

MUNICIPAL SOLID WASTE AGREEMENT

This Municipal Solid Waste Agreement (this "Agreement") is entered into as of the 1st day of October, 2024 between the Barbour Manor Homeowners' Association("HOA"), acting by and through its authorized HOA Board, and Waste Management of Kentucky("Contractor"), acting by and through its duly authorized representative.

WITNESSETH:

WHEREAS, the HOA desires to grant to Contractor the exclusive right to operate and maintain the service of collection, transportation, and disposal of residential garbage and trash to the residents who live in the HOA; and

WHEREAS, Contractor desires to operate and maintain the service of collection and transportation of residential garbage and trash for HOA residents, subject to the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the parties hereto agree as follows:

1. DEFINITIONS:

- 1.01. **Bag or Bags:** Plastic sacks, designed to store refuse with sufficient wall strength to maintain physical integrity when lifted by the top. Total weight of a Bag and its contents shall not exceed forty (40) pounds.
- 1.02. **Brush:** Any cuttings or trimmings from trees, shrubs, or lawns, and similar materials that are four (4) feet or less in length and four (4) inches or less in diameter. The term "Brush" specifically excludes material resulting from services of a Third Party Provider.
- 1.03. **Bulky Waste:** Furniture, bicycles (without tires), refrigerators that have CFCs removed by a certified technician, stoves, loose brush greater than four (4) feet in length or four (4) inches in diameter, and other oversized wastes which are customary to ordinary housekeeping operations of a Residential Unit and whose large size precludes or complicates its handling by normal solid waste collection, processing or disposal methods.
- 1.04. **Bundle or Bundles:** Tree, shrub and brush trimmings securely tied together forming an easily handled package, not to exceed four (4) feet in length, six (6) inches in diameter, or fifty (50) pounds in weight.
- 1.05. **Commercial Waste:** Garbage, Rubbish, and Refuse generated by a commercial and industrial business and establishment, including, but not limited to, stores, offices, restaurants, warehouses, and manufacturing facilities, premises, locations or entities, public or private, within the corporate limits of the HOA.

- 1.06. **Compactor:** Any container, regardless of size, which has a compaction mechanism, whether stationary or mobile.
- 1.07. **Construction Debris:** Waste building materials resulting from construction, remodeling, repair, or demolition operations, but specifically excluding inert debris, land-clearing debris, yard debris, or used asphalt, asphalt mixed with dirt, sand, gravel, rock, concrete, or similar materials.
- 1.08. **Contractor:** Waste Management of Kentucky, Inc.
- 1.09. **Customer:** The owner or tenant of a Residential Unit located within the HOA, and identified by the HOA as being eligible for and in need of the services provided by the Contractor under this Agreement.
- 1.10. **Dead Animals:** Animals or portions thereof that have expired from any cause except those slaughtered or killed for human use.
- 1.11. **Disposal Site:** A duly permitted sanitary landfill selected by Contractor.
- 1.12. **Garbage:** Solid Waste consisting of putrescible or animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling and sale of produce and other food products, and all Dead Animals of less than ten pounds (10 lbs.) in weight, except those slaughtered for human consumption.
- 1.13. **Hazardous Waste:** Any Solid Waste identified or listed as a hazardous waste by the administrator of the Environmental Protection Agency under the Federal Solid Waste Disposal Act as amended by RCRA, 42 U.S.C. §6901, *et. seq.*, as amended.
- 1.14. **Medical Waste.** Waste generated by health care related facilities and associated with health care activities, not including Garbage or Rubbish generated from offices, kitchens, or other non-health-care activities. The term includes Special Waste from health care-related facilities which is comprised of animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps as those terms are defined in 25 TAC §1.132 (relating to Definitions).
- 1.15. **Polycart:** A rubber-wheeled receptacle with a maximum capacity of 90 - 95 gallons constructed of plastic, metal and/or fiberglass, designed for automated or semi-automated solid waste collection systems, and having a tight fitting lid capable of preventing entrance into the container by small animals. The weight of a Polycart and its contents shall not exceed 175 lbs.
- 1.16. **Refuse:** Same as Rubbish.
- 1.17. **Residential Unit:** A residential dwelling within the service area of the HOA occupied by a person or group of persons comprising not more than four families. A Residential Unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto. A condominium dwelling, whether of single or multi-level construction, consisting of four units, shall be treated as a Residential Unit, except that

each single-family dwelling within any such Residential Unit shall be billed separately as a Residential Unit.

