



CITY OF FORT SASKATCHEWAN

BYLAW NO. C24-05

BEING A BYLAW OF THE CITY OF FORT SASKATCHEWAN TO AUTHORIZE THE ENTERING INTO AN AGREEMENT WITH WASTE SERVICES (CA) INC. FOR COLLECTION, REMOVAL, AND DISPOSAL OF RESIDENTIAL WASTE; RECYCLING STATION AND TRANSFER STATION SERVICES; AND LANDFILL SERVICES

WHEREAS the City of Fort Saskatchewan wishes to enter into an agreement with Waste Services (CA) Inc. for the collection, removal and disposal of Residential Waste; Recycling Station and Transfer Station Services; and Landfill Services;

AND WHEREAS the *Municipal Government Act*, RSA 2000 c.M26, provides that Council may pass a Bylaw authorizing the entering into agreements, upon receiving approval from the Alberta Energy and Utilities Board;

NOW THEREFORE the Council of the City of Fort Saskatchewan, in the Province of Alberta, in open meeting of Council enacts as follows:

1. That the Mayor and Director of Legislative Services be authorized on behalf of the City of Fort Saskatchewan to enter into agreements with Waste Services (CA) Inc. for the collection, removal and disposal of Residential Waste; Recycling Station and Transfer Station Services; and Landfill Services.
2. That a copy of the agreement for Residential Waste Services is attached hereto and marked as "Appendix A".
3. That a copy of the agreement for Recycling Station and Transfer Station Services is attached hereto and marked as "Appendix B".
4. That a copy of the agreement for Landfill Services is attached hereto and marked as "Appendix C".
5. That Bylaw C12-95 and Bylaw C21-00, and all amendments thereto, are hereby repealed upon final passing of this Bylaw.

READ a first time in Council this 25th day of October A.D., 2005.

READ a second time in Council this 24th day of January A.D., 2005.6

Read a third time in Council this 24th day of January A.D., 2005.6

Signed this 24th day of January A.D., 2005.6

CITY OF FORT SASKATCHEWAN			
APPROVED		DATE	INTL
Legal & Form	Oct. 2005	2005	RD
Dep't. Content	Oct. 2005	2005	RD
City Mgr.	Oct. 2005	2005	RD

J. Sheagreen MAYOR
B. Lamberson DIRECTOR, LEGISLATIVE SERVICES

Appendix "A"
Bylaw C24-05

THIS AGREEMENT made the 06 day of JANUARY, 2005. Doc. 82

BETWEEN:

CITY OF FORT SASKATCHEWAN

a municipal corporation under the
laws of the Province of Alberta
(hereinafter referred to as the "City")

OF THE FIRST PART

- and -

WASTE SERVICES (CA) INC.

a body corporate carrying on business
in the Province of Alberta
(hereinafter referred to as the "Contractor")

OF THE SECOND PART

EXCLUSIVE WASTE MANAGEMENT AGREEMENT
RESIDENTIAL WASTE SERVICES

WHEREAS:

- A. The *Municipal Government Act* RSA 2000, c.M-26 authorizes the City to enter into agreements for, and grant exclusive and non-exclusive rights with respect to, the provision of waste management services such as collection, removal, disposal and recycling within the municipal boundaries of the City; and
- B. The City has passed Solid Waste Bylaw C11-95 for the collection, removal, disposal and recycling of Waste within the municipal boundaries of the City; and
- C. Pursuant to the terms of Solid Waste Bylaw C11-95, the City may enter into an agreement with any person or persons and may grant an exclusive or non-exclusive right to any person or persons for the collection, removal, disposal and recycling of Waste within the municipal boundaries of the City; and
- D. The City and the Contractor are desirous of entering into this Agreement setting forth their respective rights and obligations relating to the services contemplated herein.

NOW THEREFORE THIS AGREEMENT WITNESSETH that, in consideration of these premises and of the terms, conditions, schedules and agreements herein contained, the parties do hereby agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 In this Agreement:

- (a) "Agreement" means this Agreement as the same may be amended from time to time in accordance with the terms hereof and the expressions "herein", "hereof", "hereto", "above", "below" and similar expressions used in any paragraph, subparagraph, section or article of

this Agreement refer and relate to the whole of this Agreement and not to that paragraph, subparagraph, section or article only, unless otherwise expressly provided;

- (b) "Bylaw" means Bylaw C11-95 of the City of Fort Saskatchewan;
- (c) "CPI" means the consumer price index for all goods as calculated by Statistics Canada from time to time for the City of Edmonton region;
- (d) "Co-mingled Recycling" means recycled products mingled together in one container including:
 - (i) newspapers;
 - (ii) mixed papers;
 - (iii) cardboard;
 - (iv) metal cans;
 - (v) glass containers;
 - (vi) box board; and
 - (vii) milk containers;
- (e) "Commercial, Light Industrial, Institutional and Medical Waste Services" means service to properties zoned for commercial, light industrial, institutional and medical uses as defined under the Land Use Bylaw for the City;
- (f) "Commercial Waste" means all Waste collected from commercial, light industrial, institutional and medical premises as those properties are defined under the Land Use Bylaw for the City;
- (g) "Compactor Container" means a container which forms part of or is permanently or temporarily connected to a device or machine which operates in such a manner as to compress Waste within the container;
- (h) "Delivery Point" means a facility at which Waste may be deposited for disposal which is licensed by the Minister of the Environment and designated and approved by the City;
- (i) "Dry Waste" means non-toxic, non-degradable Waste, which, without limiting the generality of the foregoing, includes demolition and construction Waste;
- (j) "Effective Date" means December 1st, 2005, subject to any approval required from the Alberta Energy and Utilities Board as contemplated in Article 22 herein;
- (k) "Landfill Services" means the disposal of Waste delivered to the Delivery Point;
- (l) "Recyclable Materials" means cardboard, glass, metals, plastics, mixed paper, yard waste, newsprint and such other substances designated by the City from time to time;
- (m) "Recycling Service" means the sorting, transportation and marketing of Recyclable Materials;
- (n) "Recycling Station" means a facility designated from time to time by the City where Recyclable Materials may be deposited;
- (o) "Residential Premises" means all residential premises and all rural agricultural residential premises within the municipal boundaries of the City;
- (p) "Residential Waste Services" means the collection and removal of Waste from Residential Premises;

- (q) "Street Can" means a container owned by the City, located on public streets within the municipal boundaries of the City which are used by the general public for the deposit of Waste;
- (r) "Transfer Station" means areas designated by the City from time to time at which Waste may be deposited;
- (s) "Waste" means Dry Waste, Wet Waste, Yard Waste, Recyclable Materials and all compostable materials, refuse, garbage and any other substance or material that may be received at a landfill or recycling facility, as the case may be, in accordance with all applicable permits, authorizations and licenses;
- (t) "Waste Disposal Facility" means a landfill facility licensed by the Minister of the Environment for the disposal of Waste, which, without limiting the generality of the foregoing, shall include landfill sites, but which shall not include facilities for the processing of Recyclable Materials;
- (u) "Wet Waste" means non-toxic, degradable Waste, which, without limiting the generality of the foregoing, does not include demolition and construction Waste; and
- (v) "Yard Waste" means grass cuttings, shrubbery and hedge prunings (excluding tree branches, stumps, roots and logs), leaves, weeds and garden waste.

1.2 Unless otherwise defined, each capitalized word or phrase herein shall have the meaning ascribed to it in the Bylaw.

ARTICLE 2 - GRANT OF RIGHTS

- 2.1 The City hereby grants the Contractor the exclusive right to collect and remove Waste from Residential Premises located within the municipal boundaries of the City under the terms and conditions of this Agreement.
- 2.2 The City reserves the right to grant rights to other persons for the provision of services related to Waste and Recyclable Materials which are not specifically provided for herein but prior to granting such other rights (if any) the City shall negotiate with the Contractor with regard to the same.

ARTICLE 3 - TERM OF AGREEMENT

- 3.1 The term of this Agreement shall expire midnight, November 30, 2010 with an option to extend the term of the Agreement until November 20, 2015.

ARTICLE 4 - RESIDENTIAL WASTE SERVICES

- 4.1 The Contractor shall be responsible for the collection and removal of Waste from all Residential Premises located within the municipal boundaries of the City and the hauling of such Waste to the Delivery Point.
- 4.2 Subject to section 4.4 herein, the City shall pay to the Contractor the charges described in Schedule "A" herein for the collection, removal and disposal of Waste from all Residential Premises within the municipal boundaries of the City for the term of this Agreement.

- 4.3 Charges described in section 4.2 herein, shall include all multi-residential dwelling container rental, and all collection, haulage rates, charges, levies and fees, which, without limiting the generality of the foregoing, shall include the provision of Containers as required by the City from time to time.
- 4.4 Charges described in section 4.2 herein contemplate delivery of the waste to a Delivery Point which is thirty-six (36) kilometres or less from the nearest municipal boundary of the City, provided however:
- (a) if the distance from the nearest municipal boundary of the City to the Delivery Point is greater than thirty-six (36) kilometres, the City shall pay the Contractor an additional charge (hereinafter referred to as the "Overhaul Charge") described in Schedule "A" hereto; and
 - (b) if the distance from the nearest municipal boundary of the City to the Delivery Point is less than thirty six (36) kilometres, the City shall pay the Contractor a reduced charge (hereinafter referred to as the "Underhaul Charge") described in Schedule "A" hereto.
- 4.5 The Contractor shall, upon request by the City from time to time, supply to the City evidence satisfactory to the City as to computation of the Overhaul Charge and Underhaul Charge, as the case may be.
- 4.6 For the purposes of section 4.2 herein, the number of Residential Premises to which this Agreement shall apply during the Term shall be calculated by the City and notice provided to the Contractor by December 1st of each year.
- 4.7 The Contractor shall invoice the City for charges accrued pursuant to section 4.2 herein on a monthly basis, with payment due and owing within thirty (30) days of the City receiving an invoice.
- 4.8 All amounts payable by the City to the Contractor hereunder will be exclusive of any goods and services tax ("GST") and the City will, in addition to the amounts payable hereunder, pay to the Contractor all amounts of GST applicable thereon. Concurrently with the execution of this Agreement the Contractor shall be a GST registrant.
- 4.9 The charges agreed herein to be paid to the Contractor by the City for the services to be performed under this Agreement is the sole compensation to be paid to the Contractor for the discharge of the Contractor's obligations under this Agreement and any other costs and expenses incurred in relation to the performance of this Agreement by the Contractor shall be the responsibility of the Contractor. The charges to be paid by the City to the Contractor for the services performed under this Agreement shall be adjusted effective the anniversary date of this Agreement in each year of the term of this Agreement by multiplying the charges by the CPI for the immediately prior 12 month period and the resulting adjusted charges shall apply to and be accepted by the City and the Contractor for the services performed during the following 12 month period.
- 4.10 The Contractor shall remove Waste from Residential Premises located within the municipal boundaries of the City once per week, with the scheduling of Waste removal to be at the discretion of the Contractor unless otherwise directed in writing by the City from time to time, in which event scheduling of Waste removal shall be in accordance with the directives of the City.
- 4.11 The City shall have the option of directing the Contractor to collect Co-Mingled Recycled Products and Yard Waste from all Residential Premises located within the municipal boundaries of the City. The Yard Waste and Co-Mingled Recycled Products collected shall be delivered by the Contractor to a site to be designated by the City within forty (40) kilometres of the City's boundaries. The City shall have the option of directing the Contractor to pick up other materials from all Residential Premises located within the municipal boundaries of the City on such terms and conditions as agreed to by the City and the Contractor.

