

RECYCLING SERVICES AGREEMENT SINGLE STREAM BLENDED VALUE

THIS RECYCLING SERVICES AGREEMENT ("Agreement") is made as of _____, by and between WM RECYCLE AMERICA, L.L.C. ("WM"), a Delaware limited liability company with an office located at 222 S. Mill Avenue, Suite 333, Tempe, AZ 85281, and City of Glendale, Arizona ("City").

1. **TERM:** The term of the Agreement shall be for a period of one (1) year, commencing _____. The Agreement may renew for up to four (4) additional one (1) year terms, upon mutual written agreement by the parties. Either party may terminate this Agreement for any reason with 90 days' written notice to the other party.

2. **QUANTITY AND QUALITY:**

- a. During the term of the Agreement, WM shall take, and City agrees to deliver or make available a minimum of 600 tons per month of City Single Stream Materials; any amount over 600 tons may be accepted at WM's discretion.
- b. City Single Stream Materials means materials collected by or on behalf of City from residential and commercial customers, including both Recyclables and Non-Recyclables, as defined in Exhibit A. City will provide the Single Stream Materials in accordance with Exhibit A ("Specifications"). Single Stream Materials specifically exclude, and City agrees to use commercially reasonable efforts to not 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 WM's property, its personnel or the public or materially impair the strength or the durability of WM'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 WM (collectively, "Excluded Materials"). For purposes of the previous sentence, the City would fulfill its obligation to exercise "commercially reasonable efforts" by doing the following on at least an annual basis (i) notifying residents that only Recyclables may be placed in Single Stream Materials containers, (ii) training collection drivers on how to identify and not collect Excluded Materials, and (iii) performing an audit of a representative sample of residential Single Stream Materials containers to identify the existence of Excluded Materials, and notifying

residents when such materials are identified. Nothing in this Agreement requires the City to process, sort, separate or otherwise guarantee that any Single Stream Material provided by the City meets the Specifications contained in Exhibit A and/or contains only Recyclables and not Non-Recyclables and Excluded Materials. The Parties recognize that although the City can direct its customers not to place Non-Recyclable or Excluding Materials into their receptacles, the City has no control over the individual customer's practices and actions. However, title to and liability for Excluded Materials, including but not limited to damage caused by Excluded Materials, shall remain with City at all times. Title to Single Stream Materials provided by City to WM is transferred to WM upon WM's receipt or collection unless otherwise provided in this Agreement or applicable law.

- c. WM reserves the right at its sole discretion, and upon adequate notice to City, 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. Discontinued acceptance of any category of Recyclable material will occur upon a one (1) year written notice to City. Any category of Recyclable subsequently deemed Non-Recyclable will not count towards the 40% or less acceptable "contamination" threshold provided in Exhibit A during the one-year phase out period.

3. **RECYCLABLE VALUE:** The value of the Single Stream Materials meeting the Specifications shall be as set forth on Exhibit B. The initial composition will be as set forth on Exhibit B. WM may perform quarterly composition studies to determine the percentage of each commodity in City's Single Stream Materials and Exhibit B will be deemed adjusted accordingly.

4. **PAYMENTS; CHARGES; ADJUSTMENTS:**

- a. Upon receipt of an invoice, City shall pay for the services furnished by WM in accordance with this Agreement, as such charges may be adjusted over the term of this Agreement as noted herein (the "**Charges**"). State and local taxes, if applicable, will also be added.
- b. WM shall pay City for amounts owed pursuant to Exhibit B on or about the last day of the following month.
- c. WM reserves the right to increase the Charges payable by City (i.e., Processing Fee, Transfer Station Fee and Contamination Charges) or reduce the rebate to City during the term only upon providing 90-day written notice to the City. Such notice shall include an explanation of the increase with supporting calculations. The City may cancel this Agreement during that 90-period, before any such increase is imposed. In the event WM adjusts the

Charges as provided in this Section, City and WM agree that this Agreement as so adjusted will continue in full force and effect for the remaining term.

