

**FIRST AMENDMENT TO THE CONTRACT FOR REFUSE, RECYCLABLES AND
YARD WASTE COLLECTION SERVICES
BETWEEN THE CITY OF AURORA AND GROOT, INC.**

This is a first amendment ("First Amendment"), dated as of _____, 2021, to the Contract for Refuse, Recyclables and Yard Waste Collection ("Agreement") dated December 23, 2014 between the City of Aurora, an Illinois home rule municipal corporation ("City) and Groot, Inc. an Illinois corporation ("Contractor"). The City and the Contractor are hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, on December 23, 2014 the City entered into an Agreement with Contractor's predecessor-in-interest for the provision by Contractor of franchised refuse, recyclable and yard waste collection within the City which was assigned to Contractor; and

WHEREAS, the City and Contractor now desire to amend certain provisions of and add certain provisions to the Agreement to extend the term of the Agreement, and add additional services and franchise fee payments for the City as further set forth herein; and

WHEREAS, it is in the best interests of the City and the Contractor to enter into this First Amendment;

NOW, THEREFORE, in consideration of the mutual covenants set forth in this First Amendment, the receipt and sufficiency of which are hereby acknowledged, the City and Contractor agree as follows:

SECTION ONE: RECITALS. The foregoing recitals are hereby incorporated into, and made part of, this First Amendment as if fully set forth therein.

SECTION TWO: AMENDMENT OF AGREEMENT.

1. Effective July 1, 2022, the Sections of the Agreement are hereby amended to read in their entirety as follows:

A. Section 4. TERM OF AGREEMENT AND ANNUAL PRICE ADJUSTMENTS

The term of this Agreement will be ~~seven (7) years, and shall become effective on the 1st day of July, 2015, and shall remain in full force and effect through the 30th day of June, 2022.~~ a two-part extension, the first extension shall be from July 1, 2022 to June 30, 2027. A second extension is specifically contingent upon the Contractor entering into a Host Agreement with the City, obtaining siting approval, obtaining all the necessary permits, and constructing and legally operating a municipal waste transfer station within the boundaries of the City prior to July 1, 2026, and those requirements shall constitute conditions precedent to the granting of the second extension. The Contractor will use its best efforts to begin the siting and development process no later than January 1, 2022. If each one of the conditions precedent set forth above have

occurred or have been met, the second extension shall be a five-year extension ending on June 30, 2032 contingent on the municipal waste transfer station being operational by July 1, 2026 and continuing to be operational during the entire term of this First Amendment. If the municipal waste transfer station stops operation at any time during the second extension for any reason other than due to a Force Majeure event, the City may terminate the Agreement in its sole discretion. For the purposes of this section, "Force Majeure" means an event beyond control of Contractor, such as war, riot, insurrection, rebellion, fire, flood, storm, earthquake, tornado, or any act of God. For the avoidance of doubt, an act or omission shall not be deemed to be "beyond the control of the Contractor" if committed, omitted or caused by the Contractor, Contractor's employees, officers, or agents or a subsidiary, affiliate or parent of Contractor or by any corporation or other business entity that holds a controlling interest in Contractor, whether held directly or indirectly (for example, but not by way of limitation, a strike by or lockout of Contractor's employees would not be an act "beyond the control of the Contractor"). Contractor shall promptly notify the City when Contractor reasonably believes that an event constituting a "Force Majeure" under this section has occurred. Either party has the right to terminate this Agreement if a Force Majeure event stops operation at any time during the second extension for a period of nine (9) months or more. A price increase of the Consumer Price Index (CPI) means the Chicago Gary Kenosha Consumer Price Index for all Urban Consumers, all items, issued by the Bureau of Labor Statistics of the United States Department of Labor with a rate increase of a minimum of 2.5% to a maximum of 2.75%.

