

MUNICIPAL RECYCLING AND WASTE AGREEMENT

This Municipal Recycling and Waste Agreement (the "Agreement") is entered into on December 30, 2020 (the "Effective Date"), by and between the Town of Friendship, Wisconsin ("Town"), and Waste Management of Wisconsin, Inc. ("WM"), a Wisconsin corporation.

Recitals

- A. The Town desires to provide its citizens with environmentally sound solid waste collection and disposal and recyclable materials collection;
- B. WM and its affiliates have extensive experience in providing solid waste and recyclable materials collection, disposal and processing; and
- C. The Town has determined that it would be in the best interests of its citizens to contract with WM for the collection of its residential solid waste and recyclable materials according to the terms and conditions contained herein.

Agreements

I. DEFINITIONS

- a. Acceptable Waste - shall mean all non-hazardous solid waste generated by households in the ordinary course including food wastes and discarded papers, cardboard, plastics, cloth, glass and metal materials, but excluding Excluded Waste as defined herein. Waste shall be considered "Acceptable Waste" only if properly contained within 64-gallon Carts placed at the curbside on the proper weekly collection day. As used herein, the term "waste" shall mean Acceptable Waste unless the context demonstrates otherwise. Title to Acceptable Waste shall transfer to WM upon collection in WM vehicles.
- b. Excluded Waste - shall mean, without limitation, any regulated quantity of a Hazardous Waste or Hazardous Substance as defined by federal, state or local laws or regulations; containerized wastes, the contents of which are not able to be identified; sludges; waste from a pollution control process or cleanup of a spill of a chemical substance or commercial product; waste tires; biohazards or regulated medical waste; friable asbestos; construction and demolition waste; soil, sod, tree branches and stumps; paint; motor oil; excessive storm debris or debris resulting from weather events such as hurricanes or tropical storms; or any item too large or heavy to be contained within a 64-gallon Cart; or any waste or material that is prohibited from being received, managed or disposed of at the disposal facility. Title to and liability for Excluded Waste shall remain with the resident that generated the Excluded Waste at all times.
- c. Recyclables or Recyclable Materials - are defined in Exhibit A. Title to Recyclable Materials shall transfer to WM upon collection in WM vehicles.
- d. Residential Unit - shall mean a dwelling within the corporate limits of the Town. Apartment or condominium buildings with four (4) or more individual dwellings shall not be considered Residential Units and are, therefore, not covered by this Agreement.

II. TERM

The initial term of this Agreement shall be for five (5) years commencing on January 1, 2021, and ending on December 31, 2025, and thereafter shall renew for one successive renewal term of one-year, upon mutual agreement. All notices shall be served by certified mail, return receipt requested, or by a nationally recognized overnight courier service.

III. SERVICES

- a. WM shall furnish the labor, equipment, licenses, permits, and other requirements necessary to provide Acceptable Waste and Recyclable Materials collection or Recyclables collection only in the case of Flood Homes Home Association to Residents Units of the Town, which currently consists of approximately 1,250 Residential Units (the "Service"). As part of the Service, WM shall:
 - i. Cart Supply. Each Residential Unit has already been provided a 64-gallon Cart for Acceptable Waste and a separate 64-gallon Cart for Recyclable Materials. New Residential Units will be provided a 64-gallon Cart for Acceptable Waste and a separate 64-gallon Cart for Recyclable Materials as they Units are added to the Town. The Carts and equipment WM furnishes Residents and the Town shall remain WM's property. Additional carts will be available, for both trash and recycling. An additional cart will be priced at the rate being charged, at the time of request. Residents will need to call WM directly to set up an individual billing account for additional carts. These carts will be billed for a period of 12 months on one invoice. No delivery charge will be assessed for additional carts. There will be a \$25.00 removal fee for additional carts removed before the expiration of the 12 month period.
 - ii. Acceptable Waste Collection Frequency, Days and Times. Acceptable Waste shall be collected from the curbside once per week from each Residential Unit on a weekday or weekdays to be agreed by WM and Town. Collections shall occur during ordinary hours but in no instance earlier than 6:00 am. All Acceptable Waste must be placed at the curb for collection no later than 7:00 A.M. on scheduled day of collection. WM reserves the right to change the service day with advance written notice to the Town and Residents.
 - iii. Recyclable Materials Collection Frequency, Days and Times. WM shall provide recycling collection services to Residential Units on a or bi-weekly basis, subject to the terms and conditions in Exhibit A. WM reserves the right to change the service day with advance written notice to the Town and Residents. The Town and Residential Units shall ensure that only materials acceptable in accordance with Exhibit A are placed in the recycling containers. WM reserves the right to refuse recycling services where the materials are not properly segregated from waste or other non-recyclable material.
 - iv. Exclusions from the Service - Notwithstanding anything to the contrary herein, the Service shall not include yard waste collection, bulk or white goods collection, construction or demolition waste collection, or Christmas tree collection. Services to commercial establishments are not covered by this Agreement.
 - v. Disposal. WM shall dispose or arrange to dispose of the Acceptable Waste collected under this Agreement only at solid waste disposal facilities that are licensed and permitted to accept such solid waste
 - vi. Holiday Schedule. The following shall be designated holidays on which the Service shall not be provided: New Year's Day Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day. If a designated holiday falls on a regularly scheduled Service day, the Service will be performed on the next weekday