- d. Any City invoice balance not paid within thirty (30) days of the date of invoice is subject to a late fee of 1.5% per month. In the event that payment is not made when due, WM 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, WM may terminate this Agreement for such default and recover any equipment and containers.
5. **SERVICE:** City shall deliver Single Stream Materials, at City's expense, to the following WM facilities: Northwest Regional MRF, located at 19401 W Deer Valley Rd, Surprise, AZ 85387; White Tank Transfer Station, located at 18605 West McDowell Road, Goodyear, AZ 85338; or Deer Valley Transfer Station, located at 22200 N. 21st Avenue, Phoenix, AZ 85027 (each a "**Facility**" and collectively the "**Facilities**"). City deliveries shall be during the following hours: Monday – Friday, 5:30 a.m. – 5:00 p.m., excluding City observed holidays. If a City observed holiday occurs on a Monday - Friday, City may deliver Single Stream Materials the following Saturday between 5:30 a.m. and 5:00 p.m. All Single Stream Materials must be delivered in self-dumping trucks or tipper trailers and will be weighed in and out by WM at the Facility.
6. **OMITTED**
7. **DEFAULT:**
- a. **CITY DEFAULT:** Notwithstanding the term of this Agreement set forth in paragraph one (1) above, if the City fails to perform any of its obligations under this Agreement, which failure is not cured within thirty (30) days after written notice from WM, WM may, at its option, may terminate this Agreement, upon written notice.
 - b. **CITY CANCELLATION:** The City reserves the right to cancel the whole or any part of the contract due to failure of WM to carry out any term, promise, or condition of the contract. The City will issue a written ten (10) day notice of default to WM for acting or failing to act as in any of the following:
 - i. WM provides personnel that do not meet the requirements of the contract.
 - ii. WM fails to perform adequately the services required in the contract.
 - iii. WM attempts to impose on the City products which are of an unacceptable quality.
 - iv. WM fails to furnish or finish the required product and/or service within the time stipulated in the contract.

- v. WM fails to make progress in the performance of the requirements of the contract and/or gives the City a positive indication that WM will not or cannot perform to the requirements of the contract.

If WM does not correct the above problem(s) within ten (10) days after receiving the notice of default, the City may resort to any single or combination of the following remedies:

- i. Cancel the contract;
- ii. Reserve all rights or claims to damage for breach of any covenants of the contract;
- iii. Perform any test or analysis on materials for compliance with the specifications of the contract. If the results of any test or analysis find a material non-compliant with the specifications, the actual expense of testing shall be borne by WM;
- iv. In case of default, the City reserves the right to purchase materials or to complete the required work in accordance with the City Procurement Code. The City may recover any actual excess costs from the WM by:
 - 1. Deduction from an unpaid balance;
 - 2. Any combination of the above or any other remedies as provided by law.

8. **INDEMNIFICATION/LIMIT OF LIABILITY:** WM agrees to indemnify, defend and save City, its parent, subsidiaries, and corporate affiliates, harmless from and against any and all liability which City 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 WM or its employees, agents or contractors. City agrees to indemnify, defend and save WM, its parent, subsidiaries, corporate affiliates and their joint venture partners, harmless from and against any and all liability which WM 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 City's breach of this Agreement or by any negligent act or omission or willful misconduct of the City or its employees, agents or contractors. Neither party shall be liable to the other for consequential, incidental or punitive damages arising out of the performance or breach of this Agreement.

9. **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.

10. **FEES, COSTS AND TAXES:** City 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 WM.

11. **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.

12. **COOPERATIVE USE CONTRACT.** This agreement may be extended for use by other governmental agencies and political subdivisions of the State. Any such usage by other entities must be in accord with the ordinances, charter, rules and regulations of the respective entity and the approval of WM and City. For a list of SAVE members, click on the following link:
<http://www.mesaaz.gov/business/purchasing/save>

13. **RIGHT TO INSPECT:** The City reserves the right to inspect WM's recyclables processing facility during normal operating hours and upon presentation of City-issued identification to include an inspection of records associated with the receipt and sale of recyclable materials received pursuant to this Agreement.

14. **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 ("**Uncontrollable Circumstances**"), 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 Single Stream Materials, 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 may 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 a party successfully enforces its rights against the other hereunder, the non-prevailing shall be required to pay the prevailing party's reasonable attorneys' fees and court costs.

15. Approval of Glendale City Council. The Parties recognize that the approval of this Agreement is conditioned on the Glendale City Council's authorization of its terms and the appropriation of adequate funding. To the extent the payments required hereunder may occur after the close of the Glendale's fiscal year, which ends on June 30, Glendale's payment obligation may be subject to the approval of a City of Glendale budget containing this Agreement as an expenditure therein. Glendale does not guarantee that the budget item will be actually adopted, and the appropriation actually made, as this is a legislative act of the City Council that cannot be pre-determined. If the Council does not approve this Agreement, the Parties acknowledge that the Agreement shall become null and void.

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.

CITY OF GLENDALE, AZ

By:  _____

By: _____

Print Name: Kenneth Martin

Print Name: _____

Title: Dir of Revenue Mgt.

