

AGREEMENT BETWEEN TOWN OF SOUTH PRAIRIE AND MURREY'S DISPOSAL COMPANY, INC., FOR THE COLLECTION AND DISPOSAL OF SOLID WASTE, RECYCLABLES AND YARD WASTE IN THE TOWN OF SOUTH PRAIRIE.

1. Date and Parties. THIS AGREEMENT (hereinafter referred to as the "Agreement") is made as of this 1st day of July, 2021, by and between the Town of South Prairie, a municipal corporation (hereinafter referred to as the "Town") and Murrey's Disposal Company, Inc., a Washington corporation (hereinafter referred to as the "Contractor").

2. Definitions. Except as specifically defined in this Section, all words used in this Agreement shall be given their normal, customary meaning, except for those words specifically defined in the South Prairie Municipal Code. If there is a conflict between definitions, the definitions in the South Prairie Municipal Code shall apply.
 - (a) The term "*aluminum*" shall mean cans and containers composed solely of aluminum.
 - (b) The term "*cardboard*" shall mean moderately thick paperboard not contaminated by glue, food, waxed coating or other similar contaminants
 - (c) The term "*cart*" shall mean a Contractor provided receptacle which is made of durable, corrosion-resistant, non-absorbent material with a close-fitting cover and wheels. For the collection and storage of solid waste, Contractor shall provide the following sizes of Carts twenty (20) gallon, thirty-five (35) gallon, sixty-five (65) gallon, and ninety-five (95) gallon. For the collection and storage of source-separated or commingled recyclables, and yard waste, Contractor shall provide ninety-five (95) gallon Carts.
 - (d) The term "*commercial wood waste*" shall mean natural wood or wood bi-products including, but not limited to, pallets, stumps, and shavings, which are not treated with chemicals, paint or other contaminants.
 - (e) The term "Container" shall mean any receptacle, including, but not limited to dumpsters and roll-out carts.
 - (f) The term "*curbside*" shall mean at the curb or up to five (5) feet from the edge of the public road.
 - (g) The term "*customer*" shall mean all users of services provided by Contractor pursuant to this Agreement, including, without limitation, residents, businesses, property owners, managers and tenants.
 - (h) The term "*drive-in*" shall mean the charge for leaving the public road to provide service. There shall be no obstruction from overhanging branches and/or wires and adequate room for the collection vehicle to turn around. If the customer requests drive-in service, the road surface shall be of such material as to withstand the weight of the collection vehicle; all maintenance and repairs shall be the customers responsibility.
 - (i) The term "*excluded waste*" shall mean any material which is or contains, or which Contractor reasonably believes to be or contain, radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, Hazardous Waste, biohazardous, toxic or hazardous material as defined by applicable federal, state or local laws or regulations.
 - (j) The term "*garbage*" shall mean all putrescible and non-putrescible solid and semi-solid wastes, including, but not limited to, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, dead small animals completely wrapped in plastic and weighing less than fifteen (15) pounds, and discarded commodities that are placed by Customers in appropriate Containers, bags, or other receptacles for collection and disposal by the Contractor. Needles or "sharps" used for the administration of medication can be included in the definition of "Garbage," provided that they are placed within a sealed, secure container as agreed upon by the Town and the Contractor and this handling is consistent with current Pierce County sharps policy. The term "Garbage" shall not

include Excluded Waste, Hazardous Wastes, Source-separated recyclable materials, or Source-separated yard waste.

(k) The term "*hazardous waste*" shall mean any substance that is:

- i. Defined as hazardous by 40 C.F.R. Part 261 and regulated as Hazardous Waste by the United States Environmental Protection Agency under Subtitle C of the Resource Conservation and Recovery Act ("RCRA") of 1976, 42 U.S.C. § 6901 et seq., as amended by the Hazardous and Solid Waste Amendments ("HSWA") of 1984; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; or any other federal statute or regulation governing the treatment, storage, handling or disposal of waste imposing special handling or disposal requirements similar to those required by Subtitle C of RCRA.
 - ii. Defined as dangerous or extremely hazardous by Chapter 173-303 WAC and regulated as dangerous waste or extremely Hazardous Waste by the Washington State Department of Ecology under the State Hazardous Waste Management Act, Chapter 70.105 RCW, or any other Washington State statute or regulation governing the treatment, storage, handling or disposal of wastes and imposing special handling requirements similar to those required by Chapter 70.105 RCW.
- (l) The term "*mixed paper*" shall mean paper (except newspaper), including magazines, mail, phone books, photocopy or printer paper, and envelopes that are not contaminated by food, plastic wrap or other contaminants.
- (m) The term "*metal containers*" shall mean cans and containers composed of metals, such as tin or steel cans, which are attracted by a magnet.
- (n) The term "*newspaper*" shall mean any part of the newspaper that was included when it was delivered or purchased.
- (o) The term "*pack-out*" shall mean the charge for carryout of over five (5) feet from the edge of the public road, but not over fifty (50) feet.
- (p) The term "*plastic*" shall mean plastic water and pop bottles, milk jugs and other plastic bottles with necks smaller than its body.
- (q) The term "*recyclables*" shall mean those recyclable items defined in RCW 70.95.030(17) designated by the Town to be picked up in the curbside recycling program which items are limited to those items deemed acceptable as recyclable pursuant to Pierce County, Washington.
- (r) The term "solid waste" shall have the same meaning as "garbage".
- (s) The term "*yard waste*" shall mean any material which occurs naturally and is grown on residential, commercial or industrial property or is included in the landscaping of such property.

