

WM SUSTAINABILITY SERVICES AND INDUSTRIAL WASTE SERVICES AGREEMENT

This Industrial Waste Services Agreement, consisting of the terms and conditions set forth herein, and Exhibit A, and/or Confirmation Letter(s) and the Profile Sheet(s) entered into from and after the date hereof from time to time (all of the foregoing being collectively referred to as the "Agreement"), is made as of the Effective Date shown below by and between City of Thorne Bay, on behalf of its subsidiaries and affiliates (collectively, "Customer") and Waste Management National Services, Inc., on behalf of its subsidiaries and affiliates providing the services to Customer (collectively, "WMNS").

1. TERMS AND CONDITIONS SERVICES PROVIDED.

WMNS may dedicate to the performance of this Agreement a WMNS Sustainability Services Resource Manager ("RM") whose obligations hereunder shall be to serve in a consultative capacity for the management of Customer's waste, and to perform the specific scope of services set forth in the Scope of Work, as amended, which shall become an Exhibit A to this Agreement. In addition, WMNS will provide Customer with collection, management, transportation, disposal, treatment and recycling services ("Services") for Customer's solid waste, special waste, and/or hazardous waste (collectively "Industrial Waste") as described on Exhibit A and/or Confirmation Letter(s) and/or applicable Profile Sheets. Rebated recycling services will be subject to Exhibit R attached hereto. Solid Waste means garbage, refuse and rubbish and organic wastes including those which are recyclable. Special Waste includes polychlorinated biphenyl ("PCB") wastes, industrial process wastes, asbestos containing material, petroleum contaminated soils, treated/de-characterized wastes, incinerator ash, medical wastes, demolition debris and other materials requiring special handling in accordance with any applicable law or regulation. Hazardous Waste means any hazardous, toxic or radioactive substances; as such terms are defined by any applicable laws or regulations. "Nonconforming Waste" is waste that is not in accordance with waste descriptions given by Customer under this Agreement and/or prohibited from being received, managed or disposed of at a transfer, storage or disposal facility used hereunder by federal, state or local law, regulation, ordinance, permit or other legal requirement or any material containing information (in hard copy of 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 ("HIPPA"), or other regulations or ordinances, and other materials requiring special handling in accordance with any applicable law or regulations. Customer agrees to notify WMNS of every opportunity to bid on Services needed by Customer. When WMNS handles Special or Hazardous Waste for Customer, Customer will provide WMNS with a Generator's Waste Profile Sheet

("Profile Sheet") describing all Special or Hazardous Waste, and provide a representative sample of such waste on request. In the event this Agreement includes transportation by WMNS, Customer shall, at the time of tender, provide to WMNS accurate and complete documents, shipping papers or manifests as are required for the lawful transfer of the Special or Hazardous Waste under all applicable federal, state or local laws or regulations.

2. CUSTOMER WARRANTIES.

Customer hereby represents and warrants that all Industrial Waste delivered by Customer to WMNS or its Subcontractors shall not be or contain any Nonconforming Waste. Customer (including its subcontractors) represents and warrants that it will comply with all applicable laws, ordinances, regulations, orders, permits or other legal requirements applicable to the Industrial Waste. Customer shall provide WMNS and its Subcontractors a safe work environment for Services performed on any premises owned or controlled by Customer.

3. WASTE CHARACTERIZATION SERVICES.

If WMNS provides waste characterization services, Customer shall certify to WMNS that the information supplied by Customer regarding the Waste Material shall be true, correct, complete and accurate. Customer shall be solely and strictly liable for any damages, losses or expenses arising from inaccuracies in the information supplied by Customer and incidences of Nonconforming Waste. WMNS will not sign any generator documentation, including, but not limited to, Profile Sheets or manifests.

4. TERM OF AGREEMENT; TERMINATION.

The Initial Term of this Agreement shall be 60 months, commencing on the Effective Date set forth below. This Agreement shall automatically terminate ("Renewal Term") unless both parties agree in writing to renew the agreement for additional twelve (12) month terms provided however, that the terms and conditions of this Agreement shall remain in full force and effect, in accordance with its terms, with respect to any uncompleted or unfinished Service provided for in an Exhibit A, Confirmation Letter and/or Profile Sheet until such Service is completed. Either party may terminate this Agreement, or a particular location serviced under this Agreement, by giving five days written notice if the other party materially breaches this Agreement, provided however that written notice has been provided to the defaulting party and this party has failed to correct its deficient performance within a reasonable time period (not to exceed 30 days). Customer may terminate at any time, with or without breach, and with or without cause, upon providing WMNS with thirty (30) days written notice; provided however, that the terms and conditions of this Agreement shall remain in full force and effect, in accordance with its terms, with respect to any uncompleted or unfinished Service provided for in an Exhibit A, Confirmation Letter and/or Profile Sheet until such Service is completed.

