

TOWN OF SUPERIOR
RESOLUTION NO. R-76
SERIES 2020

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING AN AGREEMENT WITH WASTE CONNECTIONS OF COLORADO, INC. TO PROVIDE RESIDENTIAL TRASH AND RECYCLABLES COLLECTION SERVICES

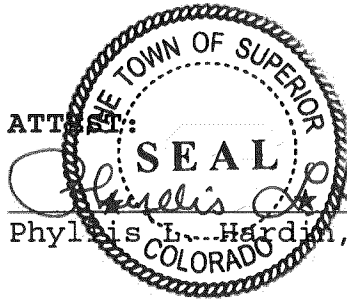
BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR, COLORADO, as follows:

Section 1. The Agreement between the Town of Superior and Waste Connections of Colorado, Inc. to provide residential trash and recyclables collection services is hereby approved in substantially the same form as attached hereto, subject to final approval by the Town Attorney.


ADOPTED this 26th day of October, 2020.



Clint Folsom, Mayor



ATTEST:


Phyllis L. Hardin, Town Clerk-Treasurer

AGREEMENT FOR SERVICES

THIS AGREEMENT FOR SERVICES (the "Agreement") is made and entered into this ^{26th} day of October, 2020, by and between the Town of Superior, Colorado, a Colorado municipal corporation with an address of 124 East Coal Creek Drive, Superior, CO 80027 (the "Town"), and Waste Connections of Colorado, Inc., a Delaware corporation with a principal place of business of 5500 Franklin Street, Denver, CO 80216 (the "Contractor") (each a "Party" and collectively the "Parties").

WHEREAS, the Town requires services; and

WHEREAS, Contractor has had itself out to the Town as having the requisite expertise and experience to perform the required services.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

I. SCOPE OF SERVICES

A. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities, which are described in the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by reference (the "Scope of Services").

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum meruit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the Town is authorized to modify any term of this Agreement, either directly or implied by a course of action.

C. The waste materials to be collected and disposed of by Contractor pursuant to this Agreement consist of all solid waste (including recyclable materials) and other materials, as set forth in the Scope of Services, generated or collected by the residents of the Town at their personal residences (the "Waste Materials"); provided, however, that the term Waste Materials specifically excludes and the residents of the Town shall not deposit in Contractor's equipment or place for collection by Contractor any radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, toxic or hazardous materials as defined by applicable federal, state or local laws or regulations ("Excluded Waste"). Contractor has no obligation to collect Excluded Waste. Additionally, Contractor may decline to collect any Waste Materials that have been loaded or left for collection outside of the designated receptacles or in any manner which would prohibit its safe collection.

D. Pursuant to C.R.S. § 31-15-401, Contractor has been selected as the exclusive provider of residential waste services in that area of the Town depicted in Exhibit A. For purposes of this Agreement, residential waste services includes the collection of waste from sources other than industrial or commercial establishments or multifamily residences of 8 or more units.

II. TERM, TERMINATION AND RENEWAL

A. Initial Term. This Agreement shall commence on January 1, 2021, and shall terminate on December 31, 2021 (the "Initial Term"). Contractor shall commence work as set forth in Exhibit A, and except as may be changed in writing by the Town, the Scope of Services in Exhibit A shall be complete and Contractor shall furnish the Town the specified deliverables as provided in Exhibit A.

B. Adjusted Rate Schedule. On or before December 1 of each year that this Agreement is in effect, Contractor shall deliver to the Town a copy of the price breakdown set forth in Exhibit B adjusted as follows (the "Adjusted Rate Schedule"):

1. The prices set forth in Exhibit B for the initial year of this Agreement shall constitute the Base Prices.
2. The Base Prices may be adjusted in an amount not to exceed the percentage change (up or down) of the Consumer Price Index for All Urban Consumers (CPI-U) in the Denver-Boulder-Greeley area from the most recent non-seasonally adjusted data available for aforementioned index on the Effective Date to the most recent non-seasonally adjusted data available for the index on July 1 of the year in which the Adjusted Rate Schedule is delivered to the Town.

By way of example only: If the most recent data available for the CPI-U for the Denver-Boulder-Greeley area shows an index of 238.1 for June 30th of the previous year and if the most recent data available for June 30th of the current year shows an index of 245.2, the increase is 3.0 percent. As such, the amounts on the Adjusted Rate Schedule may be increased by no more than 3.0 percent.