3. Purpose. The purpose of this Agreement is to provide for the collection and proper disposition of solid waste, recyclables, and yard waste throughout the Town.

4. Contractor's General Agreement. The Contractor does hereby agree to provide solid waste, recyclable, and yard waste collection services for the Town, its residents, and businesses and arrange for disposal of such solid waste, recyclables, and yard waste upon the terms and conditions set forth herein. All references to "recycling" and/or "recycling services" herein shall include the collection of recyclables and yard waste.

Notwithstanding anything herein to the contrary: (a) Contractor shall have no obligation to collect any Excluded Waste (as hereinafter defined); (b) if Contractor finds what reasonably appears to be discarded Excluded Waste, Contractor shall promptly notify the Town and the producer of the Excluded Waste, if the producer can be readily identified; and (c) title to and liability for any Excluded Waste shall remain with the producer of the Excluded Waste, even if Contractor inadvertently collects or disposes of such Excluded Waste.

5. Term/Implementation of New Term and Conditions. The term of this Agreement shall commence on June 1, 2021 and shall expire on May 31, 2031 ("Agreement Term"). Upon expiration of the term, or expiration of any extension period, the Agreement shall automatically renew for an additional ten (10) year period unless either party provides the other with written notice to terminate at least sixty (60) days prior to the end of the then current term.

6. Collection Rights to Solid Waste and Recyclables. Throughout the Agreement Term, the Contractor shall be the exclusive provider with which the Town shall contract to collect Garbage, Yard Waste, and Recyclables placed in designated Containers and set out in the regular collection locations within the Town's jurisdictional limits subject to this Agreement. Upon reasonable request by the Contractor, the Town shall make a good faith effort to protect the exclusive rights of the Contractor under this Agreement; however, the Town shall not be obligated to instigate, join in, or contribute to the expense of litigation to protect the exclusive rights of the Contractor unless the Town's institution of or joinder in such litigation is required by operation of law. The Contractor may independently enforce its rights under this Agreement against third-party violators, including, but not limited to, seeking injunctive relief, and the Town shall use good faith efforts to cooperate in such enforcement actions brought by the Contractor (without obligating the Town to join any such litigation, except for as provided in this paragraph). Such cooperative efforts may include, but not be limited to, cease and desist letters, assistance with documenting violations, and other activities as Town staff time reasonably allows.

7. Future Annexations of Territory by the Town. If during the term of the Agreement, additional territory is added to the Town through annexation or other means within which the Contractor has an existing Washington Utilities and Transportation Commission ("WUTC") certificate, or other franchise for solid waste collection, at the time of annexation, the Contractor shall, from the date of annexation, make collection in the annexed area in accordance with the provisions of this Agreement at the unit prices set forth in this Agreement.

This Agreement is in lieu of a franchise as provided in RCW 35A.14.900. The Contractor agrees that their WUTC certificate applicable to those areas shall be cancelled effective on the date of annexation by the Town. The Contractor expressly waives and releases its right to claim any and all damages or compensation from the Town, its officers, agents, or assigns arising out of the cancellation of any pre-existing permit or franchise held by the Contractor prior to annexation, and further specifically waives the right to receive any additional compensation or any rights of collection in the newly annexed territory. The term during which the Contractor shall service any future annexation areas shall be five (5) years from the date of annexation, notwithstanding the term set forth in Section 5 of this Contract. If, during this five (5) year period, this Contract terminates for any reason, and a new service provider is engaged to provide collection services under the terms of a new collection contract, the Contractor agrees to provide the services outlined in the new contract to customers in the annexed area in accordance with the provisions of that new collection contract at the unit prices set forth in that new collection contract, through the duration of the five (5) year period, unless such area has been transferred to the new service provider prior to the end of that five (5) year period.

If, during the term of the Agreement, additional territory is added to the Town through annexation within which the Contractor does not have an existing WUTC certificate or other franchise for Garbage or other collections, then, upon written notification from the Town, the Contractor agrees to make collections in such annexed areas in accordance with the provisions of this Contract at the unit price set forth in this Contract.

8. Reserved

9. Rates and Billing. Contractor will bill all South Prairie residential customers bi-monthly and all other South Prairie customers monthly at the rates specified in Exhibit A, along with any applicable Town franchise fees and/or other municipal fees or taxes, if any, as are now or later established by the Town. Contractor shall also perform all customer service functions under this Agreement as set forth in Section 11. Contractor will also assess the Washington Refuse Collection Tax on all solid waste services on a bi-monthly basis for residential customers and monthly for all other South Prairie customers and remit said State excise tax amounts to the State.

10. Revision of Rates. The rates for Contractor's services as set forth in Exhibit A attached hereto shall remain the same until the first anniversary of this Agreement.