- vii. **Cart Replacement.** WM shall replace at no charge to the Town or the individual Residential Unit any Cart that becomes damaged or destroyed during the provision of the Service, or that becomes unusable because of ordinary wear and tear. However, if a Cart in the possession of a Residential Unit is lost, stolen, damaged, or destroyed through no fault of WM, the occupant of the Residential Unit shall be responsible to compensate WM the fair market value for the replacement of such Cart. The Residential Unit shall be billed separately for such replacement cost.
- b. **Compliance with Laws.** The Service shall be performed in accordance with all applicable statutes, laws, rules, regulations and ordinances
- c. **Personnel and Equipment.** The Service shall be performed by properly trained and licensed personnel in adequate numbers and with adequate vehicles and equipment to complete the Service in a safe and timely manner
- d. **Complaints and Missed Pick-Ups.** All complaints as to WM's provision of the Service, including alleged missed pick-ups, shall be given prompt and courteous attention. WM shall attempt to resolve all complaints promptly, and shall cure all missed pick-ups that are not the result of *force majeure* events within one (1) weekday, conditions permitting
- e. **Anti-Discrimination.** In performing the Service, WM shall not discriminate against any person on the basis of race, religion, sex, national origin, political affiliation, or physical and mental disability.
- f. **Exclusive.** The Town grants the exclusive right to perform the Services set forth in this Agreement. The Town agrees that it will not allow anyone other than WM to lease carts to residents or engage in the collection of residential waste within the Town

IV. HOUSE COUNT AND ADJUSTMENTS

The estimated house count at the commencement of the term hereunder shall be 1,250 Residential Units consisting of 768 Residential Units for both waste and Recyclables collection and 482 Residential Units for Recyclable collection only for Flood Homes HOA; however, the Parties shall verify this house count prior to the initial billing under this Agreement and shall adjust the house count for billing purposes accordingly. Either Party may propose a prospective adjustment to the house count at any time during the term of this Agreement upon reasonable notice to the other Party, which adjustment shall be investigated jointly by the Parties to establish a new house count to apply thereafter. WM shall keep accurate route sheets and/or a Residential Unit database that shall be provided to Town promptly upon its request.

V. FEES AND PAYMENTS

- a. **Service Fee per Residential Unit.** The fee per Residential Unit, per month for both trash and recycling services, shall be Sixteen Dollars and twenty-five cents (\$16.25). The fee per Residential Unit, per month for recycling services only (Flood Homes) shall be Four Dollars and twenty-five cents. The monthly fee paid to WM by the Town shall be calculated based upon the current house count for the services provided at the time each invoice is generated, times the fee per Residential Unit [e.g., Current House Count receiving both services x Fee plus Current House Count receiving recycling services only x Fee = Monthly Invoice Amount].
- b. **Fuel Surcharge.** The monthly fee per Residential Unit will include a fuel surcharge, based on a \$4.00 fuel table. The published index for determining monthly diesel fuel prices will be the Department of Energy's (DOE) "Weekly Retail On-Highway Diesel Prices" for the Midwest region. The price published for the first Monday of the month will be used as that month's diesel fuel price. The prices can be viewed at the DOE's website: ("EIA/DOE"). If diesel fuel is below \$4.00 per gallon, the fuel surcharge will be 0 percent. If diesel fuel is at or above \$4.00 per gallon, the following percentages will apply to WM's monthly fee per Residential Unit.

