

RECYCLING AGREEMENT

This RECYCLING AGREEMENT (“Agreement”) is made and entered into as of September 1, 2018 (the “Effective Date”), by and between Waste Management of Washington, Inc., a Washington corporation (“WM”) and the City of Sedro-Woolley, a municipality (“City”). WM and City may be referred to herein collectively as the Parties and individually as a Party.

RECITALS

- A. WM owns and operates Waste Management of Skagit located at 12122 Bay Ridge Dr., Burlington, WA 98230.
- B. Sedro Woolley collects Recyclables from residential premises within the City.
- C. City and WM desire to enter into this Agreement to provide for the receipt, processing, and marketing of Recyclables, and the disposal of residue, on behalf of the City.

AGREEMENT

In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the Parties, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS. As used in this Agreement, the following terms shall have the following meanings:

1.1 “Base Rate” means the initial per ton fee to be paid by City to WM as compensation for Recyclables delivered to the WM Facility, which fee may be adjusted pursuant to Section 3.

1.2 “Equipment” means any and all containers, tractors, trailers, motor vehicles, cranes, top pickers and other equipment utilized by City and/or WM for the collection, transportation, handling, processing, disposal, and disposal of Recyclables pursuant to this Agreement.

1.3 “Excluded Materials” mean radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, bio-hazardous or toxic substance or material, or regulated medical or hazardous waste as defined by, characterized or listed under applicable federal, state, or local laws or regulations, 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, and/or any other waste not approved in writing by WM. Furthermore, deliveries of materials which contain materials not included in the list of Recyclables in Exhibit A shall be deemed Excluded Materials.

1.4 “Recyclables” mean the materials described as such in Exhibit A attached hereto.

1.5 “Uncontrollable Circumstances” mean acts of God, including landslides, lightning, storms, floods, freezing, and earthquakes; forest fires; civil disturbances; strikes, lockouts or other industrial disturbances; acts of the public enemy; wars; blockades; public riots; breakage; explosions; accident to machinery, pipelines or materials; power failure; governmental restraint; damage to or destruction of the WM Facility as a result of events such as those described herein; or other causes, whether of the kind enumerated or otherwise, which are not reasonably within the control of the Party whose ability to perform under this Agreement is impaired or prevented by the Uncontrollable Circumstances event.

2. DELIVERY AND ACCEPTANCE OF RECYCLABLES.

2.1 Beginning on the Effective Date, and throughout the term of this Agreement and any extension hereof, City shall deliver to the WM Facility commingled Recyclables collected from its residential curbside recycling program and commercial customers, as well as other Recyclables agreed upon by the City and WM.

2.2 Beginning on the Effective Date and throughout the term of this Agreement, WM shall, subject to volume and permit limitations, accept at the WM Facility all Recyclables received, collected, handled, transported and/or processed by City and required to be delivered pursuant to this Section 2. WM shall recycle the Recyclables for reuse and, provided that there is a commercially reasonable available market for such material, shall not dispose of any Recyclables, except such residue left after appropriate processing of the Recyclables. Company makes no representations as to the recyclability of the Recyclables and may dispose of such Recyclables when no reasonable commercial market exists or if delivered materials contain any non-Recyclables. In the event there is no commercially reasonable available market for one or more Recyclables, WM will notify the City via email regarding disposal.

2.3 City acknowledges that the WM Facility has strict daily tonnage limitations and that WM has commitments to other customers and the public which require the Parties to cooperate with each other and coordinate with other users of the WM Facility to work within such limits and maximize the use of available daily capacity.

3. WM COMPENSATION.

3.1 Base Rates. City shall pay WM \$157.95 per ton (the “Base Rate”) of Recyclables delivered to the WM Facility.

3.2 Annual Rate Adjustments. Commencing on September 1, 2019, and on the same date annually thereafter (the “Adjustment Date”), the Base Rate, as adjusted hereunder, shall be automatically increased by a percentage equal to the percent change in the average Consumer Price Index for All Urban Consumers: Water and sewer and trash collection services (“CPI”), as published by the Bureau of Labor Statistics, for the 12-month period ending nearest, but at least sixty (60) days prior to, the Adjustment Date. At least thirty (30) days prior to the Adjustment Date, WM shall notify the City of the CPI adjustment to take effect on the Adjustment Date and shall provide the City with its computations therefor. Adjustments to the Contractor’s service rates shall be made in units of one cent (\$0.01). Fractions less than one cent (\$0.01) shall not be considered when making adjustments.

