

[Rev/Cost Share]



RECYCLING SERVICES AGREEMENT

AGREEMENT made this 19 day of January, 2021 by and between ECO Maine with a principal place of business located at 64 Blueberry Road, Portland, Maine 04102 (hereinafter, "ecomaine"), and the City/Town of Limerick, located in York County, in the State of Maine (hereinafter, the "Municipality").

WHEREAS, ecomaine owns and operates a single sort recycling facility located at 64 Blueberry Road in Portland, Maine (the "Facility"); and

WHEREAS, ecomaine encourages and promotes regional recycling in accordance with the State's solid waste management and recycling plan; and

WHEREAS, recycling is to the benefit of the economy and environment of the Municipality; and

WHEREAS, the Municipality generates recyclable materials within its boundaries and provides for a method of collection of those recyclable materials; and

WHEREAS, the Municipality is seeking a cost-effective and environmentally sound manner for the processing of recyclable materials; and

WHEREAS, ecomaine is willing to accept and handle Municipality's recyclable materials for processing at the Facility;

NOW THEREFORE, in consideration of the mutual covenants and other good and valuable consideration set forth herein, the receipt and sufficiency of which are hereby acknowledged, ecomaine and the Municipality hereby agree as follows:

1. Definitions. In addition to any terms defined elsewhere in this Agreement, the following capitalized terms shall have the following meanings:

- a) "Contaminant" means any material, including free flowing liquid, that is not included in ecomaine's Program List.
- b) "Hauler" means any entity or person that performs solid waste services on behalf of the Municipality, including, without limitation, the delivery of Recyclable Materials to the Facility. "Hauler" shall also mean the Municipality when the Municipality delivers Recyclable Materials to the Facility with its own employees or agents.
- c) "Hazardous Waste" means waste by its composition, characteristics, or other inherent properties is dangerous to handle by ordinary means, or which may

present a substantial endangerment to health or safety, or which presents a reasonable possibility of adversely affecting the operation of the Facility. "Hazardous Waste" shall also mean waste which is defined as harmful, toxic, dangerous, or hazardous at any time during the term of this Agreement pursuant to (i) the Solid Waste Disposal Act, 42 U.S.C. §§ 6901 *et seq.*, as amended; and (ii) the Maine Hazardous Waste, Septage and Solid Waste Act, 38 M.R.S. §§ 1301 *et seq.*, as amended; and (iii) any other federal, state, county or local codes, statutes or laws; and (iv) any regulations, orders or other actions promulgated or taken with respect to the items listed (i) through (iii) above; provided, however, that any such materials that are later determined not to be harmful, toxic, dangerous, or hazardous by any governmental agency or unit having appropriate jurisdiction shall not be considered "Hazardous Waste" unless a contrary determination has been or is made by any other governmental agency or unit having appropriate jurisdiction. "Hazardous Waste" shall include, without limitation, medical waste.

- d) "*Processing Fee*" means the per-ton fee paid by the Municipality for the processing of Recyclable Materials by **ecomaine** at the Facility.
- e) "*Program List*" means a list of Recyclable Materials accepted by **ecomaine** for processing at the Facility, as indicated on Attachment A.
- f) "*Recyclable Materials*" means materials that are separated from waste, either at the source of such waste or at any transfer station, recycling facility or other location, and which, in the reasonable judgment of **ecomaine**, are capable of being returned to the economic mainstream in the form of raw materials or products, provided that Recyclable Materials shall not include Hazardous Waste.
- g) "*Single Sort Recycling Program*" means the single category recycling program owned and operated by **ecomaine** at the Facility, whereby materials to be recycled are not required to be sorted into categories.
- h) "*Municipality*" means a municipality, as defined in 30-A M.R.S. § 2001, or any other governmental entity that is party to this Agreement.

2. Delivery of Recyclable Materials.

- a) The Municipality agrees to deliver or cause to be delivered to the Facility all Recyclable Materials on the Program List generated within the boundaries of the Municipality and under the Municipality's control, and **ecomaine** agrees to receive and process all such Recyclable Materials through the Single Sort Recycling Program, except as otherwise provided herein.
- b) **ecomaine** shall provide the Municipality with the Program List, which may be revised by **ecomaine** up to twice per year upon 60 days' prior notice to the Municipality.

