

RECYCLING SERVICES AGREEMENT

THIS RECYCLING SERVICES AGREEMENT is made as of July 1, 2022, by and between WM RECYCLE AMERICA, L.L.C., a Delaware limited liability company with an office located at 1001 Fannin, Suite 4000, Houston, TX 77002 and Town of Monterey with a location at _____ 40 Gould Rd. Monterey MA. 01245

1. TERM:

The term of the Agreement shall be for a period of one (1) year, commencing on July 1, 2022. Notwithstanding the foregoing, Customer may terminate this Agreement upon notice in the event Customer fails to appropriate funds for the services provided hereunder during its annual appropriations. The Agreement may be renewed for additional terms with the mutual consent of both parties.

2. QUANTITY AND QUALITY:

During the term of the Agreement, Company shall be the exclusive provider of the services set forth below and shall take and Customer agrees to provide one hundred percent (100%) of Customer's high-density polyethylene bulky rigids ("Recyclables") contingent upon annual appropriations. Customer will provide loose Recyclables in accordance with the Company's specifications set forth herein ("Specifications"). The Recyclables shall consist of post-Consumer plastic injection grade HDPE, typically found to be wide mouthed containers and/or oversized items. Metals such as axles and bolts should be removed. Examples may include: carts, crates, buckets, baskets, lawn furniture, etc. Any items that previously contained hazardous material, residue and/or medical waste will be rejected. Contaminants include but are not limited to paper, cardboard and metal, more than 4% of plastics not of the specified type: i.e., PET, PVC, LDPE, PP, PS, or Other (may be marked as #7); film or fiber, HDPE blow mold grade (frac melt) or HMW (drums), more than 2% of any other material that is not plastic: i.e., wood, Styrofoam, rubber, liquid, paint or other residuals, etc., excessive amount of debris (sand, rocks, dirt, etc.) or moisture and any plastic that has deteriorated from sun or weather exposure. In the event that the Recyclables do not meet Specifications, Customer shall have the sole responsibility for any resulting settlement or adjustments, including price reductions, transportation, disposal costs, and contamination fees, all of which may include an amount for Company's operating and gross profit margin. Recyclables specifically exclude, and Customer agrees not to deposit or permit the deposit for collection of, any waste tires, radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, bio-hazardous, regulated medical or hazardous waste, toxic substance or material, as defined by, characterized or listed under applicable federal, state, or local laws or regulations, or chemical or other properties that are deleterious or capable of causing material damage to any part of Company's property, its personnel or the public or materially impair the strength or the durability of the Company's structures or equipment, or any materials containing information (in hard copy or electronic format, or otherwise) which information is protected or regulated under any local, state or federal privacy or data security laws, including, but not limited to the Health Insurance Portability and Accountability Act of 1996, as amended, or other regulations or ordinances or other waste not approved in writing by Company (collectively, "Excluded Materials"). Title to and liability for Excluded Materials shall remain with Customer at all times. Title to Recyclables provided by Customer to Company is transferred to Company upon Company's receipt or collection unless otherwise provided in this Agreement or applicable law. Company reserves the right at its sole discretion upon notice to Customer to discontinue acceptance of any category of Recyclables as a result of market conditions related to such materials and makes no representations as to the recyclability of the materials which are subject to this Agreement.

3. RECYCLABLE VALUE:

The value of the loose Recyclables meeting the Specifications shall be Secondary Materials Pricing for Plastics Mixed Bulky Rigid minus eighty-two dollars (\$82.00) per ton. "SMP" means the higher of the two Regional prices for the New York (NE USA/Maritimes) Region as published by Secondary Materials Pricing, first published price for the month, retroactive to the first of the month. If the Secondary Materials Pricing publication is no longer reflective of prevailing market conditions or if an alternative publication or method more accurately reflects such market conditions, then Company may propose to use any such alternative publication(s) or alternate method to determine the price for Recyclables. The other party's consent, which shall not be unreasonably withheld, to the use of such alternate publication or method shall be required. Customer acknowledges that the value of the Recyclables may be negative.

4. PAYMENTS; CHARGES; ADJUSTMENTS:

Upon receipt of an invoice, Customer shall pay for the services furnished by Company in accordance with this Agreement, as such charges may be adjusted over the term of this Agreement as noted herein (the "Charges"). Where the value is positive for the Recyclables, Company shall pay Customer on or about the last day of each month for Recyclables purchased during the preceding month, after deduction of any Charges owed to Company by Customer for services performed hereunder. Company reserves the right to increase the Charges payable by Customer or reduce the rebate to Customer during the term: (a) for any changes or modifications to, or differences between, the actual services provided by Company to Customer and the agreed upon services, (b) to cover any increases in disposal, processing, recycling, storage and/or third party transportation or any other transportation costs; (c) to cover increased costs due to uncontrollable circumstances, including, without limitation, changes in local, state or federal laws or regulations, imposition of taxes, fees or surcharges or acts of God such as floods, fires, hurricanes and natural disasters; and (d) no more often than annually from the commencing date by (4%) of the then current Charges. Any increase in Charges enumerated in clauses (a) through (d) above may include an amount for Company's operating or gross profit margin. In the event Company adjusts the Charges as provided in this Section, Customer and Company agree that this Agreement as so adjusted will continue in full force and effect for the remaining term. If Company increases the Charges payable by Customer hereunder for reasons other than set forth in this Section, Customer shall have the right to terminate this Agreement by written notice to the Company no later than thirty (30) days after Company notifies Customer of such increase in Charges in writing. If Customer so notifies Company of its termination of this Agreement, such termination shall be of no force and effect if Company withdraws or removes such increase within fifteen (15) days after Customer provides timely notification of termination. Absent such termination, the increased Charges shall be binding and enforceable against Customer under this Agreement for the remaining term. Any Customer invoice balance not paid within forty-five (45) days of the date of invoice is subject to a late fee, and any Customer check returned for insufficient funds is subject to a NSF fee, both to the maximum extent allowed by applicable law. In the event that payment is not made when due, Company retains the right to suspend service until the past due balance is paid in full. In the event that service is suspended in excess of fifteen (15) days, Company may terminate this Agreement for such default and recover any equipment and containers.

