

**RESOLUTION**

**SOLID WASTE COLLECTION LOCAL LAW  
(Authorizing Tolling Agreement with Waste Management)**

At a regular meeting of the Town Board of the Town of New Paltz, Ulster County, New York, held at the Community Center, in New Paltz, New York, in said Town on the \_\_\_\_\_ day of \_\_\_\_\_, 2018, at \_\_\_\_\_ o'clock P.M., Prevailing time.

The meeting was called to order by Council Member \_\_\_\_\_, and upon roll being called, the following roll was taken:

	<b><u>PRESENT</u></b>	<b><u>ABSENT</u></b>
Supervisor Neil Bettez	_____	_____
Council Member Daniel Torres	_____	_____
Council Member Marty Irwin	_____	_____
Council Member Julie Seyfert Lillis	_____	_____
Council Member David Brownstein	_____	_____

The following resolution was offered by Council Member \_\_\_\_\_, who moved its adoption, seconded by Council Member \_\_\_\_\_, to wit:

**WHEREAS**, the Town of New Paltz has duly adopted a certain local law entitled “A local law to amend the Code of the Town of New Paltz to add a new Chapter 88, ‘Town of New Paltz Residential Solid Waste Collection Law,’” the intent and purpose of which is to institute a licensing plan for the collection and management of residential solid waste and recyclable materials generated or originated in the Town of New Paltz, to promote the safety, health and well-being of persons and property within the Town and to provide for the issuance by the town of a single hauling license to a single qualified entity

that has been determined to be most beneficial to Town and Village residents;

**NOW, THEREFORE, BE IT RESOLVED** that for the reasons expressed in the attached “Tolling Agreement” between the incorporated Village of New Paltz, Ulster County, New York (“Village”), the Town of New Paltz, Ulster County, New York (“Town”) and Waste Management of New York, LLC (“Waste Management”) the Supervisor of the Town of New Paltz or his duly appointed deputy, as the case may be, is hereby authorized to sign on behalf of the town a certain “Tolling Agreement” in the form attached effective as of August 22, 2018.

<u>VOTE</u>	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
Supervisor Neil Bettez	_____	_____	_____
Council Member Daniel Torres	_____	_____	_____
Council Member Marty Irwin	_____	_____	_____
Council Member Julie Seyfert Lillis	_____	_____	_____
Council Member David Brownstein	_____	_____	_____

The resolution was thereupon duly adopted.

## **TOLLING AGREEMENT**

**THIS TOLLING AGREEMENT** (this “**Agreement**”) made as of this 22nd day of August, 2018 by and among the Village of New Paltz, a municipal corporation of the State of New York (the “**Village**”), the Town of New Paltz, a municipal corporation of the State of New York (the “**Town**” and together with the Village sometimes collectively referred to herein as the “**Municipalities**”) and Waste Management of New York, LLC (together with its parent, affiliates and subsidiaries, collectively “**Waste Management**” and together with the Municipalities sometimes collectively referred to herein as the “**Parties**” and each a “**Party**”).

**WHEREAS**, certain claims and/or disputes relating to the Parties’ respective rights and obligations with respect to the decisions and actions by the Municipalities to restrict residential waste hauling in the Municipalities to one (1) licensed waste hauler pursuant to, among other things, local laws adopted, respectively, by the Municipalities and a Franchise Agreement, dated as of June 1, 2018, entered into by and among the Municipalities and County Waste & Recycling Service, Inc. (collectively, “**Disputes**”) have arisen; and

**WHEREAS**, the Parties desire to encourage resolution and/or such further review or disposition of the Disputes as may result in no proceeding, action, lawsuit or claim being filed or commenced and, in any case, wish to avoid the expense and uncertainty of litigation of the Disputes if at all possible, and are willing to make the stipulations, covenants and agreements hereinafter set forth in order to defer and postpone the commencement of litigation; and

**WHEREAS**, the Parties desire that for the period of this Agreement, they should be able to consider issues relating to the possibility of settling the Disputes without regard to the time constraints that exist because of any future expiration of any applicable statute of limitations; and

**WHEREAS**, the Parties further believe it to be in their respective best interests that the Disputes not be asserted or pursued in litigation at the present time; and

**WHEREAS**, the Parties recognize that the mere passage of time could give rise to potential defenses to their respective claims, counterclaims or affirmative defenses and that it is essential that the Parties' respective claims, counterclaims or affirmative defenses not be prejudiced by the passage of the time that is needed for the review or disposition of the Disputes.

**NOW, THEREFORE**, in consideration of the mutual agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant and agree as follows:

1. With respect to the Disputes, the Parties hereby stipulate and agree to toll the running of any statute of limitations applicable to any claim, counterclaim or affirmative defense that each Party has or may have against any of the others, including without limitation the defense of laches. This toll shall be deemed interposed as of August 22, 2018 (the "**Effective Date**").

