

**PROFESSIONAL SERVICES AGREEMENT**  
for  
**Recycling Services**

THIS PROFESSIONAL SERVICES AGREEMENT (the “Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020 (the “Effective Date”), by and between the City of Laramie, located at 1167 N. 4<sup>th</sup> Street, Laramie, WY 82072 (“City”), and Waste Management of Colorado, Inc., located at 5395 Franklin Street, Denver, Colorado 80216 (“Contractor”).

RECITALS

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties as follows:

1. SCOPE OF WORK

The Contractor agrees to provide services in accordance with this Agreement and Exhibits A and B attached hereto and incorporated herein. The City will deliver all Recyclables (defined in Exhibit A) it receives or collects to the Franklin Street MRF at 5395 Franklin Street, Denver, CO 80216. The City agrees to participate in the Contractor’s “Up-Market Revenue Share” program as outlined in Exhibit B.

2. TIME OF PERFORMANCE

The work included in this Agreement will be performed from the Effective Date through December 31, 2022, with an option to extend the contract by one year, for up to two additional years, if both parties agree to the terms and conditions.

3. CONTRACTOR’S RESPONSIBILITY

In providing services under this Agreement, the Contractor shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. Upon notice to the Contractor and by mutual agreement between the parties, the Contractor will, without additional compensation, correct those services not meeting such a standard.

4. COMPLIANCE WITH LAWS

The Parties agree that they will perform their obligations as provided in this Agreement in accordance with all applicable laws and ordinances.

5. INDEMNIFICATION/HOLD HARMLESS

The Contractor agrees to indemnify, hold harmless and defend the City from and against any and all liabilities, claims, penalties, forfeitures and suits, and the cost and expenses incident thereto, including reasonable attorney’s fees, which may hereafter arise as a result of death or bodily injury to any person, destruction or damage to any property,

contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders to the extent caused by (1) the Contractor's breach of any term or provision of this Agreement; or (2) any negligent or wrongful act, error or omission by the Contractor, or its employees or sub-contractors in the performance of this Agreement. The Contractor acknowledges that it may incur a financial obligation to the City pursuant to the terms of this paragraph.

6. INSURANCE REQUIREMENTS

The Contractor must provide proof of the following insurance coverages:

**Commercial General Liability Insurance**

For claims arising out of bodily injury, illness or death, or from damage to or destruction of property of others, including loss or use thereof, with minimum limits of \$1,000,000 per occurrence, \$2,000,000 aggregate for the entire term of the Agreement.

**Business Automobile Insurance**

Including owned, non-owned and hired vehicles with minimum limits for bodily injury and property damage of \$1,000,000 per accident for the entire term of the Agreement.

**Workers' Compensation**

Workers' compensation coverage shall be in effect for the entire term of the Agreement, as required by Wyoming law, for all employees or agents providing services under this Agreement. Contractor shall provide the City with proof of workers' compensation or employer's liability insurance coverage.

**Additional Insurance Information**

The Contractor shall name the City of Laramie as an Additional Insured by endorsement on its insurance policies and shall provide the City with a copy of the endorsements. This requirement does not apply to workers' compensation, employer's liability and professional liability insurance policies.

Contractor shall provide the City with certificates of insurance acknowledging the above-stated coverages prior to beginning any work under this Agreement.

It is understood and agreed that these policies are primary and not contributory. All policies required under this Agreement shall be in effect for the duration of the Agreement. It shall be an affirmative obligation upon Contractor to immediately notify in writing the city risk manager, city clerk, and city attorney of any fact, circumstance, or occurrence that has resulted in or may result in the cancellation of, or substantive change to any insurance coverage required by this Agreement, and failure to do so shall be construed to be a breach of this Agreement.

If requested by the City, the Contractor shall provide the City with copies of endorsements listing the City as an additional insured. The City's failure to request or review such policies, endorsements, or certificates shall not affect the City's rights or Contractor's obligation hereunder.

Any insurance company providing coverage under this Agreement shall have a minimum A. M. Best rating of A- (excellent).