5. INSPECTION; REJECTION OF WASTE.

Title to and liability for Nonconforming Waste shall remain with Customer at all times. Title to waste provided by Customer to WMNS is transferred to WMNS upon WMNS' receipt or collection unless otherwise provided by applicable law. WMNS shall have the right to inspect, analyze or test any Industrial Waste delivered by Customer. If Customer's Industrial Waste is Nonconforming Waste, WMNS can, at its option, reject Nonconforming Waste and return it to Customer or require Customer to remove and dispose of the Nonconforming Waste at Customer's expense.

6. SPECIAL HANDLING; TITLE.

If WMNS elects to handle, rather than reject, Nonconforming Waste, WMNS shall have the right to manage the same in the manner deemed most appropriate by WMNS given the characteristics of the Nonconforming Waste. WMNS may assess and Customer shall pay additional fees associated with delivery of Nonconforming Waste, including, but not limited to, special handling or disposal charges, and costs associated with different quantities of waste, different delivery dates, modifications in operations, specialized equipment, and other operational, environmental, health, safety, or regulatory requirements. Title to and ownership of acceptable Industrial Waste shall transfer to WMNS upon its final acceptance of such waste.

7. WMNS WARRANTIES.

WMNS hereby represents and warrants that: (a) WMNS and the RM will manage the Industrial Waste in a safe and workmanlike manner in full compliance with all valid and applicable federal, state and local laws, ordinances, orders, rules and regulations; and (b) it will use disposal facilities that have been issued permits, licenses, certificates or approvals required by valid and applicable laws, ordinances and regulations necessary to allow the facility to accept, treat and/or dispose of Industrial Waste. The RM working at the facility will be trained on safe work practices and will work in compliance with applicable regulations including HAZCOM standards and HAZWOPER requirements except as provided herein, WMNS makes no other warranties and hereby disclaims any other warranty, whether implied or statutory.

8. CHARGES AND PAYMENTS.

Customer shall pay the rates set forth on Exhibit A, which may be modified as agreed upon by the parties. Rebates shall be in accordance with Exhibit R. Each party shall pay all amounts due in full within 45 days of completion of a project which is when a barge is off-hire. Any late fee shall apply on all past due amounts accruing from the completion date of a project and be calculated at 1.5% of the outstanding balance or such lesser amount to the maximum extent allowed by applicable law. Each party acknowledges that any late fee charged is not to be considered as interest on debt, is not a penalty, that the damages incurred by late payment are difficult to measure, and that the late fee is a reasonable charge for late payment.

9. CLAIMS & INSURANCE.

- A.** WMNS shall be liable to the Customer for any claim of, or liability for, negligent acts, errors, and omissions of WMNS under this Agreement, including the award of reasonable attorneys' fees even if in excess of Alaska Civil Rule 82. WMNS is not liable to the Customer for a claim of, or liability for, the negligent acts, errors, and omissions of the Customer or for incidences of Nonconforming Waste unless WMNS has elected in writing to handle the Nonconforming Waste as stated in Section 6. If there is a claim of, or liability for, a joint negligent act, error, or omission of WMNS and the Customer, the obligations of this section shall be apportioned on a comparative fault basis. In this section, WMNS and "the Customer" include the employees, agents, and contractors who are directly responsible, respectively, to each.
- B. Damages.** Neither party shall be liable to the other for consequential, indirect or punitive damages arising out of the performance (or non-performance) of this Agreement. In addition, WMNS agrees to purchase, at its own expense, and maintain in force at all times during the performance of services under this agreement, policies of insurance for auto liability with minimum limits of \$1,000,000 combined single limit per occurrence for bodily injury and property damage, and commercial general liability with minimum limits of \$2,000,000 per occurrence and \$2,000,000 in aggregate, and worker's compensation and employer's liability coverage as required by law. The auto liability policy shall include form MCS-90 and CA 9948, Broadened Pollution Coverage endorsement. The Customer is to be named as an additional insured on the WMNS auto liability and general liability policies with respect to the services provided by WMNS under this agreement. A waiver of subrogation in favor of Customer shall be included in the WMNS Workers' Compensation/Employer's Liability policy. WMNS shall also provide Pollution Legal Liability including coverage for transportation with a limit of \$5,000,000 per incident. WMNS shall provide the Customer with certificates of insurance evidencing these coverages before beginning work.