- 4.12 The City shall have the option of implementing a tag-a-bag program at no additional cost to the City. In such event, the Contractor shall remove Waste packaged in accordance with the requirements of the program concurrently with other Waste as contemplated in Sections 4.11, 4.13 and 4.14 herein. The City shall be responsible for the administration of the program and the issuance of the tags. The Contractor shall pick up and store the tags from the bags as they are picked up.
- 4.13 The City shall also have the option of directing the Contractor to pick up large items from all Residential Premises located within the municipal boundaries of the City, once in the Spring and/or once in the Fall, the scheduling of which is to be at the discretion of the Contractor, unless otherwise directed in writing by the City from time to time, in which event scheduling of removal of such items shall be in accordance with the discretion of the City. Large items shall include, but shall not be restricted to, such things as appliances, furniture, bicycles, sports equipment, toys, tools, barbecues and other items of a similar nature. Any such items which, in the opinion of the Contractor, can be recycled shall be delivered to the Recycling Station. All other items shall be delivered to the Delivery Point.
- 4.14 The City shall have the further option of directing the Contractor to pick up Christmas trees from all Residential Premises located within the municipal boundaries of the City, once in January of each year, the scheduling which shall be at the discretion of the Contractor. The Christmas trees shall be delivered to the Transfer Station.

ARTICLE 5 - TRANSFER STATION SERVICES

[Intentionally Deleted]

ARTICLE 6 - RECYCLING STATION SERVICES

[Intentionally Deleted]

ARTICLE 7 - COMMERCIAL, LIGHT INDUSTRIAL, INSTITUTIONAL AND MEDICAL WASTE SERVICES

[Intentionally Deleted]

ARTICLE 8 - LANDFILL SERVICES

[Intentionally Deleted]

ARTICLE 9 - BONDING

- 9.1 The Contractor shall lodge a performance bond with the City in the amount of Thirty Thousand (\$30,000.00) Dollars in such form and content as is satisfactory to the City in its sole, absolute and unfettered discretion, which performance bond shall be lodged prior to the effective date of this Agreement and which shall remain in place during the term of this Agreement.

ARTICLE 10 - LEGISLATIVE REQUIREMENTS

- 10.1 In carrying out its obligations hereunder, the Contractor shall be bound by and observe all applicable Federal, Provincial and Municipal legislation, rules, bylaws, regulations and directives which, without limiting the generality of the foregoing, shall include the provisions of the Bylaw, and shall cause all of its employees, agents and contractors to be so bound.

ARTICLE 11 - INSURANCE

- 11.1 Without in any way limiting the liability of the Contractor under this Agreement, the Contractor shall obtain and maintain in force during the term of this Agreement, the following insurance:
- (a) standard automobile insurance, bodily injury and property damage insurance providing coverage of at least Two Million (\$2,000,000.00) Dollars inclusive per accident for the injury to or death of one or more persons or damage to or destruction of property;
 - (b) a commercial general liability insurance policy per occurrence providing coverage of at least Two Million (\$2,000,000.00) Dollars inclusive and in respect of any one claim for injury to or death of any one or more persons or damage to or destruction of property. Coverage to include:
 - (i) non-owned automobile liability;
 - (ii) independent sub-contractors;
 - (iii) contractual liability including this Agreement;
 - (iv) contingent employers liability;
 - (v) broad form property damage endorsement;
 - (vi) environmental liability with an asbestos abatement coverage supplement in the amount of not less than \$250,000.00, if required by the City; and
 - (vii) cross-liability;
 - (c) workers compensation coverage for all employees, if any, engaged by the Contractor in accordance with the laws of the Province of Alberta;
 - (d) employer's liability insurance respecting employees, if any, of the Contractor with limits of liability of not less than Two Million (\$2,000,000.00) Dollars per employee for each accident, accidental injury or death of an employee or any sub-contractor engaged by the Contractor; and
 - (e) such other insurance as the City may from time to time reasonably require.

The Contractor shall be liable for the cost of all of the insurance required to be held by the Contractor as set forth herein and for payment of all deductible amounts from such policies of insurance.

- 11.2 The Contractor shall ensure that:
- (a) all insurance coverage maintained by the Contractor in accordance with this Agreement shall include waivers of subrogation by the insurers in favour of the City and shall name the City as an additional insured in respect to the Services provided to the City by the Contractor;
 - (b) shall provide that no such insurance policy may be cancelled without the insurer providing no less than thirty (30) days written notice of such cancellation to the City;
 - (c) written documentation is furnished, satisfactory to the City evidencing the required insurance coverage.

ARTICLE 12 - BYLAW CONTRAVENTION

- 12.1 The Contractor shall notify the City as to any and all breaches of the Bylaw which the Contractor becomes aware of as soon as reasonably possible thereafter.

ARTICLE 13 - DEPARTMENT MANAGER, PLANNING & PUBLIC WORKS

- 13.1 The Contractor shall abide by any and all directions in writing received from the Manager, Planning & Public Works, or his designate, from time to time relating to Residential Premises located in the City, which, without limiting the generality of the foregoing, shall include directions to add or to cease places or locations of collection and removal of Waste and to provide containers.

ARTICLE 14 - WARRANTIES AND REPRESENTATIONS OF THE CONTRACTOR

- 14.1 The Contractor hereby represents and warrants with and to the City and acknowledges that the City is relying upon such representations and warranties, as follows:
- (a) the Contractor has been incorporated and organized under the laws of Canada, is extra-provincially registered in the Province of Alberta and is a valid and subsisting corporation in good standing under all applicable laws of Canada and the Province of Alberta;
 - (b) the Contractor has the corporate power to own its assets and to carry on the business of collection, removal, disposal and recycling of Waste pursuant to the terms hereof;
 - (c) the Contractor is validly and properly registered and licensed under the appropriate laws of each and every jurisdiction in which the nature of its business makes such qualification necessary and, in particular, in order to carry out its obligations under the terms and provisions of this Agreement;
 - (d) the execution and delivery of this Agreement does not:
 - (i) violate any provision of;
 - (ii) result in the acceleration of any obligation under;
 - (iii) give any person, firm or corporation any right to terminate; or
 - (iv) terminateany mortgage, lien, lease or other agreement of any kind to which the Contractor is a party or by which the Contractor is bound, or violate or conflict with any other restriction or any kind or character to which the Contractor is subject;
 - (e) the Contractor is in good standing under any and all contracts, licenses and undertakings to which it is a party;
 - (f) the Contractor is in possession of all necessary vehicles, equipment and personnel in order to carry out its obligations under the terms and provisions of this Agreement;
 - (g) the Contractor is in compliance with all laws and regulations of any public authority relating to the conduct of its business and has all required permits, licenses, certificates and authorizations necessary to carry on its business and to carry out its obligations hereunder and there are not any proceedings whatsoever, actual or pending, and whether concerning cancellation, extension or otherwise, relating to the said permits, licenses, certificates or authorizations;
 - (h) the Contractor is not a party directly or indirectly to any legal proceedings or inquiries, and there are no actions, suits, seizures or proceedings pending or threatened against the

Contractor which might give rise to any legal proceedings or inquiries against the Contractor before any court, tribunal, commission, board or other agency, whether Federal, Provincial or Municipal, provided however, that the legal proceedings and inquiries referred to herein are those that would not affect, in any way whatsoever, the Contractor's performance under this Agreement;

- (i) the Contractor is not now operating under or subject to or in default of any judgment, order, writ, injunction, ordinance, regulation or decree or any other requirement of any governmental body or court relating to its property or business;
- (j) there is no pending or threatened grievance, labour dispute, work stoppage or strike nor any charge or complaint against the Contractor before any court, tribunal, commission, board or other agency, whether Federal, Provincial or Municipal, involving any charge of unfair labour practice or relating to labour or employment issues or practices generally;
- (k) any and all municipal taxes with respect to the business of the Contractor have been paid in full to the date hereof;
- (l) the Contractor is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
- (m) the Goods and Services Tax (GST) Account Number of the Contractor is 885237370RT;
- (n) the Contractor has corporate power to execute and deliver this Agreement and has taken all action required by law, its constating documents, any unanimous shareholder agreement or otherwise, to authorize and permit such execution and delivery of this Agreement;
- (o) the Contractor has filed all Canadian, provincial and local tax returns required to be filed and have paid all taxes due and payable. Adequate provision has been made for taxes payable for the current period for which tax returns are not yet required to be filed, and all instalments for taxes in the current year have been paid in accordance with applicable legislation. No assessments have been issued and no re-assessments have been made to this date or will be made hereafter questioning or challenging in any way the return that is filed or amended except such as have been paid. All franchise, real and personal property taxes, business taxes and GST of the Contractor have been paid to date. All taxes and other assessments which the Contractor is required by law to withhold or collect to the date hereof have been duly recorded, withheld and collected, and have been paid over to the proper governmental authorities;
- (p) the Contractor is not a "Canadian Controlled Private Corporation" as such term is defined in the *Income Tax Act* (Canada);
- (q) there is no claim, action or proceeding pending or threatened against the Contractor arising out of any statute, ordinance or regulation relating to the payment of wages or benefits, discrimination in employment or employment practices or occupational safety or health standards; and
- (r) the Contractor acknowledges having received and read a copy of the Bylaw and this Agreement.