-On July 1, 2016-2023 and each twelve month anniversary date thereafter (except for the July 1, 2029 through June 30, 2030 period during which no annual increase shall be applied to the charges in Exhibit 3), the charges for all services listed in Exhibit 3, except for refuse and yard waste sticker, 14 gallon bag, and cart movement fee, shall increase by a fixed rate of 2.5% . The base rate fee shall be increased by a fixed rate of 2.5% on July 1 of 2023, 2025, 2027, 2029 and 2030, the percentage increase in the CPI percentage increase in the CPI on each annual adjustment shall be determined by comparing the CPI from December preceding the adjustment date to the December in the year immediately preceding the year of the most recent CPI. The Contractor shall contact the City in writing by May 1st of each year and shall provide details of the fixed increase. .The City and the Contractor shall have the ability to mutually extend this Agreement for an additional three years based on mutual agreement with rates and terms to be negotiated.

B. Section 20. EMERGENCIES

The Contractor agrees that should any emergency arise by reason of fire, flood, storm, earthquake, tornado, or any act of God which require additional hauling equipment by the City, ~~the Contractor's equipment shall be placed at the disposal of the Mayor's Designee upon request for such temporary use, provided that upon such use the City shall pay the operating cost of such equipment and labor as it is used.~~ the Contractor shall maintain a corporate structure which enables it to respond quickly to emergencies and disasters affecting the City and its residents and shall have access to additional equipment and manpower upon which it can draw to provide additional support and services to the City. Such resources shall be available without interrupting the Contractor's regularly scheduled collection routes. In the event of a regional disaster, including one or more communities within twenty (20) miles of the City's corporate limits, the Contractor shall not give preference to providing disaster services to any community.

The City reserves the right to direct which disposal sites are to be used during an emergency. Contractor shall provide the name, address and telephone number and other pertinent information of each person who can be contacted in the event of an emergency at or related to the work. Standby service or special pickup services will be available for unusual situations warranting a need for such service. Such occasions may be upon short notice and will be held to a minimum by the City.

C. Section 32. BASE SERVICES FOR REFUSE & RECYCLING COLLECTION SPECIFICATIONS

City collection units as defined by this Agreement shall be notified in writing by the Contractor not later than August 1, 2022 of their collection options under this Agreement and the ability of each collection unit to change its refuse service level option once during a timeframe ending September 30, 2022 at no additional cost. Collection units may select options under Subsection (a) hereof. Additionally, collection units with a senior resident or hardship resident may opt to enroll in the 14-gallon bag program that until such time as the limit of 4,200 collection units outlined in Subsection (b) hereof. Finally, collection units may select to enroll in the 24-week collection program until such time as the limit of 3,750 collection units as outlined in Subsection (c) hereof.

Any collection unit that does not provide a response by ~~May 15, 2015, to the Contractor on the level of service desired shall be provided with the 65 gallon refuse cart service level automatically.~~ September 30, 2022 shall continue to have their current level of service. During the first 90 days after all the refuse carts have been delivered, each collection unit shall have one (1) opportunity to switch refuse service levels to one of the options provided under Subsection (a) hereof at no additional cost. Any collection unit wanting to switch service levels will have one other opportunity to switch service levels under Subsection (a) hereof at no cost during the 60 day time period between July 1st through August 31st, 2019. Collection units may switch service levels under subsection (a) herein at any other time, but will incur a service fee of \$30 per switch throughout the term of this First Amendment ~~\$25 per switch in service levels during the first three years of this Agreement~~ if the switch is requested outside of those times listed hereinabove. ~~Subsequent changes occurring after the beginning of year four will incur a service fee of \$30.~~

Section 32 (f) YARD WASTE COLLECTION TIMEFRAME: Yard waste collection services shall be provided to collection units by the Contractor from April 1 through December 15 of each calendar year during the term of this First Amendment.