C. Renewal Option. The Town shall have the option to renew this Agreement for an additional 1-year term by providing written notice of renewal to Contractor no later than 30 days after Contractor provides the Town with the Adjusted Rate Schedule each year, for up to 3 additional 1-year terms.

D. Termination. The Town may terminate this Agreement by providing Contractor with 90 days' advance written notice. In such case, the Town shall pay Contractor for all work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached this Agreement, the Town shall have any remedy or right of set-off available at law and equity.

III. COMPENSATION

The Town shall compensate Contractor for residential trash and recyclables collection services at rates listed in Exhibit B, attached hereto and incorporated herein by reference. Compensation for such services is payable monthly following submission of itemized statements to the Town.

IV. CONTRACTOR RESPONSIBILITY

A. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and licenses in good standing.

B. The work performed by Contractor shall be in accordance with generally accepted practices and the level of competency presently maintained by other practicing contractors in the same or similar type of work in the applicable community, and in compliance with applicable laws, ordinances, rules and regulations.

C. The Town's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or any cause of action arising out of the performance of this Agreement.

V. TITLE

Contractor shall acquire title to the Waste Materials when they are loaded into Contractor's trucks. Title to and liability for any Excluded Waste shall remain with the generator of such Excluded Waste. If Contractor finds what reasonably appears to be discarded Excluded Waste, Contractor shall notify the generator, if the generator can be determined, that Contractor may not lawfully collect such waste and leave a tag specifying the nearest location available for such appropriate disposal.

VI. INDEPENDENT CONTRACTOR

Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform the work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a Town employee for any purposes.

VII. INSURANCE

A. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Agreement. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.
2. Commercial General Liability insurance with minimum combined single limits of \$2,000,000 each occurrence and \$4,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

3. Automobile liability insurance with limits of not less than \$150,000 each occurrence and \$1,000,000 aggregate.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. Contractor shall not cancel any coverages afforded any policy without at least thirty (30) days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Contractor shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

VIII. INDEMNIFICATION

Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor.

IX. ILLEGAL ALIENS

A. Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement.

B. Prohibited Acts. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement, or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

1. If Contractor has employees, Contractor has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

2. Contractor shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under this Agreement, Contractor shall: notify the subcontractor and the Town within 3 days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under this Agreement; and terminate the subcontract with the subcontractor if within 3 days of receiving the notice required pursuant to subsection 1 hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under this Agreement; except that Contractor shall not terminate the subcontract if during such 3 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under this Agreement.

D. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

E. Affidavits. If Contractor does not have employees, Contractor shall sign the "No Employee Affidavit" attached hereto. If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the "Department Program Affidavit" attached hereto.

X. MISCELLANEOUS

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by either party shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. Integration. This Agreement and any attached exhibits constitute the entire Agreement between the Parties, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the address included on the first page of this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

I. Governmental Immunity. The Town and its officers, employees and attorneys are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, employees or attorneys.

J. Rights and Remedies. The rights and remedies of each of the Parties under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit either party's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

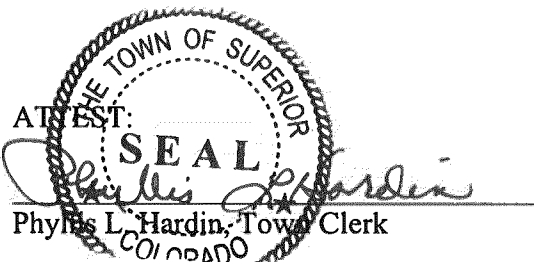
K. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, and thus any obligations of the Town hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first set forth above.

TOWN OF SUPERIOR, COLORADO

Clint Folsom

Clint Folsom, Mayor



CONTRACTOR

By: _____
[Handwritten Signature]

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

The foregoing instrument was subscribed, sworn to and acknowledged before me this 9TH day of DECEMBER, 2020, by JEFF STEWALT as REPRESENTATIVE of Waste Connections of Colorado, Inc.