ARTICLE 15 - FURTHER AGREEMENTS OF THE CONTRACTOR

- 15.1 The Contractor shall pay all business, sales, equipment, machinery, goods and services taxes, other taxes, charges and licenses levied or imposed by any competent authority in respect of the personnel, business, sales, equipment, machinery or income of the Contractor.

15.2 The Contractor shall, at its sole cost, maintain in good working order all of its vehicles and equipment to be used in carrying out its obligations under the terms and provisions of this Agreement.

15.3 In carrying out its obligations hereunder the Contractor shall:

- (a) ensure that the performance of the service provided for in this Agreement is conducted in accordance with the Bylaw;
- (b) do such things in order that all of the warranties and representations given by the Contractor hereunder continue to remain in effect respectively during the term hereof; and
- (c) cause its employees and contractors and all other persons it is responsible for at law to observe all of the obligations of the Contractor hereunder.

ARTICLE 16 - DEFAULT

16.1 If during the term hereof:

- (a) any of the goods and chattels of the Contractor shall be taken in execution or by attachment by any creditor of the Contractor;
- (b) the Contractor shall make an assignment for the benefit of creditors;
- (c) the Contractor, becoming bankrupt or insolvent, shall take the benefit of any Act that may be in force for bankrupt or insolvent debtors;
- (d) there is instituted by or against the Contractor any formal or informal procedures for the dissolution or liquidation of, settlement of claims against, or winding up of affairs of the Contractor;
- (e) there be default or breach or non-performance of any of the obligations or agreements in this Agreement contained on the part of the Contractor;
- (f) the City, in good faith, believes that the prospect of performance of any of the Contractor's obligations hereunder is impaired;
- (g) any representation and warranty given by the Contractor is untrue or inaccurate;
- (h) the Contractor ceases or threatens to cease to carry on business or makes or agrees to make a bulk sale of assets or commits or threatens to commit an act of bankruptcy; or
- (i) a Receiver and Manager or a Receiver/Manager of all or any part of the property, assets or undertakings of the Contractor is appointed

then, and in any of such cases, and without reference to any other rights that the City may have at law or in equity, the City may terminate this Agreement upon written notice to that effect given to the Contractor and upon receipt of the approval of the Alberta Energy and Utilities Board (if required).

ARTICLE 17 - LIABILITY WAIVER AND INDEMNITY

17.1 The Contractor shall not make or bring any claim, action, suit, proceeding or demand against the City, its elected officials, officers, employees, servants, agents and contractors with respect to any occurrence, incident, accident or happening relating in any manner whatsoever to this Agreement

and the rights and obligations arising therefrom, which, without limiting the generality of the foregoing, shall include any claim, action, suit, proceeding or demand arising in tort, contract or agreement.

17.2 The Contractor shall be liable for and shall indemnify and save harmless the City, its elected officials, officers, employees, servants, agents and contractors, with respect to any claim, liability, action, suit, proceeding or demand of whatever nature:

- (a) which any of the City, its elected officials, officers, employees, servants, agents and contractors may sustain, pay or incur; and/or
- (b) which may be brought or made against any of the City, its elected officials, officers, employees, servants, agents and contractors,

by any third party with respect to any occurrence, incident, accident or happening relating in any manner whatsoever to this Agreement and the rights and obligations arising therefrom, and which indemnity shall, without restricting the generality of the foregoing, include all legal costs on a solicitor and his own client full indemnity basis incurred by the City.

ARTICLE 18 - PERFORMANCE FAILURE

18.1 If the Contractor shall fail to perform any of the obligations or agreements of the Contractor under or in respect of this Agreement the City may, from time to time, in its sole and absolute discretion, and without prejudice to its rights hereunder and at law or in equity, perform or cause to be performed any such agreements or obligations, or any part thereof and for such purpose may do such things as may be requisite. The Contractor shall pay all expenses incurred and expenditures made by or on behalf of the City under this Section within ten (10) days from the date of invoice therefore. Further, any expenses incurred or expenditures made as set forth in this Section shall constitute a debt due and owing to the City and such amount may, without further action or notice, be set-off against any sum of money owed by the City to the Contractor, as such may exist from time to time, until all amounts owing to the City have been completely set off.

ARTICLE 19 - SURVIVAL

19.1 The parties acknowledge that the provisions of this Agreement which by their context are meant to survive the termination or expiry hereof, including, without restriction, the provisions of sections 14.1, 17.1 and 17.2 herein, shall survive the termination or expiry of this Agreement and shall not be merged therein or therewith.

ARTICLE 20 - GENERAL

20.1 If any term, covenant or condition of this Agreement or the application thereof to any party or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement or application of such term, covenant or condition to a party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining term, covenant or condition of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law.

20.2 This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties and there are no general or specific warranties, representations or other agreements by or among the parties in connection with the entering into of this Agreement or the subject matter hereof except as specifically set forth herein.

- 20.3 The parties hereto and each of them do hereby covenant and agree to do such things, obtain such approvals, permits and licenses and execute such further documents, agreements and assurances as may be necessary or advisable from time to time in order to carry out the terms and conditions of this Agreement in accordance with their true intent.
- 20.4 This Agreement may be altered or amended in any of its provisions when any such changes are reduced to writing and signed by the parties hereto but not otherwise.
- 20.5 No remedy herein conferred upon any party is intended to be exclusive of any other remedy available to that party but each remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing by law or in equity or by statute.
- 20.6 No consent or waiver, express or implied, by either party to or of any breach or default by the other party in the performance by the other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of obligations hereunder by such party hereunder. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.
- 20.7 Any notice required to be given hereunder by any party shall be in writing and shall be deemed to have been well and sufficiently given if:
- (a) personally delivered to the party to whom it is intended or if such party is a corporation to an officer of that corporation; or
 - (b) if mailed by prepaid registered mail, to the address of the party to whom it is intended hereinafter set forth or to such other address as a party may from time to time direct in writing as follows:
 - (i) In case of notice to the City, to:

The City of Fort Saskatchewan
10005 - 102 Street
Fort Saskatchewan, Alberta
T8L 2C5

Attn: Manager, Planning & Public Works
 - (ii) In case of notice to the Contractor, to:

Waste Services (CA) Inc
185 Strathmoor Way
Sherwood Park, Alberta
T8H 1Z7

Any notice delivered as aforesaid shall be deemed to have been received on the date of delivery and any notice mailed shall be deemed to have been received seventy two (72) hours after the date it is postmarked. If normal mail service is interrupted by strike, slow-down, force majeure or other cause after the notice has been sent the notice will not be deemed to be received until actually received. In the event normal mail service is impaired at the time of sending the notice, then personal delivery only shall be effective.

- 20.8 The parties hereby confirm and ratify the matters contained and referred to in the Preamble and the Schedules to this Agreement and agree that same are expressly incorporated into and form part of this Agreement.
- 20.9 Wherever the singular, plural, masculine, feminine or neuter is used throughout this Agreement the same shall be construed as meaning the singular, plural, masculine, feminine, neuter, body politic or body corporate where the fact or context so requires and the provisions hereof and all covenants herein shall be construed to be joint and several when applicable to more than one party.
- 20.10 The headings in this Agreement have been inserted for reference and as a matter of convenience only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision hereof.
- 20.11 The laws of the Province of Alberta shall govern this Agreement.
- 20.12 Time shall be of the essence of this Agreement and of every part hereof.
- 20.13 This Agreement may not be assigned in whole or in part by the Contractor without the express written permission of the City, which permission may be unreasonably or arbitrarily withheld. Notwithstanding that the Contractor may assign its interest in this Agreement with the permission of the City, the Contractor shall remain liable under the provisions hereof. Any assignment contrary to the provisions hereof is void.
- 20.14 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.

ARTICLE 21 - EFFECTIVE DATE

- 21.1 This Agreement shall become effective upon the Effective Date.

ARTICLE 22 - ALBERTA ENERGY AND UTILITIES BOARD APPROVAL

- 22.1 This Agreement is subject to approval by the Alberta Energy and Utilities Board.

IN WITNESS WHEREOF this Agreement has been executed by the parties effective as of the date first above written notwithstanding the actual date or dates of execution.



Bill
Witness

Bill
Witness

CITY OF FORT SASKATCHEWAN

Mayor

B. Dambros
Legislative Services Director

WASTE SERVICES (CA) INC.

PER: David M. Appleton

PER: KEITH D. HAWKINS

CITY OF FORT SASKATCHEWAN

David M. Appleton
SIGNATURE

Nov 7, 2005
DATE

SCHEDULE "A"

RESIDENTIAL SERVICE CHARGES

RESIDENTIAL SERVICE EXCLUDING DISPOSAL:

WEEKLY RESIDENTIAL PICKUP (INCLUDES MULTIFAMILY)	\$4.07 per residence per month
WEEKLY TAG-A-BAG RESIDENTIAL PICKUP (INCLUDES MULTIFAMILY)	\$4.07 per unit per month
WEEKLY RESIDENTIAL CO-MINGLED RECYCLING (INCLUDES MULTI-FAMILY)	\$3.41 per residence per month
RESIDENTIAL YARD WASTE – PICKUP EVERY 2 ND WEEK 6 MONTHS PER YEAR (OPTIONAL FOR CITY) see S.4.10	\$2.75 per residence per month
OVERHAUL/UNDERHAUL CHARGE (OPTIONAL FOR CITY) see S.4.4(a) and (b)	\$0.75 per kilometre per tonne
SPRING/FALL LARGE ITEM PICK-UP (OPTIONAL FOR CITY) see S.4.13	\$4.17 per residence per pick-up
CHRISTMAS TREE PICK-UP (OPTIONAL FOR CITY - ONCE PER YEAR) see S.4.14	\$1.50 per residence per pick-up

*All of the foregoing amounts are exclusive of goods and services tax (GST).

*All of the foregoing amounts shall be adjusted for CPI in accordance with Article 4.9 herein.