3.3 Extraordinary Rate Adjustments. WM may increase the Base Rates every ninety (90) days to reflect WM’s actual increased costs or reduced revenue associated with performance of the services under this Agreement.

3.4 Contamination Surcharge. Once per year (or more frequently if WM identifies consistently higher levels of contamination since the last audit), WM will perform a composition audit of material delivered to the WM Facility under this Agreement. The composition audits will be performed pursuant to the protocol set forth in Exhibit B attached hereto. If a composition audit results in more than 2.5% contamination (i.e., non-Recyclable Materials), then there will be a contamination surcharge added to each monthly WM invoice. Said surcharge is in addition to any other adjustments to the Base Rate.

- (a) Subtract 5% from the actual contamination percentage identified in the composition audit (the “Percentage Differential”)
- (b) Multiply the Percentage Differential by the tons of Recyclables delivered during the applicable billing cycle
- (c) Multiply the result from (b) above by \$150.00
- (d) The result from (c) above will be the contamination surcharge added to the applicable WM invoice.

The following is an example where actual contamination identified in a composition audit is 10% and there was 100 tons delivered in the previous month.

- (a) $10\% - 5\% = 5\%$
- (b) $5\% \times 100 \text{ tons} = 5 \text{ tons}$

(c) 5 x \$150.00 = \$550.00 contamination surcharge

In this example, a \$550.00 contamination surcharge would be added to the WM invoice to the City.

3.5 Payment. On a monthly basis during the term of this Agreement, WM shall invoice the City for the actual tons of Recyclables delivered by or on behalf of the City during the preceding month. City shall pay the full amount of each invoice to WM within 30 days of the date of each invoice. City shall pay a late fee and service charge on all past due amounts accruing from the date of the invoice at a rate of twelve percent (12%) per annum, except WM shall not charge a late fee if paid within 30 days and the reason for late payment is due to City Council scheduling issues. WM may suspend performance hereunder due to non-payment of invoices.

4. EXCLUDED WASTE; INSPECTION, REJECTION. City shall not deliver any Excluded Materials to the WM Facility. WM shall have the right to inspect, analyze or test any waste delivered by City. WM shall have the right to reject, refuse or revoke acceptance of any waste if, in the opinion of WM, the waste or tender of delivery fails to conform to, or City fails to comply with, the terms of this Agreement, including the delivery of waste meeting the definition of Recyclables hereunder. In the event WM, by notice to City, rejects or revokes acceptance of waste hereunder, City shall, at its sole cost, immediately remove or arrange to have the rejected waste removed from WM's control or property. If the rejected waste is not removed within twenty-four (24) hours from receipt of notice, WM shall have the right and authority to handle and dispose of the rejected or Excluded Waste. City shall pay and/or reimburse WM for any and all costs, damages and/or fines incurred as a result of or relating to City's tender or delivery of Excluded Waste or other failure to comply or conform to this Agreement, including, without limitation, costs of inspection, testing, analysis, handling and disposal of Excluded Waste. Title to, ownership of and liability for Excluded Waste shall at all times remain with City.

5. COMPLIANCE WITH LAWS. City and WM shall fully comply with all federal, state and local statutes, regulations, permits, approvals and restrictions, any legal entitlement and any other rule, regulation, requirement, guideline, permit, action, determination or order of any governmental body having jurisdiction, that is/are applicable to this Agreement.

6. TERM OF AGREEMENT. Except as otherwise provided herein, the term of this Agreement shall commence on September 1, 2018 and expire August 31, 2021. Either Party may cancel the agreement at any time, giving the other Party 30 days' written notice.

7. LIMITED LICENSE TO ENTER. City and its agents, assignees and subcontractors shall have a limited license to enter the WM Facility for the sole purpose of off-loading Recyclables at an area designated, and in the manner directed, by WM. City shall, and shall ensure that its agents, assignees, and subcontractors, comply in all material respects with all

rules and regulations of the WM Facility, including those relating to the use and operation of the WM Facility and conduct of persons on the premises of the WM Facility, as the same may be amended by WM from time to time. WM may reject Recyclables, deny City or its agents, assignees and subcontractors entry to the WM Facility and/or terminate this Agreement, subject to Section 10 hereof, in the event of City's or its agents, assignees or subcontractors' failure to follow such rules and regulations.

8. **TIME OF DELIVERY.** City shall be entitled to deliver Recyclables to the WM Facility during normal business hours, which hours are subject to change from time to time as WM deems appropriate upon 30 days written notice to City.

