

RESOLUTION NO. 2018-128
RADNOR TOWNSHIP

A RESOLUTION OF RADNOR TOWNSHIP, DELAWARE COUNTY,
PENNSYLVANIA, APPROVING A PILOT PROGRAM AGREEMENT
BETWEEN THE TOWNSHIP OF RADNOR AND CURB MY CLUTTER,
LLC

WHEREAS, Radnor Township desires to enter into a twelve (12) month Pilot Program Agreement with Curb My Clutter, LLC; and

WHEREAS, the Township desires to optimize the collection of certain recyclable items from its residents.

NOW, THEREFORE, be it hereby resolved that the Board of Commissioners of Radnor Township does hereby approve the Pilot Program Agreement a copy of which is attached hereto as *Exhibit "A"*.

SO RESOLVED this 11 day of November 2018.

RADNOR TOWNSHIP

By: 
Name: Lisa Borowski
Title: President

ATTEST: 
Robert A. Zienkowski, Secretary

**CURB MY CLUTTER LLC
PILOT PROGRAM AGREEMENT**

This PILOT PROGRAM AGREEMENT (this "Agreement"), effective as of November __, 2018 ("Effective Date"), is made by and between Curb My Clutter LLC, a Delaware limited liability company ("CMC"), and the Township of Radnor, a township located in the Commonwealth of Pennsylvania (the "Township," and together with CMC, the "Parties," and each, a "Party").

WHEREAS, CMC is a software as a service ("SaaS") provider that helps municipalities optimize the collection from its residents of, and processing by such municipalities of, certain recyclable items;

WHEREAS, the Township desires to optimize the collection from its residents of, and processing by the Township of, certain recyclable items; and

WHEREAS, in order to explore the possibility of a longer-term partnership between them, the Township and CMC desire to enter into a twelve (12) month pilot program (the "Pilot Program") wherein CMC would help the Township to optimize and monetize the collection from its residents of, and processing of, certain recyclable items.

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

1. CMC Services. During the term of the Pilot Program, CMC agrees to do the following:

1.1 *Customization of Platform*. CMC shall customize its digital platform, including, without limitation, the software comprising the digital platform (the "Platform"), for the Township to include the scheduling ("Scheduling") of collections ("Collections") of textile and e-waste (collectively, "Recyclable Materials"), from residents of the Township (the "Residents"), which Collections shall be scheduled via text messages from Residents' mobile phones. Any customization of the Platform shall be as mutually agreed between CMC and the Township.

1.2 *Management of Scheduling and Collection Process*. CMC shall use commercially reasonable efforts to:

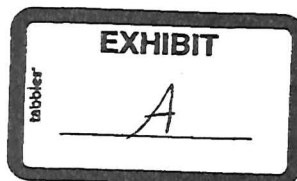
(a) provide curbside Collection of Recyclable Materials, subject to Scheduling with Residents;

(b) provide offsite storage and sorting of all Recyclable Materials collected by CMC from Residents;

(c) manage and respond to Residents' requests and concerns generated during the Scheduling and Collection processes for Recyclable Materials;

(d) market and sell the Recyclable Materials that CMC collects from the Residents to processors ("Processors") for the re-use, de-manufacturing or scrapping of such Recyclable Materials; and

(e) build a network of brands that will offer rewards programs to Residents scheduling Collections through CMC.



1.3 *Branding of Personnel and Vehicles.* All CMC personnel (including its employees or independent contractors) who make Collections shall wear uniforms or otherwise be clearly marked with identifying logos and marks, and will clearly display CMC logos or marks on any vehicles used by them in the provision of the Collections.

2. Licenses to Use of Platform.

2.1 *Grant of Licenses.* CMC shall provide access and a non-exclusive, non-assignable, non-transferable, non-licensable, revocable license to up to three (3) employees of the Township ("Licenses") to access the back end of the Platform using a management interface, such that the Licensees may access reports and other data regarding Collections, including an inventory of items scheduled for Collections; *provided, that*, each of the Licensees agrees in advance, in writing, to be bound by the obligations of Sections 2.2, 2.3, and 2.5 of this Agreement.

