



HOMEOWNERS' ASSOCIATION SERVICE AGREEMENT NON-HAZARDOUS WASTES

Waste Management of Colorado, Inc.
5500 S. Quebec St. Ste. 250
Greenwood Village, CO 80111
Phone: (303) 818-1911
Email: mmaher1@wm.com

Account No. 010-582378
Type of Billing Group
Term 60 months
Effective Date 12.01.2017

Association Name: HAWTHORN METRO DISTRICT
Address: VARIOUS LOCATIONS

City/State/ZIP: GOLDEN, CO 80403
Phone: (303) 872-9224 X 102 Fax: _____
Email Address: scott.bristol@scmcolorado.com
Contact Name: Scott Bristol

Notice Address: HAWTHORN METRO DISTRICT
Address: C/O STILLWATER COMMUNITY MANAGEMENT
8390 E CRESCENT PKWY STE 500
City/State/ZIP: GREENWOOD VILLAGE, CO 80111
Phone: (303) 872-9224 X 102 Fax: _____
Email Address: scott.bristol@scmcolorado.com
Contact Name: Scott Bristol

EQUIPMENT/SERVICE SPECIFICATIONS

Approximate Number of Residences within the Association Area: 199		Monthly Group Billing Charge: \$2,537.25	
Containers/Charges*/Schedule (per residence)	Trash Qty: 199	Size: 96-gal	Monthly Charge: \$12.75
	Recycle Qty: 199	Size: 96-gal	Monthly Charge: Included
Additional Containers:	Additional Carts available at \$6.50 per additional cart per month billed to resident.		
Special Instructions:	<ul style="list-style-type: none"> • 199 homes at \$12.75 per home, per month. • Term of this Agreement is sixty months; however, the Metro District shall have an opt out period once a year between Nov 1st and December 1st where if the Metro District does elect to opt out of the agreement during this time, service will be cancelled effective January 1st of the following year with no penalty or liquidated damages charged to the Metro District. • No fuel or other charges shall apply. • Billing will be based on actual number of homes built and serviced. • \$5.00 Admin Fee Applies – Waived if setup for paperless billing and autopay. • Includes weekly trash collection and every-other-week recycle collection. • Included use of (1) 96-gallon trash cart and (1) 96 gallon recycle cart per resident. • Additional Carts available at \$6.50 per additional cart per month billed to resident. • Bulk items, such as furniture, will be charged to residents, and must be scheduled in advance and prepaid by resident, by calling 303-797-1600. • Rate is guaranteed for 12 months with future increases to be based on The Consumer Price Index – Water, Sewer, and Trash Index, not to exceed a 5% increase per year. 		
Delivery Charge:	No Delivery Charge for Initial or Additional Carts.		
If charges are Group Billed, the Monthly Group Billing Charge indicated above is based on the number of residences within the Association Area (as defined in Section 1 below and approximated above) and Company may adjust the monthly charges to account for any change in the number of residences; the Association shall timely notify Company of any increase or decrease in the number of residences within the Association Area. The Association shall be liable to Company for any underpayment due to the Association's failure to notify Company of any increase in the number of residences. The Association is not entitled to be reimbursed for any overpayment due to the Association's failure to notify Company of a decrease in the number of residences.			

This Homeowners' Association Service Agreement (this "Agreement") is made as of the Effective Date shown above by and between Waste Management of Arizona, Inc. ("Company") and the Association named above, on behalf of the Association and the Customers. The undersigned individual signing this Agreement on behalf of the Association and all of the Customers acknowledges that he/she has read and understands the following terms and conditions of this Agreement and that he/she has the authority to sign on behalf of the Association and all of the Customers.

COMPANY

(AUTHORIZED SIGNATURE)

Mike Maher

(PRINTED/TYPED NAME OF PERSON SIGNING)

HOA Account Manager

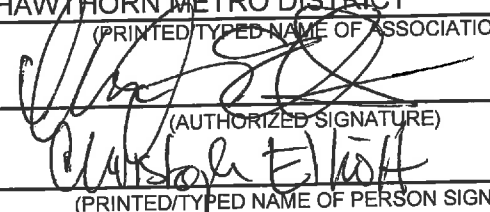
(TITLE)

(DATE)

ASSOCIATION

HAWTHORN METRO DISTRICT

(PRINTED/TYPED NAME OF ASSOCIATION)



(AUTHORIZED SIGNATURE)

Christopher Elliott

(PRINTED/TYPED NAME OF PERSON SIGNING)

President Dec 4, 2017

(TITLE) (DATE)