9. **UNCONTROLLABLE CIRCUMSTANCES.** Provided that the requirements of this Section 9 are met, neither Party shall be considered in default in the performance of its obligations under this Agreement (not including the obligation to make payments on time) to the extent that such performance is prevented or impaired by the occurrence of Uncontrollable Circumstances. If, as a result of an event of Uncontrollable Circumstances, either Party is wholly or partially unable to meet its obligations under this Agreement, then it shall give the other Party prompt written notice of such event, describing it in reasonable detail. The obligations under this Agreement of the affected Party shall be suspended, other than for payment of monies due, but only with respect to the particular component of obligations affected by the event and only for the period during which the event of Uncontrollable Circumstances exists; provided, however, that WM shall have a reasonable time during which to assess the impacts caused by an event of Uncontrollable Circumstances and sole discretion to determine whether it will make repairs and resume all or part of the operations or whether it will terminate all operations at the WM Facility.

10. **TERMINATION; DEFAULT.** Either Party shall have the right to terminate this Agreement upon giving the other Party written notice if the other Party (i) fails to make any payment required hereunder, not disputed in good faith, within thirty (30) days after receiving notice of nonpayment from the non-defaulting Party, or (ii) materially breaches any of its representations and warranties set forth in Sections 11 or 12 below, or (iii) materially fails to comply with any federal, state or local laws, rules, orders or ordinances, or regulations that pertain to this Agreement, or (iv) breaches any other material obligation under this Agreement and fails to cure such breach within thirty (30) days after receiving written notice thereof from the non-breaching Party, provided, that, with regard to breaches identified in clauses (iii) or (iv) above, in the event the breaching Party shows good cause why it should be entitled to reasonable additional time to cure the breach, the non-breaching Party shall allow such reasonable additional time not to exceed ninety (90) days. In addition, WM shall have the right to terminate this Agreement upon ninety (90) days' written notice to City if the laws, regulations or orders of any governmental body having jurisdiction over WM prohibit WM from operating the WM Facility as contemplated in this Agreement.

11. **WARRANTIES OF CITY OF SEDRO-WOOLLEY.** City of Sedro Woolley warrants and represents that:

11.1 The materials delivered to the WM Facility from City's transfer station, collection vehicles or otherwise by City or its agents or subcontractors shall conform to the definition of Recyclables set forth in this Agreement and shall not contain any Excluded Materials;

11.2 City shall establish and maintain a program of operating and monitoring procedures for its transfer station(s), material recovery facility(ies) and any of its Recyclables collection activities to prevent the transportation or delivery to the WM Facility of Excluded Materials;

11.3 City possesses the Equipment, plant and employee or subcontractor resources required to meet its obligations required under this Agreement, and the Equipment shall, at all times relevant to the performance of services hereunder, be maintained in a good and safe condition and fit for use;

11.4 City has advised its drivers and its transfer station operators of WM's prohibition on delivery of Excluded Materials and of the definition of Recyclables herein.

12. WARRANTIES OF WM. WM warrants and represents that:

12.1 It possesses the Equipment, plant and employee resources required to meet its obligations required under this Agreement, and the Equipment shall, at all times relevant to the performance of services hereunder, be maintained in a good and safe condition and fit for use;

12.2 The WM Facility has been issued, and WM will maintain throughout the term of this Agreement, all permits, licenses, certificates or approvals required by valid and applicable laws, ordinances and regulations necessary to allow the WM Facility to accept the Recyclables; and

12.3 It will handle the Recyclables in a safe and workmanlike manner in full compliance with all valid and applicable federal, state and local laws, ordinances, orders, rules and regulations.

13. INSURANCE. WM and City each warrant that it shall, and shall ensure that its agents, Affiliates and subcontractors, secure and maintain in full force and effect throughout the term of this Agreement insurance coverage for commercial general liability (bodily injury and property damage), automobile liability and workers' compensation insurance with limits that are required by appropriate regulatory agencies or the following limits, whichever are greater: commercial general liability, \$2,000,000 combined single limit per occurrence and aggregate; automobile liability, \$2,000,000 combined single limit per occurrence and aggregate; and, workers' compensation, statutory limit. The City shall be named an Additional Insured on the commercial General Liability and Auto Liability policies regarding activities by or on behalf of WM and shall provide the City with a certificate of said coverage annually.