- 1.27 **Residential Waste:** All Refuse, Garbage and Rubbish generated by a Customer at a Residential Unit, excluding Unacceptable Waste.
- 1.18. **Rubbish:** Nonputrescible Solid Waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).
- 1.19. **Solid Waste or Waste:** All Residential Waste to be collected by Contractor pursuant to this Agreement. The term "Solid Waste" or "Waste" specifically excludes Unacceptable Waste.
- 1.20. **Special Waste:** Waste that requires special handling and management due to the nature of the waste, including, but not limited to, the following: (A) containerized waste (e.g. a drum, barrel, portable tank, box, pail, etc.), (B) waste transported in bulk tanker, (C) liquid waste, (D) sludge waste, (E) waste from an industrial process, (F) waste from a pollution control process, (G) residue and debris from the cleanup of a spill or release of chemical(s), or (H) any other waste defined by applicable law, rule or regulation as "Special Waste."
- 1.21. **Third Party Provider:** A commercial business enterprise or commercial service provider providing services to Residential Units.
- 1.22. **Unacceptable Waste:** Any waste or material that (i) the acceptance and handling of which by Contractor would cause a violation of any permit, condition, legal or regulatory requirement, (ii) substantial damage to Contractor's equipment or facilities, or (iii) contains information (in hard copy or electronic format) that is protected or regulated under any local, state or federal privacy or data security laws, including without limitation, the Health Insurance Portability and Accountability Act (HIPAA), or (iv) presents a danger to the health or safety of the public or Contractor's employees, and/or (v) is or contains Hazardous Waste, Special Waste, untreated Medical Waste, Dead Animals weighing ten pounds (10 lbs.) or greater, or (vi) is or contains solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit, or (vii) is soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements, or (viii) results from activities associated with the exploration, development, or production of oil or gas or geothermal resources.

2. GRANT OF EXCLUSIVE FRANCHISE:

Contractor is hereby granted the exclusive right and privilege within the limits of the HOA to conduct business for the purpose of collection and disposal of Residential Unit Waste, subject to the terms hereof, including any tracts, territories and areas hereafter annexed to or acquired by HOA. This grant of exclusivity does not include the collection of Commercial Waste from commercial or industrial businesses.

3. **TERM:**

The term of this Agreement shall commence October 1st, 2024 ("Commencement Date"), and continue to remain in full force and effect for a period of three (3) years; provided, however, the term of this Agreement shall automatically extend without further action of the parties for additional terms of one year, each, unless, not less than ninety (90) days before the termination of the then current term, one party advises the other in writing of its desire to terminate this Agreement at the conclusion of the then current term of the Agreement. The contractor must notify the HOA of the termination of the contract no less than 120 days prior to the expiration date.

4. **RATES:**

Contractor is authorized to charge, and shall receive from the HOA, the rates set forth below ("Base Rates"). The Base Rates are subject to adjustment as set forth in Section 8 below.

October 1st, 2024 through September 30th, 2025

1x per week curbside garbage collection (96-gallon cart provided)

\$16.00 per home per month

Every-other-week curbside recycling collection (96-gallon cart provided)

\$4.00 per home per month

Every-other-week curbside yard waste collection

\$4.00 per home per month

Rates above will be adjusted each year, effective October 1st, based on the year-over-year change in the Consumer Price Index for Water, Sewer, and Trash Services (CPI-WST)

5. **CONTRACTOR SERVICES:**

5.01 **Residential Collection:**

(a) Contractor shall collect Residential Waste generated at a Residential Unit and placed in that Residential Unit's Polycart one time(s) per week during the term of this Agreement.

(b) Construction Debris generated at a Residential Unit by a Third Party Provider shall be deemed Commercial Waste, and is outside the scope of this Agreement. Construction Debris

generated at a Residential Unit by the owner or tenant of that Residential Unit, and not utilizing the services of a Third Party Provider provided, shall be subject to the Bulky Waste limitations set forth in this Agreement.

(c) Each unit shall be permitted one bulk item per month for curbside collection, which must be scheduled for collection through WM customer service.

5.03 Residential Carts:

(a) Contractor shall provide one (1) Polycart to each Residential Unit at the commencement of this Agreement for each of trash, recycling, and yard waste collection. Polycarts (the "Carts") shall be placed by the Customer of a Residential Unit in a location that is readily accessible to Contractor and its collection equipment, not to exceed three (3) feet from the curb or edge of the travel portion of the street, road or alley, and not to be located in a manner that will block the driveway or mailbox or otherwise inhibit proper servicing. The HOA shall aid Contractor in resolving problems of Cart location by the Customer. Customers shall not overload Carts, and the Carts shall be loaded such that the lids shall close securely.