Title: _____

EXHIBIT A
SINGLE STREAM MATERIALS SPECIFICATIONS

RECYCLABLES must be dry, loose (not bagged) and include **ONLY** the following:

Aluminum cans - empty	Newspaper
PET bottles with the symbol #1 – with screw tops only - empty	Mail
HDPE plastic bottles with the symbol #2 (milk, water bottles detergent, and shampoo bottles, etc.) – empty	Uncoated paperboard (ex. cereal boxes; food and snack boxes)
Plastics with the symbol #4 (LDPE) or #5 (PP)	Uncoated printing, writing and office paper
Steel and tin cans – empty	Old corrugated containers/cardboard (uncoated)
Glass food and beverage containers – brown, clear, or green – empty*	Magazines, glossy inserts and pamphlets

NON-RECYCLABLES include, but are not limited to the following:

Plastic bags and bagged materials (even if containing Recyclables)	Microwavable trays
Mirrors	Window or auto glass
Light bulbs	Coated cardboard
Porcelain and ceramics	Plastics not listed above including but not limited to those with symbols #3, #6, #7 and unnumbered
Expanded polystyrene	Coat hangers
Glass and metal cookware/bakeware	Household appliances and electronics,
Hoses, cords, wires	Yard waste, construction debris, and wood
Flexible plastic or film packaging and multi-laminated materials	Needles, syringes, IV bags or other medical supplies
Food waste and liquids, containers containing such items	Textiles, cloth, or any fabric (bedding, pillows, sheets, etc.)
Excluded Materials or containers which contained Excluded Materials	Napkins, paper towels, tissue, paper plates, paper cups, and plastic utensils
Any paper Recyclable materials or pieces of paper Recyclables less than 4" in size in any dimension	Propane tanks, batteries
Cartons	Aseptic Containers

DELIVERY SPECIFICATIONS:

Single Stream Materials delivered by or on behalf of City may not contain more than 40% Non-Recyclables or any Excluded Materials. In the event the Single Stream Material contain up to 40% Non-Recyclables, WM will not be entitled to seek, assess or collect any additional charges or fees under this Agreement, except in the case of Excluded Materials.

WM may reject in whole or in part, or may process, in its sole discretion, Single Stream Materials not meeting the specifications, including wet materials and loads with more than 40% contamination. In the event WM rejects a load of Single Stream Materials because it does not meet these specifications, City shall pay WM for the actual costs and expenses incurred to return or properly dispose of such non-conforming Single Stream Materials, including costs for handling, processing, transporting and/or disposing of such non-conforming Single Stream Materials. The cost for rejected loads will be \$150 per ton (adjusted by CPI), assuming such material does not contain Excluded Materials (in which case City shall pay WM for the actual costs and expenses incurred by WM).

EXHIBIT B

PRICING

1. VALUE SHARE

Where the Blended Value is greater than the Processing Fee, City's value share is 60% of the difference between the Blended Value and the Processing Fee, and Transfer Station Fees (if applicable). When the Blended Value is less than the Processing Fee, City shall pay WM the difference between the Processing Fee and the Blended Value, plus the Transfer Station Fee (if applicable). See examples in Section 4 regarding how the calculation will be done.

2. BLENDED VALUE

To calculate the Blended Value per ton of Single Stream Materials,

(a) The percentage of each Recyclable and Non-Recyclable component set forth below contained in the City's Single Stream Materials, as established and revised by quarterly audits, is multiplied by the current value of each commodity set forth below; and

(b) Each commodity value per ton is added together to obtain the Blended Value per ton.

City acknowledges that the value of a commodity may be negative.

Blended Value is calculated monthly.

- **"Pulp & Paper"** means the higher of the prices issued by *Fastmarket RISI PPI Pulp & Paper Week* for the Southwest Region as stated below, domestic price, 1st issue of the month retroactive to the first of the month.
- **"SMP"** means the average price published at www.SecondaryMaterialsPricing.com for the SMP Region as stated below, first dated price each month, retroactive to the first of the month.
- If Pulp & Paper or SMP (or both) is no longer reflective of prevailing market conditions or if an alternative publication more accurately reflects such market conditions, then WM may substitute such alternative publication(s) or alternate method to determine the value of each commodity set forth below.
- **"Actual Value"** means the average price, as established as of the 15th of each month, to be paid to or charged to the processing facility during the month of delivery of the recyclables less any freight, customs charges, duties, or other charges paid to third parties for the sale of such Recyclables.
- **"Transportation and Disposal"** means the charge for transporting residue from the processing facility per ton in the month of delivery and disposal costs.

The initial composition, and hypothetical pricing, is set forth below. WM will perform composition studies on a quarterly basis to determine the cumulative percentage (based on 8 audits) of each commodity in City's Single Stream Materials and this Exhibit B will be deemed adjusted accordingly.