2. Unless extended in writing by the Parties, this Tolling Agreement and all its provisions shall terminate on the Expiration Date, as defined in paragraph 3, infra.

3. As used in paragraph 2, supra, "**Expiration Date**" shall mean September 28, 2018 or ten (10) days from the date that written notice of termination of this

Agreement has been served by any of the Parties on all of the other Parties in accordance with paragraph 5 of this Agreement, whichever is earlier.

4. For purposes of this paragraph 4, “**Timing Defense**” shall mean and include, and shall be limited to, any affirmative defense that any Party has or may have to the extent based upon (1) any statute of limitations, (2) laches, and/or (3) any failure of any the Parties to institute or commence litigation or other legal proceedings within some specified period, before a specified date, or before the happening of a specified event. The Parties agree that this Tolling Agreement shall have no effect on any Timing Defenses that may be available to any Party prior to the Effective Date. The Parties further agree that all time periods prior to the Effective Date and after the Expiration Date (and prior to the filing of any lawsuit or other legal proceeding by any Party against the others (or any of them) with respect to the Disputes) shall be included in the calculation of and running of any application Timing Defenses. Nothing herein shall be deemed to revive any claim, counterclaim or affirmative defense that is otherwise barred as of the Effective Date.

5. Any Party may terminate this Tolling Agreement, effective ten (10) days after the date of serving a written notice of termination, by serving notice of termination by letter to all of the other Parties. Such notice of termination shall be served by email transmission, followed by the delivery of an original of that notice of termination letter by United States certified mail, return receipt requested, to the following persons at the following postal addresses and email addresses:

If to Village:

William A. Frank, Esq.  
Blustein, Shapiro, Rich & Barone, LLP

10 Matthews Street  
Goshen, New York 10924  
wfrank@mid-hudsonlaw.com (email)

If to Town:

Joseph M. Moriello, Esq.  
DiStasi Moriello & Murphy Law PLLC  
P.O. Box 915  
Highland, New York 12528  
jmlaw@bestweb.net(email)

If to Waste Management:

Philip G. Spellane, Esq.  
Harris Beach PLLC  
99 Garnsey Road  
Pittsford, NY 14534  
[PSpellane@HarrisBeach.com](mailto:PSpellane@HarrisBeach.com)

6. On or after the Expiration Date of this Agreement, each of the Parties shall have the right to file any claim and pursue all or any legal remedies regarding the Disputes.

7. None of the Parties nor any of their respective agents, witnesses or attorneys will refer or allude to this Tolling Agreement, its terms, its execution, or the existence of any tolling period in any way, directly or indirectly, before a jury or any fact finder in any action or proceeding for any purpose, except to prove that any applicable statute of limitations was tolled for the period of time during which this Tolling Agreement was in effect. The terms of this paragraph will survive expiration or termination of this Tolling Agreement.

8. Nothing in this Agreement shall be construed as an admission or denial by any of the Parties as to the merits of any of the Disputes.

9. Each Party represents and warrants to all the other Parties that (a) each of the individuals signing this Agreement on behalf of such Party has the full right, power and authority to sign on behalf of such Party for which they have acted as signatory, (b) that the execution, delivery and performance of this Agreement by such Party has been duly authorized by all requisite corporate or entity action, and (c) this Agreement constitutes the valid, legal and binding obligation of such Party, enforceable against such Party in accordance with its terms, covenants and conditions.

10. This Agreement may be signed in counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one instrument. Delivery of an executed counterpart of this Agreement by facsimile or electronic transmission in a Portable Document Format (“**PDF**”) or other digital format shall be equally effective as manual delivery of an executed counterpart of this Agreement, and each such counterpart, whether delivered manually, by facsimile or PDF or such other digital format shall be deemed an original. Any party delivering an executed counterpart of this Agreement by facsimile or PDF or other digital format shall also manually deliver an executed counterpart of this Agreement; however the failure to do so shall have no effect on the validity, enforceability or binding nature and effect of this Agreement.

*Signature Page Follows*

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives.

**VILLAGE OF NEW PALTZ**

By: \_\_\_\_\_  
Timothy E. Rogers

Title: Village Mayor

Date: August \_\_\_\_, 2018

**TOWN OF NEW PALTZ**

By: \_\_\_\_\_  
Neil Bettez

Title: Town Supervisor

Date: September \_\_\_\_, 2018

**WASTE MANAGEMENT OF NEW YORK , LLC**

By: \_\_\_\_\_  
Christopher DeSantis

Title: Vice President

Date: \_\_\_\_\_, 2018