- c) Except as otherwise provided herein, **ecomaine** shall be exclusively entitled to any benefits derived from Recyclable Materials delivered to the Facility by or on behalf of the Municipality.

3. Collection, Transportation and Handling of Recyclable Materials.

- a) The Municipality shall be responsible for all costs associated with collection and transportation of Recyclable Materials to the Facility.
- b) Until delivery to the Facility, Recyclable Materials remain the property of the Municipality and all responsibility for safe and lawful handling rests with the Municipality.
- c) Upon acceptance of Recyclable Materials by **ecomaine** from the Municipality or its Hauler, all responsibility belongs to **ecomaine**, provided that any Hazardous Waste delivered by the Municipality to the Facility and inadvertently accepted by **ecomaine** shall remain the responsibility of the Municipality.
- d) Delivery of Recyclable Materials shall occur during the hours of operation at the Facility as posted by **ecomaine**.
- e) The Municipality shall use best efforts to ensure that Contaminants are not included with Recyclable Materials. Upon inspection, **ecomaine** may downgrade loads that contain Contaminants. Downgraded loads will incur a contamination fee for the entire load as follows:
- 3-5% contaminants by volume will receive a warning.
 - 6-10% contaminants by volume will incur an additional \$15 per ton fee.
 - 11-15% contaminants by volume will incur an additional \$25 per ton fee.
 - 16-20% contaminants by volume will incur an additional \$45 per ton fee.
 - 21-25% contaminants by volume will incur an additional \$55 per ton fee.
 - 26% or higher contaminants by volume will incur a contamination fee in the amount of the current commercial waste disposal gate rate per ton fee for the entire load.
- f) For loads containing any portion of Hazardous Waste, including medical waste, to the extent detected by **ecomaine** prior to tipping, **ecomaine** will immediately reject such loads and the Municipality or its Hauler shall promptly remove such loads from the Facility for disposal at an appropriate facility. For loads containing any portion of Hazardous Waste, including medical waste, to the extent detected by **ecomaine** after tipping, **ecomaine** will segregate such loads and dispose of them at an appropriate facility designated by **ecomaine**. All costs associated with the disposal of Hazardous Waste will be at the sole expense of the Municipality. The Municipality will not receive payment under Section 5 for any load containing a level of contamination greater than 10% or for any load

containing Hazardous Waste. Any contamination fees charged will be in addition to net processing costs.

- g. In the event that no market for Recyclable Materials exists at any point during the term of the Agreement, **ecomaine** may, in its sole discretion, utilize alternative disposal methods for the Recyclable Materials, including without limitation disposal at **ecomaine's** landfill or waste-to-energy facility.

4. Term of Agreement.

- a) This Agreement is effective for one (1) year, commencing on February 2, 2021, unless sooner terminated under the terms hereof.
- b) To ensure continuous service, this Agreement will be automatically renewed for successive three (3) year periods, unless either party serves written notice of termination upon the other party no less than ninety (90) days before the end of the initial term or ninety (90) days before the end of any subsequent three (3) year term.
- c) Notwithstanding any other provision of this Agreement, the parties agree that the amounts required to be paid by the Municipality under this Agreement are payable by the Municipality from appropriation by the legislative body (*i.e.*, town meeting) each year. In the event an insufficient amount to fund this Agreement for any contract year is appropriated, this Agreement may be terminated by the municipal officers without further obligation of the Municipality. In such event, the municipal officers shall certify to **ecomaine** that sufficient funds have not been made available to the Municipality to meet the obligations of this Agreement, and such certification shall be conclusive upon the parties.

5. Processing Cost and Revenue Share.

- a) The Municipality shall pay **ecomaine** a Processing Fee of \$95.00 per ton of Recyclable Materials delivered by or on behalf of the Municipality to the Facility until June 30, 2021, at which time and annually thereafter, the Processing Fee shall be adjusted by the percentage increase, if any, in the Consumer Price Index for Urban Consumers Northeast Region, Class B (CPI-U, Northeast B) (all items 1982-1984=100) compared to the previous year. Notwithstanding the preceding sentence, no single, annual adjustment will exceed 7% in any one year.
- b) At the end of each **ecomaine** fiscal year during the Agreement, based on the blended revenue earned or costs incurred by **ecomaine** from the marketing of all Recyclable Materials received through its contract Single Sort Recycling Program, a credit or charge will be issued to the Municipality based on the average per ton value of the Recyclable Materials delivered by the Municipality. The value of the credit/expense shall be 80% of the blended revenue/expense on a per-ton basis.