7. MINORITY AND DISADVANTAGED BUSINESS ENTERPRISES 49 C.F.R. Part 26  
All parties to this Agreement assure that no person will be excluded from participation in, denied the benefits of, or otherwise discriminated against, in connection with the award and performance of this Agreement on the grounds of age, race, color, disability, national origin or sex.
8. COMPENSATION  
In consideration of the services to be performed pursuant to this Agreement, the Contractor will bill the City and the City agrees to pay Contractor as shown in Exhibit B. Exhibit B states the “Processing Fee” is \$95.00 per ton. The Contractor has the right to adjust the Processing Fee on January 1, 2021, and on each anniversary of such date, by the percentage increase in the average CPI for the twelve-month period ending the previous October and as otherwise provided in Exhibits A and B.
9. MONTHLY INVOICING  
With every monthly billing, Contractor shall provide the City Representative with a written statement. Failure to provide the required monthly statement will delay processing of any payment request until the statement is submitted.
10. INDEPENDENT CONTRACTOR  
The Contractor shall function as an independent contractor for the purposes of this Agreement. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Agreement. Nothing in this Agreement shall be interpreted as authorizing the Contractor or its agents or employees to act as an agent or representative of or on behalf of the City or to incur any obligation of any kind on the behalf of the City.
11. TAXES  
The Contractor agrees to pay all valid taxes, excises, license fees, permit fees, bills, debts and obligations incurred by and in connection with its operations under this Agreement.
12. DEFAULT  
Each and every term and condition in this Agreement shall be deemed to be a material element of the Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default.
13. REMEDIES  
In the event a party has been declared in default, such defaulting party shall be allowed a period of fifteen (15) days within which to cure the default. In the event the default remains uncorrected, the non-defaulting party declaring default may elect to:
- a. Terminate the Agreement and seek damages, which damages shall not exceed the contract amount; or
  - b. Treat the Agreement as continuing and require specific performance.
14. TERM AND TERMINATION

This Agreement shall be for a period of twelve (12) months. The parties may by mutual written agreement renew or extend this Agreement.

15. ADDITIONAL REMEDIES

In the event the Contractor fails to strictly perform in accordance with this Agreement, the City may elect to correct the deficiencies and charge the Contractor. In the event of default of any of the conditions by either party which shall require the party not in default to commence legal or equitable action against the defaulting party each party shall bear its own costs and expenses, including without limitation, attorney's fees.

16. GOVERNING LAW, JURISDICTION AND VENUE

The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The courts of the State of Wyoming shall have jurisdiction over any action arising out of this Agreement and over the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.

17. GOVERNMENTAL IMMUNITY

The City, along with its officials and employees, does not waive its governmental immunity by entering into this Agreement, except to the extent necessary for the parties to pursue a contract action to clarify or enforce the written terms of the Agreement. Furthermore, the City specifically retain all immunities and defenses available to it as a sovereign or governmental entity pursuant to Wyo. Stat. § 1-39-101, *et seq.*, and all other relevant state and federal law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of governmental immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to governmental or sovereign immunity shall be construed in favor of governmental immunity.

18. MONITORING ACTIVITIES

The City shall have the right to monitor all activities related to this Agreement that are performed by the Contractor or its sub-contractors. This shall include, but not be limited to, the right to make site inspections at any time and with reasonable notice; to bring experts and consultants on site to examine or evaluate completed work or work in progress; to examine the books, ledgers, documents, papers, and records pertinent to this Agreement; and to observe personnel in every phase of performance of the related work.

19. NON-DISCRIMINATION

The Contractor shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105, *et seq.*), the Americans With Disabilities Act (ADA), as amended, 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto, and shall not discriminate against any individual on the grounds of age, sex, creed, color, race, religion, national origin, ancestry, pregnancy or qualifying disability in connection with the performance under this Agreement.

21. ENTIRETY OF AGREEMENT

This Agreement and Exhibits A and B contain the entire understanding of the parties. There are no other terms or conditions, written or oral, concerning or controlling this matter.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

City of Laramie

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Waste Management of Colorado, Inc.