10. UNCONTROLLABLE CIRCUMSTANCES.

Except for the obligation to make payments hereunder, neither party shall be in default for its failure to perform or delay in performance caused by events beyond its reasonable control, including, but not limited to, labor disputes, strikes, riots, imposition of laws or governmental orders, fires, or acts of God, and the affected party shall be excused from performance during the occurrence of such events.

11. ASSIGNMENT.

This Agreement shall be binding on and shall inure to the benefit of the parties and their respective successors and assigns. In the event WMNS sells all or a portion of its business which provides services to Customer, Customer agrees this Agreement with respect to locations affected by such sale is terminated, however, WMNS will propose to Customer alternative ways to perform the Services lost as a result of the sale.

12. ENTIRE AGREEMENT.

This Agreement represents the entire understanding and agreement between the parties relating to the management of Industrial Waste and supersedes any and all terms and conditions contained in any agreements, purchase or work orders, bids or proposals, whether written or oral, between the parties regarding the same; excluding, however, any service agreements under which any subsidiary or affiliate of WMNS is providing any leased equipment, in which case the equipment information, term, termination and liquidated damages provisions of any service agreement as it pertains to the equipment only, shall prevail.

13. EQUIPMENT.

The equipment WMNS furnishes to Customer will remain WMNS' property. Customer will be responsible for any loss or damage resulting from Customer's handling of the equipment, except for normal wear and tear. Customer will not overload by weight or volume, move or alter the equipment and will take reasonable precautions to prevent others from doing the same. Customer will use the equipment only for its intended purpose. On collection day, Customer will provide unobstructed access to the equipment. If the equipment is inaccessible or overloaded by weight or volume, Customer's service will be subject to an additional charge. Provided such vehicles are within the legal road weights for public routes taken to Customer's location(s), WMNS will not be responsible for damage to Customer's driving surfaces resulting from the weight of WMNS' vehicles or equipment.

14. MISCELLANEOUS.

((a) The validity, interpretation and performance of this Agreement shall be construed in accordance with the law of the state in which the Services are performed and the dispute arose; (b) If any provision of this Agreement is declared invalid or unenforceable, then such provision shall be deemed severable from and shall not affect the remainder of this Agreement, which shall remain in full force and effect; (c) The party's payment obligations for Services and the Warranties and Indemnification made by each party shall survive termination of this Agreement.; (d) No additional scope of work under the Agreement shall be performed unless WMNS and Customer have mutually agreed and have executed a written amendment to the Agreement. (e) This Agreement shall be enforced in accordance with the laws of the State of Alaska. f) The Parties agree that the Superior Court for the State of Alaska has personal and subject matter jurisdiction over WMNS and this Agreement, and that venue for all disputes is proper in the First Judicial District within, or closest to, the Customer. (g) All considerations of the agreed work will be coordinated through the party representatives named below:

Waste Management National Services, Inc..

(Address)

(Email)

(Phone)

The City of Thorne Bay

James A. Gould, Mayor

P.O. Box 19110

Thorne Bay, AK 99919

administrator@thornebay-ak.gov

(907) 828-3380

IN WITNESS WHEREOF, this Agreement has been signed by the authorized representatives of the parties on _____, 20__.

WASTE MANAGEMENT NATIONAL SERVICES, INC.

("WMNS")

City Of Thorne Bay

Customer

By:

James A. Gould
4/13/17

By:

Name:

JAMES A. GOULD

Name:

Title:

MAYOR

Title:

EXHIBIT A

Scope of Work

EXHIBIT R

TO WM SUSTAINABILITY SERVICES AND INDUSTRIAL WASTE SERVICE AGREEMENT FOR USED VEHICLE/METAL SCRAP RECYCLING SERVICES

1. **TERMS & CONDITIONS:** Unless otherwise modified herein, the terms and conditions of the WM Sustainability Services and Industrial Waste Service Agreement between WMNS and Customer (the "Agreement") shall govern the services provided under this Exhibit R. In the event of a conflict between the Agreement and this Exhibit R, the terms and conditions of Exhibit R shall control, but only with respect to the recycling services provided hereunder. Except as amended hereby, all other terms and conditions of the Agreement shall remain in full force and effect, and all word and phrases used in this Agreement shall, unless the context clearly requires otherwise, have the meanings subscribed to them in the Agreement.