My commission expires: MAY 04, 2024

(S E A L) FOUND ON
PAGE 7

Stephane Seru

Notary Public

**STEPHANIE SENA
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20164016927
MY COMMISSION EXPIRES MAY 04, 2024**

NO EMPLOYEE AFFIDAVIT

[To be completed only if Contractor has no employees]

1. Check and complete one:

I, _____, am a sole proprietor doing business as _____ . I do not currently employ any individuals. Should I employ any employees during the term of my Agreement with the Town of Superior (the "Town"), I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

OR

I, _____, am the sole owner/member/shareholder of _____, a _____ [specify type of entity – i.e., corporation, limited liability company], that does not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the Town, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

2. Check one.

I am a United States citizen or legal permanent resident.

The Town must verify this statement by reviewing one of the following items:

- *A valid Colorado driver's license or a Colorado identification card;*
- *A United States military card or a military dependent's identification card;*
- *A United States Coast Guard Merchant Mariner card;*
- *A Native American tribal document;*
- *In the case of a resident of another state, the driver's license or state-issued identification card from the state of residence, if that state requires the applicant to prove lawful presence prior to the issuance of the identification card; or*
- *Any other documents or combination of documents listed in the Town's "Acceptable Documents for Lawful Presence Verification" chart that prove both Contractor's citizenship/lawful presence and identity.*

OR

I am otherwise lawfully present in the United States pursuant to federal law.

Contractor must verify this statement through the federal Systematic Alien Verification of Entitlement ("SAVE") program, and provide such verification to the Town.

Signature

Date

DEPARTMENT PROGRAM AFFIDAVIT

[To be completed only if Contractor participates in the Department of Labor Lawful Presence Verification Program]

I, Waste Connections of Colorado, as a public contractor under contract with the Town of Superior (the "Town"), hereby affirm that:

1. I have examined or will examine the legal work status of all employees who are newly hired for employment to perform work under this public contract for services ("Agreement") with the Town within 20 days after such hiring date;

2. I have retained or will retain file copies of all documents required by 8 U.S.C. § 1324a, which verify the employment eligibility and identity of newly hired employees who perform work under this Agreement; and

3. I have not and will not alter or falsify the identification documents for my newly hired employees who perform work under this Agreement.

[Handwritten Signature]

Signature

12-9-2020

Date

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

The foregoing instrument was subscribed, sworn to and acknowledged before me this 9th day of DECEMBER, 2020, by JEFF STEWART as REPRESENTATIVE of WASTE CONNECTIONS OF COLORADO

My commission expires: MAY 04, 2024

(S E A L)

[Handwritten Signature: Stephanie Sena]
Notary Public

STEPHANIE SENA
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20164016927
MY COMMISSION EXPIRES MAY 04, 2024

EXHIBIT A
SCOPE OF SERVICES

- **Services.** Contractor shall provide residential waste collection services to the area of the Town depicted in the attached map, which excludes any area with a homeowners' association already under contract with another waste services provider. Contractor shall provide a 96-gallon trash collection cart, with lid, and weekly trash collection. Contractor shall provide a 96-gallon single-stream recycling cart, with lid, and weekly recycling collection. Trash collection carts will be Contractor's standard dark blue color, and recycling carts will be marked for recycling. Additional trash collection carts may be requested by the customer for an additional cost. At a customer's request and no more than once per year, Contractor shall exchange the 96-gallon carts for smaller-sized carts at no cost to the customer. Any additional cart exchanges shall be subject to additional charges. Contractor shall initiate service for new customers and deliver trash collection cart and recycling cart within 10 business days of notice of new account by the Town.

- **Additional Services.**
 - Bulk item pickup. Contractor shall provide bulk item pickup as requested by customers for an additional cost. Bulk item is any item that is outside the trash container and is not lawn waste.
 - Yard waste pickup. Contractor shall provide lawn waste pickup for customers to be picked up on collection day for an additional cost. Lawn waste bundles or bags shall be no more than 4 feet long and no more than 40 pounds. Customers must call in to Contractor's customer service number to set up additional services and pick-ups.
 - Organic material. Contractor shall provide a 96-gallon container, with lid, and bi-weekly collection for organic materials collection. Organic material collection service is an optional sign-up service available to residents.

- **Recyclables.** Recyclables shall be collected in material streams acceptable to the facility to which materials are delivered, either separated by material or commingled according to what is mutually acceptable to the Town, Contractor and the facility. Recyclables are those designated as such in Section 6-5-10 of the Superior Municipal Code.

- **Collection.** Contractor shall provide alley collection where available and curbside collection where no alley is available.

