

AGREEMENT FOR
HOME GENERATED NON-CONTROLLED PHARMACEUTICAL WASTE COLLECTIONS

This Agreement is entered into and effective on May 1, 2020 by WM Curbside, LLC ("WM"), Costa Mesa Sanitary District ("CMSD"), and the City of Costa Mesa (City) (City and CMSD collectively "Customer").

WHEREAS, CMSD provides solid waste collection services within the boundaries of the City and has a contractual relationship with WM to collect and dispose of home generated non-controlled pharmaceutical waste, as further defined herein, properly and safely; and

WHEREAS, CMSD desires to provide collection boxes for home generated non-controlled pharmaceutical waste so that it is convenient for persons that need to properly dispose of such waste, including at City's Senior Center.

NOW, THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. WM has provided CMSD with one (1) 43-gallon drop-box (the "Box") for the purpose of collecting **home generated non-controlled pharmaceutical waste** ("Waste Materials") from the general public. WM, itself or through its subsidiaries, affiliates or subcontractors, as approved by CMSD, shall provide CMSD with collection, management, transportation, disposal, and treatment of Waste Materials ("Services") directly from, and generated by, the general public and patrons of CMSD, and not including Nonconforming Waste, during the term of this agreement. As used in this Agreement, "Nonconforming Waste" is waste that is not in accordance with waste descriptions given by CMSD 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 is not a Waste Material.
2. WM delivered the Box to the inside of the *Costa Mesa Senior Center*, located at 695 W. 19th Street, Costa Mesa, CA 92627. City makes no representation or warranty of any kind whatsoever regarding the condition of the location or its fitness for CMSD's use, or any use. CMSD agrees to use the location in its current "as-is" condition. It is the responsibility of CMSD to affix the Box to the building if it chooses to do so. The manner of installation and location of the Box shall be within the sole discretion of CMSD. CMSD shall comply with all reasonable requests of City in connection with the placement of the Box at the Costa Mesa Senior Center.
3. The Box is the property of CMSD. City and WM are not responsible for any incidents that occur as a result of the use and/or placement and/or installation of the Box. CMSD shall determine the rules and regulations for use of the Box by CMSD's patrons and others. WM and City assume no responsibility for the CMSD or CMSD's rules or usage of the Box, and the CMSD agrees that WM has made no representations as to how the Box should or should not be used. However, CMSD shall maintain signage on or associated with the Box stating that "only non-controlled pharmaceutical waste" may be placed in the Box. CMSD is responsible for all incidents related to the Box.
4. CMSD will take reasonable steps so that the Waste Materials it tenders to WM will not contain Nonconforming Waste. WM disclaims all responsibility for and assumes no

liability for any Nonconforming Waste, which it will neither handle nor accept for disposal, unless otherwise agreed to between the parties in writing.

5. **Term and Termination.** The initial term of this Agreement ("Term") is two (2) years, starting on the effective date, unless terminated earlier, as provided herein. The parties may mutually agree to extend the Term for an additional one (1) year by giving written notice to the other parties. Any party may request such extension. Any party may terminate this Agreement, without cause, by giving the other parties thirty (30) days' written notice of termination. There is no early termination fee. Any party may terminate this Agreement for cause upon the defaulting party's failure to cure a default following by five (5) days written notice to the defaulting party and an opportunity to cure.
6. **Removal of Bin.** Upon the expiration or termination of this Agreement, WM and CMSD shall coordinate with City and cause the removal of the Box. CMSD shall be responsible for the costs associated with returning the location of the Box to the condition that existed prior to placement of the Box. If restoration or repairs are necessary, City may invoice CMSD for the costs of restoring the location to its original condition. CMSD shall pay such invoices within 30 days of receipt.
7. **Compensation.** WM will be compensated by the CMSD as follows: WM will charge a per stop fee of **\$125.00**; and WM will charge a disposal fee of **\$4.85 per pound** of Waste Materials collected from the Box. The fee may be adjusted by WM to account for increased costs due to uncontrollable circumstances, including, without limitation, changes in local, state or federal laws or regulations, imposition of taxes, fees or surcharges and acts of God such as floods, fires, etc., provided CMSD receives notice from WM and agrees to such increase. Should CMSD not agree, WM may terminate this Agreement for cause. CMSD shall pay the charges in full within 30 days of the date of invoice. Any CMSD invoice balance not paid within thirty (30) days of the date of invoice is subject to a late charge, and any CMSD check returned for insufficient funds is subject to a Non-Sufficient Funds fee, both to the maximum extent allowed by applicable law. CMSD acknowledges that any late charge assessed by WM is not to be considered as interest on debt, is not a penalty, and is a reasonable charge for late payment. City shall not be liable to WM or CMSD for any compensation or fees related to this Agreement.
8. **Waiver of Liability.** CMSD waives all claims it may have against WM and any other person or entity working for or at the direction of WM for the safekeeping or safe delivery or damage to any property of CMSD or of any customer, because of (a) any act or omission associated with the collection of waste from the Box; (b) leaks from the Box, any casualty, or odors on CMSD's premises; or (c) any other such cause whatsoever; except for damage caused by WM's gross negligence or from WM's improper disposal of the waste, except for occurrences involving Nonconforming Waste.