- (a) Annual CPI Adjustment. Beginning on the first anniversary of the Agreement, and for every year thereafter, the rates set forth in Exhibit A shall be adjusted by one hundred percent (100%) of the change in the Consumer Price Index ("CPI") as maintained by U.S. Department of Labor, for all Urban Consumers – Water and Sewer and Trash Collection Services, (excluding any CPI adjustment to the Town utility tax and/or other municipal fee or tax amounts in Exhibit A), for the immediately preceding twelve (12) month period from the then most currently published index.
- (b) Tipping Fees/Rate Increases. During the term of this Agreement, Contractor is authorized to pass through to its customers all increases in recycling, landfill, and disposal costs in addition to increased costs associated with higher solid waste/recycling duties imposed by local, State, or Federal laws and regulations.
- (c) Notice of Rate Increases/Decreases. The Contractor shall provide the Town with notice of any such proposed rate increase or decrease pursuant to Section 10(a) and (b) above, upon Contractor being notified of an increase or decrease, but in any event not less than forty-five (45) days prior to the effective date of such increase or decrease. In connection therewith, the Contractor shall provide the Town with all reasonable information requested by the Town related to such rate adjustments. The Contractor shall also provide timely notice to its customers in the Town in accordance with RCW 35A.21.152 and shall also, at a minimum, put such notice of rate increase into to billing statement of the cycle prior to the effective date of such increase.
- (d) Rate Increases/Unforeseen Costs. Contractor may apply to the Town for temporary rate adjustments to reflect unforeseen costs, arising during the term of this Agreement, including without limitation, fuel, tax charges, governmental fees and surcharges, approval for which adjustments shall not be unreasonably withheld by the Town. Said temporary rate adjustments shall last no longer than sixty (60) days without further approval from the City.

11. Billing and Customer Service

- (a) All billing for residential solid waste collection and recycling services within the Town limits shall be performed by the Contractor every other month in accordance with the rates established in this Agreement. Billing for all non-residential solid waste collection and recycling services within the Town limits shall be performed by the Contractor every month in accordance with the rates established in this Agreement.
- (b) Contractor shall bill customers for charges accrued during the present and prior month, based on the date the bill is received by the customer. The time period covered will be stated in the bill. The charge for any special services not covered in Exhibit A will be determined by mutual agreement of the parties hereto.
- (c) The Contractor shall bill customers directly for solid waste and recyclables which exceed the customer's current subscribed level of service.

- (d) The Contractor shall provide billing services for solid waste and recyclables without proration for partial months. The minimum proration period shall be one month.
- (e) The types of services for which the customer is being charged will be clearly stated on the face of the bill provided by the Contractor. The bill will include a breakdown of charges for each type of service and applicable taxes.
- (f) The bills provided by the Contractor shall be due in accordance with guidelines established by the Contractor. If a bill remains unpaid after forty-five (45) calendar days from the bill date, a late notice shall be mailed to the customer and shall include a 1.5% penalty (minimum \$1.00). If the bill remains unpaid after sixty (60) calendar days from the date of the invoice, Contractor may terminate service.
- (g) A fee of \$25.00 will apply to all customers stopped for non-payment to re-establish service, plus applicable taxes, if any.
- (h) A fee of \$25.00 will be assessed on all checks returned by a financial institution for insufficient funds plus applicable taxes, if any.
- (i) A fee of \$25.00 shall be assessed for redelivery of carts/receptacles where the customer had requested suspension or termination of service or where the service was suspended for non-payment by customer.
- (j) Customers whose service is terminated and restarted within one year after the termination of their prior service shall be assessed a service restart fee in accordance with Exhibit A. Upon restart of service, customers shall have the choice of paying a Receptacle redelivery fee in accordance with Exhibit A or customers may pick up their Receptacle(s) directly from Contractor at no charge.
- (k) All costs related to billing and bill collection incurred by Contractor will be paid by the Contractor.
- (l) A property owner shall not be held responsible for payment of any fees or charges under this Agreement if they are not the customer.

12. Spring Clean Up. At no additional charge to the Town or the ratepayers, the Contractor shall provide one cleanup program every year, between the months of March through May. This program will include curbside collection of extra residential solid waste, yard waste, and appliances as specified by the Town and the Contractor. The Contractor may limit items to be included in the cleanup in accordance with environmental requirements. The Town and Contractor shall mutually agree upon the dates for the clean-up. The Contractor will coordinate with the Town to provide information to residents.

13. Town Utility Taxes

- (a) The Contractor shall separately identify on each customer's bill the imposition of any utility tax that has been established by the Town on solid waste collection services.
- (b) Contractor shall be allowed to recover, by pass through, any attrition in net revenue caused by the "tax on tax" effect of the gross-up of revenues to absorb utility and/or business and occupation taxes which are assessed on the gross revenues of the Contractor.

14. Carts, Containers/Cages, and Toters. For residential, single dwelling(s), duplex(s), triplex(s), and four-plex(s), the Contractor shall provide recycling carts of the same type as specified in the Pierce County Recycling Ordinance 8.29 for recyclables. For larger multi-family complexes and commercial establishments, the Contractor shall provide container/cage(s) and/or toter(s) for collection of recyclable materials guided by space availability and volume of materials generated. The recycling carts, container/cage(s) and toter(s) shall be provided, maintained and/or replaced by the Contractor at the Contractor's expense and shall remain the property of the Contractor.