- **Hours and Days of Operation.** Collections will occur on Monday of every week for both residential trash and recycling services between the hours of 7:00 a.m. and 7:00 p.m.

- **Holiday Schedules.** Contractor shall provide a list of proposed holidays. Collection shall occur on the day immediately following the holiday. Saturdays may be used following a holiday if required as a catch-up collection day. Contractor shall provide a calendar of holidays to the Town and customers.

- **Trucks and Equipment.** Contractor shall comply with Article V of the Superior Municipal Code regarding licensing. Contractor shall maintain all waste receptacles in good repair, shall bear the cost of normal wear and tear, and shall replace them as needed.

- **Billing System.** The Town will bill charges for the service through the utility billing system. Contractor shall provide a single bill to the Town based on a per account basis for service, which the Town will use to bill through the utility billing system.
- **Promotion and Education.** Contractor shall work with the Town to provide service-oriented information to customers and for developing and executing public education to encourage waste reduction and diversion. Specifically, prior to January 1, 2021, Contractor shall provide a one page color flyer to be mailed to each customer. This flyer, subject to Town approval, will inform Town residents of the specifics of the trash and recyclables collection program, including a collection schedule, a complete list of prices and services offered to each customer, a listing of what materials can go into the recyclable materials cart, instructions on the proper handling of the collection carts, instructions on what customers are to do with trash that does not fit into the collection carts, etc.
- **Customer Service.** Contractor shall be responsible for providing all customer service functions including informing customers of current services, handling customer requests, and resolving customer complaints. Contractor shall respond to customer complaints within 24 hours of receiving the complaint. Contractor shall provide a copy of its customer service standards, and the customer service contact information, as well as the contact information for the customer service supervisor responsible for the Town's services.
- **Maintenance of Records and Reporting.** Contractor shall maintain in its local office full and complete operation and customer service records that shall at all reasonable times be open for inspection and copying for any reasonable purpose by the Town. Reports shall be submitted by the 10th day of each month to the Town documenting the following information: (1) the customers service was provided to; (2) a log of complaints and resolutions for trash and recycling collection services; (3) a log of missed collections and responses; (4) a description of any vehicle accidents or infractions; and (5) a listing of all accounts having a change of service during the month; and (6) weights in tons of garbage, recyclable and compostable materials collected by commodity and the destinations these items were transported to. Annual reports shall include the weight (in tons and pounds) of discarded materials, including recyclable materials and compostable materials collected (by commodity, or aggregated into commingled containers; fiber; and, organics) and transported from within the Town.
- **Contractor Default.** Contractor shall provide a performance bond in the amount of \$50,000 or equal to the cost of 3 months of service to the Town, whichever is greater, to cover the Town's costs in the event of Contractor default.
- **Penalties.** Penalties may be levied if documented in an incident report presented by the Town to Contractor. Penalties will be deducted from the monthly payment made by the Town to Contractor. The Town reserves the right to make periodic, unscheduled inspection visits to determine Contractor's compliance with this Agreement. Penalties are as follows:

Action or Omission

Penalties

Commencement of residential collection prior to 7:00 a.m. or continuance after 7:00 p.m. except as expressly permitted;	\$200 per incident (each truck on each route is a separate incident);
Failure to collect spilled materials;	Cost of cleanup plus \$400 per incident;
Town observed leakage from Contractor's vehicles or vehicle contents;	\$400 each vehicle, each inspection;
Except as otherwise allowed under this Agreement, failure to collect any and all garbage, recyclable materials, and yard debris within one business day after notification;	\$25 each incident;
Collection from residential premises on other than the day specified excluding inclement weather or holiday schedule;	\$200 per structure;
Collection as garbage of source-separated recycling;	\$1,000 per incident;
Misrepresentation in records or reporting;	\$200 per incident;
Failure to respond to a customer complaint within one business day after notification;	\$25 each incident;
Failure to make required reports on time;	\$200 per incident;
Failure to maintain clean and sanitary vehicles.	\$200 per vehicle; per occurrence.