6. **Payment.** On a monthly basis during the term of the Agreement, **ecomaine** shall issue an invoice to the Municipality detailing Processing Fees due under Section 5(a), any contamination fees due under Section 3(e), and any other applicable charges due. The Municipality shall pay the invoice amount to **ecomaine** within thirty (30) days of the invoice date. In the event that a credit is due to the Municipality under Section 5(b), **ecomaine** will pay the Municipality within thirty (30) days of the last day of the fiscal year. In the event that a charge is issued to the Municipality under Section 5(b), the Municipality will pay **ecomaine** within thirty (30) days of the last day of the fiscal year.

7. **Default.** Failure of the Municipality to deliver or cause to be delivered to the Facility all Recyclable Materials generated within the boundaries of the Municipality and under its control shall constitute a breach of this Agreement. In event of such breach, the Municipality shall pay **ecomaine** an amount equal to the Processing Fee in effect for the period of breach times the estimated number of tons of Recyclable Materials that were not delivered to the Facility as a result of such breach. **ecomaine** will estimate such number of tons on a monthly basis by:

- a) Calculating the number of tons of Recyclable Materials generated in the Municipality and delivered to the Facility in the calendar month prior to the commencement of the breach; and
- b) Adjusting the above number of tons for any monthly or seasonal variation in delivery that has occurred in the previous two calendar years; and
- c) Subtracting from the resulting figure the number of tons of Recyclable Materials generated in the Municipality and actually delivered to the Facility during each month in which the breach occurs.

In the event that sufficient historical data does not exist to allow calculation of the estimated number of tons of undelivered Recyclable Materials as the result of such breach, **ecomaine** shall estimate that number of undelivered tons in any reasonable manner available.

8. **Force Majeure.** Neither party shall be liable to the other for its failure to perform hereunder if its performance is rendered impossible by any act, event or condition beyond its reasonable control which, by exercise of due diligence, it shall be unable to overcome. Such acts, events or conditions shall include, but not be limited to, the following:

- a) Acts of God, hurricane, tornado, lightning, earthquake or epidemic;
- b) Acts of war, civil insurrection or terrorism;
- c) Fire or flood not caused by the party unable to perform; or
- d) Injunctions, or restraining orders, judicial or governmental laws, regulations, requirements, orders, actions, or inaction, including the revocation or suspension, or failure to issue or to obtain or renew any permit, except where the order, action

or inaction is due to the acts or omissions of the party claiming the existence of a force majeure hereunder.

A party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of any such event, (i) provide written notice to the other party of the nature and extent of any such Force Majeure condition; and (ii) use commercially reasonable efforts to remove any such causes and resume performance under this Agreement as soon as reasonably practicable.

9. Notices. All notices required by this Agreement shall be considered sufficiently given if sent by First Class, U.S. Mail, addressed to the party at the following addresses:

If to ecomaine:

ecomaine
64 Blueberry Road
Portland, ME 04102
Attn: Kevin Roche, CEO/General Manager

With a copy to:

Mark A. Bower, Esq.
Jensen Baird Gardner & Henry
Ten Free Street, P.O. Box 4510
Portland, Maine 04112

If to the Municipality:

Judy LePage
55 Washington St.
Limerick, ME 04048

10. Compliance with Laws. Each party shall comply with all federal, state and local laws, regulations, rules, ordinances and orders of any kind that are applicable to that party's performance under this Agreement.
11. Indemnification. To the extent permitted by law, ecomaine and the Municipality shall each indemnify, save, and hold harmless the other from and against any and all liabilities, expenses, including reasonable attorney's fees, claims, costs, losses, suits, judgments, or damages relating to injuries or deaths of persons or damage to property in any way attributable, directly or indirectly, to the acts or omissions of authorized agents, officers, contractors or employees of the other party; provided, however, that the indemnifying party shall not be liable for indemnification under this Section 11 to the extent any such liabilities, expenses, claims, costs, losses, suits, judgments, or damages result from the

negligence, contributory negligence, fault or willful misconduct of the indemnified party or its authorized agents, officers, contractors or employees.

