

Contract between
the Massachusetts Department of Environmental Protection,
the Contractor and a Dual Stream Designated Community

AGREEMENT made by and between the Commonwealth of Massachusetts, acting through its Department of Environmental Protection (hereinafter "DEP"), the _____ [name of Designated Community] (hereinafter "Designated Community"), and WM Recycle America, LLC (hereinafter "Contractor").

WHEREAS, the DEP has entered into the Commonwealth Contract with the Contractor pursuant to which the Contractor shall Receive and Process Program Recyclables from the Designated Community in accordance with the terms of that Commonwealth Contract and this Contract, and

WHEREAS, the Designated Community requires all residents to separate out Recyclable Materials from their waste, and whereas the Designated Community shall be entitled to deliver Program Recyclables to the Contractor in consideration of its fulfillment and ongoing satisfaction of certain duties and obligations specifically set forth herein; and

NOW, THEREFORE, the DEP, the Contractor and the Designated Community agree as follows:

Article 1. Definitions

For the purposes of this Contract, the following terms shall have the following meanings unless otherwise specifically stated herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of either the masculine or feminine gender shall include the other.

- 1.1. Applicable Law: Federal, State, or local law, ordinance, code, rule or regulation or other similar legislation which in any manner affects facility operations, employment, site conditions and all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.
- 1.2. Average Market Value or AMV: the value of Recovered Materials and Residue based on the average aggregate of published market indexes, actual prices and charges as set forth on Exhibit 1, such average being weighted by the composition of Recovered Materials and Residue. The AMV of Recovered Materials and Residue shall be calculated pursuant to Exhibit 1 of this Contract.
- 1.3. Commencement Date: The date when the Contractor begins accepting Program Recyclables, which is July 1, 2020.
- 1.4. Commonwealth: The Commonwealth of Massachusetts acting by and through the Department of Environmental Protection.
- 1.5. Commonwealth Contract: The agreement, including the Commonwealth Terms and Conditions and the Standard Contract Form, between the Commonwealth and the Contractor setting forth the terms and conditions concerning Contracted Services, together with all exhibits, amendments, and attachments to such agreement.

- 1.6. Contaminant(s) or Contamination: Materials which do not meet the definition of Program Recyclables and are collected along with Recyclables Materials. Contaminants are included in the weight of inbound Program Recyclables.
- 1.7. Contract Manager: The individual designated in writing by the Contractor to represent it in all matters relating to the implementation of the Contract.
- 1.8. Contract Officer: The individual designated in writing by the Commonwealth to represent it in all matters relating to the implementation of the Contract.
- 1.9. Contracted Services: All services provided by the Contractor under the terms of the Commonwealth Contract.
- 1.10. Contractor: The entity that is party to the Commonwealth Contract to provide the Contracted Services, whether that be a corporation, firm, individual, joint venture, or any combination thereof, and including any subcontractors thereof.
- 1.11. Day: A calendar day.
- 1.12. DEP: The Department of Environmental Protection established pursuant to Massachusetts General Laws, Chapter 21A, Section 4, or its successor agency.
- 1.13. Designated Community: A municipality, solid waste district or other public entity executing a Designated Community Contract with the Commonwealth and the Contractor, by which terms the municipality, district or other public entity is entitled to bring Program Recyclables to the Facility.
- 1.14. Designated Community Contract: The agreement between the Designated Community, Commonwealth, and the Contractor setting forth the terms and conditions for Contracted Services, together with all exhibits, amendments, and attachments to such agreement.
- 1.15. Designated Hauler: The entity identified by the Designated Community to transport and deliver Program Recyclables to the Receiving Facility on behalf of the Designated Community.
- 1.16. Dual Stream: A method of collecting and delivering Recyclable Material whereby Recyclable Containers and Recyclable Paper are kept separate.
- 1.17. Effective Date: The date as defined in the Commonwealth Contract.
- 1.18. Facility Manager: The individual(s) designated in writing by the Contractor to represent it in all matters relating to operation and management of the Receiving Facility and Processing Facility.
- 1.19. Hazardous Waste: Hazardous waste as defined or classified as a "hazardous substance," "toxic substance," "hazardous material," "hazardous waste," "hazardous pollutant," or "toxic pollutant," or otherwise denominated as hazardous, toxic, or a pollutant in: (A) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, as amended (CERCLA); (B) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as amended ("RCRA"); (C) the Massachusetts Hazardous Waste Management Act, Massachusetts General Laws Chapter 21C, as amended ("Chapter 21C"); (D) the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Massachusetts General Laws Chapter 21E, as amended ("Chapter 21E"); (E) any other federal, state, or local law or ordinance addressing the protection of human health, safety, welfare, or the environment, as amended or

(F) regulations promulgated pursuant to CERCLA, RCRA, Chapter 21C, Chapter 21E, or other applicable environmental laws, as amended.