5. SERVICE: Customer shall deliver Recyclables, at Customer's expense, to Company's facility located at 203 Tremont Street, Springfield, MA 01104 or to such other location within the greater Springfield, MA area as Company may direct from time to time 7am-3pm during the Facilities operating hours, Monday through Friday, excluding holidays specified by the Facility. All Recyclables must be delivered in self-dumping trucks and will be weighed in and out by Company at the Facility.

6. DEFAULT:

Notwithstanding the term of this Agreement set forth in paragraph one (1) above, in the event of default by a party, which default is not cured within thirty (30) days after written notice from the non-defaulting party, the non-defaulting party, at its option, may terminate this Agreement, upon written notice.

7. INDEMNIFICATION/LIMIT OF LIABILITY:

Company agrees to indemnify, defend and save Customer, their elected and appointed officials, agents, and employees harmless from and against any and all liability which Customer may be responsible for or pay out as a result of bodily injuries (including death), property damage, or any violation or alleged violation of law, to the extent caused by any negligent act or omission or willful misconduct of the Company or its employees, which occurs as a result of the disposal of Customer's Recyclables in a facility owned by the Company or a Waste Management company, provided that the Company's indemnification obligations will not apply to occurrences involving Excluded Materials. To the extent allowed by law, Customer agrees to indemnify, defend and save the Company, its parent, subsidiaries, corporate affiliates and their joint venture partners, harmless from and against any and all liability which the Company may be responsible for or pay out as a result of bodily injuries (including death), property damage, or any violation or alleged violation of law to the extent caused by Customer's breach of this Agreement or by any negligent act or omission or willful misconduct of the Customer or its employees, elected and appointed officials, agents or contractors.. To the full extent permitted by law, no official, employee, agent, or representative of the municipality participating in this Agreement shall be individually or personally liable on any obligation of the municipality under this Agreement. Neither party shall be liable to the other for consequential, incidental or punitive damages arising out of the performance or breach of this Agreement.

8. REMEDIES AND WAIVER:

A party's remedies hereunder are not exclusive and are in addition to any other remedies at law or in equity. A party shall not be deemed to waive any remedy available to it or any right under this Agreement, at law or in equity, by virtue of any act or forbearance in enforcing such rights or remedies.

9. CLASS ACTION WAIVER. Customer and Company agree that under no circumstances, whether in arbitration or otherwise, may Customer bring any claim against the Company, or allow any claim that the Customer may have against the Company to be asserted, as part of a class action, on a consolidated or representative basis or otherwise aggregated with claims brought by, or on behalf of, any other entity or person, including other customers of the Company.

10. FEES, COSTS AND TAXES:

Customer shall pay all license fees, assessments and sales, use and other taxes imposed as a result of this Agreement, excepting only taxes imposed on or measured by income of the Company.

11. RIGHT OF FIRST REFUSAL:

Customer grants to Company a right of first refusal to match any offer relating to services similar to those provided hereunder which Customer receives (or intends to make) upon termination of this Agreement for any reason and Customer shall give Company prompt written notice of any such offer and a reasonable opportunity to respond to it.

12. NOTICES:

Any notice to be given hereunder shall be sent certified mail or by a recognized National overnight carrier service to the address set forth above and in the case of Company a copy shall be sent to 1001 Fannin, Suite 4700, Houston, TX 77002, Attn: President and to 4600 N Port Washington Road, Milwaukee, WI, 53212, Attn: Law Department.

13. MISCELLANEOUS:

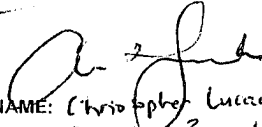
(a) Except for the obligation to make payments hereunder, neither party shall be in default for its failure to perform or delay in performance caused by events or significant threats of events beyond its reasonable control, whether or not foreseeable, including, but not limited to, strikes, labor trouble, riots, imposition of laws or governmental orders, fires, acts of war or terrorism, acts of God, and the inability to obtain equipment, and the affected party shall be excused from performance during the occurrence of such events; (b) This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns; (c) This Agreement represents the entire agreement between the parties and supersedes any and all other recycling services agreements for the Recyclables, whether written or oral, that may exist between the parties or its affiliates; (d) This Agreement shall be construed in accordance with the law of the state in which the services are provided; (e) If any provision of this Agreement is declared invalid or unenforceable, then such provision shall be severed from and shall not affect the remainder of this Agreement; however, the parties shall amend this Agreement to give effect, to the maximum extent allowed, to the intent and meaning of the severed provision; and (f) In the event Company successfully enforces its rights against Customer hereunder, the Customer shall be required to pay Company's attorneys' fees and court costs.

BY SIGNING BELOW, EACH SIGNATOR WARRANTS THAT HE OR SHE IS AUTHORIZED TO ENTER INTO A BINDING AGREEMENT ON BEHALF OF THE PARTY SET FORTH.

Dated as of the date first above written.

WM RECYCLE AMERICA, L.L.C

BY: 
PRINT NAME: JUSTIN MAKUC
TITLE: Select Board Chair

BY: 
PRINT NAME: Christopher Lucavette
TITLE: Area Director, Recycling Ops