the RDN each month of the term of their Agreement to the RDN the Fees for the Collection Services as calculated pursuant to the terms set out in Schedule A of the Bylaw. Parksville acknowledges and agrees that the RDN will be entitled to amend Schedule A of the Bylaw on an annual basis and Parksville hereby agrees to pay the Fees as set out in Schedule A, as revised from time to time, upon the RDN providing written notice of such amended Schedule A to Parksville.
- 8.2 The RDN shall pay to Parksville an amount equal to 7.5% of the total Fees invoiced monthly to cover the costs actually incurred by Parksville in providing the administrative component under this Agreement (the “**Administration Fee**”). On or before the first anniversary of the Commencement Date, the parties hereby acknowledge and agree to revise the amount of Administration Fee payable, either by increasing or decreasing such amount, as applicable, to ensure that such Administration Fee is a reasonable and genuine pre-estimate of the administrative costs actually incurred by Parksville in providing the administrative service of collecting the Fees from its residents. Parksville agrees to provide

the RDN with sufficient proof and documentation of such administrative costs incurred by Parksville, as reasonably requested by the RDN, for the purpose of revising the Administration Fee pursuant to this Section 8.2.

- 8.3 In the event that Parksville pays the Fees in accordance with the terms set out in Section 8.4, the RDN shall pay to Parksville an amount equal to 10% of the total Fees invoiced monthly as an equivalent to the Prompt Payment Discount provided by the RDN within the Electoral Areas to its residents (the “**Prompt Payment Discount Amount**”). Parksville shall have the right to set off the amount of the Prompt Payment Discount Amount from the Fees held in trust and payable to the RDN.
- 8.4 The RDN will provide invoices on the first day of every month to Parksville setting out its Fees for the Collection Services, and Parksville will pay such invoices within thirty (30) days of receipt.
- 8.5 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 0%.

9.0 DEFAULT OR NON-PERFORMANCE

- 9.1 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.
- 9.2 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 9.1 hereof, the other party may immediately terminate this Agreement.

10.0 DISPUTE RESOLUTION

- 10.1 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.

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

11.0 TERMINATION

11.1 In addition to any other right of termination under this Agreement but provided that section 10 has not been invoked, then either party may terminate this Agreement for convenience by providing not less than 6 months written notice. Parksville agrees to pay RDN such reasonable Fees as may have been incurred up to the date of termination.

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

12.0 NOTICE

12.1 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 RDN: Regional District of Nanaimo
6300 Hammond Bay Road
Nanaimo, British Columbia V9T 6N2
Email: vschau@rdn.bc.ca
Fax number: 250-390-1542
Attn: Zero Waste Coordinator, Solid Waste Services

If to Parksville: City of Parksville
100 Jensen Avenue East
PO Box 1390
Parksville, BC V9P 2H3
Email: JHolmes@parksville.ca
Fax number: 250 954-4685
Attn: Manager of Finance

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.

13.0 CONFIDENTIAL INFORMATION

13.1 The RDN agrees that any of the Parksville'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 Parksville 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*.

14.0 FORCE MAJEURE

14.1 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.

15.0 GOVERNING LAW

15.1 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.

16.0 AMENDMENT AND WAIVER

16.1 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.

17.0 ENTIRE AGREEMENT

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

18.0 TIME OF ESSENCE

18.1 Time is of the essence in this Agreement.

19.0 INTERPRETATION

19.1 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.

20.0 ASSIGNMENT

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

21.0 SEVERABILITY

21.1 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.

22.0 BINDING EFFECT

22.1 This Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, administrators, executors, successors and permitted assignees.

[Signature page follows. Remainder of page left intentionally blank.]

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:

THE CITY OF PARKSVILLE

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE A
RDN Resolution

[See attached.]

SCHEDULE B
Parksville Resolution

[See attached.]

SCHEDULE C
Copy of Bylaw

[See attached.]