2. **STATEMENT OF WORK:** Sites to be serviced pursuant to this Exhibit R shall be set forth in the Site Addendum attached or similar document referenced in the Agreement. The terms and conditions of such Site Addendum shall control with respect to each site. Each Site Addendum shall be effective and become a part of the Agreement as of the effective date stated on each Site Addendum and when both parties have executed the Site Addendum. The commodities covered by such Site Addendum shall be referred to as "Recyclables". In the event of a conflict between the Agreement, this Exhibit R, and a Site Addendum, the terms and conditions of the Site Addendum shall control, but only with respect to the recycling services provided thereunder. The services to be provided hereunder shall be restricted to the recycling of used vehicles and other metal containing products. In the event the parties agree the WMNS will be providing other recycling services, the parties acknowledge that a separate exhibit and/or statement of work will be needed, which statement of work will contain specifications and pricing considerations.

3. **QUANTITY:** During the term of the Agreement, WMNS agrees to take and Customer agrees to provide to WMNS the entire quantity of the Recyclables set forth on each Site Addendum.

4. **QUALITY:** Unless otherwise set forth on the Site Addendum, Customer will provide titled and non-titled vehicles, trucks and heavy equipment, (including tires collected in conjunctions with such vehicles) and other items such as appliances containing scrap metal in accordance with the following specifications ("Specifications"):

Scrap vehicles, appliances and other metal-containing materials consistent with the materials currently collected by WM and its customers, which may contain tires and other ancillary materials, as evidenced by the pictures as set forth as Exhibit A. Appliances and vehicles shall be drained of all gasses and liquids and contain no Hazardous Waste or Special Waste, including but not limited to, Freon, gasoline, oil, or batteries. Tires on vehicles are acceptable. For tanks or other pressure vessels, the end of the tank must be opened. Pressurized cylinders shall have the valves removed and a hole punched in the side. For the avoidance of doubt, waste tires that are not attached to a scrap vehicle will not be processed as Recyclables or receive a rebate. Waste tires will be disposed of in accordance with Exhibit A.

In the event that the Recyclables do not meet Specifications, Customer shall have the sole responsibility for any resulting settlement or adjustments, including price reductions, transportation and disposal costs. Recyclables specifically exclude, and Customer 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, 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 ("HIPAA"), or other regulations or ordinances, ("Protected Information"), or other waste not approved in writing by WMNS (collectively, "Excluded Materials"). Notwithstanding the foregoing, with respect to any SOW under which vehicles are being recycled, Customer may include waste tires in such recyclables to the extent collected in conjunction with a vehicle being recycled.

5. **RECYCLABLE VALUE /CHARGES:** The value of the Recyclables and charges to be paid by Customer to WMNS for processing the Recyclables shall be as set forth in Exhibit A. Unless specifically stated, all pricing set forth therein excludes haul charges, that is, any charges with respect to the collection of such Recyclables and delivery to a recycling facility shall be paid by Customer unless otherwise stated in Exhibit A. Customer acknowledges that the value of the Recyclables may be negative.

6. **TITLE AND RISK OF LOSS:** Title to and risk of loss for the Recyclables purchased under this Agreement and Exhibit A shall pass to WMNS upon receipt of such Recyclables by WMNS and/or its subcontractor at the Customer facility being serviced. Title to and liability for Excluded Materials shall remain with Customer at all times.

7. **SERVICE:** Service arrangements will be agreed upon between Customer and WMNS as set forth in Exhibit A.

8. **PAYMENT:** WMNS shall provide a consolidated report showing tonnage delivered by each Customer location, together with recyclable values owed to Customer by WMNS and charges to be paid to WMNS by Customer. Payments shall be offset against each other and WMNS shall pay Customer on or about forty-five (45) days after receipt of weight confirmation of the Recyclables at the third-party processing facility less any charges incurred. Customer shall pay WMNS any amounts owed in accordance with the Agreement.

9. All payments shall be made in accordance with this Exhibit R.

10. Unless otherwise agreed in writing, tonnage removed from the site shall be determined by certified scales or barge displacement measurements and use of a certified displacement table for the barge in use. Representatives from WMNS and Customer shall conduct/witness displacement measurements before and after hauling of all scrap metals.

11. WMNS will be released from performance under any SOW if current market pricing and collection expenses predict a loss unless prior arrangements are made with the Customer.

12. All parties warrant and guarantee that all services performed and scrap metal/junk cars stored under the Agreement shall meet the environmental laws and standards applicable to this endeavor.