- (a) For any account requesting yard waste service(s), the Contractor shall provide a ninety-five (95) gallon recycling. All recycling carts/toters remain the property of the Contractor. Notwithstanding anything to the foregoing, subscription to yard waste services have a minimum requirement of a six (6) month term.
- (b) All recycling materials and yard waste must be free of contaminants. The Town and customers must comply with any description of and/or procedures with respect to removal of contaminants or preparation of recyclable materials as reasonably provided by Contractor. If the Town or customer fails to do so and such recyclables contain contaminants such as solid waste, Contractor may decline to collect such materials without being in breach of this Agreement and shall give the customer written notice of the reason the materials were not collected. In the event any recyclables contain contaminants, such as garbage, the Contractor shall not pick it up and Contractor shall call the generator and/or place a sticker on the item (if possible) letting the generator of such waste know such item is not fit for recycling. If such contamination is not identified until the cart has been emptied, a fee of \$10 shall be charged to the generator of such waste. Furthermore, Contractor reserves the right to cease or pause recycling collection for residents who consistently attempt to recycle contaminated items. Contractor shall not be responsible for and has does not make any representations regarding the ultimate recycling of such recyclable materials by any third party facilities. The following categories shall be readied by the customers as follows:
- i. Aluminum and Metal Containers. All containers should be rinsed out and if possible flattened.
 - ii. Cardboard. All cardboard must be flattened and placed inside the cart.
 - iii. Mixed Paper and Newspaper. Material shall be placed in cart loose (not in plastic bags) and be clean, dry and free of food, plastic wrap and other contamination.
 - iv. Plastic. Plastic Containers must have lids removed and must be rinsed out.
 - v. Yard Waste. Yard waste must be placed into the ninety-five (95) gallon toter furnished by the Contractor. Branches shall be no larger than four (4) inches in diameter and shall not exceed the length of three (3) feet. In addition, branches must fit in the yard waste toter with the lid closed. Christmas trees that are not flocked and cut into appropriate length are not acceptable. Customers who are signed up for the yard waste program and who wish to put out more yard waste than the toter can hold, may set out additional material in 'Kraft' or other approved compostable bags at the rate set forth in Exhibit A.
- (c) Upon mutual agreement, on terms, conditions, and rates satisfactory to the parties, the Town and the Contractor may include additional items for recycling under this Agreement.
- (d) Any equipment furnished hereunder by Contractor shall remain the property of Contractor; however, customers or Town (as applicable) shall have care, custody and control of the equipment while at the service locations. Customers and Town shall not overload (by weight or volume), move or alter the equipment, and shall use the equipment only for its proper and intended purpose. Customers and Town must provide unobstructed access to the equipment on the scheduled collection day. The word "equipment" as used in this Agreement shall mean all containers used for the storage of non-hazardous solid waste.

15. Reserved.

16. Collection Related Services

- (a) The Contractor becomes the owner of the recyclable materials, including yard waste, following collection and can market them in any manner the Contractor deems to be economically feasible. Recyclable materials, which are collected by the Contractor shall not be disposed of in a landfill,

unless the Contractor has considered other alternatives and, after good faith efforts to locate a market, has determined that such disposal is the most economical way to handle them.

- (b) All non-contaminated recyclables collected within the Town by the Contractor shall be properly disposed of or marketed by the Contractor in accordance with the laws and regulations of the State of Washington and Pierce County governing such recycling.
- (c) Weight Restrictions. The Contractor is responsible for collection of all containers which do not exceed the weight limits, described below:

20-gallon Cart	30 lbs
35-gallon Cart	45 lbs
65-gallon Cart	90 lbs
95-gallon Cart	135 lbs

If a container exceeds these weight limits, the Contractor may refuse to collect the overweight container, which case, the Contractor shall tag the overweight container and contact the customer to provide alternatives so that service will not be disrupted in the future.

- (d) Contractor Planning Assistance. The Contractor shall, upon request and without additional cost, make available either to the Town or the customer, planning assistance on new construction or major remodeling of buildings and structures within Town limits with respect to the design and planning of garbage and recycling removal facilities and their location upon the site of the proposed construction or remodeling project.

17. Service to New Customers. The Contractor shall provide service to new customers in the Town within seven business days after a receipt of a request for service. In the case of container size, if the Contractor is unable to provide the size of container ordered by the customer within one week, then the Contractor may temporarily provide the customer with any size container; provided, however, the service provided to the customer and the rate charged shall be no more than the equivalent to the service and rate for the container ordered.

18. Collection

- (a) Pick-up. The Contractor shall make collections of solid waste one time per week per customer. Residential pickup shall be made Monday through Friday on a regularly scheduled day of the week, unless otherwise approved by the Town in writing. Commercial establishments may be serviced more than once per week when requested. Billing will be based on the number of pickups. A fee (as described in Exhibit A) will be assessed if the Contractor must either connect or reconnect any cable/wires from a compactor being serviced.
- (b) Holidays. The Contractor shall observe Thanksgiving Day, Christmas Day and New Year's Day as the only holidays in each year of this Agreement. Service that normally would have been provided on these days will be provided on the first business day following each respective holiday with resulting delay of one day for the balance of the calendar week.
- (c) Missed Collections. Adequate provisions shall be made by the Contractor to provide special collections when solid waste or recyclables have not been collected during the regularly scheduled trip as a result of the Contractor's inadvertence or neglect in picking up the same. Special pickups for such missed collections shall be made by the Contractor when requested by the resident at no additional cost to the customer.

19. Hauling and Disposal. Care shall be taken in the loading and transportation of solid waste, recycling, and yard waste into Contractor's vehicles so that any leaking or spilling is prevented. The

Contractor shall immediately clean up any spills of solid waste, recycling, or yard waste which are caused by Contractor's negligent acts or omissions, upon notice from the Town. The Contractor shall be responsible for disposing of all solid waste collected to an authorized disposal site or transfer station and shall pay any and all disposal fees involved. The Contractor shall abide by all applicable rules and regulations that govern the authorized solid waste disposal facility.