Appendix "B"
Bylaw C24-05

THIS AGREEMENT made the 26 day of JANUARY, 2005. 226. B2

BETWEEN:

CITY OF FORT SASKATCHEWAN

a municipal corporation under the
laws of the Province of Alberta
(hereinafter referred to as the "City")

OF THE FIRST PART

- and -

WASTE SERVICES (CA) INC.

a body corporate carrying on business
in the Province of Alberta
(hereinafter referred to as the "Contractor")

OF THE SECOND PART

EXCLUSIVE WASTE MANAGEMENT AGREEMENT
RECYCLING STATION AND TRANSFER STATION SERVICES

WHEREAS:

- A. The *Municipal Government Act* RSA 2000 c.M-26 authorizes the City to enter into agreements for, and grant exclusive and non-exclusive rights with respect to, the provision of waste management services such as collection, removal, disposal and recycling within the municipal boundaries of the City; and
- B. The City has passed Solid Waste Bylaw C11-95 for the collection, removal, disposal and recycling of Waste within the municipal boundaries of the City; and
- C. Pursuant to the terms of the Solid Waste Bylaw C11-95, the City may enter into an agreement with any person or persons and may grant an exclusive or non-exclusive right to any person or persons for the collection, removal, disposal and recycling of Waste within the municipal boundaries of the City; and
- D. The City and the Contractor are desirous of entering into this Agreement setting forth their respective rights and obligations relating to the services contemplated herein.

NOW THEREFORE THIS AGREEMENT WITNESSETH that, in consideration of these premises and of the terms, conditions, schedules and agreements herein contained, the parties do hereby agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 In this Agreement:

- (a) "Agreement" means this Agreement as the same may be amended from time to time in accordance with the terms hereof and the expressions "herein", "hereof", "hereto", "above", "below" and similar expressions used in any paragraph, subparagraph, section or article of

this Agreement refer and relate to the whole of this Agreement and not to that paragraph, subparagraph, section or article only, unless otherwise expressly provided;

- (b) "Bylaw" means Solid Waste Bylaw C11-95 of the City of Fort Saskatchewan;
- (c) "CPI" means the consumer price index for all goods as calculated by Statistics Canada from time to time for the City of Edmonton region;
- (d) "Commercial, Light Industrial, Institutional and Medical Waste Services" means service to properties zoned for commercial, light industrial, institutional and medical uses as defined under the Land Use Bylaw for the City;
- (e) "Commercial Waste" means all Waste collected from commercial, light industrial, institutional and medical premises as those properties are defined under the Land Use Bylaw for the City;
- (f) "Compactor Container" means a container which forms part of or is permanently or temporarily connected to a device or machine which operates in such a manner as to compress Waste within the container;
- (g) "Delivery Point" means a facility at which Waste may be deposited for disposal which is licensed by the Minister of the Environment and designated and approved by the City;
- (h) "Dry Waste" means non-toxic, non-degradable Waste, which, without limiting the generality of the foregoing, includes demolition and construction Waste;
- (i) "Effective Date" means December 1st, 2005, subject to any approval required from the Alberta Energy and Utilities Board as contemplated in Article 22 herein;
- (j) "Landfill Services" means the disposal of Waste delivered to the Delivery Point;
- (k) "Recyclable Materials" means cardboard, glass, metals, plastics, mixed paper, yard waste, newsprint and such other substances designated by the City from time to time;
- (l) "Recycling Service" means the sorting, transportation and marketing of Recyclable Materials;
- (m) "Recycling Station" means a facility designated from time to time by the City where Recyclable Materials may be deposited;
- (n) "Residential Premises" means all residential premises and all rural agricultural residential premises within the municipal boundaries of the City;
- (o) "Residential Waste Services" means the collection, removal and disposal of Waste from Residential Premises;
- (p) "Street Can" means a container owned by the City, located on public streets within the municipal boundaries of the City which is used by the general public for the deposit of Waste;
- (q) "Transfer Station" means areas designated by the City from time to time at which Waste may be deposited;
- (r) "Waste" means Dry Waste, Wet Waste, Yard Waste, Recyclable Materials and all compostable materials, refuse, garbage and any other substance or material that may be

received at a landfill or recycling facility, as the case may be, in accordance with all applicable permits, authorizations and licenses;

- (s) "Waste Disposal Facility" means a landfill facility licensed by the Minister of the Environment for the disposal of Waste, which, without limiting the generality of the foregoing, shall include landfill sites, but which shall not include facilities for the processing of Recyclable Materials;
- (t) "Wet Waste" means non-toxic, degradable Waste, which, without limiting the generality of the foregoing, does not include demolition and construction Waste; and
- (u) "Yard Waste" means grass cuttings, shrubbery and hedge prunings (excluding tree branches, stumps, roots and logs), leaves, weeds and garden waste.

- 1.2 Unless otherwise defined, each capitalized word or phrase herein shall have the meaning ascribed to it in the Bylaw.

ARTICLE 2 - GRANT OF RIGHTS

- 2.1 The City hereby grants the Contractor the exclusive right to collect and remove Waste from all Transfer Stations as well as collect, remove and market Recyclable Materials from all Recycling Stations located within the municipal boundaries of the City under the terms and conditions of this Agreement.
- 2.2 The City reserves the right to grant rights to other persons for the provision of services related to Waste and Recyclable Materials which are not specifically provided for herein but prior to granting such other rights (if any) the City shall negotiate with the Contractor with regard to the same.

ARTICLE 3 - TERM OF AGREEMENT

- 3.1 The term of this Agreement shall expire midnight November 30th, 2010 with an option to extend the term of the Agreement until November 30th, 2015.

ARTICLE 4 - RESIDENTIAL WASTE SERVICES

[Intentionally Deleted]

ARTICLE 5 - TRANSFER STATION SERVICES

- 5.1 The Contractor shall be responsible for the collection and removal of Waste from all Transfer Stations located within the municipal boundaries of the City and the hauling of such Waste to a Delivery Point as required by the City from time to time. The City may designate in its sole and unfettered discretion, separate and distinct Delivery Points for Wet Waste and Dry Waste.
- 5.2 Subject to section 5.4, the City shall pay to the Contractor the charges described in Schedule "A" herein for the collection, removal and hauling of Waste pursuant to section 5.1 herein, for the term of this Agreement.
- 5.3 Charges described in section 5.2 herein shall include all container rental and all collection, haulage and disposal rates, charges, levies and fees, which, without limiting the generality of the foregoing, shall include all landfill tipping fees and the provision of containers as required by the City.

- 5.4 Charges described in section 5.2 herein contemplate delivery of the Waste to a Delivery Point which is thirty-six (36) kilometres or less from the nearest municipal boundary of the City, provided however:
- (a) if the distance from the nearest municipal boundary of the City to the Delivery Point is greater than thirty-six (36) kilometres the City shall pay the Contractor an additional charge (hereinafter referred to as the "Overhaul Charge") described in Schedule "A" hereto; and
 - (b) if the distance from the nearest municipal boundary of the City to the Delivery Point is less than thirty-six (36) kilometres, the City shall pay the Contractor a reduced charge (hereinafter referred to as the "Underhaul Charge") described in Schedule "A" hereto.
- 5.5 The Contractor shall, upon request by the City from time to time, supply to the City evidence satisfactory to the City as to the computation of the Overhaul Charge and Underhaul Charge, as the case may be.
- 5.6 The Contractor shall invoice the City for charges accrued pursuant to section 5.2 herein on a monthly basis, with payment due and owing within thirty (30) days of the City receiving an invoice.
- 5.7 All amounts payable by the City to the Contractor hereunder will be exclusive of any goods and services tax ("GST") and the City will, in addition to the amounts payable hereunder, pay to the Contractor all amounts of GST applicable thereon. Concurrently with the execution of this Agreement the Contractor shall be a GST registrant.
- 5.8 The charges agreed herein to be paid to the Contractor by the City for the services to be performed under this Agreement is the sole compensation to be paid to the Contractor for the discharge of the Contractor's obligations under this Agreement and any other costs and expenses incurred in relation to the performance of this Agreement by the Contractor shall be the responsibility of the Contractor. The charges to be paid by the City to the Contractor for the services performed under this Agreement shall be adjusted effective the anniversary date of this Agreement in each year of the term of this Agreement by multiplying the charges by the CPI for the immediately prior 12 month period and the resulting adjusted charges shall apply to and be accepted by the City and the Contractor for the services performed during the following 12 month period.

ARTICLE 6 - RECYCLING STATION SERVICES

- 6.1 The Contractor shall be responsible for the collection, removal and marketing of Recyclable Materials from all Recycling Stations located within the municipal boundaries of the City as required by the City from time to time.
- 6.2 The City shall pay to the Contractor the charges described in Schedule "B" herein for the collection, removal and marketing of Recyclable Materials within the municipal boundaries of the City for the term of this Agreement.
- 6.3 The Contractor shall deliver to and market all Recyclable Materials at facilities which recycle such Recyclable Materials in a manner satisfactory to the City within the Edmonton region, and in no event shall such Recyclable Materials be disposed of at a Delivery Point unless directed by the Manager, Planning and Public Works, of the City, or his designate.
- 6.4 The Contractor shall unconditionally pay to the City the proceeds from the Recyclable Materials marketed in accordance with section 6.3 herein, within thirty (30) days of delivery of the marketed Recyclable Materials. In the event that Recyclable Materials are marketed by the Contractor at the request of the City based upon a marketing plan approved by the City that will operate on a net deficit basis, the City shall reimburse the Contractor for any unrecovered costs incurred by the Contractor relating to the marketing of Recyclable Materials provided that the Contractor has made

every effort to recover such costs through the proceeds of the marketing of the Recyclable Materials. The Contractor shall supply the City upon request with sufficient documentation to support any claim made by the Contractor for unrecovered costs relating to the marketing of Recyclable Materials.

- 6.5 The Contractor shall invoice the City for charges accrued pursuant to section 6.2 herein on a monthly basis, with payment due and owing within thirty (30) days of the City receiving an invoice.
- 6.6 All amounts payable by the City to the Contractor hereunder will be exclusive of any goods and services tax ("GST") and the City will, in addition to the amounts payable hereunder, pay to the Contractor all amounts of GST applicable thereon. Concurrently with the execution of this Agreement the Contractor shall be a GST registrant.
- 6.7 The charges agreed herein to be paid to the Contractor by the City for the services to be performed under this Agreement is the sole compensation to be paid to the Contractor for the discharge of the Contractor's obligations under this Agreement and any other costs and expenses incurred in relation to the performance of this Agreement by the Contractor shall be the responsibility of the Contractor. The charges to be paid by the City to the Contractor for the services performed under this Agreement shall be adjusted effective the anniversary date of this Agreement in each year of the term of this Agreement by multiplying the charges by the CPI for the immediately prior 12 month period and the resulting adjusted charges shall apply to and be accepted by the City and the Contractor for the services performed during the following 12 month period.