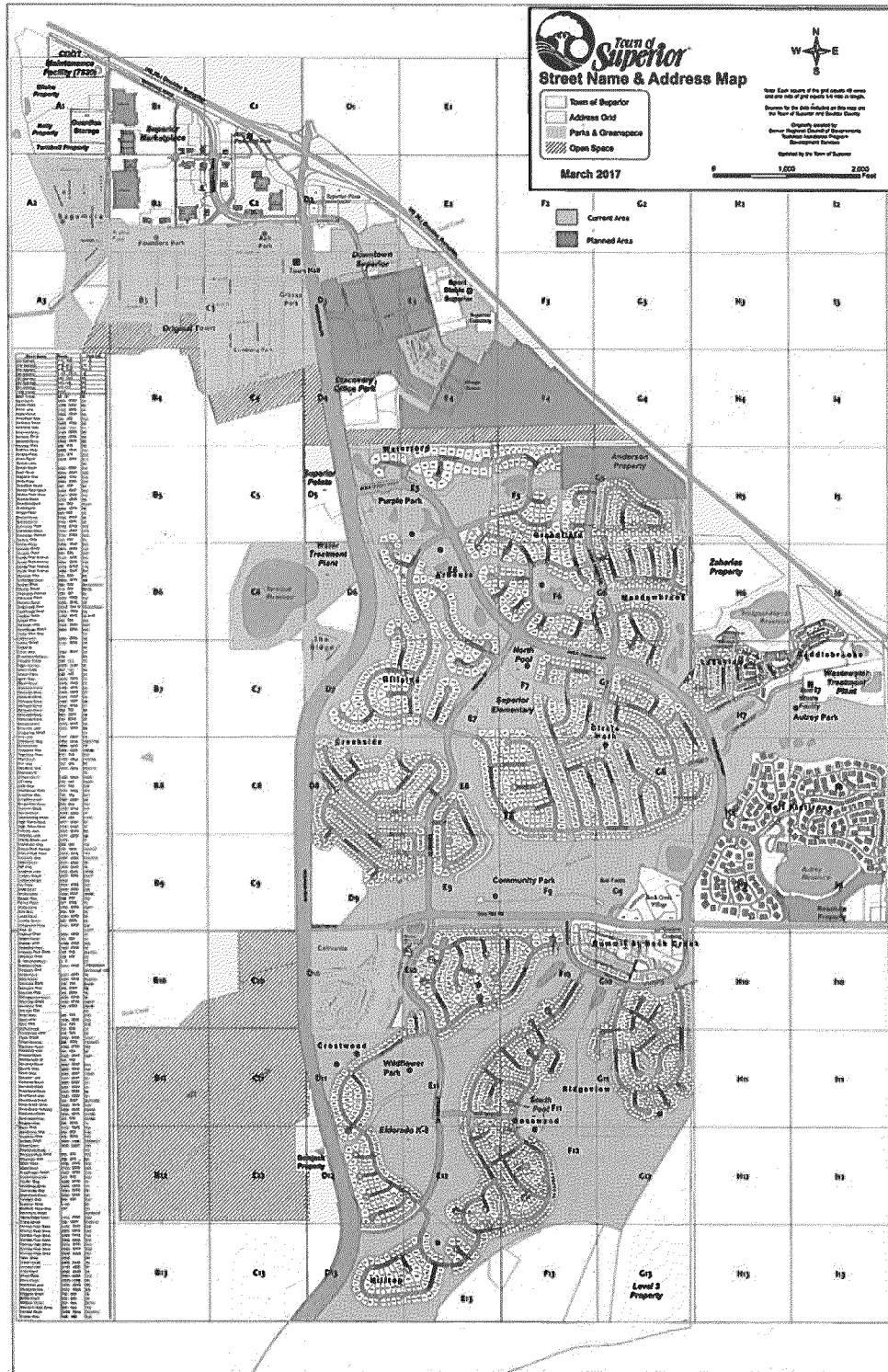


EXHIBIT B COMPENSATION

Following is the price structure:

- Fixed price per household for fixed weekly trash and weekly recycling service - \$13.00 per month.
 - Price includes one 96-gallon trash cart with lid, and one 96-gallon recycling cart with lid.
 - Customers who exchange a 96-gallon cart for a smaller-sized cart for either trash or recyclables or both pay this same price.
- Additional 96-gallon trash cart with lid service weekly - \$4.00 per month.
- Bulk item pick-up service - \$15.00 per item.
- Yard waste pick-up service - \$3.00 per item, large amounts of over one cubic yard of debris will be charged at a rate of \$15.00 per yard.
- Price for optional yard waste/organic material collection per household in one 96 gallon container serviced bi-weekly - \$9.50 per month.