- 1.20. Holiday: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.
- 1.21. Load: Recyclable Materials in one truck or one container delivered to the Receiving Facility(s)
- 1.22. MRF Advisory Board or MAB: The group of representatives from Designated Communities that advises, represents and coordinates joint activities of Designated Communities and helps ensure effective recycling outreach and education.
- 1.23. Process and Processing: Actions taken by the Contractor subsequent to Receiving Program Recyclables to convert Program Recyclables into Recovered Materials and market Recovered Materials. To the extent applicable, Processing includes transportation of Program Recyclables from a Receiving Facility to a Processing Facility.
- 1.24. Processing Facility: The facility or facilities designated by the Contractor and approved by the Commonwealth to Process Program Recyclables and market Recovered Materials.
- 1.25. Processing Fee(s): Payment by Designated Communities to the Operator pursuant to Article 6.
- 1.26. Program Recyclables: Recyclable Materials from Designated Communities.
- 1.27. Receive and Receiving: The means by which the Contractor weighs, manages unloading, and inspects Program Recyclables at the Receiving Facility.
- 1.28. Receiving Facility: The facility or facilities designated by the Contractor and approved by the Commonwealth to Receive Program Recyclables. As of the date hereof, for Single Stream Recyclable Material the Receiving Facility is at 203 Tremont St, Springfield, MA 01104 and for Dual Stream Recyclable Material the Receiving Facility is at 84 Birnie Ave., Springfield, Massachusetts.
- 1.29. Recovered Material: Program Recyclables which have been processed into marketable form.
- 1.30. Recyclable Containers: Metal cans, foil, plastic bottles, jars, tubs, and jugs, clear plastic hinged containers (clamshells), clear plastic cups, clear plastic egg cartons, gable-top and aseptic cartons, and glass bottles and jars, including labels and caps. The list of Recyclable Containers may be expanded or reduced from time to time as determined jointly by the Commonwealth, the Contractor, and the MAB.
- 1.31. Recyclable Material: Recyclable Containers and Recyclable Paper delivered as either Single Stream or Dual Stream materials.
- 1.32. Recyclable Paper: Paper, magazines, catalogs, greeting cards, gift wrap (excluding foils or metallic gift wraps), calendars, paperback books and phonebooks (including covers), corrugated cardboard, paperboard, and clean pizza boxes, including paper clips and staples. The list of Recyclable Paper may be expanded or reduced from time to time as determined jointly by the Commonwealth, the Contractor, and the MAB.
- 1.33. Residue: The portion of Program Recyclables accepted by the Contractor that is not converted to Recovered Material.

- 1.34. Revenue Share Payment(s): Payment by the Operator to Designated Communities pursuant to Article 6.
- 1.35. Revenue Share Percent: The percent of the Average Market Value to be credited by the Contractor to Designated Communities for Program Recyclables.
- 1.36. Single Stream: A method of collecting and delivering Recyclable Material whereby Recyclable Containers and Recyclable Paper are all mixed together.
- 1.37. Shutdown: Any time in which the Contractor is unable to Receive or Process Program Recyclables according to the provisions of the Commonwealth Contract.
- 1.38. Solid Waste: Solid waste as defined in 310 CMR 19.000.
- 1.39. Specifications: The condition of acceptable Program Recyclables: acceptable Program Recyclables must not contain more than 15% Contamination and any Hazardous Waste. Recyclable Containers shall not be contained in a bag or sufficiently soiled with food waste such that the item may not be marketable. Recyclable Paper shall not be contained in a plastic bag, sufficiently soiled, or saturated with liquid such that the item may not be marketable.
- 1.40. Ton: 2,000 pounds.
- 1.41. Uncontrollable Circumstances: An act of God or other cause factually beyond the control and without the fault or negligence of the party affected by the Uncontrollable Circumstance. A subcontractor's failure to perform, commodity market fluctuations, or product availability shall not be deemed factually beyond the Contractor's control. Uncontrollable Circumstances shall include changes in Applicable Law.

Article 2. Term of Contract

This Contract represents the full agreement between the Designated Community, the DEP and the Contractor and supersedes any and all previous contracts between the parties.

2.1 Effective and Commencement Dates

2.2 The Effective Date shall be the date this Contract is executed by an authorized signatory of Commonwealth, a later date specified in the Contract or the date of any approvals required by law or regulation, whichever is later. The Commencement Date is the date when the Contractor begins Receiving Program Recyclables, which is July 1, 2020.

2.2.1 The initial term of this Contract shall be for a period of five (5) years from the Commencement Date terminating on June 30, 2025 or at such earlier time should the Commonwealth Contract be terminated in whole or with respect to Dual Stream services.

2.3 Early Termination

The Contractor may terminate this Contract in whole or in part upon written notice to the Commonwealth under the following circumstances. Notice must be given within ninety (90) days after the event allowing notice to be given occurs.

- (i) If by no later than 120 days prior to the commencement of the initial term, or by no later than 150 days prior to the commencement of any subsequent renewal term,

Designated Community Contracts representing not less than 17,000 tons per year of Dual Stream Designated Community tonnage (“Minimum Dual Stream tonnage”) based on the tonnage provided by such Communities over the prior twelve (12) month period, have not been executed by the Designated Communities and the Commonwealth, Contractor may, at its sole discretion, terminate this Contract with respect to its obligations related to Dual Stream recycling. For the purpose of calculating the Dual Stream Designated Community tonnage, any community that switches to Single Stream shall have its annual tonnage from each prior year considered toward the Minimum Dual Stream tonnage in which case it shall not be counted toward the Minimum Single Stream tonnage.