Material Grade	Publication	Market		Determination of Value	Price	Percentage	Value
Sorted Residential Papers and News*	Pulp & Paper (OBM)	Southwest	Avg	Resi Fiber # 56	\$100.00	8.4%	\$8.43
Old Corrugated Cardboard*	Pulp & Paper (OBM)	Southwest	Avg	OCC # 11	\$165.00	26.3%	\$43.48
Mixed Paper*	Pulp & Paper (OBM)	Southwest	Avg	Mixed Paper # 54	\$87.50	17.0%	\$14.84
HDPE Natural Bottles (Plastic #2)*	Recyclingmarkets.net (SMP)	Pacific NW	Avg	Natural HDPE	\$1,100.00	1.3%	\$14.35
HDPE Color Bottles (Plastic #2)*	Recyclingmarkets.net (SMP)	Pacific NW	Avg	Colored HDPE	\$430.00	1.3%	\$5.68
PET Bottles (Plastic #1)*	Recyclingmarkets.net (SMP)	PNW/Houston	Avg	PET	\$260.00	4.9%	\$12.81
Steel and tin beverage and product containers	Recyclingmarkets.net (SMP)	PNW/Houston**	Avg	Steel cans	\$200.00	1.1%	\$2.28
Post-Consumer Aluminum Can Scrap*	Recyclingmarkets.net (SMP)	Pacific NW	Avg	Aluminum cans	\$1,430.00	1.9%	\$27.48
LDPE #4, PP #5*	Recyclingmarkets.net (SMP)	Pacific NW	Avg	Polypropylene	\$230.00	0.7%	\$1.54
Other plastic				Transportation and disposal	(\$42.46)	1.5%	(\$0.64)
MRF Glass (3-color mixed container glass)*				Actual value	(\$5.08)	4.5%	(\$0.23)
Other materials / Residue				Transportation and disposal	(\$42.46)	<u>30.9%</u>	<u>(\$13.14)</u>

						100.0%	\$116.88
* ISRI Scrap Specifications Circular 2021							
** Used actual price for month							

- (1) Percentage allocation will be adjusted on a quarterly basis to reflect cumulative results of eight (8) audits.
- (2) Monthly prices and rebate will be adjusted on a monthly basis.
- (3) Non-Recyclables will be based on WM's then-current transportation and disposal charges.

Notwithstanding anything to the contrary contained herein, if WM determines prior to the 15th of the month, that the anticipated Actual Value for any commodity will be more than 5% lower than the index published for such commodity that month, due to market conditions, WM may substitute the anticipated Actual Value as established on or about the 15th of the month for the index value that month.

By way of example:

The PPW published price for OCC#11 for November is \$130.00 per ton. On or about the 15th of November, WM determines that its anticipated Actual Value due to market conditions will be \$110.00 per ton. In calculating the Blended Value, \$110.00 per ton will be used to determine the commodity value for OCC#11 for that month.

3. CHARGES

- Processing Fee: The Processing Fee is \$103.21 per delivered ton.
- Transfer Station Fee: City shall pay a Transfer Station Fee of \$41.17 for each ton of Single Stream Materials delivered to the White Tank Transfer Station or Deer Valley Transfer Station.
- CPI Adjustment. WM has the right to adjust the Processing Fee, Transfer Station Fee and Contamination Fees on January 1, 2023 and on each anniversary of such date ("Anniversary Date"). Such CPI adjustment shall be effective on such Anniversary Date and shall be recalculated and effective each Anniversary Date thereafter. The CPI adjustments shall be based on the percentage increase in the CPI for the twelve (12) month period ending two months prior to the Anniversary Date. "CPI" means the Consumer Price Index-All Urban Consumers (CPI-U), Water, Sewer, and Trash Collection (WST), (Not Seasonally Adjusted, 12-month rolling average) as published by the United States Department of Labor, Bureau of Labor Statistics (1982-1984=100). In the event this CPI is no longer viable or no longer reflective of consumer prices in City's geographic region, another consumer pricing index or method of adjustment may be used as a replacement for the CPI, upon the mutual agreement of the parties.

4. EXAMPLES

EXAMPLE #1

- Processing Fee is \$103.21 per ton
- Blended Value is \$100.00 per ton
- 100 tons delivered
- Blended Value for all tons = 100 tons x \$100.00 = \$10,000
- Processing Fee for all tons = 100 x \$103.21 = \$10,321
- \$10,000 - \$10,321 = (\$321)
- City owes WM \$321

EXAMPLE #2

- Processing Fee is \$103.21 per ton
- Blended Value is \$150.00 per ton
- 100 tons delivered
- Blended Value for all tons = 100 tons x \$150.00 = \$15,000
- Processing Fee for all tons = 100 x \$103.21 = \$10,321
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- \$15,000.00 - \$10,321 = \$4,679 available commodity value
- \$4,679 x 60% = \$2,807.40 (City base rebate)
- WM owes City \$2,807.40