Diesel Fuel Price per Gallon	Fuel Surcharge
<\$4.00	0 Percent
\$4.00 to \$4.24	2 Percent
\$4.25 to \$4.49	4 Percent
\$4.50 to \$4.75	5 Percent
For every \$0.25 per gallon increase above \$4.75	The Fuel Surcharge will increase by 1%

- c. **Annual Increase.** Annually, the monthly fee per Residential Unit shall be adjusted on each anniversary of the effective date of this Agreement by an amount of the increase in the Consumer Price Index ("CPI") for Water, Sewer and Trash Collection Services¹ published by U.S. Bureau of Labor Statistics.
- d. **Invoices and Payment.** WM will submit monthly invoices to the Town and the Town shall have thirty (30) days from the invoice date to remit payment in full. Payment by Town shall be made by check or wire transfer or ACH debit. The maximum interest permitted by law shall be applied to balances due and unpaid after more than fifteen (15) days beyond the due date.
- e. **Changes in Law.** Notwithstanding anything to the contrary in this Agreement, WM may modify the rates to account for any increase in costs due to uncontrollable circumstances, including, without limitation, changes in local, state or federal laws or regulations, disposal or processing costs, third party transportation costs, imposition of taxes, fees or surcharges, municipal franchise fee increases and acts of God such as floods, fires, etc. WM shall provide Town with 30 days written notification prior to the effective date of any changes in rate.

VI. DEFAULT AND TERMINATION

The failure of either Party to perform a material obligation under this Agreement shall be considered a breach of this Agreement, and the breaching Party shall be in default. In the event of default, the non-defaulting Party shall give written notice of the default, and the defaulting Party shall have: (i) ten (10) days from the receipt of the notice to cure any failure to pay money under this Agreement, or (ii) thirty (30) days from the receipt of the notice to cure any other default under this Agreement. If the defaulting Party fails to cure the breach within the allotted time, the non-defaulting Party may, at its option, immediately terminate the Agreement. In the event of a default, the defaulting Party agrees to pay all damages caused by said default, to include, without limitation reasonable attorneys' fees and costs associated with enforcement of this Agreement. Under no circumstances shall the Parties be liable for any consequential, indirect, punitive or special damages for any alleged default under this Agreement.

VII. FORCE MAJEURE

WM's performance of the Service may be suspended and its obligations hereunder excused during the pendency of a cause or causes beyond its reasonable control, such as by way of example and not limitation: acts of war, public enemy, civil disturbance, riot or disorder; epidemic or pandemic; acts of God such as landslide, lightning, earthquake, fire, storm, the impending approach of a storm, or flood; explosion; restraining orders, interference by civil or military authorities, strike, statute, ordinance, government order or ruling; or other similar causes. In the event of an occurrence of a *force majeure* event, WM shall notify the Town immediately, in writing, describing the particulars of the circumstances preventing performance of the Service and its expected duration. Notice shall be provided after the effect of such occurrence has ceased.

VIII. INDEMNIFICATION

a. To the fullest extent permitted by law, the Town agrees to indemnify, defend, and hold WM harmless from and against all claims and actions, suits, debts, damages, liabilities and costs whatsoever, including but not limited to attorneys' fees and costs of defense, based upon or arising out of the Town's breach of this Agreement, and based upon or arising out of any injuries (including death) to persons, or damage to property, to the extent caused in whole or in part by the negligent acts or omissions of the Town, or any of its directors, officers, employees, agents, or subcontractors, in the performance of this Agreement.

b. WM agrees to indemnify, defend, and hold the Town harmless from and against all claims and actions, suits, debts, damages, liabilities and costs whatsoever, including but not limited to attorneys' fees and costs of defense, based upon or arising out of the breach of this Agreement, and based upon or arising out of any injuries (including death) to persons, or damage to property, to the extent caused in whole or in part by the negligent acts or omissions of WM, or any of its directors, officers, employees, agents, or subcontractors, in the performance of this Agreement.

c. Notwithstanding any provisions to the contrary, WM shall not be responsible for any damage to pavement or curbing that is the result of ordinary wear and tear during the performance of the Service.

d. The indemnification obligations of this section shall survive the termination or expiration of this Agreement for any reason.