TERMS AND CONDITIONS

1. **SERVICES RENDERED; WASTE MATERIALS.** The Association grants to Company and Company shall have the exclusive right and privilege to collect, dispose, recycle, or otherwise handle all Waste Materials generated, deposited, accumulated, or otherwise coming to exist in (1) the geographical area encompassing all of the residences which are subject to any of the rules of the Association as of the Effective Date of this Agreement and (2) any additional geographical area(s) encompassing any additional residences that become subject to any of the rules of the Association, but only if (a) such additional area is in close proximity to the geographical area described in (1) above and (b) Company is able to provide collection services in such additional area (collectively, the "Association Area"). All residential premises within the Association Area (collectively, "Customers," or individually, "Customer") shall be required by the Association to utilize the collection services of Company, as described in this Agreement. The Association represents and warrants that the materials to be collected under this Agreement shall be only "Waste Materials." For purposes of this Agreement, "Waste Materials" means all non-hazardous putrescible and non-putrescible solid waste and recyclable materials generated by a Customer or at a Customer's residence. Waste Materials specifically excludes and the Association and Customers shall not deposit or permit the deposit for collection (1) industrial process wastes, (2) asbestos containing materials, (3) petroleum contaminated soils, (4) treated/de-characterized wastes, (5) dirt, rocks, concrete, or demolition debris, (6) any radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, biohazardous, regulated medical or hazardous wastes, and (7) toxic substances or materials, as defined by, characterized or listed under applicable federal, state, or local laws or regulations (collectively, "Excluded Materials"). Title to and liability for Excluded Materials shall remain with Customers at all times.

2. **REPRESENTATIONS BY THE ASSOCIATION.** The Association and the person signing this Agreement represent and warrant to Company that (1) the Association has the authority under the applicable CC&Rs to enter into this Agreement on behalf of all of the Customers and to obligate all of the Customers to be subject to and to comply with the terms of this Agreement and (2) this Agreement has been approved by the Association's board of directors.

3. **TRANSFER OF CONTROL.** If this Agreement is entered into before control of the Association is transferred from the developer to the residents, this Agreement shall be binding on the Association after the transfer of such control.

4. **TERM.** The initial term ("Term") of this Agreement is (sixty) months (60) from the Effective Date ("Initial Term"). This Agreement shall automatically renew for additional terms of sixty (60) months each ("Renewal Term") unless either party gives to the other party written notice (See Section 12) of termination at least ninety (90) days, but not more than one hundred eighty (180) days, prior to the termination of the then-existing term.

5. **SERVICES GUARANTY.** If Company fails to perform the services described in this Agreement within five business days of its receipt of a written demand from the Association (See Section 12), the Association may terminate this Agreement with the payment of all monies due through the termination date. If charges are Individually Billed, "all monies due" referenced above means the total of all monies due under all bills issued to all Customers through the termination date. This Section 5 does not apply to Customers and only the Association may terminate this Agreement pursuant to this Section 5.

6. **CHARGES; PAYMENTS; ADJUSTMENTS.** Payments for the services and/or equipment (including repair and maintenance) furnished by Company in accordance with the charges on the reverse side as adjusted hereunder are due within ten (10) days of the date of Company's invoice. Charges will either be billed collectively to the Association ("Group Billed") or billed individually to each Customer ("Individually Billed"), as indicated on the reverse side. Company may apply a service charge on all amounts not paid within 30 days after the date of the invoice at a rate of eighteen percent (18%) per annum or, if less, the maximum rate allowed by law. Any check returned for insufficient funds is subject to a NSF fee to the maximum extent allowed by applicable law. If Individually Billed charges are not paid when due, Company retains the right to suspend service to the applicable residence(s) and to recover equipment. If Group Billed charges are not paid when due, Company retains the right to suspend service to all residences; if service is suspended in excess of fifteen (15) days, Company may terminate this Agreement, recover any equipment, and recover the liquidated damages described below.

Company may increase the charges to account for (1) any increase in disposal, fuel or transportation costs, (2) any change in the composition of the Waste Materials or increases in the average weight per container of Waste Materials, (3) 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., and (4) any changes or modifications to, or differences between, the actual equipment/services provided by Company to Customers and the agreed upon equipment/service specifications listed on the reverse side; if charges are Group Billed, this shall include any increase in the number of residences within the Association Area. Company may also increase the charges to reflect increases in the national Consumer Price Index. Increases in charges for reasons other than as provided above require the consent of the Association which may be evidenced verbally, in writing, or by the actions and practices of the parties.

7. **CHANGES.** Changes in the frequency of collection service, schedule, number, capacity, and/or type of equipment may be agreed to orally, in writing, or by the actions and practices of the parties.