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**TERMS AND CONDITIONS OF RECYCLING SERVICES**

Recycling services to be provided by Waste Management of Colorado, Inc. (“Contractor”) to the City of Laramie (“City”) shall be subject to the following terms and conditions:

1. During the term of the Agreement, Contractor shall take and City agrees to provide one hundred percent (100%) of City’s single stream recyclables (“Recyclables”). City will provide Recyclables in accordance with this Exhibit A (“Specifications”). Recyclables specifically exclude, and City 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 Contractor's property, its personnel or the public or materially impair the strength or the durability of the Contractor'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 Contractor (collectively, “Excluded Materials”). Title to and liability for Excluded Materials shall remain with City at all times. Title to Recyclables provided by City to Contractor is transferred to Contractor upon Contractor’s receipt or collection unless otherwise provided in this Agreement or applicable law. Contractor may reject in whole or in part, or may process, in its sole discretion, Recyclables not meeting the specifications, including wet materials, and City shall pay Contractor for all increased costs, losses and expenses incurred with respect to such non-conforming Recyclables including costs for handling, processing, transporting and/or disposing of such non-conforming Recyclable Materials which charges may include an amount for Contractor's operating or profit margin (collectively the “Cost”). Without limiting the foregoing, and City shall pay a contamination charge as set forth below for additional handling, processing, transporting and/or disposing of Non-Recyclables, Excluded Materials, and/or all or part of non-conforming loads and additional charges may be assessed for bulky items such as appliances, concrete, furniture, mattresses, tires, electronics, pallets, yard waste, propane tanks, etc. Contractor reserves the right upon notice 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. Collected Recyclables for which no commercially reasonable market exists may be landfilled at City’s Cost.

2. Where Recyclables contain non-recyclables, the following will apply:

- a.
- b. **Single Stream Recyclables:** All Excluded Materials shall be handled at City’s sole cost and expense. If a contaminated load is not rejected, all other non-recyclables shall be charged to City on a per ton charge as follows:

Contamination Percentage	Deduction Per Ton (See Rebate/Tip Fee Calculation -Exhibit B)
0-15%	\$0.00
More than 15.01% up to and including 20%	\$5.00
More than 20.01% up to and including 25%	\$10.00
More than 25.01% up to and including 35%	\$15.00
Greater than 30%	\$50.00

3. The following specifications shall apply to the Recyclables delivered to Contractor:

a.

b. Single Stream Recyclables: Single stream recyclables must be dry, loose (not bagged), unshredded, empty, and include ONLY the following:

Aluminum cans	Newspaper
PET bottles with the symbol #1 – with screw tops only	Mail
HDPE plastic bottles with the symbol #2 (milk, water bottles detergent, and shampoo bottles, etc.)	Uncoated paperboard (ex. cereal boxes; food and snack boxes)
Steel and tin cans	Uncoated printing, writing and office paper
Magazines, glossy inserts and pamphlets	Old corrugated containers/cardboard (uncoated)

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

Plastic bags and bagged materials (even if containing Recyclables)	Microwavable trays
Porcelain and ceramics	Mirrors, window or auto glass
Light bulbs	Coated cardboard
Soiled paper, including paper plates, cups and pizza boxes	Plastics not listed above including but not limited to those with symbols #3, #4, #5, #6, #7 and unnumbered plastics, including utensils
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, and paper cups

Any paper Recyclables or pieces of paper Recyclables less than 4” in size in any dimension, including shredded paper	Propane tanks, fuel cannisters
Batteries	Glass food and beverage containers – brown, clear, or green

Material delivered by or on behalf of City may not contain more than 15% Non-Recyclables or any Excluded Materials.

## **EXHIBIT B PRICING**

The City will be paid or charged for single-stream recyclables delivered to the Franklin St MRF based on the net value per market indexes as described in the following narrative.

**“Value Share”** refers to the sharing of the money with the City earned by Waste Management from the sale of your community’s recyclable materials pursuant to the Agreement. Monthly “Value Share” payments will be made by the 30<sup>th</sup> day following the applicable month for which Waste Management seeks or makes payment for the sale of recyclable materials for the City, if and when the Blended Value of recycled materials is greater than the Processing Fee, in which case the City’s Value Share will be 50 percent of the difference between the Blended Value and the Processing Fee, multiplied by the tons of Recyclable Materials processed in the previous month.