Notwithstanding anything stated in the Agreement to the contrary, CMSD will not assert any claims against WM for any federal laws associated with pharmaceutical waste collection programs based on the content of the Box, and WM may modify the Agreement to comply with any applicable laws, provided any modifications are reflected in a written amendment to the Agreement signed by the parties, or terminate the Agreement if the Services under the Agreement are prohibited or made impracticable under applicable laws. WM shall comply with all applicable laws pertaining to waste disposal. WM shall maintain shipping and tracking documents for transfer of the Waste Materials. Such documentation shall be produced upon reasonable written request of CMSD.

9. **Indemnification.** CMSD shall defend, hold harmless and indemnify WM and City and their affiliates and respective directors, employees, successors, assigns, insurers, licensees, distributors, agents (the "Indemnified Parties") against any claim, suit, proceeding, loss, damage, settlement, cost, expense (including but not limited to reasonable attorneys' fees and expenses and costs of investigation) and liabilities ("Liabilities") involving an allegation (regardless of whether it is false, fraudulent or groundless, or whether it alleges any negligence, willful misconduct or culpability by Indemnified Parties) that arises, directly or indirectly, from the Box or Services (the "Claims"), that are incurred by any Indemnified Party relating to any Claim except as herein provided. If a portion of the Liabilities is caused by the gross negligence or willful misconduct of an Indemnified Party, however, CMSD is not obligated to indemnify that Indemnified Party to the proportional extent of its Liability as determined by a final, non-appealable order of a court having jurisdiction.

CMSD agrees to indemnify, defend and save WM harmless from and against any and all liability (including reasonable attorneys' fees) which WM may be responsible for or pay out as a result of bodily injuries (including death), property damage, or any violation or alleged violation of law to the extent caused by Nonconforming Waste.

WM shall indemnify, defend and save CMSD and City and their officers, agents and employees harmless from any and all liability caused by improper disposal of the Waste Materials, except to the extent arising out of the negligence or willful misconduct of CMSD or City; provided, further, that WM's indemnification obligation does not apply to occurrences involving Nonconforming Waste. WM agrees to indemnify, defend and save CMSD and City and their officers, agents and employees harmless from and against any and all liability (including reasonable attorneys' fees) as a result of bodily injuries (including death) or property damage to the extent caused by the negligent operation of WM's vehicles.

10. **Assumption of Risk; Release.** CMSD and WM agree to assume all risks associated with their, and their officers', agents', and employees' entry onto City property in connection with the Box. CMSD and WM hereby waive, release, and discharge City, its elected officials, officers, agents, employees, and volunteers (collectively, "City"), from any and all claims for damages and/or liability, including, without limitation, personal injury, death, or property damage, which arise out of the use of the City's property, except that CMSD and WM do not assume any risks arising out of the negligence or willful misconduct of City in the operation, maintenance or repair of its property.
11. **Insurance.** WM shall have broad coverage insurance as set forth in Exhibit A and shall name the CMSD and City as additional insureds and provide CMSD and City with an endorsement of coverage indicating such additional insured status.
12. **Nonconforming Waste.** Title to and liability for Nonconforming Waste shall remain with CMSD at all times. WM shall have the right to inspect, analyze or test any waste delivered by CMSD. If CMSD's Waste Material is Nonconforming Waste, WM can, at its option, reject such Nonconforming Waste and return it to CMSD or require CMSD to remove and dispose of the Nonconforming Waste at CMSD's sole expense. CMSD shall indemnify, hold harmless and pay or reimburse WM for any and all costs, damages and/or fines incurred as a result of or relating to CMSD's tender or delivery of Nonconforming Waste or other failure to comply or conform to this Agreement, including costs of inspection, testing and analysis.