The parties acknowledge that both parties are political subdivisions of the State of Maine to which the Maine Tort Claims Act applies. Therefore, this indemnification requirement shall not apply to any claim for which either party would not be liable under the Maine Tort Claims Act, 14 M.R.S. §§ 8101 *et seq.*, if such claim were made directly against that party, and that party shall continue to enjoy all rights, claims, immunities, and benefits available to it under law.

This section shall survive termination of the Agreement.

12. Assignment. This Agreement, its rights and obligations, is not assignable or transferable by either party, in whole or in part.
13. Severability. In the event any covenant, condition or provision of this Agreement is held to be invalid or unenforceable by the final judgment of a court of competent jurisdiction, or by any other board, tribunal or entity the decision of which is binding upon the parties hereto and which has become final, such invalidity or enforceability shall in no way affect any of the other covenants, conditions or provisions hereof.
14. Modification. This Agreement represents the entire agreement of the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may only be modified or revised in writing, signed by the authorized agents of the parties.
15. Construction of Agreement. This Agreement and its performance shall be construed and governed in accordance with the laws of the State of Maine. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
17. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, and together shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by email (PDF) or facsimile transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

Witness:

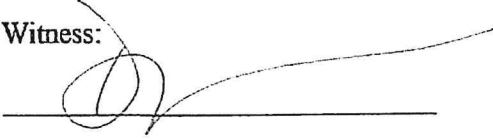
Courtney Davis

Town of Limerick

By: [Signature]

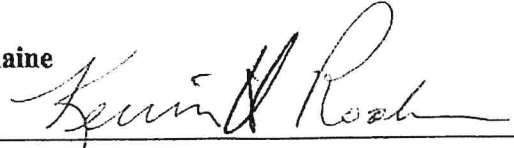
Its: Select Board Chair

Witness:

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a long horizontal stroke.

ecomaine

By:

A handwritten signature in black ink, appearing to read 'Kevin H. Roth'.

Its: CEO/General Manager

Attachment A

ecomaine

With single stream recycling nothing needs to be sorted or kept separated. Everything is placed in the same container. Items that are currently accepted are:

YES: *Paper, Paperboard, Cardboard, Glass, Cans, Aluminum, and #1 - 7 Plastic Containers*

- Old Mail
- Catalogs
- Books (Soft & Hard Cover)
- Magazines
- Office Paper & Envelopes
- Pizza Boxes (Clean)
- Cereal Boxes/Paperboard
- Newspapers & Inserts
- Phone Books
- Paper Bags & Plates (Clean)
- Corrugated Cardboard (Broken down)
- Egg Cartons (Not Styrofoam)
- Milk & Juice Cartons
- Wrapping Paper
- Shredded Paper (Put in clear bags and tied at the top)
- All #1 - #7 Rigid Plastic Containers
 - ✓ Milk Jugs
 - ✓ Water Jugs & Bottles
 - ✓ Detergent Bottles
 - ✓ Bleach Bottles
 - ✓ Empty Oil Containers
 - ✓ Yogurt Cups
 - ✓ Shampoo Bottles
- Metal Cans
- Aluminum Foil, Trays, & Pans
- Aluminum Beverage Cans
- Clear or Colored Glass
- Drink Boxes (Juice, Shelf milk, Broth)
- Aerosol Cans
- Pots & Pans

All Acceptable Containers Should be Emptied & Rinsed

NO: Garbage; **Plastic Bags of any type** (including but not limited to: frozen vegetable, bread, newspaper, chips or snacks, sandwich/Ziplock, potato chip, grocery, trash; the exception being shredded paper in clear plastic bags tied off at the top), hypodermic needles or sharp objects; vinyl siding; bubble wrap; food; toys; plastic film/wrap; tarps & boat wrap; diapers; Styrofoam or expanded polystyrene containers, packaging, peanuts or meat trays (even if marked #6); garden hoses; baby pools; CDs/DVDs; porcelain or window glass; paper napkins/towels; waxed paper/boxes; wood/lumber; Propane/Helium/gas cylinders; large metal parts (car, boat, truck etc.); clothing/shoes; kitty litter; knives; light bulbs (any type, return CFLs to store); Plastic/Tyvek envelopes; clothing, pipes (plastic/metal), clothes hangers, wire, Christmas lights, textiles, pillows, free flowing liquid, any item not listed in the YES categories