14. INDEMNITY.

14.1 Indemnity. Each Party (“Indemnitor”) shall defend, indemnify and hold harmless the other Party, its affiliates, and their respective employees, officers, directors, agents and subcontractors (collectively, “Indemnitees”), from and against any and all liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, judgments and costs and expenses incidental thereto, including reasonable attorneys’ fees (collectively, “Damages”), which any or all of the Indemnitees may hereafter suffer, incur, be responsible for or pay out as a result of personal injuries, property damage, or contamination of or adverse effects on the environment, to the extent directly or indirectly caused by, or arising from or in connection with the breach of any representations and warranties of the Indemnitor set forth above, or any negligent actions or omissions of Indemnitor, its affiliates, employees, officers, directors, agents or subcontractors, in the performance of this Agreement. Such indemnity shall be limited to exclude Damages to the extent they arise as a result of any negligent actions or omissions of any of the Indemnitees. Notwithstanding the foregoing or anything else in this Agreement to the contrary, City shall be liable and shall defend, indemnify and hold harmless WM for Damages (including, but not limited to, reasonable investigation and legal expenses) arising from, related to or caused by the presence, handling or disposal of Excluded Materials delivered by City or its affiliates, its agents or subcontractors.

14.2 Notice, Defense. In the event of any suit against any Indemnitee under this Section 14, the Indemnitor shall appear and defend such suit provided that the Indemnitor is notified in a timely manner of the suit. The Indemnitee shall have the right to approve counsel chosen by the Indemnitor to litigate such suit which approval shall not be unreasonably withheld. In the event a dispute exists over whether a Party is entitled to indemnification, each Party shall defend itself until the dispute is resolved. Upon resolution of the indemnification dispute, the prevailing Party shall be entitled to indemnification for its defense costs incurred prior to resolution.

14.3 Insurance. The indemnification obligation hereunder shall arise only in excess of any available and collectible insurance proceeds and the Party indemnifying the other Party shall be liable hereunder to pay only its share of the amount of Damages, if any, that exceeds the total amount that all insurance has paid for the Damages, plus the total amount of all deductible and self-insured expenses paid under all insurance policies.

15. **BINDING EFFECT, ASSIGNMENT**. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors and assigns provided that the rights, obligations and duties of each Party as specified in this Agreement may not be transferred, assigned or otherwise vested in any other entity or person without the prior written approval of the other Party, which approval shall not be unreasonably withheld. For the purposes of this Section, a “successor” shall include but not be limited to any one acquiring all or

any material part of the assets of City or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, installment sale contract, leasehold interest, lease-option contract, or by sale assignment, or transfer of any beneficial interest in or to any material part of the assets of City, or by any other method of conveyance. In such event, City shall ensure that any such successor shall assume all of City's obligations under this Agreement with the consent of WM as provided herein. Notwithstanding the foregoing, WM may assign or transfer its rights and obligations hereunder to an affiliate of WM or a subsidiary of WM's parent company without seeking or obtaining the approval of City.

16. NOTICES. All notices required under this Agreement shall be personally delivered or mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight carrier, or confirmed facsimile to the Parties' addresses on the signature page hereto, or to such other address as either Party shall specify by written notice so given. Any notice sent by mail in the manner set forth above shall be deemed given and received three (3) business days after the date deposited in the United States mail. Any notice or communication given by personal delivery or sent by overnight carrier or confirmed facsimile in the manner set forth above shall be deemed given upon receipt.

17. INDEPENDENT CONTRACTOR. Each Party hereto is and shall perform this Agreement as an independent contractor, and as such, shall have and maintain complete control over all of its employees, agents, and operations. Neither Party nor anyone employed by it shall be, represent, act, purport to act or be deemed to be the agent, representative, employee or servant of the other Party.

18. NON-WAIVER. The failure of either Party to enforce its rights under any provision of this Agreement shall not be construed to be a waiver of such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other breach.

19. ENTIRE AGREEMENT; AMENDMENT. The Recitals are incorporated into and form a part of this Agreement. This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes any and all other communications, representations, proposals, understandings or agreements, either written or oral, between the parties hereto with respect to such subject matter. This Agreement may not be modified or amended, in whole or in part, except by a writing signed by both Parties hereto.

20. SEVERABILITY. If any provision of this Agreement is declared invalid or unenforceable, then such provision shall be deemed to be severed from this Agreement and shall not affect the remainder hereof, which shall remain in full force and effect; however, the Parties shall amend this Agreement to give effect, to the maximum extent allowed by law, to the intent and meaning of the severed provision.

21. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington regardless of any conflict of law provisions.

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

Waste Management of Washington, Inc.

City of Sedro-Woolley

By: _____
Jason Rose, President

By: _____
Julia Johnson, Mayor

Address for Notice:

Area Director, Public Sector Solutions
720 4th Avenue, Suite 400
Kirkland, WA 98033

Copy to: Legal Department
740 4th Avenue, Suite 400
Kirkland, WA 98033

ATTEST:

Doug Merriman, Finance Director

APPROVED AS TO FORM:

Eron Berg, City Attorney

Address for Notice:

325 Metcalf Street
Sedro-Woolley, WA 98284

EXHIBIT A
SPECIFICATIONS

RECYCLABLES shall be clean, dry, loose and not bagged.