ARTICLE 7 - COMMERCIAL, LIGHT INDUSTRIAL, INSTITUTIONAL AND MEDICAL WASTE SERVICES

[Intentionally Deleted]

ARTICLE 8 - LANDFILL SERVICES

[Intentionally Deleted]

ARTICLE 9 - BONDING

- 9.1 The Contractor shall lodge a performance bond with the City in the amount of Ten Thousand (\$10,000.00) Dollars in such form and content as is satisfactory to the City in its sole, absolute and unfettered discretion, which performance bond shall be lodged prior to the effective date of this Agreement and which shall remain in place during the term of this Agreement.

ARTICLE 10 - LEGISLATIVE REQUIREMENTS

- 10.1 In carrying out its obligations hereunder, the Contractor shall be bound by and observe all applicable Federal, Provincial and Municipal legislation, rules, bylaws, regulations and directives which, without limiting the generality of the foregoing, shall include the provisions of the Bylaw, and shall cause all of its employees, agents and contractors to be so bound.

ARTICLE 11 - INSURANCE

- 11.1 Without in any way limiting the liability of the Contractor under this Agreement, the Contractor shall obtain and maintain in force during the term of this Agreement, the following insurance:

- (a) standard automobile insurance, bodily injury and property damage insurance providing coverage of at least Two Million (\$2,000,000.00) Dollars inclusive per accident for the injury to or death of one or more persons or damage to or destruction of property;
- (b) a commercial general liability insurance policy per occurrence providing coverage of at least Two Million (\$2,000,000.00) Dollars inclusive and in respect of any one claim for injury to or death of any one or more persons or damage to or destruction of property. Coverage to include:
 - (i) non-owned automobile liability;
 - (ii) independent sub-contractors;
 - (iii) contractual liability including this Agreement;
 - (iv) contingent employers liability;
 - (v) broad form property damage endorsement;
 - (vi) environmental liability with an asbestos abatement coverage supplement in the amount of not less than \$250,000.00, if required by the City; and
 - (vii) cross-liability.
- (c) workers compensation coverage for all employees, if any, engaged by the Contractor in accordance with the laws of the Province of Alberta;
- (d) employer's liability insurance respecting employees, if any, of the Contractor with limits of liability of not less than Two Million (\$2,000,000.00) Dollars per employee for each accident, accidental injury or death of an employee or any sub-contractor engaged by the Contractor; and
- (e) such other insurance as the City may from time to time reasonably require.

The Contractor shall be liable for the cost of all of the insurance required to be held by the Contractor as set forth herein and for payment of all deductible amounts from such policies of insurance.

11.2 The Contractor shall ensure that:

- (a) all insurance coverage maintained by the Contractor in accordance with this Agreement shall include waivers of subrogation by the insurers in favour of the City and shall name the City as an additional insured in respect to the Services provided to the City by the Contractor;
- (b) shall provide that no such insurance policy may be cancelled without the insurer providing no less than thirty (30) days written notice of such cancellation to the City;
- (c) written documentation is furnished, satisfactory to the City evidencing the required insurance coverage.

ARTICLE 12 - BYLAW CONTRAVENTION

- 12.1** The Contractor shall notify the City as to any and all breaches of the Bylaw which the Contractor becomes aware of as soon as reasonably possible thereafter.

ARTICLE 13 - DEPARTMENT MANAGER, PLANNING & PUBLIC WORKS

- 13.1** The Contractor shall abide by any and all directions in writing received from the Manager, Planning & Public Works, or his designate, from time to time relating to Transfer Stations and Recycling Stations

located in the City, which, without limiting the generality of the foregoing, shall include directions to add or to cease places or locations of collection and removal of Waste and Recyclable Materials.

ARTICLE 14 - WARRANTIES AND REPRESENTATIONS OF THE CONTRACTOR

- 14.1 The Contractor hereby represents and warrants with and to the City and acknowledges that the City is relying upon such representations and warranties, as follows:
- (a) the Contractor has been incorporated and organised under the laws of Canada, is extra-provincially registered in the Province of Alberta and is a valid and subsisting corporation in good standing under all applicable laws of Canada and the Province of Alberta;
 - (b) the Contractor has the corporate power to own its assets and to carry on the business of collection, removal, disposal and recycling of Waste pursuant to the terms hereof;
 - (c) the Contractor is validly and properly registered and licensed under the appropriate laws of each and every jurisdiction in which the nature of its business makes such qualification necessary and, in particular, in order to carry out its obligations under the terms and provisions of this Agreement;
 - (d) the execution and delivery of this Agreement does not:
 - (i) violate any provision of;
 - (ii) result in the acceleration of any obligation under;
 - (iii) give any person, firm or corporation any right to terminate; or
 - (iv) terminate
 - any mortgage, lien, lease or other agreement of any kind to which the Contractor is a party or by which the Contractor is bound, or violate or conflict with any other restriction or any kind or character to which the Contractor is subject;
 - (e) the Contractor is in good standing under any and all contracts, licenses and undertakings to which it is a party;
 - (f) the Contractor is in possession of all necessary vehicles, equipment and personnel in order to carry out its obligations under the terms and provisions of this Agreement;
 - (g) the Contractor is in compliance with all laws and regulations of any public authority relating to the conduct of its business and has all required permits, licenses, certificates and authorizations necessary to carry on its business and to carry out its obligations hereunder and there are not any proceedings whatsoever, actual or pending, and whether concerning cancellation, extension or otherwise, relating to the said permits, licenses, certificates or authorizations;
 - (h) the Contractor is not a party directly or indirectly to any legal proceedings or inquiries, and there are no actions, suits, seizures or proceedings pending or threatened against the Contractor which might give rise to any legal proceedings or inquiries against the Contractor before any court, tribunal, commission, board or other agency, whether Federal, Provincial or Municipal, provided however, that the legal proceedings and inquiries referred to herein are those that would not affect, in any way whatsoever, the Contractor's performance under this Agreement;

- (i) the Contractor is not now operating under or subject to or in default of any judgment, order, writ, injunction, ordinance, regulation or decree or any other requirement of any governmental body or court relating to its property or business;
- (j) there is no pending or threatened grievance, labour dispute, work stoppage or strike nor any charge or complaint against the Contractor before any court, tribunal, commission, board or other agency, whether Federal, Provincial or Municipal, involving any charge of unfair labour practice or relating to labour or employment issues or practices generally;
- (k) any and all municipal taxes with respect to the business of the Contractor have been paid in full to the date hereof;
- (l) the Contractor is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
- (m) the Goods and Services Tax (GST) Account Number of the Contractor is 885237370RT;
- (n) the Contractor has corporate power to execute and deliver this Agreement and has taken all action required by law, its constating documents, any unanimous shareholder agreement or otherwise, to authorize and permit such execution and delivery of this Agreement;
- (o) the Contractor has filed all Canadian, provincial and local tax returns required to be filed and have paid all taxes due and payable. Adequate provision has been made for taxes payable for the current period for which tax returns are not yet required to be filed, and all instalments for taxes in the current year have been paid in accordance with applicable legislation. No assessments have been issued and no re-assessments have been made to this date or will be made hereafter questioning or challenging in any way the return that is filed or amended except such as have been paid. All franchise, real and personal property taxes, business taxes and GST of the Contractor have been paid to date. All taxes and other assessments which the Contractor is required by law to withhold or collect to the date hereof have been duly recorded, withheld and collected, and have been paid over to the proper governmental authorities;
- (p) the Contractor is not a "Canadian Controlled Private Corporation" as such term is defined in the *Income Tax Act* (Canada);
- (q) there is no claim, action or proceeding pending or threatened against the Contractor arising out of any statute, ordinance or regulation relating to the payment of wages or benefits, discrimination in employment or employment practices or occupational safety or health standards; and
- (r) the Contractor acknowledges having received and read a copy of the Bylaw and this Agreement.

ARTICLE 15 - FURTHER AGREEMENTS OF THE CONTRACTOR

- 15.1 The Contractor shall pay all business, sales, equipment, machinery, goods and services taxes, other taxes, charges and licenses levied or imposed by any competent authority in respect of the personnel, business, sales, equipment, machinery or income of the Contractor.
- 15.2 The Contractor shall, at its sole cost, maintain in good working order all of its vehicles and equipment to be used in carrying out its obligations under the terms and provisions of this Agreement.
- 15.3 In carrying out its obligations hereunder the Contractor shall:

- (a) ensure that the performance of the service provided for in this Agreement is conducted in accordance with the Bylaw;
- (b) do such things in order that all of the warranties and representations given by the Contractor hereunder continue to remain in effect respectively during the term hereof; and
- (c) cause its employees and contractors and all other persons it is responsible for at law to observe all of the obligations of the Contractor hereunder.

ARTICLE 16 - DEFAULT

16.1 If during the term hereof:

- (a) any of the goods and chattels of the Contractor shall be taken in execution or by attachment by any creditor of the Contractor;
- (b) the Contractor shall make an assignment for the benefit of creditors;
- (c) the Contractor, becoming bankrupt or insolvent, shall take the benefit of any Act that may be in force for bankrupt or insolvent debtors;
- (d) there is instituted by or against the Contractor any formal or informal procedures for the dissolution or liquidation of, settlement of claims against, or winding up of affairs of the Contractor;
- (e) there be default or breach or non-performance of any of the obligations or agreements in this Agreement contained on the part of the Contractor;
- (f) the City, in good faith, believes that the prospect of performance of any of the Contractor's obligations hereunder is impaired;
- (g) any representation and warranty given by the Contractor is untrue or inaccurate;
- (h) the Contractor ceases or threatens to cease to carry on business or makes or agrees to make a bulk sale of assets or commits or threatens to commit an act of bankruptcy; or
- (i) a Receiver and Manager or a Receiver/Manager of all or any part of the property, assets or undertakings of the Contractor is appointed;

then, and in any of such cases, and without reference to any other rights that the City may have at law or in equity, the City may terminate this Agreement upon written notice to that effect given to the Contractor and upon receipt of the approval of the Alberta Energy and Utilities Board (if required).