### **“Blended Value”**

The Blended Value per ton of the City’s recyclables will be calculated as follows:

- (a) The percentage of each Recyclable Material and Non-Recyclable Material (i.e., waste residue, herein called **“Residue”**) component set forth below contained in the City’s recyclables, as established and revised from time-to-time by audit, 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. The City acknowledges that the value of a commodity may be negative or zero. Blended Value is calculated monthly.

**“Net Value”** means the amount paid to the City by Waste Management, or paid to Waste Management by the City, after subtracting any charges owed by the City from the City’s Value Share. The City acknowledges that the Net Value may be negative and result in a tip fee to be paid to Waste Management.

Where the Net Value is positive, Waste Management will pay the City on or about the last day of the month following delivery for the City’s single stream materials purchased during the preceding month. Where the Net Value is negative, the City shall pay Waste Management within 30 days of receipt of invoice.

**“Pulp & Paper”** means the higher of the prices issued by *RISI PPI Pulp & Paper Week* for the PPW Region as stated below, domestic price, 1st issue of the month; the price shall be retroactive to the first of the month.

**“SMP”** means the average price published at [www.SecondaryMaterialsPricing.com](http://www.SecondaryMaterialsPricing.com) for the City’s geographic SMP Region, 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 Waste Management and the City may, by written stipulation, 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 10<sup>th</sup> 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 recyclable materials.

The following table is an example of how Blended Value is calculated. The **“Grade”** column is the grade of City’s recycled materials under the Agreement and sold on the recycled materials market; the next column **“October-19 Price (High)”** is the price for each recycled material per ton in the market for the material of that row at that date. The date will be changed for each month’s calculation to reflect the most recent figures available. The **“Percentage”** column is the percentage that the recycled material of that row constitutes of the total amount of recycled materials for average ton of recycled material. The **“Value”** column is the figure derived from multiplying the figure in the dated **“Price”** column by the figure in the Percentage column. The total at the bottom is the weighted value per ton of all of the City’s recyclables, in this case an average of \$33.36 per ton.

### Example City of Laramie Residential Single Stream Pricing

			October-19		
Publication	Market	Grade	Price (High)	Percentage	Value
Pulp & Paper (OBM)	Southwest/LA	Resi Fiber # 56	\$10	15.97%	\$1.60
Pulp & Paper (OBM)	Southwest/LA	OCC # 11	\$30	35.89%	\$10.77
Pulp & Paper (OBM)	Southwest/LA	Actual	Mixed Paper # 54	17.25%	(\$1.73)
Recyclingmarkets.net (SMP)	Houston/PNW	Mixed HDPE	\$220	3.24%	\$7.13
Recyclingmarkets.net (SMP)	Houston/PNW	PET	\$120	3.50%	\$4.20
Recyclingmarkets.net (SMP)	Houston	Steel/Tin	\$25	2.14%	\$0.54
Recyclingmarkets.net (SMP)	Houston/PNW	Aluminum	\$1,080	1.68%	\$18.16
		Plastic 3-7	(\$37)	2.58%	(\$0.96)
	Actual	3 mix Glass	(\$5)	0.70%	(\$0.03)
		Residue	(\$37)	17.04%	(\$6.31)
				100.00%	\$33.36

The index prices and rebate will be adjusted on a monthly basis.

If above indexes do not reasonably reflect actual market conditions, actual sales price for the grade may be utilized

The stream composition will be adjusted on a periodic basis.