- (ii) Notwithstanding paragraph 2.3 above, if at any time the Designated Community Contract is terminated for any reason and as a result thereof the Contractor determines that the Minimum Dual Stream Tonnage established in the Commonwealth Contract will not be met, the Contractor may, at its sole discretion, upon 180 day notice to the Commonwealth and the Designated Communities terminate this Contract with respect to the Dual Stream services so affected.

2.4 Renewal Option

This Contract may be renewed for two (2) additional five (5) year terms upon the mutual concurrence of the DEP, the Designated Community and Contractor. The financial terms of the Contract as defined in Article 6 may be amended at the time of Contract extension by mutual consent of the DEP, the Designated Community and the Contractor in writing.

Article 3. Rights and Responsibilities of the Department of Environmental Protection (DEP)

3.1 Contract Oversight

The DEP has entered into the Commonwealth Contract requiring the Contractor to Receive and Process Program Recyclables. The DEP shall provide the Designated Community with relevant Contractor operational data upon request, within 30 days of such request, in accordance with the public records law, G.L. c. 66, s. 10.

3.2 Public Education and Technical Assistance

The DEP shall assist the MRF Advisory Board and its designees, using the Public Education Fees, and/or the educational support contribution of \$10,000.00 annually made to the MAB pursuant to the Commonwealth Contract, to conduct public education and information efforts designed to ensure smooth operation and expand participation in the recycling program. The DEP shall provide up to two (2) representatives to the MRF Advisory Board.

3.3 Dispute Resolution

In the event the Designated Community fails to comply with this Contract, the DEP shall first notify the Designated Community in writing of such failure and work with the Designated Community and the MRF Advisory Board to remedy the situation. In the event the Designated Community is unable to remedy such noncompliance to the DEP's satisfaction, the DEP, at its sole discretion, may suspend or terminate the Designated Community's rights as a Designated Community.

Article 4. Rights and Responsibilities of the Contractor

4.1 Receive and Process Program Recyclables

The Contractor shall Receive and Process Program Recyclables meeting the Specifications and delivered to the Receiving Facility in accordance with the Commonwealth Contract. The Contractor shall refuse to accept and shall arrange for the removal of, at the expense of the Designated Community delivering (or causing to be delivered) such material, any Hazardous Waste delivered to the Receiving Facility.

The Contractor shall allow a Designated Community to discontinue delivering glass to the Receiving Facility upon approval by the Commonwealth and notice to Contractor. Once the Designated Community so notifies Contractor, if glass is included in the Program Recyclables delivered to the Contractor thereafter, the Designated Community shall not be entitled to the credit set forth in Article 6. The Designated Community may resume delivery of glass upon prior notice to the Contractor.

The Contractor may seek to temporarily dispose of or contract for temporary disposal of Program Recyclables with prior notification to DEP in accordance with 310 CMR 19.017(5)(b). If the DEP grants such exception to the disposal prohibition, the tons that are consequently disposed are considered Residue for the purposes of calculating the Average Market Value.

The Contractor shall allow a Designated Community to remove processed glass aggregate produced by the Contractor provided however that the Designated Community must notify the Contractor at least ten (10) days in advance that it intends to pick up such glass, the quantity of the glass desired and shall pick it up as approved and scheduled by the Contractor. The Designated Community shall receive a credit for each ton removed as described in Article 6.

4.2 Option to Terminate

In the event the Designated Community does not deliver all Program Recyclables collected by or on behalf of the Designated Community to the Receiving Facility according to its responsibilities under Article 5, or the Designated Community does not pay Processing Fees in accordance with Article 6 (unless otherwise expressly agreed to in writing between the Designated Community, the Contractor and the DEP), the Contractor may request that the DEP, after 30 days written notice to the DEP and to the Designated Community, terminate or suspend this Contract with the Designated Community.

4.3 Receiving Hours

The Contractor shall keep the Receiving Facility open to Receive Program Recyclables between the hours of 7:00 a.m. and 4:30 p.m. Monday through Friday, with the exception of Holidays.

The Receiving Facility may close on Holidays that occur Monday through Friday, but shall be open on the following Saturday between 9:00 a.m. and 2:00 p.m. The Contractor shall coordinate with Designated Communities whose fleets do not operate on other Massachusetts holidays (including but not limited to, Martin Luther King Day, Presidents Day, Patriots Day, Columbus Day, and Veterans Day) to Receive Program Recyclables on the Saturday following those holidays, as necessary. Should an Uncontrollable Circumstance prevent the Contractor from Receiving Program Recyclables, the Contractor shall notify the Contract Officer and Designated Communities within one (1) hour of such an event.

4.4 Ownership of Materials. The Contractor shall assume ownership of Program Recyclables upon acceptance of materials at the Receiving Facility except for materials rejected pursuant to Section 4.5. Notwithstanding the foregoing, (i) the Contractor shall not assume ownership of Hazardous Waste at any time whether or not such materials are rejected, and (ii) notwithstanding any transfer of ownership, Contractor shall have no obligation to protect the contents of any Program Recyclables which contain information 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.