ARTICLE 17 - LIABILITY WAIVER AND INDEMNITY

17.1 The Contractor shall not make or bring any claim, action, suit, proceeding or demand against the City, its elected officials, officers, employees, servants, agents and contractors with respect to any occurrence, incident, accident or happening relating in any manner whatsoever to this Agreement and the rights and obligations arising therefrom, which, without limiting the generality of the foregoing, shall include any claim, action, suit, proceeding or demand arising in tort, contract or agreement.

17.2 The Contractor shall be liable for and shall indemnify and save harmless the City, its elected officials, officers, employees, servants, agents and contractors, with respect to any claim, liability, action, suit, proceeding or demand of whatever nature:

- (a) which any of the City, its elected officials, officers, employees, servants, agents and contractors may sustain, pay or incur; and/or
- (b) which may be brought or made against any of the City, its elected officials, officers, employees, servants, agents and contractors,

by any third party with respect to any occurrence, incident, accident or happening relating in any manner whatsoever to this Agreement and the rights and obligations arising therefrom, and which indemnity shall, without restricting the generality of the foregoing, include all legal costs on a solicitor and his own client full indemnity basis incurred by the City.

ARTICLE 18 - PERFORMANCE FAILURE

18.1 If the Contractor shall fail to perform any of the obligations or agreements of the Contractor under or in respect of this Agreement the City may, from time to time, in its sole and absolute discretion, and without prejudice to its rights hereunder and at law or in equity, perform or cause to be performed any such agreements or obligations, or any part thereof and for such purpose may do such things as may be requisite. The Contractor shall unconditionally pay all expenses and expenditures incurred or made on behalf of the City under this Section within ten (10) days from the date of invoice therefore. Further, any expenses incurred or expenditures made as set forth in this Section shall constitute a debt due and owing to the City and such amount may, without further action or notice, be set-off against any sum of money owed by the City to the Contractor, as such may exist from time to time, until all amounts owing to the City have been completely set off.

ARTICLE 19 - SURVIVAL

19.1 The parties acknowledge that the provisions of this Agreement which by their context are meant to survive the termination or expiry hereof, including, without restriction, the provisions of sections 14.1, 17.1 and 17.2 herein, shall survive the termination or expiry of this Agreement and shall not be merged therein or therewith.

ARTICLE 20 - GENERAL

20.1 If any term, covenant or condition of this Agreement or the application thereof to any party or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement or application of such term, covenant or condition to a party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining term, covenant or condition of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law.

20.2 This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties and there are no general or specific warranties, representations or other agreements by or among the parties in connection with the entering into of this Agreement or the subject matter hereof except as specifically set forth herein.

20.3 The parties hereto and each of them do hereby covenant and agree to do such things, obtain such approvals, permits and licenses and execute such further documents, agreements and assurances

as may be necessary or advisable from time to time in order to carry out the terms and conditions of this Agreement in accordance with their true intent.

20.4 This Agreement may be altered or amended in any of its provisions when any such changes are reduced to writing and signed by the parties hereto but not otherwise.

20.5 No remedy herein conferred upon any party is intended to be exclusive of any other remedy available to that party but each remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing by law or in equity or by statute.

20.6 No consent or waiver, express or implied, by either party to or of any breach or default by the other party in the performance by the other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of obligations hereunder by such party hereunder. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

20.7 Any notice required to be given hereunder by any party shall be in writing and shall be deemed to have been well and sufficiently given if:

(a) personally delivered to the party to whom it is intended or if such party is a corporation to an officer of that corporation; or

(b) if mailed by prepaid registered mail, to the address of the party to whom it is intended hereinafter set forth or to such other address as a party may from time to time direct in writing as follows:

(i) In case of notice to the City, to:

The City of Fort Saskatchewan
10005 - 102 Street
Fort Saskatchewan, Alberta
T8L 2C5

Attn: Manager, Planning & Public Works

(ii) In case of notice to the Contractor, to:

Waste Services (CA) Inc
185 Strathmoor Way
Sherwood Park, Alberta
T8H 1Z7

Any notice delivered as aforesaid shall be deemed to have been received on the date of delivery and any notice mailed shall be deemed to have been received seventy two (72) hours after the date it is postmarked. If normal mail service is interrupted by strike, slow-down, force majeure or other cause after the notice has been sent the notice will not be deemed to be received until actually received. In the event normal mail service is impaired at the time of sending the notice, then personal delivery only shall be effective.

20.8 The parties hereby confirm and ratify the matters contained and referred to in the Preamble and the Schedules to this Agreement and agree that same are expressly incorporated into and form part of this Agreement.

20.9 Wherever the singular, plural, masculine, feminine or neuter is used throughout this Agreement the same shall be construed as meaning the singular, plural, masculine, feminine, neuter, body politic or

body corporate where the fact or context so requires and the provisions hereof and all covenants herein shall be construed to be joint and several when applicable to more than one party.

- 20.10 The headings in this Agreement have been inserted for reference and as a matter of convenience only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision hereof.
- 20.11 The laws of the Province of Alberta shall govern this Agreement.
- 20.12 Time shall be of the essence of this Agreement and of every part hereof.
- 20.13 This Agreement may not be assigned in whole or in part by the Contractor without the express written permission of the City, which permission may be unreasonably or arbitrarily withheld. Notwithstanding that the Contractor may assign its interest in this Agreement with the permission of the City, the Contractor shall remain liable under the provisions hereof. Any assignment contrary to the provisions hereof is void.
- 20.14 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.

ARTICLE 21 - EFFECTIVE DATE

- 21.1 This Agreement shall become effective upon the Effective Date.

ARTICLE 22 - ALBERTA ENERGY AND UTILITIES BOARD APPROVAL

- 22.1 This Agreement is subject to approval by the Alberta Energy and Utilities Board.

IN WITNESS WHEREOF this Agreement has been executed by the parties effective as of the date first above written notwithstanding the actual date or dates of execution.



[Signature]
Witness
[Signature]
Witness

CITY OF FORT SASKATCHEWAN

[Signature]
Mayor

[Signature]
Legislative Services Director

WASTE SERVICES (CA) INC.

Per: *[Signature]* David M. Appleton
[Signature] KEITH D. HAWKINS

CITY OF FORT SASKATCHEWAN

[Signature]
SIGNATURE

NOV-7, 2005
DATE

SCHEDULE "A"

TRANSFER STATION SERVICE CHARGES

DROP-OFF STATION 40 CUBIC YARD RENT AND HAUL	\$135.00 per lift
OVERHAUL/UNDERHAUL CHARGE (OPTIONAL FOR THE CITY) see S.5.4(a) and (b)	\$0.75 per kilometre per tonne

* All of the foregoing amounts are exclusive of Goods and Services tax (GST).

* All of the foregoing amounts shall be adjusted for CPI in accordance with Article 5.8 herein.

SCHEDULE "B"

RECYCLING STATION SERVICE CHARGES

RECYCLING STATION RENT AND HAUL 15 CUBIC YARD	\$135.00 per lift
30 CUBIC YARD	\$135.00 per lift
40 CUBIC YARD	\$135.00 per lift
OVERHAUL/UNDERHAUL CHARGE (OPTIONAL FOR THE CITY) see S.5.4(a) and (b)	\$0.75 per kilometre per tonne

*All of the foregoing amounts are exclusive of Goods and Services Tax (GST).

*All of the foregoing amounts shall be adjusted for CPI in accordance with Article 6.7 herein.

Appendix "C"
Bylaw C24-05

THIS AGREEMENT made the

26

day of

JANUARY

2005.

RD

BETWEEN:

CITY OF FORT SASKATCHEWAN

a municipal corporation under the
laws of the Province of Alberta
(hereinafter referred to as the "City")

OF THE FIRST PART

- and -

WASTE SERVICES (CA) INC.

a body corporate carrying on business
in the Province of Alberta
(hereinafter referred to as the "Contractor")

OF THE SECOND PART

**EXCLUSIVE WASTE MANAGEMENT AGREEMENT
LANDFILL SERVICES**

WHEREAS:

- A. The *Municipal Government Act* RSA 2000, c.M-26 authorizes the City to enter into agreements for, and grant exclusive and non-exclusive rights with respect to, the provision of waste management services such as collection, removal, disposal and recycling within the municipal boundaries of the City; and
- B. The City has passed Solid Waste Bylaw C11-95 for the collection, removal, disposal and recycling of Waste within the municipal boundaries of the City; and
- C. Pursuant to the terms of Solid Waste Bylaw C11-95, the City may enter into an agreement with any person or persons and may grant an exclusive or non-exclusive right to any person or persons for the collection, removal, disposal and recycling of Waste within the municipal boundaries of the City; and
- D. The City and the Contractor are desirous of entering into this Agreement setting forth their respective rights and obligations relating to the services contemplated herein.

NOW THEREFORE THIS AGREEMENT WITNESSETH that, in consideration of these premises and of the terms, conditions, schedules and agreements herein contained, the parties do hereby agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 In this Agreement:

- (a) "Agreement" means this Agreement as the same may be amended from time to time in accordance with the terms hereof and the expressions "herein", "hereof", "hereto", "above", "below" and similar expressions used in any paragraph, subparagraph, section or article of

this Agreement refer and relate to the whole of this Agreement and not to that paragraph, subparagraph, section or article only, unless otherwise expressly provided;

- (b) "Bylaw" means Solid Waste Bylaw C11-95 of the City of Fort Saskatchewan;
- (c) "CPI" means the consumer price index for all goods as calculated by Statistics Canada from time to time for the City of Edmonton region;
- (d) "Commercial, Light Industrial, Institutional and Medical Waste Services" means service to properties zoned for commercial, light industrial, institutional and medical uses as defined under the Land Use Bylaw for the City;
- (e) "Commercial Waste" means all Waste collected from commercial, light industrial, institutional and medical premises as those properties are defined under the Land Use Bylaw for the City;
- (f) "Compactor Container" means a container which forms part of or is permanently or temporarily connected to a device or machine which operates in such a manner as to compress Waste within the container;
- (g) "Delivery Point" means a facility at which Waste may be deposited for disposal which is licensed by the Minister of the Environment and designated and approved by the City;
- (h) "Dry Waste" means non-toxic, non-degradable Waste, which, without limiting the generality of the foregoing, includes demolition and construction Waste;
- (i) "Effective Date" means December 1, 2005, subject to any approval required from the Alberta Energy and Utilities Board as contemplated in Article 22 herein;
- (j) "Landfill Services" means the disposal of Waste delivered to the Delivery Point;
- (k) "Recyclable Materials" means cardboard, glass, metals, plastics, mixed paper, yard waste, newsprint and such other substances designated by the City from time to time;
- (l) "Recycling Service" means the sorting, transportation and marketing of Recyclable Materials;
- (m) "Recycling Station" means a facility designated from time to time by the City where Recyclable Materials may be deposited;
- (n) "Residential Premises" means all residential premises and all rural agricultural residential premises within the municipal boundaries of the City;
- (o) "Residential Waste Services" means the collection and removal of Waste from Residential Premises;
- (p) "Street Can" means a container owned by the City, located on public streets within the municipal boundaries of the City which are used by the general public for the deposit of Waste;
- (q) "Transfer Station" means areas designated by the City from time to time at which Waste may be deposited;
- (r) "Waste" means Dry Waste, Wet Waste, Yard Waste, Recyclable Materials and all compostable materials, refuse, garbage and any other substance or material that may be

received at a landfill or recycling facility, as the case may be, in accordance with all applicable permits, authorizations and licenses;