13. **Contribution.** Where Indemnification is not enforceable and where any Indemnified Party or CMSD is found liable to a third party with respect to the performance of Services, WM and CMSD each shall contribute to any judgment awarded in favor of the third party in proportion to its comparative degree of culpability.
14. **Claim.** An Indemnified Party need not seek recovery from a third party or otherwise mitigate its losses in order to make a claim under Indemnification. CMSD shall not consent to the entry of any judgment or enter into any settlement without WM's prior written consent.
15. **Independent Obligation.** The parties' obligations under the Indemnification section are independent of any other obligation of the parties under this Agreement.
16. **Assignment.** WM and CMSD shall not assign any part or all of this Agreement, or subcontract or delegate any rights under this Agreement, without the prior written consent of the other parties, which such consent shall not be unreasonably withheld, conditioned or delayed. Any attempt to assign, subcontract or delegate in violation of this section is void in each instance, except that WM may assign its rights, but not its duties, to any affiliate.
17. **Governing Law.** This Agreement is governed by California law, excluding its conflicts of law rules. CMSD, City and WM irrevocably submit to venue and exclusive personal jurisdiction in the federal and state courts in Orange County, California for any dispute arising out of this Agreement, and waive all objections to jurisdiction and venue of such courts.
18. **Notices.** Notices hereunder shall be in writing and shall be deemed duly given upon delivery if delivered by hand (against receipt), by facsimile (with confirmation of receipt) or by a nationally recognized courier service (signature requested), to the undersigned at the address or facsimile number set forth below.

If to CMSD: Costa Mesa Sanitary District
290 Paularino Avenue
Costa Mesa, CA 92626
Attn: Nabila Guzman

If to City: City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: Parks and Community Services Director

If to WM: WM Curbside, LLC
Regalado Pestano, District Operations Manager
10633 Ruchti Road,
South Gate, CA 90280

Copy to: WM Curbside, LLC
9081 Tujunga Ave.
Sun Valley, CA 91352
Attention Sr. Legal Counsel

Notice is effective: (i) when delivered personally, (ii) three business days after sent by certified mail, (iii) on the business day after sent by a nationally recognized courier service, or (iv) on the business day after sent by facsimile with electronic confirmation to the sender. A party may change its notice address by giving notice in accordance with this section.

19. **Severability.** If any provision of this Agreement is determined to be unenforceable, the parties intend that this Agreement be enforced as if the unenforceable provisions were not present and that any partially valid and enforceable provisions be enforced to the extent that they are enforceable.
20. **No Waiver.** A party does not waive any right under this Agreement by failing to insist on compliance with any of the terms of this Agreement or by failing to exercise any right hereunder. Any waivers granted hereunder are effective only if recorded in a writing signed by the party granting such waiver.
21. **Cumulative Rights.** The rights and remedies of the parties under this Agreement are cumulative, and either party may enforce any of its rights or remedies under this Agreement or other rights and remedies available to it at law or in equity.
22. **Construction.** The section headings of this Agreement are for convenience only and have no interpretive value. In this Agreement, defined terms include the plural as well as the singular, and references to "include" and its derivatives (including, "e.g.") mean "including but not limited to". This Agreement may be executed in counterparts, which together will constitute one and the same agreement.
23. **Survival.** The following provisions survive termination or expiration of this Agreement: Compensation; Waiver of Liability; Indemnification; and Term and Termination.
24. **Costs and Legal Fees.** In the event of any legal action between the parties arising from this Agreement, the prevailing party may recover from the other party all of its reasonable costs and expenses, including attorneys' fees and court costs.
25. **Limitations on Liability.** No party is liable under any circumstances for lost opportunities or profits, or for consequential, special, incidental, punitive or indirect damages arising out of the performance of this Agreement.
26. **License Status.** WM represents and warrants that it has all licenses, permits and approvals necessary to dispose of the Waste Materials as described in this Agreement and will provide proof of the same to CMSD or City upon written request.
27. **Entire Agreement.** This Agreement, together with all attachments, constitutes the complete and final agreement of the parties pertaining to the contents herein and supersede the parties' prior agreements, understandings and discussions relating to the this agreement. No modification of this Agreement is binding unless it is in writing and signed by WM, CMSD and City.

IN WITNESS WHEREOF, the parties have caused their respective duly authorized representatives to execute this Agreement effective as of the effective date.



City of Costa Mesa

Lori Ann Farrell Harrison, City Manager
Name, Title



Costa Mesa Sanitary District

Scott Carroll, General Manager
Name, Title



WM Curbside, LLC

Larry Metter, Area Vice President
Name, Title

CMSD:

APPROVED AS TO FORM:
HARPER & BURNS LLP



ATTEST:

 7/30/2020

City Clerk

CITY:

APPROVED AS TO FORM:



Costa Mesa City Attorney

WM:

APPROVED AS TO FORM:



WM Senior Counsel