4.5 Program Recyclables Load Rejection

The Contractor shall have the right to reject or downgrade Loads of Program Recyclables that are reasonably suspected to contain more than 15 percent of the Load by weight of Contaminants or any Hazardous Waste. If the Contractor intends to reject a Load of Program Recyclables, the Contractor shall comply with the following procedure:

4.5.1 The Facility Manager shall immediately, at the time of unloading, isolate the Load and notify the Designated Community and the Contract Officer, document the occurrence of such event by digital photograph or video, share such documentation with the Designated Community and the Contractor Officer, and hold the load for no less than two (2) hours to allow the Commonwealth and Designated Community to inspect the Load where such inspection shall not unduly impede or interfere with the operation of the Receiving Facility. If the Facility Manager and the Designated Community, or the Contract Officer acting on behalf of the Designated Community, mutually agree that the amount of Contaminants in a given Load exceeds 15% or contains Hazardous Waste the load will subject to provisions of 4.5.2.

4.5.2 Subject to Section 4.5.1. above, the Contractor shall, either:

(i) for loads with Contamination levels above 15%, charge the Designated Community \$120.00 per ton for all tons of Contamination greater than fifteen percent (15%) and accept and process the Load. The excess Contamination (that above 15%) shall not be subject to a Processing Fee or Revenue Share.

(ii) If the Contract Officer and Contractor agree that the entire load is contaminated to the extent that it cannot be processed, charge the Designated Community \$300.00 to reload the material or charge the Designated Community \$120.00 per ton for the entire

Load and reject and dispose of the Load, provided however that the Designated Community shall be required to dispose of any Hazardous Waste at its sole cost and expense, unless otherwise agreed by Contractor. The Contractor shall make a reasonable effort to provide the Designated Community with the cheaper rejected Load alternative. The rejected Load shall not be subject to a Processing Fee or Revenue Share.

By way of examples:

Five (5) ton Load contains 25% contamination and Contractor chooses to process the load. This is 10% or .5 tons more than allowed. The Designated Community shall pay Contractor (i) \$60.00 (.5 tons x \$120.00 per ton) for the excess Contamination; and (ii) shall pay processing fees and shall receive credit or payment for the AMV, if any, on 4.5 tons.

Five (5) ton Load is agreed to be contaminated to the extent that it cannot be processed, and the Load is rejected and disposed by the Contractor. The Designated Community shall pay Contractor \$600.00 (5 tons x \$120.00 per ton.)

Five (5) ton Load is agreed to be contaminated to the extent that it cannot be processed, and the Load is rejected and reloaded by Contractor. The Designated Community shall pay Contractor \$300.00.

The material disposal charge of \$120.00 per ton and the reloading fee of \$300.00 per load shall be increased every July 1 by 2.5%.

4.5.3 If the level of contamination cannot be mutually resolved by the parties, the dispute shall be resolved in accordance with Article 7 of the Designated Community Contract.

4.5.4 In the event the procedures outlined above are not followed, the Contractor shall manage the total weight of the Load according to Article 6 of the Designated Community Contract.

4.6 Shutdown

4.6.1 Notification. As soon as it knows that a Shutdown will occur or has occurred, the Contractor shall, within one (1) hour, notify the DEP and the Designated Communities as to the reason for the Shutdown, what aspect of Contracted Services the Contractor is unable to provide, procedures that have been/will be implemented if necessary, and the timeline anticipated to resume regular operations.

4.6.2 Alternative Facilities. In the case of a Shutdown, it shall be the responsibility of the Contractor to locate an alternative facility or facilities as soon as commercially reasonable to ensure that Receiving and Processing of Program Recyclables is not unduly interrupted. Except in the event of Uncontrollable Circumstances, the Contractor shall be liable for all transportation, processing, marketing, disposal, and any other related costs which may be incurred by the Designated Communities in excess of Designated Community payments that would have been made under this Contract.

4.7 Reporting and Invoicing

4.7.1 Monthly Report, Invoice and Payment. The Contractor shall submit a monthly report, processing fee invoice and Program Recyclable Revenue Share Payment to the Designated Community no later than the 15th day following the end of each calendar

month. The report shall contain the following information for the subject month:

- a. Tons of Program Recyclables, by material type, truck number, and date delivered by the Designated Community.
- b. Certification signed by the Contract Manager that all Program Recyclables accepted by the Contactor were Processed and that all Residue and Contaminants were disposed in accordance with the Contract.
- c. Calculation of the financial balance forward from the previous month(s).
- d. Calculation and invoice for the Processing Fee for the Designated Community.
- e. Calculation of the Revenue Share Payment for the Designated Community. Any payments due the Designated Community will be issued in a method mutually agreed to by the parties.
- f. List of Rejected Loads from the Designated Community, including the date, truck number, the weight, the percent Contamination, and additional charges imposed.
- g. Any other information reasonable requested by the Commonwealth or Designated Community.

4.7.2 Annual Report. The Contractor shall submit an annual report to the Designated Community no later than the 15th day following the end of each calendar year. The reports shall contain the following information for the subject year:

- a. Tons of Program Recyclables, by material type, truck numbers and delivery dates, delivered by the Designated Community.
- b. Calculation of the Processing Fee for the Designated Community.
- c. Calculation of the Revenue Share Payment for the Designated Community.
- d. The number of rejected Loads, total weight, and total additional charges imposed for the Designated Community.
- e. Any other information reasonably requested by the Commonwealth.

4.8 MRF Advisory Board Meetings

The Contractor shall, at the request of the DEP and the MRF Advisory Board, attend at a minimum, quarterly meetings of the MRF Advisory Board and report on Receiving Facility operations, recycling markets and revenue share payments.