D. Section 35. DEFAULT PERFORMANCE BOND

~~If the Contractor fails to observe the established schedule for more than two (2) consecutive working days, and in the opinion of the Mayor's Designee, there has not been sufficient cause to justify such lack of observance, the City shall service notice, either personally or by affixing such notice to the local premises of the Contractor, that this Agreement shall be in default if the Contractor does not take action to re-establish the schedule within twenty four (24) hours of said notice. If at the end of the twenty-four (24) hour period, the Contractor has not made the~~

~~necessary corrections, the City shall take steps, as are necessary, to provide services according to the collection schedule submitted by the Contractor. The Contractor will be liable for any costs of such steps from the date of the notice of default. If deemed necessary by the Mayor's Designee the City shall have the right to take over all equipment and facilities of the Contractor for a period of up to one hundred twenty (120) days from the date of notice of default.~~ Within thirty (30) days of execution of this First Amendment by the Contractor and the City, and for the entire term of this First Amendment, the Contractor shall furnish the City with a Performance Bond on the form acceptable to the City from a responsible, national surety company licensed to do business in the State of Illinois rated AA or better by Best's Insurance Reports. The Performance Bond shall be conditioned upon the faithful performance by the Contractor of its obligations under this Agreement and upon its full compliance with the all applicable laws, ordinances and regulations. Said Performance Bond shall indemnify the City against any loss resulting from any breach or failure of performance. The Bond shall provide for the payment of any penalties, fines or costs assessed by the City against the Contractor under this Agreement upon written demand of the City, addressed to both the bond company and the Contractor, including any costs and expenses and administrative, attorney's or consultant's fees incurred by the City as a consequence of any default or any legal or administrative action brought to enforce the terms of this Agreement. The amount of the bond shall be in a penal sum equal to two million dollars (\$2,000,000). A Performance Bond in conformance with the provisions above shall be furnished by the Contractor with the City within thirty (30) days of the anniversary date of the approval of this First Amendment each year this Agreement is in effect. The Contractor expressly understands and agrees that any Performance Bond or insurance protection required of the Contractor, or otherwise provided by this Agreement, shall in no way limit its responsibility to defend, indemnify, keep and hold harmless and defend the City, its agents, officials, servants and employees as provided in the Agreement.

E. Section 44. CITY SERVICES MONTHLY FEE

For refuse, recyclables and yard waste collection services at City-owned facilities as outlined in Exhibit 1 of this agreement and Exhibit 2, the City shall pay the Contractor as outlined in Exhibit 3. The City shall no longer be required to pay for the two, one-week spring clean-up events as outlined in Exhibit 3 throughout the term of this First Amendment.

F. Section 48. ANNUAL FRANCHISE FEE

The Contractor shall pay to the City an annual franchise fee. The first franchise fee payment shall be \$150,000 with payment to the City within 30 days of City Council approval of the First Amendment. Subsequent franchise fee payments shall be equal to 3.5% of all revenue associated with the City's Agreement with the Contractor, with the only exception being sticker sales. The franchise fee payment shall be made each July 1 beginning with July 2022. If the Contractor sites, constructs and begins operating a municipal waste transfer station within the City, and the Parties enter into a Host Agreement related to the transfer station, the franchise fee shall be lowered to 1.75% of all revenue not including sticker sales beginning with the date the municipal waste transfer station begins operating.

G. Section 49. FESTIVAL REFUSE AND RECYCLING SERVICES

Beginning on July 1, 2022, during the term of this First Amendment the Contractor shall provide festival refuse and recycling services, including but not limited to collection of festivals' refuse and recyclables from centralized locations, container delivery including refuse and recyclables boxes, and adequate dumpster collection services for the Blues on the Fox Festival and the 4th of July Weekend both at RiverEdge Park, and the following festivals: Memorial Day Parade, Fourth of July Parade, Aurora's Puerto Rican Heritage Festival, Aurora's Fiestas Patrias Parade and Festival, Diwali, Veteran's Day Parade, Winter Lights Celebration and Aurora's Irish Fest. These services shall include all labor and conveyance devices required to remove all refuse and recyclables from the events and festivals daily (excluding Sunday). On or before January 31st of each year during the term of this First Amendment the City shall provide the Contractor with a list of all the events and festivals to occur that year from the list provided and include the dates and locations of each event and festival. The Contractor shall, upon request, provide the City with data on the amount of refuse and recyclables collected at the festivals.