(b) Contractor shall not be required to collect (i) any Residential Waste that is not placed in a Polycart, (ii) any Residential Waste from a Polycart that is overloaded by weight or volume, or (iii) a Polycart that is not properly placed curbside.

(c) The Carts furnished by the Contractor hereunder shall remain the property of Contractor, and the Customer will have no interest in the Carts. The Carts shall remain at the location of the Residential Unit where delivered by Contractor. The Customer shall be responsible for all loss or damage to the Carts, except for normal wear and tear or for loss or damage resulting from Contractor's handling of the equipment. Any Cart removed from a Residential Unit shall be deemed lost, and Contractor shall be entitled to compensation by the customer therefor. Additional Carts are available for residential Customers at an additional charge to be paid by the Customer.

5.04 Unusual Accumulations Collection: Contractor shall have no obligation to collect Unusual Accumulations, and may charge for the collection of any Unusual Accumulations.

5.06 Unacceptable Waste: Contractor shall not be obligated to collect Unacceptable Waste. Title to Unacceptable Waste shall not pass to Contractor, and liability for any unacceptable Waste shall remain with the generator of such Waste.

6. COLLECTION OPERATION:

6.01. **Hours of Operation:** Collection of Residential Waste shall begin no earlier than 6:00 A.M. and shall generally not extend beyond 6:00 P.M. No collection shall be made on Sunday, unless agreed to by both parties.

6.02. **Routes of Collection:** Collection routes shall be established by the Contractor. The HOA shall provide Contractor with maps of the HOA containing sufficient detail for Contractor to design collection routes.

6.03. **Holidays:** The following shall be holidays for purposes of this Agreement:

New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

Contractor may decide to observe any or all of the above-mentioned holidays by suspension of collection service on the holiday, but the Contractor shall be responsible for providing make-up collection for residential routes that occur on specified holidays. Make-up days shall be the next business day following the holiday.

6.04. **Complaints:** Customer complaints shall be directed by the HOA to Contractor, and Contractor shall promptly resolve such complaint based on the nature of the complaint. Any alleged missed pickups will be investigated and, if such allegations are verified, Contractor shall arrange for collection on the next business day after receipt of such complaint. If the missed pickup is a result of Customer related acts or omissions, the HOA shall take appropriate action to cause such Customer to subsequently properly set out such Waste.

6.05. **Collection Equipment:** Contractor, at its sole cost and expense, agrees to furnish, all trucks, equipment, machines, and labor which are reasonably necessary to adequately, efficiently, and properly collect and transport Waste from Customers serviced by Contractor in accordance with this Agreement.

6.06. **Disposal:** The Contractor shall deliver Waste collected to a duly permitted Disposal Site operated in compliance with rules stipulated by the applicable state agency and/or the U.S. Environmental Protection Agency.

6.07. **Spillage:** The Contractor shall not be responsible for scattered Waste unless the same has been caused by Contractor, in which case all scattered Waste shall be timely collected by Contractor.

6.08. **Vicious Animals:** Employees of the Contractor shall not be required to expose themselves to the dangers of vicious animals in order to accomplish Waste collection service. Contractor shall immediately notify the HOA, in writing, of such condition and of his inability to make collection.

6.09. **Protection From Scattering:** Each vehicle shall be equipped with a cover which may be net with mesh not greater than one and one-half (1-1/2) inches, or tarpaulin, or fully enclosed metal top to prevent leakage, blowing or scattering of Waste onto public or private property.

6.10. **Point of Contact.** All dealings and contacts between Contractor and the HOA shall be directed between Andy Reynolds of Contractor, or such other individual identified by Contractor, and the Contract Administrator designated by the HOA.

7. **BILLING:**

- (a) Contractor shall provide billing and bill collection services to Residential and Light Commercial Units on a quarterly basis during the term of this Agreement. Customer shall remit to Contractor payment for such services within thirty (30) days after Customer's receipt of invoice.

8. **MODIFICATION TO RATES:**

8.01 **Additional Adjustments.** Contractor shall also be entitled to an increase in Base Rates from time to time during the term of this Agreement, and upon sixty (60) days' written notice to the HOA, to offset any change in conditions which increase the Contractor's costs due to changes in the ordinances under which the Contractor is to operate, or changes in federal, state or local laws, rules or regulations. Documentation of such increases shall be submitted to the HOA at its request. Contractor shall notify the HOA's contract administrator in writing regarding any such increase in pricing. If the HOA does not agree to the rate adjustment proposed by the Contractor, either party may terminate the agreement upon sixty (60) days' written notice.