4.9 Inability to Receive. In the event that the Contractor is unable to Receive Program Recyclables at any time during the Contract during normal Facility hours and except for situations caused by Uncontrollable Circumstances, the Contractor shall be liable for all transportation, processing, marketing, disposal, and any other related costs which may be incurred by the Designated Communities in excess of Designated Community payments that would have been made under this Contract.

4.10 Emergency Operations. If an Uncontrollable Circumstance disrupts the normal collection schedule of Designated Communities and causes the Commonwealth or Designated Communities to request

the Contractor to accept unusual quantities of Program Recyclables or an abnormal delivery schedule, the Contractor shall, to the extent reasonably consistent with the Receiving Facility's capacity and labor conditions, use reasonable efforts to accommodate said request, provided however that any significant additional costs incurred by Contractor shall be borne by the Designated Community.

Article 5. Rights and Responsibilities of the Designated Community

5.1 Public Education Fees

The Designated Community shall pay a public education fee each year to the MRF Advisory Board equal to \$0.05 per capita per year.

5.2 Collection and Delivery of Program Recyclables

5.2.1 Designated Hauler. The Designated Community annually shall provide its Designated Hauler(s) information to the Contractor and the DEP, including the name, email address, mailing address, and telephone number. The Designated Community shall notify the Contractor and the DEP of any change in the Designated Hauler(s) before said hauler(s) delivers the Designated Community's Program Recyclables to the Facility.

5.2.2 Contact Person. The Designated Community annually shall provide its recycling contact person information to the Contractor and the DEP, including the name, email address, mailing address, and telephone number. The Designated Community shall notify the Contractor and the DEP of any change in the recycling contact person.

5.2.3 Collection and Delivery of Program Recyclables. The Designated Community shall be solely responsible for the collection and delivery of all its Program Recyclables to the Receiving Facility in accordance with the provisions of this Contract and shall be solely responsible for all costs associated with such collection and delivery.

5.2.4 Change in Recycling Collection. Designated Community may change from Single Stream delivery to Dual Stream delivery during the term of its Designated Community Contract by executing a new Designated Community Contract, provided

(i) the Designated Community shall provide notice of not less than 180 days prior to such change and,

(ii) the Designated Community Contract shall be co-terminus with the remaining Dual Stream Designated Community Contracts

Designated Communities may not change from Dual Stream collection to Single Stream collection, without the express written consent of the Contractor, which consent may be withheld at the Contractor's sole discretion if such change results in Dual Stream Program Recyclables dropping below 17,000 tons annually.

5.2.5 Compliance with Law: The Designated Community, and if applicable, its Designated Hauler, shall comply with all applicable State, Federal, and local laws, and license and permit requirements concerning the collection, transfer, handling and delivery of Program Recyclables. The Designated Community, and if applicable, its Designated Hauler, shall comply with all Applicable Laws governing the safety and working conditions of its employees.

5.2.6 Terms and Conditions Affecting Delivery of Program Recyclables. The Designated Community acknowledges and understands that the Commonwealth Contract contains provisions that define and limit the obligations of the Contractor to Receive and Process Program Recyclables. Therefore, the Designated Community's rights to deliver its Program Recyclables to the Receiving Facility, is subject to the following terms and conditions:

- a. The Designated Community shall work with the Contractor and the DEP to coordinate efficient delivery of Program Recyclables to the Receiving Facility.
- b. The Designated Community shall follow (and require any Designated Hauler to follow) all Receiving Facility rules, including safety rules.
- c. The Designated Community shall adopt an ordinance or bylaw, which requires its residents to separate Program Recyclables from solid waste.
- d. The Designated Community shall incorporate in any contract with its Designated Hauler a requirement that all Program Recyclables collected on behalf of the Designated Community by that hauler will be delivered to the Receiving Facility.
- e. The Designated Community shall not deliver Solid Waste or Hazardous Waste to the Facility.
- f. The Designated Community shall not eliminate materials from or add materials to the definition of Program Recyclables without the prior written consent of the DEP, which consent may be withheld in the DEP's sole discretion.
- g. The Designated Community shall not allow its Designated Hauler(s) to mix loads of Program Recyclables with Recyclable Material from non-designated communities.
- h. The Designated Community shall promptly remove any loads rejected pursuant to Section 4.5 from the Receiving Facility.

Article 6. Financial Terms

6.1 Processing Fee

Designated Communities will pay the Contractor for Program Recyclables based on a Processing Fee, multiplied by the Tons of Program Recyclables delivered to the Receiving Facility. The Processing Fee shall be:

July 1, 2020 through June 30, 2021: \$93.50

July 1, 2021 through June 30, 2022: \$95.84

July 1, 2022 through June 30, 2023: \$98.23

July 1, 2023 through June 30, 2024: \$100.69

July 1, 2024 through June 30, 2025: \$103.21

6.1.1 Processing Fee Credit for Glass Free Program Recyclables

Designated Communities that have been approved by the Commonwealth and can demonstrate

to the Contractor that Program Recyclables are delivered to the Receiving Facility substantially free of glass shall receive a \$5 per ton credit toward their Processing Fee.

6.2 Recovered Materials Composition

Subject to Section 4.5, the Recovered Materials Composition contained in Exhibit 1 shall represent the composition of all Designated Community materials received during the term of the Contract, except to the extent loads are downgraded or rejected due to excessive Contamination or because they contain Hazardous Waste.