H. Section 50. CONTRACTOR TIPPING FEE RECEIPTS

Upon the City's request, the Contractor shall provide the City copies of the Contractor's receipts for tipping fees for refuse, recyclables and yard waste collection pursuant to this Agreement.

I. Section 51. CONTRACTOR RESOURCES FOR EMERGENCIES AND DISASTERS

The Contractor's local operations and facilities shall be available to respond to all of the City's immediate needs for emergency and disaster services. The Contractor shall have available, or have access to, a pool of vehicles which can mobilize within twenty-four (24) hours in case of a localized emergency such as a tornado damage or other storm related damage, to provide collection of tornado/storm related waste and debris from collection units and the City-owned facilities.

J. Section 52. LIMITED MOST FAVORED NATION STATUS

The Contractor shall, within six (6) weeks of the end of the Agreement year, provide the City with a list of all contracts under which the Contractor is providing any of the services described herein to any unit of local government in Cook, DuPage, Kane, Kendall or Will Counties, Illinois. The City may request, and the Contractor shall, at its sole cost and expense, deliver (or email) to the City certified copies of such related contracts or agreements, including amendments pertaining to such contract or agreement.

If the City determines that the terms and conditions of any such other contracts, agreements, or amendments of any other community within the counties set forth above relative to: a) customer service, education or outreach; or b) the use of any computer, software or other technological devices or services are more favorable to that community than as provided herein (hereafter "Preferential Terms or Services") the City may elect, by written notice to the Contractor, to incorporate those terms and services into this Agreement in a manner which is at least as beneficial to the City at no additional charge to the City. The Contractor and City shall take all

steps necessary to amend this Agreement to implement said terms and conditions. Notwithstanding the foregoing: (i) the cost to accommodate a request by the City for the Contractor to utilize RFID technology for collection of refuse shall be mutually agreed upon by the parties; and (ii) if Preferential Terms or Services are paid for as a separate line-item from the remainder of the costs set forth in the other community's contract or agreement, the City shall be entitled to require the Contractor to provide such Preferential Terms or Services subject to the same payment therefor by the City as set forth in the other community's contract or agreement. Notwithstanding the foregoing, this Section does not apply to pricing, costs, or rates set forth in this Agreement.

SECTION THREE: REPRESENTATIONS

A. The City hereby represents and warrants that: 1) the persons executing this First Amendment on its behalf have been properly authorized to do so by the City Council; 2) it has full power and authority to execute and deliver this First Amendment and to perform all of its obligations imposed pursuant to this First Amendment; and 3) this First Amendment constitutes a legal, valid and binding obligation of the City enforceable in accordance with its terms.

B. Contractor hereby represents and warrants that: 1) the persons executing this First Amendment on its behalf have the full authority to bind the Contractor to the obligations set forth in this First Amendment and to so act on behalf of the Contractor; 2) it has the full power and authority to execute and deliver this First Amendment; and 3) this First Amendment constitutes a legal, valid and binding obligation of the Contractor enforceable in accordance with its terms.

SECTION FOUR: MISCELLANEOUS

A. That all portions of the Agreement, not amended by this First Amendment, shall remain in full force and effect.

B. This First Amendment shall be executed simultaneously in two (2) counterparts, each of which shall be deemed an original, but both of which shall constitute one and the same First Amendment.

C. This First Amendment shall be deemed dated and become effective on the day on which this First Amendment is executed by the last of the signatories, as set forth below, with said date appearing on page 1 hereof.

IN WITNESS WHEREOF, the Parties hereto have caused this First Amendment to be executed on or as of the day and year first above written.

CITY OF AURORA

By:_____

Richard C Irvin, Mayor

Date: _____

ATTEST

By:_____

Jennifer Stallings, City Clerk

Date

GROOT, INC.

By:_____

Name:_____

Title:_____

Date:_____

ATTEST

By:_____

Name_____

Title_____

Date