9. **HOA'S OBLIGATIONS:**

The HOA agrees to perform all obligations required of the HOA pursuant to the terms of this Agreement, including, but not limited, the following:

- (a) The HOA shall communicate HOA decisions to Contractor on a timely basis from time to time as required under this Agreement;
- (b) The HOA shall timely inform Contractor of complaints made by Customers;
- (c) The HOA shall work with Contractor in good faith to resolve complex Customer service issues; and
- (d) The HOA shall educate Customers to encourage, promote and obtain proper Waste set-out, collection, and disposal as required by this Agreement, including educating Residential Unit Customers to assure proper and timely Waste set out.

10. **DISASTER EVENT:**

The parties understand and agree that, in the event of a hurricane, tornado, major storm, flood, natural disaster, war, act of terrorism, or other act of God ("Disaster Event"), the cleanup from such events may require Contractor to utilize additional equipment, employ additional personnel, or work existing personnel on overtime hours to clean material or debris resulting from the Disaster Event, the collection and disposal of such materials is not included within this Agreement, and shall be governed by a separate, written agreement to be negotiated by the parties, in each party's sole discretion. The HOA shall give the Contractor the first right and opportunity to enter such negotiations with the HOA, and both parties agree to conduct such

negotiations in good faith. The HOA has the right to engage a provider of its choice to collect such material or debris should it be unable to enter into a contract with Contractor.

11. ENFORCEMENT:

HOA grants unto Contractor the right to seek an injunction against any third party which is believed to be infringing on the rights of Contractor to this Agreement, including Contractor's exclusive franchise rights granted herein. By granting this right to Contractor, the HOA in no way reduces its right or obligation to enforce this Agreement relating to the collection and disposal of Waste. Furthermore, Contractor shall have all rights and remedies available to it under Kentucky law to collect delinquent payment of fees by HOA and Customers making payments directly to Contractor. The HOA agrees to take all steps necessary and permitted by law to require Customers to comply with the terms of this Agreement.

12. TERMINATION:

Except as otherwise provided herein, if either party defaults in the performance of any of the covenants or conditions contained herein, and fails to cure such default within thirty (30) days after the non-defaulting party has given the defaulting party written notice of such default (or if such default is of a nature that it cannot be cured within such thirty (30) day period, the defaulting party fails to commence the curing of such default within such thirty (30) day period, and fails to thereafter diligently pursue the curing thereof) (the "Cure Period"), the non-defaulting party may: (a) terminate this Agreement as of any date which the non-defaulting party may select, provided said date is at least thirty (30) days after the expiration of the Cure Period; (b) cure the default at the expense of the defaulting party; and/or (c) have recourse to any other right or remedy to which it may be entitled by law, including, but not limited to, the right to all damages or losses suffered as a result of such termination. In the event either party waives default by the other party, such waiver shall not be construed or determined to be a continuing waiver of the same or any subsequent breach or default.

13. DISPUTE RESOLUTION:

The parties shall endeavor to settle all disputes under, or relating to, this Agreement by amicable negotiations. Except as otherwise provided herein, any claim, dispute, disagreement or controversy that arises among the parties under or relating to this Agreement that is not amicably settled shall be submitted to mediation. If the parties remain unable to resolve the controversy through mediation, then either party may pursue their claim, dispute, disagreement or controversy in a court with proper venue in the state within which the services are being performed.

14. FORCE MAJEURE:

The performance of this Agreement may be suspended and the obligations of either party excused in the event of and during the period that such performance is prevented or delayed by a Force Majeure occurrence. "Force Majeure" shall mean:

- (a) An act of God, including hurricanes, tornadoes, landslides, lightning, earthquakes, weather conditions, fire, flood, explosion, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot, civil disturbance, strike or other labor disturbances, governmental actions or regulations, governmental requests or requisitions for national defense, or breakdown or injury to, or shortage in, facilities used for the handling,

processing or transportation of Solid Waste or any other cause beyond the reasonable control of either party;

(b) The order or judgment of any federal, State, or local court, administrative agency or governmental body (excluding decisions of federal courts interpreting federal tax laws, and decisions of State courts interpreting State tax laws) if it is not also the result of the willful misconduct or negligent action or inaction of the party relying thereon; provided that neither the contesting in good faith of any such order or judgment nor the failure to so contest shall constitute or be construed as a measure of willful misconduct or negligent action or inaction of such party;

(c) The suspension, termination, interruption, denial, or non-renewal of any permit or approval essential to the operation of the Contractor; or

(d) A Change in Law. "Change in Law" means (i) the adoption, promulgation, or modification or reauthorization after the date of this Agreement of any law, regulation, order, statute, ordinance, rule or binding judicial or administrative ruling that was not adopted, promulgated, modified or reissued on or before the date of this Agreement, or (ii) the imposition of any material conditions in connection with the issuance, renewal, or modification of any permit, license, registration, notice of intent or approval after the date of this Agreement, which in the case of either (a) or (b) establishes requirements affecting a party's operation under this Agreement more burdensome than the requirements that are applicable to such party and in effect as of the date of this Agreement. A change in any federal, State, county, or other tax law or workers compensation law shall not be a Change of Law. However, in the event that a federal, State or local entity imposes a fee, charge or tax after the date of this Agreement that applies to a party's operations per se, such fee, charge or tax shall be treated as a Change in Law.