20. The Contractor's Office. The Contractor shall be required to maintain an office provided with telephones and such attendants as may be necessary to take care of requests, orders for special service or instruction from the Town. This office shall be in operation between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays or as otherwise directed by the Town in writing. The Contractor shall provide the Town with a telephone number for a manager or higher that is available for use 24 hours per day, 365 days per year for use during emergencies.

21. The Contractor's Employees

- (a) The Contractor shall require all employees to be courteous at all times, not to use loud or profane language, and to do their work as quietly as possible. Specific questions as to rates or changes in existing service should be referred to the Contractor's office and not handled by any collection employee. Charges for additional services shall be billed and payment for these services shall not be accepted by Contractor employees.
- (b) While collecting solid waste, recycling and yard waste, Contractor's employees shall follow the regular walks for pedestrians while on private property, returning to the street or alley after replacing the empty cans, recycling, and yard waste containers. They shall also replace all receptacles and covers and close all gates opened by them.
- (c) Contractor's employees shall not trespass or loiter or cross property to adjoining premises.
- (d) Contractor's employees shall be competent and skilled in the performance of the work to which they may be assigned. Failure or delay in the performance of this Agreement due to the Contractor's inability to obtain employees of the number and skill required shall constitute a default in the Agreement unless the reason for the delay is a labor dispute and such delay does not exceed five (5) business days.

22. Contractor's Vehicles

- (a) The Contractor shall furnish all vehicles which shall be specifically designed for collection and hauling of solid waste, recycling, and yard waste. Each vehicle shall have a tight metal body design so as to prevent the scattering of solid waste when driven over the streets and highways. The Contractor shall utilize vehicles that do not roll over curbs when turning on South Prairie routes.
- (b) Collection vehicles shall be kept in good repair, appearance, and sanitary condition at all times, including having no leaks. Each vehicle shall clearly display the Contractor's name, phone number and an identifying number. No advertising shall be permitted other than the name and phone number of the Contractor. The Contractor shall not use a firm name containing the words "South Prairie", "Town," or any other words implying municipal ownership.
- (c) Vehicles found not to comply with the above standards shall be taken out of service and brought to standards before being placed back into service for the Town.

23. Mandatory Participation by Citizens/Town's Obligation to Enforce

- (a) The Town shall maintain in full force and effect an ordinance requiring all residential, multi-family and commercial establishments within the Town to utilize the solid waste collection service

consistent with this Agreement. The Town has provided for exemptions to solid waste service under specific limited circumstances. Any exemptions beyond what is in this Agreement must be approved by the Town. If an exemption to mandatory solid waste service is approved, the Customer must dispose of all solid waste in an appropriate manner.

- (b) Commercial businesses handling fresh/frozen foods and/or produce shall have a minimum of weekly solid waste service.

24. Reporting Records and Service Complaints

- (a) Reporting. Upon reasonable request by the Town, the Contractor shall furnish to the Town quarterly reports within thirty (30) days of the end of each quarter showing the number of tons of solid waste transported by the Contractor to the disposal site during the previous three (3) months. Separate records reflecting the tonnage of recyclable materials and yard waste transported to recyclable and yard waste processors shall be reported to the Town monthly upon request.
- (b) Complaint Records. A weekly log of complaints on service shall be maintained by the Contractor, and a copy of the complaint log shall be presented to the Town upon request.
- (c) Disposal Receipts. The Contractor shall keep records of solid waste collected and charges therefore. Copies of dump receipts, recyclable receipts and yard waste receipts shall be maintained by the Contractor and provided to the Town upon request. The original receipts shall remain in the Contractor's office as part of its records for three (3) years after the termination of any Agreement between the Town and the Contractor.
- (d) Customer Count. The Contractor shall provide the Town with a Customer count by the type of Customer, whether residential, multifamily, or commercial upon request by the Town.
- (e) Schedules and Routes. Contractor shall, at all times, maintain current documentation of schedules and routes for the areas served pursuant to this Agreement, and shall make available for Town review current copies of such schedules and routes, along with a map that details the routes of service.
- (f) Town Access to Contractor Records. The Contractor agrees to maintain records with respect to hauling routes, tonnage recycled or disposed of, and related documentation and any books, documents, papers and records that are directly pertinent to performance of work under this Agreement. In addition to its obligations under Section 27 below, the Contractor shall allow the Town or any of its duly authorized representatives access to all such records during the term of the Agreement and for three years thereafter for inspection and copying.

25. Breach of Contract

- (a) If the Contractor abandons or breaches this Agreement or fails to fully and promptly comply with any or all of its obligations under this Agreement, the Town may declare the Contractor to be in default of the Agreement, terminate this Agreement, and notify the Contractor, in writing, to discontinue any further service hereunder. But, if the Contractor's breach of this Agreement does not directly endanger public health, safety, or welfare, the Town shall first give the Contractor thirty (30) days' written notice to cure the breach or the failure to comply. If the Contractor fails to cure the breach within such time, the Town may then terminate this Agreement.
- (b) Notwithstanding Section 25(a) above, a delay or interruption in the performance of all or any part of the Agreement resulting from causes beyond the Contractor's control, including labor disputes or strikes, shall not be deemed to be a breach of this Agreement provided the delay or interruption does not last more than five (5) business days, and the rights and remedies of the Town provided for herein shall be inapplicable. Any interruption of service that last more than five (5) business

days shall be considered a breach of this Agreement unless such interruption is a force majeure as defined in Section 39 herein.