6.3 Revenue Share Payment/Charges

Each month the Contractor shall calculate the Average Market Value (AMV) in accordance with Exhibit 1. Contractor shall pay or charge the Designated Community based on the monthly AMV, minus the Processing Fee, then multiplied by the Tons of Program Recyclables delivered to the Receiving Facility by the Designated Community. If the AMV is less than \$0, the negative AMV shall be subtracted from the Processing Fee and the difference shall be multiplied by the Tons of Program Recyclables delivered to the Receiving Facility by the Designated Community. As an example, if the AMV is negative \$10.00 and the Processing Fee is \$145.00, the charge per ton is \$145.00 minus (-\$10.00) or \$155.00 per ton. If the AMV is greater than \$0 but less than the Processing Fee, the AMV shall be subtracted from the Processing Fee and then the difference is multiplied by the Tons of Program Recyclables delivered to the Receiving Facility by the Designated Community. If the AMV exceeds the established Processing Fee, the Contractor shall pay the Designated Community for Program Recyclables based on 70% of the monthly AMV amount above the applicable Processing Fee, multiplied by the Tons of Program Recyclables delivered to the Receiving Facility by the Designated Community.

6.4 Other Financial Terms

6.4.1 If the Contractor requests that the Designated Community deliver its Program Recyclables to a location other than a Receiving Facility as defined in Section 1.28 for reasons other than Uncontrollable Circumstances, the Contractor shall offer a reduction in the Processing Fee (or pay to Designated Community as the case may be) to offset any additional costs or inconvenience.

6.4.2 Where the value of glass is negative, and a Designated Community chooses to reclaim processed glass as set forth in Section 4.1, such Designated Community will receive a credit equal to the value of the glass as set forth in Exhibit 1 for the month prior to pick up, multiplied by the tons of glass removed by the Designated Community. Where the value of glass is positive, and a Designated Community chooses to reclaim glass, such Designated Community will pay the Contractor an amount equal to the value of the glass as set forth in Exhibit 1 for the month prior to pick up multiplied by the number of tons of glass removed by the Designated Community.

6.5 Timing of Payment: Where the AMV is less than the Processing Fee, the Designated Communities will be required to pay the Contractor based on the monthly invoice within 45 days from the date of invoice. Where the AMV is greater than the Processing Fee, Contractor shall pay the monthly

Revenue Share to the Designated Communities based on the monthly payment report and in accordance with the Designated Community Contract within 45 days.

6.6 Interest on Overdue Payments

All payments to be made under this Contract that are outstanding after the applicable due date shall bear simple interest at the maximum rate permitted by State law.

6.7 Payment Disputes

If the Contractor or a Designated Community disputes an amount owed to the other party, such party shall: (i) give notice to the other party of such disputed amount together with sufficient information to allow the other party to understand the nature of the dispute and deliver such notice on or before the due date of the amount disputed; and (ii) pay all undisputed amounts on the due date. Interest at the maximum rate permitted by State law shall accrue from the original due date of disputed amounts, or the portions thereof, to the party which is ultimately determined to be entitled to such disputed amount (or any portions of such disputed amounts). Notwithstanding Article 7, the Contractor may withhold services to a Designated Community if a Designated Community has not paid an undisputed Processing Fee owed within 90 days after the due date described in 6.5, provided however that if a Designated Community fails to timely pay an undisputed Processing Fee more than one (1) time in any twelve (12) month period, the Contractor may withhold such services at its discretion without a 90 day waiting period.

6.8 Material Change

Designated Community acknowledges that the Commonwealth Contract contains the following provision and that the Designated Community shall be bound by any amendments to the Commonwealth Contract made in accordance with this provision:

The parties acknowledge that the composition of Recovered Materials and Residue as set forth on Exhibit 1 reflect the agreement of the parties with respect to both the composition of the Recovered Materials and the corresponding processing fees, based upon the Program Materials accepted by the Contractor and the Recovered Materials marketed by the Contractor as of the date of this Agreement. In the event that a change in Applicable Law, an Uncontrollable Circumstance or a material change in market conditions occurs, including but not limited to, the lack of commercially reasonable market availability for Recovered Materials, changes in market specifications affecting the salability of Recovered Materials, changes affecting the recyclability of Program Recyclables or the marketability of Recovered Materials, or changes in the quantity, quality, type or composition of the Recovered Materials, (each a "Material Change"), and has the effect of materially altering the terms of this Contract or the Designated Communities Contract, or preventing or precluding compliance with one or more provisions of this Contract, or preventing, precluding or substantially affecting the benefit(s) bargained for under this Contract, including profits of the Contractor and the fees charged or revenues paid to the Designated Communities under the Designated Community Contracts, the party detrimentally affected by a Material Change (or the Commonwealth in the case of the Designated Communities) shall so notify the other party and request amendment to this Contract accordingly. The parties shall engage in

good faith negotiations for a period of three (3) months after such request regarding such amendments of this Contract or the terms of the Designated Communities Contract that reflect the extent to which the provisions hereof are modified to reasonably compensate the party detrimentally affected and the parties shall amend this Contract and/or the Designated Community Contract to the extent of any mutually agreed upon revisions.