- (s) "Waste Disposal Facility" means a landfill facility licensed by the Minister of the Environment for the disposal of Waste, which, without limiting the generality of the foregoing, shall include landfill sites, but which shall not include facilities for the processing of Recyclable Materials;
- (t) "Wet Waste" means non-toxic, degradable Waste, which, without limiting the generality of the foregoing, does not include demolition and construction Waste; and
- (u) "Yard Waste" means grass cuttings, shrubbery and hedge prunings (excluding tree branches, stumps, roots and logs), leaves, weeds and garden waste.

- 1.2 Unless otherwise defined, each capitalized word or phrase herein shall have the meaning ascribed to it in the Bylaw.

ARTICLE 2 - GRANT OF RIGHTS

- 2.1 The City hereby grants the Contractor the exclusive right to dispose of Residential Waste and Waste from Transfer Stations located within the municipal boundaries of the City.
- 2.2 The City reserves the right to grant rights to other persons for the provision of services related to Waste and Recyclable Materials which are not specifically provided for herein but prior to granting such other rights (if any) the City shall negotiate with the Contractor with regard to the same.

ARTICLE 3 - TERM OF AGREEMENT

- 3.1 The term of this Agreement shall expire midnight, November 30th, 2010 with an option to extend the term of the Agreement until November 30, 2015.

ARTICLE 4 - RESIDENTIAL WASTE SERVICES

[Intentionally Deleted]

ARTICLE 5 - TRANSFER STATION SERVICES

[Intentionally Deleted]

ARTICLE 6 - RECYCLING STATION SERVICES

[Intentionally Deleted]

ARTICLE 7 - COMMERCIAL, LIGHT INDUSTRIAL, INSTITUTIONAL AND MEDICAL WASTE SERVICES

[Intentionally Deleted]

ARTICLE 8 - LANDFILL SERVICES

- 8.1 The Contractor shall dispose of all waste collected from Residential Premises and all wet waste and all dry waste collected from Transfer Stations located within the municipal boundaries of the City and deliver said Waste to the Delivery Point.
- 8.2 The City shall pay the Contractor the charges described in Schedule "A" herein for all Landfill Services.
- 8.3 All amounts payable by the City to the Contractor hereunder will be exclusive of any goods and services tax ("GST") and the City will, in addition to the amounts payable hereunder, pay to the Contractor all amounts of GST applicable thereon. Concurrently with the execution of this Agreement the Contractor shall be a GST registrant.

ARTICLE 9 - BONDING

- 9.1 The Contractor shall lodge a performance bond with the City in the amount of Thirty Thousand (\$30,000.00) Dollars in such form and content as is satisfactory to the City in its sole, absolute and unfettered discretion, which performance bond shall be lodged prior to the effective date of this Agreement and which shall remain in place during the term of this Agreement.

ARTICLE 10 - LEGISLATIVE REQUIREMENTS

- 10.1 In carrying out its obligations hereunder, the Contractor shall be bound by and observe all applicable Federal, Provincial and Municipal legislation, rules, bylaws, regulations and directives which, without limiting the generality of the foregoing, shall include the provisions of the Bylaw, and shall cause all of its employees, agents and contractors to be so bound.

ARTICLE 11 - INSURANCE

- 11.1 Without in any way limiting the liability of the Contractor under this Agreement, the Contractor shall obtain and maintain in force during the term of this Agreement, the following insurance:
- (a) standard automobile insurance, bodily injury and property damage insurance providing coverage of at least Two Million (\$2,000,000.00) Dollars inclusive per accident for the injury to or death of one or more persons or damage to or destruction of property;
 - (b) a commercial general liability insurance policy per occurrence providing coverage of at least Two Million (\$2,000,000.00) Dollars inclusive and in respect of any one claim for injury to or death of any one or more persons or damage to or destruction of property. Coverage to include:
 - (i) non-owned automobile liability;
 - (ii) independent sub-contractors;
 - (iii) contractual liability including this Agreement;
 - (iv) contingent employers liability;
 - (v) broad form property damage endorsement;
 - (vi) environmental liability with an asbestos abatement coverage supplement in the amount of not less than \$250,000.00, if required by the City; and
 - (vii) cross-liability.

- (c) workers compensation coverage for all employees, if any, engaged by the Contractor in accordance with the laws of the Province of Alberta;
- (d) employer's liability insurance respecting employees, if any, of the Contractor with limits of liability of not less than Two Million (\$2,000,000.00) Dollars per employee for each accident, accidental injury or death of an employee or any sub-contractor engaged by the Contractor; and
- (e) such other insurance as the City may from time to time reasonably require.

The Contractor shall be liable for the cost of all of the insurance required to be held by the Contractor as set forth herein and for payment of all deductible amounts from such policies of insurance.

11.2 The Contractor shall ensure that:

- (a) all insurance coverage maintained by the Contractor in accordance with this Agreement shall include waivers of subrogation by the insurers in favour of the City and shall name the City as an additional insured in respect to the Services provided to the City by the Contractor;
- (b) shall provide that no such insurance policy may be cancelled without the insurer providing no less than thirty (30) days written notice of such cancellation to the City;
- (c) written documentation is furnished, satisfactory to the City evidencing the required insurance coverage.

ARTICLE 12 - BYLAW CONTRAVENTION

12.1 The Contractor shall notify the City as to any and all breaches of the Bylaw which the Contractor becomes aware of as soon as reasonably possible thereafter.

ARTICLE 13 - MANAGER, PLANNING & PUBLIC WORKS

[Intentionally Deleted]

ARTICLE 14 - WARRANTIES AND REPRESENTATIONS OF THE CONTRACTOR

14.1 The Contractor hereby represents and warrants with and to the City and acknowledges that the City is relying upon such representations and warranties, as follows:

- (a) the Contractor has been incorporated and organized under the laws of Canada, is extra-provincially registered in the Province of Alberta and is a valid and subsisting corporation in good standing under all applicable laws of Canada and the Province of Alberta;
- (b) the Contractor has the corporate power to own its assets and to carry on the business of collection, removal, disposal and recycling of Waste pursuant to the terms hereof;
- (c) the Contractor is validly and properly registered and licensed under the appropriate laws of each and every jurisdiction in which the nature of its business makes such qualification necessary and, in particular, in order to carry out its obligations under the terms and provisions of this Agreement;
- (d) the execution and delivery of this Agreement does not:
 - (i) violate any provision of;

- (ii) result in the acceleration of any obligation under;
- (iii) give any person, firm or corporation any right to terminate; or
- (iv) terminate

any mortgage, lien, lease or other agreement of any kind to which the Contractor is a party or by which the Contractor is bound, or violate or conflict with any other restriction or any kind or character to which the Contractor is subject;

- (e) the Contractor is in good standing under any and all contracts, licenses and undertakings to which it is a party;
- (f) the Contractor is in possession of all necessary vehicles, equipment and personnel in order to carry out its obligations under the terms and provisions of this Agreement;
- (g) the Contractor is in compliance with all laws and regulations of any public authority relating to the conduct of its business and has all required permits, licenses, certificates and authorizations necessary to carry on its business and to carry out its obligations hereunder and there are not any proceedings whatsoever, actual or pending, and whether concerning cancellation, extension or otherwise, relating to the said permits, licenses, certificates or authorizations;
- (h) the Contractor is not a party directly or indirectly to any legal proceedings or inquiries, and there are no actions, suits, seizures or proceedings pending or threatened against the Contractor which might give rise to any legal proceedings or inquiries against the Contractor before any court, tribunal, commission, board or other agency, whether Federal, Provincial or Municipal, provided however, that the legal proceedings and inquiries referred to herein are those that would not affect, in any way whatsoever, the Contractor's performance under this Agreement;
- (i) the Contractor is not now operating under or subject to or in default of any judgment, order, writ, injunction, ordinance, regulation or decree or any other requirement of any governmental body or court relating to its property or business;
- (j) there is no pending or threatened grievance, labour dispute, work stoppage or strike nor any charge or complaint against the Contractor before any court, tribunal, commission, board or other agency, whether Federal, Provincial or Municipal, involving any charge of unfair labour practice or relating to labour or employment issues or practices generally;
- (k) any and all municipal taxes with respect to the business of the Contractor have been paid in full to the date hereof;
- (l) the Contractor is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
- (m) the Goods and Services Tax (GST) Account Number of the Contractor is 885237370RT;
- (n) the Contractor has corporate power to execute and deliver this Agreement and has taken all action required by law, its constituting documents, any unanimous shareholder agreement or otherwise, to authorize and permit such execution and delivery of this Agreement;
- (o) the Contractor has filed all Canadian, provincial and local tax returns required to be filed and have paid all taxes due and payable. Adequate provision has been made for taxes payable for the current period for which tax returns are not yet required to be filed, and all instalments

for taxes in the current year have been paid in accordance with applicable legislation. No assessments have been issued and no re-assessments have been made to this date or will be made hereafter questioning or challenging in any way the return that is filed or amended except such as have been paid. All franchise, real and personal property taxes, business taxes and GST of the Contractor have been paid to date. All taxes and other assessments which the Contractor is required by law to withhold or collect to the date hereof have been duly recorded, withheld and collected, and have been paid over to the proper governmental authorities;

- (p) the Contractor is not a "Canadian Controlled Private Corporation" as such term is defined in the *Income Tax Act* (Canada);
- (q) there is no claim, action or proceeding pending or threatened against the Contractor arising out of any statute, ordinance or regulation relating to the payment of wages or benefits, discrimination in employment or employment practices or occupational safety or health standards; and
- (r) the Contractor acknowledges having received and read a copy of the Bylaw and this Agreement.