IX. INSURANCE

WM shall maintain at its own cost and expense the following minimum limits of occurrence-based insurance during the term of this Agreement:

	<u>Type</u>	<u>Amount</u>
A.	Worker's Compensation	Statutory
B.	Employer's Liability	\$500,000
C.	Comprehensive General Liability	\$500,000 per occurrence \$1,000,000 aggregate
D.	Automobile Liability (owned and non-owned)	
	i. Bodily Injury	\$1,000,000 per occurrence
	ii. Property Damage Liability	\$500,000 per occurrence
E.	Excess/Umbrella	\$500,000 per occurrence

The Town, its elected and appointed officials and employees, shall be included as additional insured parties under the CGL, Automobile and Excess/Umbrella coverages. Prior to commencement of the Service, WM shall deliver to Town a certificate of insurance evidencing the required coverages. This certificate shall provide that any change restricting or reducing coverage, or the cancellation of any policies under which certificates are issued, shall not be valid unless at least 30 days' written notice of cancellation is provided.

X. MISCELLANEOUS PROVISIONS

a. Independent Contractor. WM shall perform the Service as an independent contractor. WM, its officers, employees, agents, contractors or subcontractors, are not and shall not be considered employees, agents or servants of the Town for any purpose whatsoever under this Agreement or otherwise. WM at all times shall have exclusive control of the performance of the Service. Nothing in this Agreement shall be construed to give the Town any right or duty to supervise or control WM, its officers, employees, agents, contractors, or subcontractors, nor to determine the manner in which WM shall perform its obligations under the Agreement.

b. Amendments. No amendment to this Agreement shall be made except upon the written consent of both Parties.

c. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties hereto with respect to the subject matter and supersedes any prior and contemporaneous agreements and understandings, express or implied.

d. Waiver. A waiver by either Party of any breach of any provision hereof shall not be taken or held to be a waiver of any subsequent breach, whether similar or dissimilar, or as a waiver of any provision itself. No payment or acceptance of compensation for any period subsequent to any breach shall be deemed a waiver of any right or acceptance of defective performance.

e. Severance. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid, or unenforceable, the balance of this Agreement shall remain in effect and binding on the Parties.

f. Choice of Law. This Agreement shall be governed by the laws of the state where the services are being performed, without regard to choice of law rules.

g. **Assignment.** Neither Party may assign its rights and obligations under this Agreement without the prior written consent of the other Party, except that WM may assign its rights and obligations under this Agreement to any WM affiliate without the Town's consent by providing the Town with 30 days' written notice. An assignment shall not relieve the assignee of any obligations under this Agreement.

h. **Notice.** All notices required or permitted under this Agreement shall be in writing and shall be personally delivered, sent by certified mail, return receipt requested, or by overnight courier, with copies to counsel for the respective Parties.


IN WITNESS THEREOF, the parties have executed this Municipal Recycling and Waste Agreement as of the Effective Date indicated above.

Waste Management of Wisconsin, Inc

Signature:

Printed
Name:

Title:



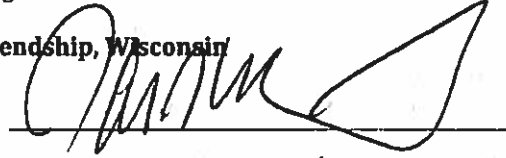
PAUL COPELAN
AREA SALES DIRECTOR

Town of Friendship, Wisconsin

Signature:

Printed
Name:

Title:



JEFF MEISENBERG
TOWN CHIEF

EXHIBIT A
SINGLE STREAM SPECIFICATIONS

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)
PP plastic bottles and tubs with symbol # 5 - empty	Uncoated printing, writing and office paper
Steel and tin cans	Old corrugated containers/cardboard (uncoated)
Glass food and beverage containers* - brown, clear, or green	Magazines, glossy inserts and pamphlets

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

Plastic bags and bagged materials (even if containing Recyclables)	Microwavable trays
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*, #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 Recyclable materials or pieces of paper Recyclables less than 4" in size in any dimension	Propane tanks, batteries
Cartons*	Aseptic Containers*

DELIVERY SPECIFICATIONS:

Material delivered by or on behalf of Customer may not contain Non-Recyclables or Excluded Materials. "Excluded Materials" means 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 1964, as amended, or other regulations or ordinances or other materials that are deleterious or capable of causing material damage to any part of Company's property, its personnel or the public or materially impair the strength or the durability of Company's structures or equipment.

Company may reject in whole or in part, or may process, in its sole discretion, Recyclables not meeting the specifications, including wet materials, and Customer shall pay Company 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 Company's operating or profit margin ("Cost"). Without limiting the foregoing, and Customer shall pay a contamination charge 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.

Company reserves the right upon notice to discontinue acceptance of any category of materials set forth above 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 Customer's Cost.

* Glass may not be accepted in all locations. Cartons, aseptic containers and other plastics may be allowed if approved in writing by Company.

V6 February 2019