15. **INSURANCE:**

Contractor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in conjunction with the performance of the work hereunder by the Contractor, its agents, representatives, employees, or subcontractors. The HOA shall be named as an additional insured under the policies, except for workers' compensation, subject to Contractor's indemnities set forth herein. Contractor shall provide the HOA with a certificate of insurance reflecting the HOA's additional insured status and agreeing to give the HOA at least 30 days' written notice in case of policy termination. The cost of such insurance shall be borne by the Contractor.

Minimum Limits of Insurance:

Type of Coverage	Per Occurrence Minimum	Aggregate Minimum
Workers Compensation	As required by law and shall cover all employees including drivers	As required by law.
Commercial General Liability Bodily Injury/Property Damage	\$1,000,000 \$1,000,000 occurrence combined single limit	\$1,000,000
Commercial Auto Liability Bodily Injury/Property Damage	\$1,000,000	\$1,000,000

	\$1,000,000 each accident combined single limit	
Excess/Umbrella Liability	\$1,000,000 occurrence	\$2,000,0000

16. INDEMNITY:

The Contractor shall indemnify the HOA against any third party claims, actions, or suits, to the extent caused by Contractor’s negligent or willful misconduct in providing the services required by this Agreement. Upon obtaining knowledge of any matter giving rise to possible indemnification, the HOA shall notify the Contractor immediately. The Contractor shall have the right to defend or contest any such claim or demand in the name of the HOA. The HOA shall cooperate as the Contractor may reasonably request and shall make available to the Contractor or its representatives all records and other materials reasonably required in such defense. So long as the Contractor is contesting or defending any such claim or demand in good faith, no amount shall be deemed to be due hereunder unless the HOA has been required by order of any court to pay any sum arising from the subject matter of the suit.

17. OWNERSHIP:

Title to Waste shall pass to Contractor when placed in Contractor’s collection vehicle. Title to Unacceptable Waste shall remain with the generator of such Unacceptable Waste.

18. SEVERABILITY:

Should any portion of this Agreement be deemed invalid or unenforceable to any extent, the parties hereto agree that such provision shall be amended to the minimum extent necessary to make such provision enforceable, and the remainder of this Agreement shall not be affected thereby.

19. PRIOR AGREEMENTS:

This Agreement contains the entire agreement between the parties hereto with respect to the matter set forth herein. No provision of any other document, including any request for proposal, shall be deemed incorporated herein, it being the intent of the parties that this Agreement sets forth the full agreement of the parties with respect to the services described herein. No change, alteration or amendment will be binding on either party unless set forth in a document duly executed by all parties hereto.

20. ATTORNEY’S FEES AND VENUE:

In the event suit is filed by either party as a result of the performance or non-performance of the terms set forth in this agreement, the prevailing party shall recover its attorney fees and court costs, with venue of any such action to be in Jefferson County, Kentucky.

21. NOTICES:

All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given (i) if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by

delivering same in person to the intended addressee, or (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated place or machine of the intended addressee. For purposes of notice, the addresses of the parties shall be as set forth below; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth herein.

If to the HOA, at:

Barbour Manor HOA
4103 Machupe Dr
Louisville, KY 40241
ATTN: Bill Hellmueller

If to the Contractor at:

Waste Management of Kentucky, Inc.
7501 Grade Lane
Louisville, KY 40219

with a copy to:

Waste Management
9708 Giles
Austin, TX 78754
Attn: Senior Legal Counsel; and

CT Corporation System
350 North St. Paul Street
Dallas, Texas 75201

or such other addresses as the parties may hereafter specify by written notice delivered in accordance herewith.

EFFECTIVE AS OF THE 1st DAY OF OCTOBER, 2024.

HOA:

HOA BARBOUR MANOR

Bill Hellmueller

Print Name:

Bill Hellmueller

Title:

President/TSR

9-5-2024

CONTRACTOR:

WASTE MANAGEMENT OF KY

Andy Reynolds

Print Name:

Andy Reynolds

Title:

Government & Community Affairs Manager

09/06/24