ARTICLE 15 - FURTHER AGREEMENTS OF THE CONTRACTOR

- 15.1 The Contractor shall pay all business, sales, equipment, machinery, goods and services taxes, other taxes, charges and licenses levied or imposed by any competent authority in respect of the personnel, business, sales, equipment, machinery or income of the Contractor.
- 15.2 The Contractor shall, at its sole cost, maintain in good working order all of its vehicles and equipment to be used in carrying out its obligations under the terms and provisions of this Agreement.
- 15.3 In carrying out its obligations hereunder the Contractor shall:
 - (a) ensure that the performance of the service provided for in this Agreement is conducted in accordance with the Bylaw;
 - (b) do such things in order that all of the warranties and representations given by the Contractor hereunder continue to remain in effect respectively during the term hereof; and
 - (c) cause its employees and contractors and all other persons it is responsible for at law to observe all of the obligations of the Contractor hereunder.

ARTICLE 16 - DEFAULT

- 16.1 If during the term hereof:
 - (a) any of the goods and chattels of the Contractor shall be taken in execution or by attachment by any creditor of the Contractor;
 - (b) the Contractor shall make an assignment for the benefit of creditors;
 - (c) the Contractor, becoming bankrupt or insolvent, shall take the benefit of any Act that may be in force for bankrupt or insolvent debtors;

- (d) there is instituted by or against the Contractor any formal or informal procedures for the dissolution or liquidation of, settlement of claims against, or winding up of affairs of, the Contractor;
- (e) there be default or breach or non-performance of any of the obligations or agreements in this Agreement contained on the part of the Contractor;
- (f) the City, in good faith, believes that the prospect of performance of any of the Contractor's obligations hereunder is impaired;
- (g) any representation and warranty given by the Contractor is untrue or inaccurate;
- (h) the Contractor ceases or threatens to cease to carry on business or makes or agrees to make a bulk sale of assets or commits or threatens to commit an act of bankruptcy; or
- (i) a Receiver and Manager or a Receiver/Manager of all or any part of the property, assets or undertakings of the Contractor is appointed;

then, and in any of such cases, and without reference to any other rights that the City may have at law or in equity, the City may terminate this Agreement upon written notice to that effect given to the Contractor and upon receipt of the approval of the Alberta Energy and Utilities Board (if required).

ARTICLE 17 - LIABILITY WAIVER AND INDEMNITY

- 17.1 The Contractor shall not make or bring any claim, action, suit, proceeding or demand against the City, its elected officials, officers, employees, servants, agents and contractors with respect to any occurrence, incident, accident or happening relating in any manner whatsoever to this Agreement and the rights and obligations arising therefrom, which, without limiting the generality of the foregoing, shall include any claim, action, suit, proceeding or demand arising in tort, contract or agreement.
- 17.2 The Contractor shall be liable for and shall indemnify and save harmless the City, its elected officials, officers, employees, servants, agents and contractors, with respect to any claim, liability, action, suit, proceeding or demand of whatever nature:
- (a) which any of the City, its elected officials, officers, employees, servants, agents and contractors may sustain, pay or incur; and/or
 - (b) which may be brought or made against any of the City, its elected officials, officers, employees, servants, agents and contractors,

by any third party with respect to any occurrence, incident, accident or happening relating in any manner whatsoever to this Agreement and the rights and obligations arising therefrom, and which indemnity shall, without restricting the generality of the foregoing, include all legal costs on a solicitor and his own client full indemnity basis incurred by the City.

ARTICLE 18 - PERFORMANCE FAILURE

- 18.1 If the Contractor shall fail to perform any of the obligations or agreements of the Contractor under or in respect of this Agreement the City may, from time to time, in its sole and absolute discretion, and without prejudice to its rights hereunder and at law or in equity, perform or cause to be performed any such agreements or obligations, or any part thereof and for such purpose may do such things as may be requisite. The Contractor shall unconditionally pay all expenses and expenditures incurred by or on behalf of the City under this Section within ten (10) days from the date of invoice therefore.

Further, any expenses incurred or expenditures made as set forth in this Section shall constitute a debt due and owing to the City and such amount may, without further action or notice, be set-off against any sum of money owed by the City to the Contractor, as such may exist from time to time, until all amounts owing to the City have been completely set off.

ARTICLE 19 - SURVIVAL

- 19.1 The parties acknowledge that the provisions of this Agreement which by their context are meant to survive the termination or expiry hereof, including, without restriction, the provisions of sections 14.1, 17.1 and 17.2 herein, shall survive the termination or expiry of this Agreement and shall not be merged therein or therewith.

ARTICLE 20 - GENERAL

- 20.1 If any term, covenant or condition of this Agreement or the application thereof to any party or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement or application of such term, covenant or condition to a party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining term, covenant or condition of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law.
- 20.2 This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties and there are no general or specific warranties, representations or other agreements by or among the parties in connection with the entering into of this Agreement or the subject matter hereof except as specifically set forth herein.
- 20.3 The parties hereto and each of them do hereby covenant and agree to do such things, obtain such approvals, permits and licenses and execute such further documents, agreements and assurances as may be necessary or advisable from time to time in order to carry out the terms and conditions of this Agreement in accordance with their true intent.
- 20.4 This Agreement may be altered or amended in any of its provisions when any such changes are reduced to writing and signed by the parties hereto but not otherwise.
- 20.5 No remedy herein conferred upon any party is intended to be exclusive of any other remedy available to that party but each remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing by law or in equity or by statute.
- 20.6 No consent or waiver, express or implied, by either party to or of any breach or default by the other party in the performance by the other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of obligations hereunder by such party hereunder. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.
- 20.7 Any notice required to be given hereunder by any party shall be in writing and shall be deemed to have been well and sufficiently given if:
- (a) personally delivered to the party to whom it is intended or if such party is a corporation to an officer of that corporation; or
 - (b) if mailed by prepaid registered mail, to the address of the party to whom it is intended hereinafter set forth or to such other address as a party may from time to time direct in writing as follows:

- (i) In case of notice to the City, to:

The City of Fort Saskatchewan
10005 - 102 Street
Fort Saskatchewan, Alberta
T8L 2C5

Attn: Manager, Planning & Public Works

- (ii) In case of notice to the Contractor, to:

Waste Services (CA) Inc
185 Strathmoor Way
Sherwood Park, Alberta
T8H 1Z7

Any notice delivered as aforesaid shall be deemed to have been received on the date of delivery and any notice mailed shall be deemed to have been received seventy two (72) hours after the date it is postmarked. If normal mail service is interrupted by strike, slow-down, force majeure or other cause after the notice has been sent the notice will not be deemed to be received until actually received. In the event normal mail service is impaired at the time of sending the notice, then personal delivery only shall be effective.

- 20.8 The parties hereby confirm and ratify the matters contained and referred to in the Preamble and the Schedules to this Agreement and agree that same are expressly incorporated into and form part of this Agreement.
- 20.9 Wherever the singular, plural, masculine, feminine or neuter is used throughout this Agreement the same shall be construed as meaning the singular, plural, masculine, feminine, neuter, body politic or body corporate where the fact or context so requires and the provisions hereof and all covenants herein shall be construed to be joint and several when applicable to more than one party.
- 20.10 The headings in this Agreement have been inserted for reference and as a matter of convenience only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision hereof.
- 20.11 The laws of the Province of Alberta shall govern this Agreement shall.
- 20.12 Time shall be of the essence of this Agreement and of every part hereof.
- 20.13 This Agreement may not be assigned in whole or in part by the Contractor without the express written permission of the City, which permission may be unreasonably or arbitrarily withheld. Notwithstanding that the Contractor may assign its interest in this Agreement with the permission of the City, the Contractor shall remain liable under the provisions hereof. Any assignment contrary to the provisions hereof is void.
- 20.14 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.

ARTICLE 21 - EFFECTIVE DATE

- 21.1 This Agreement shall become effective upon the Effective Date.

ARTICLE 22 - ALBERTA ENERGY AND UTILITIES BOARD APPROVAL

22.1 This Agreement is subject to approval by the Alberta Energy and Utilities Board.

IN WITNESS WHEREOF this Agreement has been executed by the parties effective as of the date first above written notwithstanding the actual date or dates of execution.

CITY OF FORT SASKATCHEWAN

PER:

Mayor

PER:

Legislative Services Director

WASTE SERVICES (CA) INC.

PER:

David M. Appleton

PER:

KEITH R. HAWKINS



CITY OF FORT SASKATCHEWAN

SIGNATURE

Nov. 7/05

DATE

SCHEDULE "A"

DRY WASTE DISPOSAL CHARGES

YR.	1	2	3	4	5
	\$38.00 per tonne	\$39.25 per tonne	\$40.50 per tonne	\$41.70 per tonne	\$42.90 per tonne

YR.	6	7	8	9	10
	\$45.00 per tonne	\$45.00 per tonne	\$45.00 per tonne	\$45.00 per tonne	\$45.00 per tonne

*The foregoing amounts are based upon a Delivery Point to be located at the lands legally described as 53103 Strathmoor Way with the final disposal for the term of the contract at either Beaver Regional Waste Management Landfill (Ryley) or Coronation Landfill (Owned and Operated by Waste Services Inc.).

* All of the foregoing amounts are exclusive of Goods and Services Tax (GST).

WET WASTE DISPOSAL CHARGES

YR.	1	2	3	4	5
	\$38.00 per tonne	\$39.25 per tonne	\$40.50 per tonne	\$41.70 per tonne	\$42.90 per tonne

YR.	6	7	8	9	10
	\$45.00 per tonne	\$45.00 per tonne	\$45.00 per tonne	\$45.00 per tonne	\$45.00 per tonne

*The foregoing amounts are based upon a Delivery Point to be located at the lands legally described as 53103 Strathmoor Way with the final disposal for the term of the contract at either Beaver Regional Waste Management Landfill (Ryley) or Coronation Landfill (Owned and Operated by Waste Services Inc.).

* All of the foregoing amounts are exclusive of Goods and Services Tax (GST).