26. Indemnification.

- (a) Indemnification and Hold Harmless. The Contractor shall indemnify, hold harmless, and defend the Town, its elected officials, officers, employees, agents, volunteers, and representatives, from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, including costs and attorney's fees, injuries, sickness, or death of any person, or damage to or destruction of property of any kind, whether tangible or intangible, including loss of use resulting therefrom, arising out of, in connection with, or incident to the work performed under this Contract to the fullest extent permitted by law, provided, however, that:
- (i) The Contractor's obligation to indemnify, defend, and hold harmless shall not extend to injuries, sickness, death, damage, or destruction caused by or resulting from the sole negligent acts or actions of the Town, its officers, agents, or employees.
 - (ii) The Contractor's obligation to indemnify, defend, and hold harmless for injuries, sickness, death, damage, or destruction caused by or resulting from concurrent willful or negligent acts or actions of the Contractor and the Town shall apply only to the extent of the Contractor's willful acts or negligence.

The Town shall notify the Contractor in writing of the assertion of any claim against it for which it is entitled to be indemnified hereunder, and shall give the Contractor the opportunity to defend such claim (including the sole right to select and retain reasonable counsel of its own choice to represent it in connection with such claim), and shall not settle the claim without the prior written approval of the Contractor (and if the Contractor elects to defend such claim, the Contractor shall have the sole and exclusive right to resolve and settle such claim, so long as the Town has been absolved of any and all liability). The Town shall be entitled to fully participate with the Contractor in its defense of the Town. The Town may employ separate counsel to participate in the investigation and defense, but the Town shall pay the reasonable fees and costs of that counsel unless the Contractor has agreed otherwise. The Contractor shall control the defense of claims (including the assertion of counterclaims) against which it is providing indemnity under this Section.

- (b) Industrial Insurance Immunity Waiver. With respect to the obligations to hold harmless, indemnify, and defend provided for herein, as they relate to claims against the Town, its officers, agents, and employees, the Contractor agrees to waive the Contractor's immunity under industrial insurance, Title 51 RCW, for any injury, sickness, or death suffered by the Contractor's employees that is caused by or arises out of the Contractor's negligent exercise of rights or privileges granted by the Contract. This waiver is mutually agreed to by the parties.

27. Public Records. Under Washington State law, any written or recorded information (including but not limited to written, printed, graphic, electronic, photographic, or voice mail materials and/or transcriptions, recordings, or reproductions thereof) created or submitted in performance of this Agreement may be a public record under the Public Records Act, Chapter 42.56 RCW. Public records are subject to mandatory disclosure upon request by any person, unless the records are exempted from disclosure by a specific provision of law.

Contractor acknowledges that data, materials, reports, memoranda, or other documents developed under this Agreement may be considered public records under the Public Records Act. Contractor agrees to cooperate

with the Town in responding to any public records request, and agrees that any public records developed by Contractor, or held by Contractor, shall become the property of the Town and shall be forwarded to the Town at its request.

28. Damage to Property

- (a) If any property is damaged as a result of the Contractor's negligence or intentional act, the Contractor shall repair or replace the same after being notified of the damage.
- (b) The Town shall not be liable to the Contractor for any loss or damage other than any loss or damage occurring as a result of the negligent or intentional act of the Town, its employees, and/or its agents.

29. Liability Insurance. The Contractor shall procure and maintain, for the term of the Agreement, insurance that meets or exceeds the coverage set forth below. The cost of such insurance shall be paid by the Contractor. Contractor's maintenance of insurance as required by this Contract shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the Town's recourse to any remedy available at law or in equity.

(a) **Minimum Scope of Insurance.** The Contractor shall obtain insurance that meets or exceeds the following of the types described below:

- i. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.
- ii. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01, or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract.
- iii. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- iv. Contractor's Pollution Liability insurance coverage covering any claim for bodily injury, personal injury, property damage, cleanup costs, and legal defense expenses applying to all work performed under the contract, including that related to transported cargo.

(b) **Minimum Amounts of Insurance.** Contractor shall maintain at a minimum the following insurance limits:

- i. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of one million dollars (\$5,000,000) for each accident. Limits may be achieved by a combination of primary and umbrella policies.
- ii. Commercial General Liability insurance shall be written with limits no less than three million dollars (\$1,000,000) for each occurrence, two million dollars (\$2,000,000) general

- aggregate and two million dollars (\$2,000,000) products-completed operations aggregate limit. Limits may be achieved by a combination of primary and umbrella policies.
- iii. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
 - iv. Contractor's Pollution Liability insurance shall be written with limits no less than one million dollars (\$1,000,000) combined single limit for each pollution condition for bodily injury, personal injury, property damage, cleanup costs, and legal defense expense.
 - v. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Commercial General Liability, and Contractor's Pollution Liability coverage:

The Contractor's insurance coverage shall be the primary insurance with respect to the Town, its officials, employees, and volunteers to the extent such liabilities are assumed hereunder by Contractor. Any insurance, self-insurance, or insurance pool coverage maintained by the Town shall be in excess of the Contractor's insurance and shall not contribute with it. The Town, its officials, employees, and volunteers shall be named as additional insured's on the Contractor's insurance policy, via blanket-form endorsement.