21.1 CHINA SWORD WESTERN WA RECYCLING LIST

MATERIAL TYPE	DESCRIPTION	PREPARATION INSTRUCTIONS	EXCLUSIONS
Glass	<ul style="list-style-type: none"> • Food or beverage containers 	Remove lids; empty of all food or liquids. Labels do not need to be removed.	Leaded glass: windows, mirrors, baking dishes, storage dishes, ceramic, plates, glassware, storage/canning jars.
Paper	<ul style="list-style-type: none"> • Office paper, copy paper, construction paper • Newspaper and paper inserts • Magazines and paper inserts • Catalogs • Cardboard • Mail and paper inserts • Envelopes • Paper bags • Cereal, cookie and cracker boxes • Paper towel tubes • Toilet paper tubes • Tissue boxes • Non-foil wrapping paper • Kraft paper bags or boxes 	Remove plastic bags (exterior or interior), plastic packaging, metal, electronics, magnets, twine, straws, lids and any food or liquids. Must be dry. Plastic windows in paper envelopes okay.	Shredded paper; paper envelopes with bubble wrap liners, insulation liners or envelopes made from plastic (Tyvek); laminated paper, stickers, labels, photos, carbon paper, receipts, paper affixed to magnets; wax or poly-coated cups, cartons, or aseptic containers; pet food bags; mixed material bags; wet or soiled paper; paper with large amounts of paint or glue.
Cardboard	<ul style="list-style-type: none"> • Cardboard boxes • Cardboard packaging • Cardboard beverage 'flats' or nursery 'flats' 	Flatten all cardboard. Remove all interior packaging, block foam, packing	Waxed cardboard, wet cardboard

		peanuts and exterior plastic wrap. Do not bundle with tape or twine. External tape okay. Oversized cardboard can be placed next to card/container. Must be dry.	
Metal	<ul style="list-style-type: none"> • Tin, aluminum and steel food or beverage containers 	Remove all exterior packaging; remove lids; empty of all food or liquids. Labels do not need to be removed.	Aluminum foil and trays; sharp or greasy metal; batteries; propane tanks, microwaves; electrical cords; cell phones; car snow chains. Empty aerosol cans, Metal appliances
Plastic	<ul style="list-style-type: none"> • PET/PETE bottles (#1 plastic) • HDPE bottles/jugs (#2 plastic) • Dairy tubs, e.g. butter, yogurt, cottage cheese (#5 plastic) 	Plastic bottles with plastic screw-on lids are okay <u>if</u> lids are screwed back on, remove all other lids; remove straws; empty of all food, liquids or other debris. Labels do not need to be removed.	#3, #4, #6 & #7 plastics, plastic bags, plastic cups, plastic film; plastic bottles that contained HHW listed materials; deli, bakery and produce clamshell containers; loose lids – any size; plant trays; PVC; large rigid plastic (outdoor furniture, laundry baskets, swimming pools, toys, etc.); hoses; landscaping/sprinkler tubing.

EXHIBIT B

COMPOSITION AUDITS

“Composition Audits” of Recyclables will determine the percentage of each category of material found in the materials delivered by or on behalf of City. The protocol for conducting audits will consist of the following standards:

- a) WM will weigh each receptacle before the Composition Audit begins to establish an accurate tare weight for each receptacle before weighing each component sample. City’s drivers will be instructed by WM’s scale clerk and traffic controllers where to empty loads of Recyclables. After the vehicle empties the entire load onto the tip floor, a random sample will be selected from the pile, from which a minimum two-hundred (200) pound (approximately 3 cubic yards), random sample will be removed. Ten (10), two-hundred (200) pound, random samples of Recyclables (from different routes, different times of day, and different days of the week) will be segregated, sorted, and weighed (each, an “audit”). The samples will then be transported to the sorting area and hand sorted. Components will be sorted into bins and/or carts based on the material type and size, and each material will be weighed to the nearest tenth of a pound. After all samples have been collected, weighed, and recorded, composition and quantity estimates of the Recyclables are calculated and recorded. The results of the audits of such samples shall be averaged and used to calculate the inbound composition of the Recyclables.
- b) WM will notify City in advance of all prospective Composition Audit dates and times at least one (1) week prior to undertaking a Composition Audit. City may have a representative present at the Composition Audit.