#### Rebate/Tip Fee Calculation

	<u>To Franklin St</u>	
Material Sales Value	\$ 33.36	
Less base fee	\$ (95.00)	includes debaling fee
Available Commodity Value	\$ (61.64)	
Customer rebate % if positive	50.0%	
Customer Rebate/(Tip Fee) per Net Ton	\$ (61.64)	
Excess Contamination Charge	\$ (5.00)	
Total Customer Rebate/(Tip Fee) per Ton	\$ (66.64)	

- (1) Percentage allocation will be adjusted on a quarterly basis to reflect cumulative results of up to 12 audits performed in a manner and by a person agreeable to Waste Management and the City during the quarter. For the first month of this Agreement, the Value Share payment, if any, will be based on the audits that Waste Management previously conducted on the City's material, as reflected in the above table, and quarterly audits thereafter. The City may observe the audit process of its materials.
- (2) Prices and rebate/payment will be adjusted on a monthly basis, according to the applicable index in column two, or the Actual Value, as explained below.
- (3) Residue price will be based on Waste Management's current transportation and disposal costs.

Notwithstanding anything to the contrary contained herein, if Waste Management reasonably determines prior to the 10<sup>th</sup> of the month that the anticipated Actual Value for any commodity will be more than 5 percent lower than the index published for such commodity that month, due to market conditions, Waste Management may substitute the anticipated Actual Value as established on or about the 10<sup>th</sup> of the month for the index value that month. By way of example:

The PPW published price for OCC #11 for October is \$30.00 per ton. On or about the 10<sup>th</sup> of October, Waste Management determines that its anticipated Actual Value due to market conditions will be \$25.00 per ton. In calculating the Blended Value, \$25.00 per ton will be used to determine the commodity value for OCC #11 for that month.

**“Processing Fee”**

The initial Processing Fee is \$95.00 per ton of recyclable materials delivered on behalf of the City. Waste Management has the right to adjust the Processing Fee on January 1, 2021, and on each anniversary of such date (“**Anniversary Date**”), by the percentage increase in the average CPI for the twelve-month period ending the previous October. Such CPI adjustments will be effective on the Anniversary Date and will be recalculated and effective each Anniversary Date thereafter. “CPI” means the Consumer Price Index-All Urban Consumers (CPI-U), Water, Sewer, and Trash Collection (WST), (Not Seasonally Adjusted, 12-month rolling average). In the event the foregoing CPI index is no longer published, or if the parties agree that this no longer reflects consumer prices for trash collection in the City’s geographic region, another consumer pricing index or method of adjustment may be used as a replacement for the CPI. Failure by Waste Management to submit such CPI price adjustment shall not preclude the retroactive implementation of such adjustment as of the Anniversary Date for up to 90 days after the Anniversary Date.

Waste Management reserves the right to increase the Processing Fee during the term: (a) to cover any increases in our processing, recycling, storage and/or third-party transportation or any other transportation costs reasonably incurred by Waste Management; and (b) 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. Any increase in the Processing Fees above may include an amount for Waste Management’s operating or gross profit margin.

**“Other Charges”**

In addition to the monthly rebate or tip fee, Waste Management offers the following trailer rental and transportation rates. These rates will also be subject to the annual CPI adjustments referenced above.

Trailer rental	\$258.00 per trailer per month
Trailer transportation	\$880.00 per haul
Fuel surcharge/credit	Varies monthly as under current process. See example below.

**Fuel Surcharge.** The transportation fee set forth above is based on a published fuel price of \$3.00 per gallon for On-Highway Diesel Fuel (Rocky Mountain region). A fuel surcharge or discount will be added to or subtracted from the Base Hauling Fee on a per haul basis. The surcharge will increase or decrease by one cent (\$.01) per mile for every 5-cent increase or decrease in the price of diesel fuel above or below the threshold price of \$3.00 per gallon. Calculations shall be made the first day of each month based upon the United States Department of Energy price for weekly on-highway retail diesel prices for the Rocky Mountain Region for the previous Monday (or Tuesday if Monday is a Federal holiday). This price is located at <http://www.eia.gov/oog/info/wohdp/diesel.asp>. An illustration of the calculation is shown below:

Origin / Destination:	Laramie Landfill/WM Franklin Street MRF	
Threshold price per gallon		\$3.000
Fuel price as of 12/1/2014		\$3.727
Change:		+\$0.727
Fuel Surcharge or discount per mile (+\$0.727/5)		\$0.145
Origin / Destination Round trip Mileage		250 miles
Fuel Surcharge (Discount) per load	(250/mile x \$0.145/mile)	+\$36.25 per load