- vi. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- vii. Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be canceled except after thirty (30) days prior written notice has been given to the Town. Such notice shall be sent directly to the Town. If any insurance company refuses to provide the required notice, the Contractor or its insurance broker shall notify the Town of any cancellation of any insurance immediately on receipt of insurers' notification to that effect.
- viii. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- ix. Verification of Coverage. The Contractor shall furnish the Town a current Certificate of Insurance setting forth said insurance policy to be in full force and effect. The Contractor shall give the Town thirty (30) days advance written notice of cancellation or lapse of such policy. The contractor shall provide the Town Clerk and Town Attorney with original certificates and a copy of the blanket-form amendatory endorsements as required herein, including, but not necessarily limited to, the additional insured endorsement, evidencing the insurance requirements of the Contractor at least a month before the Date of Commencement of Service of this Contract.
- x. Subcontractors. The Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the same insurance requirements as stated herein for the Contractor, including the requirement that the Town, its officials, employees, and volunteers be named additional insured's on the Contractor's insurance policy.

30. Performance Bond. No performance bond shall be required of the Contractor under this Agreement.

31. Compliance with Laws. The Contractor agrees and covenants to comply with all provisions of Federal, State, County, and Town laws and ordinances affecting, directly or indirectly, the subject matter of this Agreement.

32. Business Licenses. The Contractor shall obtain, at its own expense, all permits and licenses required by the Town or any other governmental authority and maintain the same in full force and effect during the terms of this Agreement.

33. Severability. If any provision of this Agreement shall be wholly or partially invalid or unenforceable under applicable law, such provision will be ineffective to that extent only, without in any way affecting the remaining parts or provision of this Agreement, and the remaining provisions of this Agreement shall continue to be in effect.

34. Notices. Any notice required or permitted to be given under this Agreement shall be deemed sufficient if given in writing and deposited into any post office as first-class, postage prepaid, certified mail, return receipt requested, and addressed as stated below:

CONTRACTOR:

Murrey's Disposal Company, Inc.
Attention Division Vice President
PO Box 532
Puyallup, Washington, 98371,

TOWN OF SOUTH PRAIRIE:

Town of South Prairie
Attention: Mayor
PO Box 870
South Prairie, WA 98385

With a copy to :

Murrey's Disposal Company, Inc.
Attention: District Manager

With a copy to:

Town of South Prairie
South Prairie Town Clerk

Notice shall be deemed effective three (3) days after notice has been delivered to a post office. Parties may change their notice address, listed above, without amendment to this Agreement by giving the other party written notice of a change of address.

35. Entirety. This Agreement and exhibits attached hereto and incorporated herein by this reference represent the entire Agreement between the Town and the Contractor. Any prior written or oral statement or proposal or representation, not incorporated herein, shall be excluded, and shall not alter any term or provision of this Agreement. This Agreement may be modified or amended only in writing by any authorized representatives of the Contractor and the Town

36. Dispute Resolution. The parties shall attempt to resolve any and all disputes to the mutual satisfaction of both parties by good faith discussions. Throughout the duration of a dispute, the Contractor shall continue fulfill all of its obligations required by this Agreement. Disputes not resolved in accordance with other provisions of this Agreement or through good faith discussions shall be submitted to non-binding mediation before a mediator acceptable to both the Town and the Contractor. All costs of mediation, including the Town's attorneys' fees and expert witness fees, shall be paid for by the Contractor. Neither party may initiate or commence legal proceedings prior to completion of the non-binding mediation.

37. Applicable Law and Jurisdiction. This Agreement shall be governed by the laws of the State of Washington. In the event any claim, dispute, or action arising from or relating to this Agreement cannot be resolved by mediation, then it shall be commenced exclusively in the Pierce County Superior Court.

The substantially prevailing party in any such action before the courts shall be entitled to recover its costs of suit and reasonable attorneys' fees.

38. Assignment and Control

- (a) Contractor shall not assign or subcontract any of the work or delegate any of its duties under this Agreement without the prior written approval of the Town.
- (b) When requested, approval by the Town of a subcontract or assignment of this Agreement or a part thereof may be withheld for any reason unless such subcontract, assignment, or delegation is to a subsidiary or an affiliate under common ownership or control as Contractor.
- (c) In the event of an assignment, subcontracting, or delegation of duties, the Contractor shall remain responsible for the full and faithful performance of this Agreement and the assignee, subcontractor, other obligor shall also become responsible to the Town for the satisfactory performance of the work assumed. The Town may condition approval upon the delivery by the assignee, subcontractor or other obligor of its covenant to the Town to complete fully and faithfully the work or responsibility undertaken or other security acceptable to the Town.

39. Force Majeure. Provided that the requirements of this section are met, Contractor shall not be deemed to be in default and shall not be liable for failure to perform under this Agreement if Contractor's performance is prevented or delayed by Acts of Nature, including landslides, lightning, forest fires, storms, floods, freezing and earthquakes, terrorism, civil disturbances, acts of the public enemy, wars, blockades, public riots, explosions, governmental restraint, or other causes, whether of the kind enumerated or otherwise, that are not reasonably within the control of the Contractor, and are not the result of the willful or negligent act, error, or omission of the Contractor; and that could not have been prevented by the Contractor through the exercise of reasonable diligence ("Force Majeure"). The Contractor's obligations under this Contract shall be suspended, but only with respect to the particular component of obligations affected by the Force Majeure and only for the period during which the Force Majeure exists.