8. **EQUIPMENT, ACCESS.** All equipment furnished by Company shall remain the property of Company; however, each Customer shall have care, custody and control of the equipment and shall bear responsibility and liability for all loss or damage to the equipment and for its contents while at Customer's location.

Customers shall not overload, move, or alter the equipment and shall use the equipment only for its intended purpose. At the termination of this Agreement or as otherwise provided herein, Customers shall return the equipment to Company in the condition in which it was provided, normal wear and tear excepted. Company shall be fully compensated for any damage or loss to equipment furnished by Company; such charges will be Group Billed or Individually Billed, as indicated on the reverse side. Customers shall provide unobstructed access to the equipment on the scheduled collection day. Company may charge an additional fee for any service modifications caused by or resulting from a Customer's failure to provide access; such charges will be Group Billed or Individually Billed, as indicated on the reverse side. Company shall not be responsible for any damage to any Customer's or the Association's property, including pavement, subsurface, or curbing, resulting from Company's provision of services hereunder. The Association warrants that the Association's right of way is sufficient to bear the weight of Company's equipment and vehicles.

9. **LIQUIDATED DAMAGES.** If the Association terminates this Agreement prior to the expiration of any term for any reason other than a default by Company, or if Company terminates this Agreement for the Association's default, the Association shall pay the following liquidated damages in addition to Company's legal fees: (1) if the remaining Initial Term is 12 or more months, the Association shall pay fifty percent of its most recent monthly charges multiplied by the number of months remaining in the Term; (2) if the remaining Initial Term is at least six months, but less than 12 months, the Association shall pay its most recent monthly charges multiplied by six; (3) if the remaining Initial Term is less than six months, the Association shall pay its most recent monthly charges multiplied by the number of months remaining in the Term; (4) if the remaining Renewal Term is three or more months, the Association shall pay its most recent monthly charges multiplied by three; or (5) if the remaining Renewal Term is less than three months, the Association shall pay its most recent monthly charges multiplied by the number of months remaining in the Renewal Term. If charges are Individually Billed, the "most recent monthly charges" referenced above means the total of all monies due under all bills issued to all Customers for the most recent month. The Association acknowledges that the actual damage to Company in the event of termination is difficult to fix or prove, and the foregoing liquidated damages amount is reasonable and commensurate with the anticipated loss to Company resulting from such termination and is an agreed upon fee and is not imposed as a penalty. Company shall not be liable under any circumstances for any special, incidental, or consequential damages arising out of or in connection with performance of this Agreement. This Section 9 does not apply to Customers and only the Association and Company may terminate this Agreement pursuant to this Section 9.

10. **INDEMNITY.** Company agrees to indemnify, defend, and save the Association harmless from and against any and all liability which the Association 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 any negligent act, negligent omission, or willful misconduct of Company or its employees, which occurs (1) during the collection or transportation of Customers' Waste Materials, or (2) as a result of the disposal of Customers' Waste Materials, after the date of this Agreement, in a facility owned by a subsidiary of Waste Management, Inc., provided that Company's indemnification obligations will not apply to occurrences involving Excluded Materials.

The Association shall indemnify, defend, and save Company harmless from and against any and all liability which Company 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 the Association's breach of this Agreement or by any negligent act, negligent omission, or willful misconduct of the Association or its employees, agents, or contractors in the performance of this Agreement or a Customer's use, operation, or possession of any equipment furnished by Company. Neither party shall be liable to the other for consequential, incidental, or punitive damages arising out of the performance of this Agreement.

11. **RIGHT OF FIRST REFUSAL.** The Association grants to Company a right of first refusal to match any offer relating to services similar to those provided hereunder ("Competing Offer") which the Association receives (or intends to make) upon termination of this Agreement for any reason. The Association shall give Company prompt written notice of any Competing Offer, including a copy of any contract relating to the Competing Offer, and a reasonable opportunity to respond to it.

12. **MISCELLANEOUS.** (a) 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, strikes, riots, imposition of laws or governmental orders, fires, acts of God, and inability to obtain equipment, and the affected party shall be excused from performance during the occurrence of such events; (b) This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns; (c) This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, whether written or oral, that may exist between the parties; (d) This Agreement shall be construed in accordance with the law of the state in which the services are provided; (e) All written notification required by this Agreement shall be by Certified Mail, Return Receipt Requested to the addresses listed on the reverse side; (f) If any provision of this Agreement is declared invalid or unenforceable, then such provision shall be severed from and shall not affect the remainder of this Agreement; however, the parties shall amend this Agreement to give effect, to the maximum extent allowed, to the intent and meaning of the severed provision; (g) In the event Company successfully enforces its rights against the Association hereunder, the Association shall be required to pay Company's attorneys' fees and court costs.