Article 7. Dispute Resolution

In the event of a dispute arising under this Contract, the Commonwealth and the Contractor shall continue performance of their respective obligations under this Contract and attempt to informally resolve such dispute in a cooperative manner. Any actions arising out of the Contract shall be governed in accordance with the Commonwealth Terms and Conditions.

The Commonwealth shall work with Designated Communities and the Contractor to resolve disputes that may arise between Designated Communities and the Contractor with regard to the service provided under this Contract. The Commonwealth, at its sole discretion, may suspend, modify or terminate a Designated Community's rights to utilize the Facility.

Article 8. Amendments and Modifications

Subject to Section 6.8, this Contract may not be amended except by mutual agreement of the Designated Community, the Contractor and the DEP in writing. Such amendment(s), when mutually agreed upon by and between the Designated Community, the Contractor and the DEP, shall be incorporated into this Contract by written amendment, and executed in the same manner by the signatories hereto.

The DEP, the Designated Community and the Contractor acknowledge and agree that the Massachusetts Legislature has the authority to make comprehensive changes in solid waste management legislation and funding of DEP activities, and that these and other changes which mandate certain actions or programs may require changes or modifications to this Contract. The parties to this Contract agree to enter into good faith negotiations to reach mutual agreement regarding modifications to this Contract required by any subsequent legislation or regulation.

Article 9. General Provisions

9.1 Indemnification

Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the Designated Community, its volunteers, the Commonwealth of Massachusetts, including the DEP, and the agents, officers and employees of the Designated Community, the Commonwealth of Massachusetts and the DEP, against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement or other damages that the State or Designated Community may sustain to the extent caused by the negligence, reckless or intentional conduct of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall at no time be considered an agent or representative of the DEP, the Commonwealth or the Designated Community. After prompt notification of a claim by the Commonwealth or the Designated Community, the Contractor shall have an opportunity to participate in the defense of

such claim and any negotiated settlement agreement or judgment. The Commonwealth shall not be liable for any costs incurred by the Contractor arising under this section. Any indemnification of the Contractor shall be subject to appropriation and Applicable Law. This indemnification and hold harmless agreement shall survive the termination or expiration of this Contract.

9.2 Severability

If any provision of this Contract is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations under that provision. The remainder of this Contract shall be enforced to the fullest extent permitted by law.

9.3 Governing Law and Venue

The laws of the Commonwealth of Massachusetts shall govern the rights, obligations, duties and liabilities of the parties to this Contract and shall govern the interpretation of this Contract. Any and all legal action necessary to enforce this Contract shall be held and solely maintained in the Commonwealth of Massachusetts.

9.4 Availability of Municipal Funds

This Contract shall be subject to appropriation by the Designated Community for payments for the fiscal year beginning July 1, 2020. The Designated Community agrees that delivery of the Designated Community's Recyclables to the Facility after June 30, 2020 shall constitute verification by the Designated Community that it has appropriated such funds. The Designated Community shall notify, in accordance with Article 10, on or before the Commencement Date, should it fail to appropriate such funds. Such notice shall terminate this Contract. In subsequent years, if the Designated Community fails to appropriate funds for this contract, the requirement that the Designated Community deliver its Recyclable Materials to the Contractor and that the Contractor accept such Recyclable Materials shall be suspended until such time as funds are appropriated by the Designated Community for the recycling services to be provided hereunder.

Article 10. Notice

All notices given under this Contract by the Designated Community shall be deemed properly served if delivered in writing to:

Mr. Steven Ellis
Massachusetts Department of Environmental Protection
436 Dwight Street
Springfield, MA 01103

WM Recycle America, L.L.C.
1001 Fannin Street
Houston, TX 77002
Attn.: President

With a copy to:
WM Recycle America, L.L.C.
4600 N. Port Washington Road

Milwaukee, WI 53212
Attn.: Law Department

Article 11 Uncontrollable Circumstances.

Upon notification to the other parties, no party shall be deemed to be in breach when prevented from performing its obligations hereunder due to Uncontrollable Circumstances for so long as such Uncontrollable Circumstances continue. The obligations of a party shall resume as soon as the cause for the delay or failure ends.

IN WITNESS WHEREOF, the Commonwealth of Massachusetts, acting by and through its Commissioner of the Department of Environmental Protection, the Designated Community, and the Contractor have hereunto set their hands and seals:

I certify that I am duly authorized to enter into this Contract on behalf of:

**COMMONWEALTH OF MASSACHUSETTS
Department of Environmental Protection**

By: _____ Date: _____
Title:

DESIGNATED COMMUNITY

By: _____ Date: _____
Title:

By: _____ Date: _____
Title:

By: _____ Date: _____
Title:

CONTRACTOR

By: _____ Date: _____
Title:

Exhibit 1: Composition and Average Market Value of Recovered Materials

1. The percentages used to calculate the Average Market Values (AMV) are estimates of the Recovered Material composition of Single Stream and Dual Stream Program Recyclables and Residue.
2. The Recovered Material composition percentages in Table 1 and Table 2 shall be used for Dual Stream and Single Stream Program Recyclables, respectively.
3. The Contractor shall calculate the AMV each month.
4. The commodity market indices utilized in Table 1 and 2 are intended to reflect the average market value, in the northeastern United States, of Recovered Materials. PS means the average of the prices for the appropriate grade of material published at <http://recyclingmarkets.net/secondaryfiber/index.html> for the Northeast Region first dated price each month, retroactive to the first of the month. SMP means the average of the prices for the appropriate grade of material published at www.SecondaryMaterialsPricing.com for the Northeast (New York) Region, first dated price each month, retroactive to the first of the month.
5. Glass and Dual Stream Commingled Plastics are based on Actual Value. Actual Value means the average price paid to or charged to the Processing Facility during the month of delivery, less any freight or other charges paid to third parties.
6. The Residue Fee in Table 1 and 2 shall initially be \$80.00/ton and shall be increased 2.5% annually on July 1 each year.
7. Within thirty (30) days of execution of this contract, the Contractor shall pay for two (2) subscriptions to applicable indices, or a substitute subscription in accordance with paragraph 9 below, for the Commonwealth and provide the user name and password for each subscription to the Commonwealth.
8. If at any time during the term of the Contract, applicable indices no longer posts or otherwise provides the applicable market indices or if such indices do not accurately reflect the value of such materials, then the Contractor and the Commonwealth shall jointly select an appropriate replacement source for the required information from among the sources recycling industry professionals utilize to obtain reliable Recovered Material pricing information. A change in the market indices used shall become effective on the first day of the month following joint agreement and for the remainder of the Contract, or until subsequently replaced.
9. The Revenue Share Payment formula provided in Article 6 shall be used for calculating payments and charges to Designated Communities throughout the term of the Contract.

TABLE 1: Average Market Value (AMV) - Dual Stream				
Recovered Material	Recovered Material Index *	Recovered Material Composition/Ton	Index Value/Ton	AMV Value
OCC (Cardboard)	PS 11 Corrugated Containers	21.17%	\$	\$
Mixed Paper #54	PS 54 Mixed Paper (MP)	8.59%	\$	\$
Sorted Residential Paper #56	PS 56 Sorted Residential Papers (SRNP)	31.16%	\$	\$
Aluminum Beverage Cans	SMP for Aluminum Cans (Sorted, Baled, cents/lb. picked up) minus \$.25 per pound	0.83%	\$	\$
Steel/Tin Cans	SMP Steel Cans (Sorted, Baled, \$/Gross ton, picked up)	3.87%	\$	\$
PET (Plastic #1)	SMP for PET (baled, cents/lb. picked up)	2.15%	\$	\$
Natural HDPE (Plastic #2)	SMP for Natural HDPE (baled, cents/lb. picked up)	1.09%	\$	\$
Colored HDPE (Plastic #2)	SMP for Colored HDPE (baled, cents/lb. picked up)	1.19%	\$	\$
Commingled Plastics, #3-7	Actual Value	7.42%	\$	\$
Glass	Actual Value	17.54%	\$	\$
Residue	Residue Fee	5.00%	\$	\$
		100.00%	\$	\$

*PS means the average of the prices for the appropriate grade of material published at <http://recyclingmarkets.net/secondaryfiber/index.html> for the Northeast Region first dated price each month, retroactive to the first of the month. SMP means the average of the prices for the appropriate grade of material published at www.SecondaryMaterialsPricing.com for the Northeast (New York) Region, first dated price each month, retroactive to the first of the month. Actual Value means the average price paid to or charged to the Processing Facility during the month of delivery, less any freight or other charges paid to third parties. The Residue Fee shall initially be \$80.00/ton and shall be increased 2.5% annually on July 1.

TABLE 2: Average Market Value (AMV) - Single Stream				
Recovered Material	Recovered Material Index *	Recovered Material Composition/Ton	Index Value/Ton	AMV Value
OCC (Cardboard)	PS 11 Corrugated Containers	14.19%	\$	\$
Mixed Paper (All other paper)	PS 54 Mixed Paper (MP)	44.65%	\$	\$
Aluminum Beverage Cans	SMP for Aluminum Cans (Sorted, Baled, cents/lb. picked up) minus \$.25 per pound	0.48%	\$	\$
Steel/Tin Cans	SMP Steel Cans (Sorted, Baled, \$/Gross ton, picked up)	2.37%	\$	\$
PET (Plastic #1)	SMP for PET (baled, cents/lb. picked up)	4.29%	\$	\$
Natural HDPE (Plastic #2)	SMP for Natural HDPE (baled, cents/lb. picked up)	0.42%	\$	\$
Colored HDPE (Plastic #2)	SMP for Colored HDPE (baled, cents/lb. picked up)	1.69%	\$	\$
Tubs and Lids (Plastic #5)	SMP for Plastics PP Post Consumer (baled, cents/lb. picked up)	0.78%	\$	\$
Glass	Actual Value	21.13%	\$	\$
Residue	Residue Fee	10.00%	\$	\$
		100.00%	\$	\$

*PS means the average of the prices for the appropriate grade of material published at <http://recyclingmarkets.net/secondaryfiber/index.html> for the Northeast Region first dated price each month, retroactive to the first of the month. SMP means the average of the prices for the appropriate grade of material published at www.SecondaryMaterialsPricing.com for the Northeast (New York) Region, first dated price each month, retroactive to the first of the month. Actual Value means the average price paid to or charged to the Processing Facility during the month of delivery, less any freight or other charges paid to third parties. The Residue Fee shall initially be \$80.00/ton and shall be increased 2.5% annually on July 1.