The following events do not constitute Force Majeure: strikes, other than nationwide strikes or strikes that by virtue of their extent or completeness make the particular goods or services effectively unavailable to the Contractor; work stoppages or other labor disputes or disturbances occurring with respect to any activity performed or to be performed by the Contractor; accidents to machinery, equipment, or materials; unavailability of required materials or disposal restrictions; epidemics or pandemics (but specifically excluding shortfalls in Contractor's staffing due to said epidemic or pandemic which the parties agree are beyond the control of Contractor) unless the government directs a closure of solid waste hauling businesses; or general economic conditions.

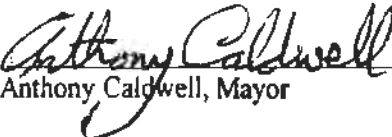
If, as a result of a Force Majeure event, Contractor is unable wholly or partially to meet its obligations under this Agreement, the Contractor shall notify the Town by telephone and email, on or promptly after the Force Majeure is first known, followed within seven (7) days by a written description of the event and cause thereof to the extent known; the date the event began, its estimated duration, the estimated time during which the performance of the Contractor's obligations will be delayed; the likely financial impact of the event; and whatever additional information is available concerning the event and its impact on the Town and its Customers. The Contractor shall provide prompt written notice of the cessation of the Force Majeure. Whenever such event shall occur, the Contractor, as promptly and as reasonably possible, shall use its best efforts to eliminate the cause, reduce the cost, and resume performance under the Agreement. In addition, if as a result of a Force Majeure event, Contractor is unable wholly or partially to meet its obligations under this Agreement, the Contractor shall notify all Customers regarding the disruption in collection service.

DATED this 25th day of May, 2021

MURREY'S DISPOSAL COMPANY, INC.


By: Matthew O'Connell, Division VP

TOWN OF SOUTH PRAIRIE


Anthony Caldwell, Mayor

ATTEST:


Terri Berry, Town Clerk/Treasurer

APPROVED AS TO FORM:


Kari Sand, Town Attorney
Ogden Murphy Wallace, PLLC

**Exhibit A
Contractor's Rates**

Rate: Per unit, Per Month

RESIDENTIAL

Garbage Cart Service:

20RW1R	20 Gallon Cart	\$ 26.11
35RW1R	35 Gallon Cart	\$ 30.69
65RW1R	65 Gallon Cart	\$ 40.62
95RW1R	95 Gallon Cart	\$ 52.90
DRVNRW1	50' Maximum Walk-in / Drive-in Fee (per cart)	\$ 5.04

Occasional Rates:

REXTRA	Occasional Extra Garbage (limit 32 gallons)	\$ 4.86
TRIPRCANS	Return Trip Charge per Cart (limit 32 gallons)	\$ 8.99
RESTART FEE	Stop and Restart within 12-month - per unit, per re-delivery	\$ 22.53
BULKY-RES	Bulky Item per Yard	\$ 23.30
RESTART FEE	Restart Fee (Each)	\$ 11.22
NSF FEES	Returned Check Fee (per item)	\$ 25.00
DELCART	Redelivery Fee (Each)	\$ 22.53

Recycling Cart Service:

RECYR	2nd Recycling Cart	\$ 7.38
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Yard Waste Cart Service:

YDW90	90 Gallon Cart (Yard Waste)	\$ 6.20
YDWEX	Occasional extra per unit	\$ 2.00

COMMERCIAL

Garbage Container Service:

R1YD1W	1 Yard Once per Week	\$ 103.57
R1YD2W	1 Yard Twice per Week	\$ 207.14
R1.5YD1W	1-1/2 Yard Once per Week	\$ 143.32
R1.5YD2W	1-1/2 Yard Twice per Week	\$ 286.64
R2YD1W	2 Yard Once per Week	\$ 178.87
R2YD2W	2 Yard Twice per Week	\$ 357.74
R2YD3W	2 Yard Three Times per Week	\$ 536.61
F4YD1W	4 Yard Once per Week	\$ 336.09
F4YD2W	4 Yard Twice per Week	\$ 672.18
F4YD3W	4 Yard Three Times per Week	\$ 1,008.27
F6YD1W	6 Yard Once per Week	\$ 464.44

F6YD2W	6 Yard Twice per Week	\$ 928.88
F6YD3W	6 Yard Three Times per Week	\$ 1,393.32

Occasional Rates:

R1YDEX	1 Yard Extra Pickup on Regular Route	\$ 26.09
R1.5YDEX	1.5 Yard Extra Pickup on Regular Route	\$ 35.29
R2YDEX	2 Yard Extra Pickup on Regular Route	\$ 43.47
F4YDEX	4 Yard Extra Pickup on Regular Route	\$ 79.80
F6YDEX	6 Yard Extra Pickup on Regular Route	\$ 109.44
CTRIP	Return Trip Charge (per Container)	\$ 16.80
CEXYD	Loose and bulky extra on regular Route per Yard	\$ 25.80
CLOCK	Lock/Unlock (Service, per Month)	\$ 4.72
	Lock & Chain (Supplies, One Time)	\$ 30.00