2.2 *Prohibited Activities.* Except as expressly authorized herein, the Township and each Licensee are prohibited from and shall not undertake, cause, or permit any: (a) copying or modification of the Platform; (b) creating derivative works based on all or any portion of the Platform; (c) removal or modification of any notice of any patent, copyright, trademark or other proprietary rights that appear on or in the Platform; (d) reverse engineering, de-compilation, translation, disassembly or discovery of the source code of all or any portion of the Platform; (e) distribution, disclosure, marketing, leasing, reselling, assigning, loaning, sublicensing, renting, pledging, offering as security or transferring to any third party, including the Residents, of the Platform, or use of the Platform for any dial-up, third party data or third party network management services, remote access, interactive or other service; (f) merging of the Platform into or with another product; or (g) use of the Platform beyond the term or after expiration or termination of this Agreement.

2.3 *Confidentiality.* The Township and each Licensee agrees to protect and maintain the confidentiality of the Platform, and not to disclose the Platform to any third parties except as expressly permitted in this Agreement. The Township and each Licensee acknowledges that its breach of confidentiality shall cause CMC irreparable injury and entitle CMC to obtain equitable relief, in addition to all other remedies available to it. The confidentiality obligations hereunder shall survive the termination or expiration of this Agreement.

2.4 *Limited License.* The Township and each Licensee further acknowledges that it is acquiring only a limited license to use the Platform and not any title to or ownership of the Platform or any part thereof and that the Platform is proprietary to and copyrighted by CMC. THE PLATFORM IS COPYRIGHTED AND LICENSED, NOT SOLD.

2.5 *Data Privacy.* Neither the Township and nor any Licensee shall use any personal identifiable information ("PII") of any Resident obtained via the Platform for any purpose and must safeguard all such PII in accordance with all applicable laws.

2.6 *Ownership of Platform.* CMC retains all title, ownership, interests and intellectual property rights in and to the Platform, including, without limitation, and customizations thereof and improvements or modifications thereto, and deems the Platform, and any such improvements, modifications, or customizations, to be confidential information. To the extent the Platform contains any materials licensed from third parties, third party suppliers may own such licensed materials. CMC retains all rights not expressly granted to the Township and Licensees in this Agreement.

3. Marketing of Pilot Program; Co-Branding Opportunities; Public Releases.

3.1 *CMC Obligations.* CMC shall (a) work together with the Township to create co-branded advertising and educational materials ("Materials") to engage residents on the Pilot Program, (b) to the extent determined by CMC in CMC's sole discretion, supply funding for the printing and distribution of such Materials to Residents, and (c) to the extent determined by CMC in CMC's sole discretion, advocate with community groups in the Township such as environmental committees, religious organizations, educational and civic institutions, and offer to speak with these groups about the importance of driving Recyclable Materials out of the disposal stream.

3.2 *Township Obligations.* The Township shall promote community engagement with the Pilot Program through existing channels, including, without limitation, the Township's website, television channel, and other social media channels currently deployed by the Township.

3.3 *Rights to Use Marks.* Any and all co-branding or other public releases with respect to the Pilot Program, including, without limitation, the Materials, and the commitments of the Parties and other matters described in this Agreement, shall require the mutual prior written consent of the Parties, including, without limitation, as to the wording thereof and the use of all logos; *provided, however*, that CMC shall be permitted to make public releases stating that CMC is the authorized collection agent of Recyclable Materials for the Township. To the extent the Parties consent to any such co-branding or release, the Parties hereby grant to each other limited, revocable, non-assignable, non-transferable, non-licensable, licenses in their respective marks. Notwithstanding that any co-branding or public release may have been approved by the other Party in accordance with this Section 3, at any time upon written notification from one Party to the other Party advising such Party that it withdraws consent to such co-branding or public release, such Party shall as soon as practicable stop using such co-branding or promoting such public release, including, without limitation, removing it from all websites and social media to the extent such removal is within such Party's control.

4. Profit Share and Cost Savings.

4.1 *Right to Charge Fees to Residents.* CMC shall be entitled to charge Residents fees for the collection of the items set forth on Exhibit A hereto, including televisions and cathode ray tubes, in the amounts set forth on Exhibit A hereto, which amounts are consistent with those currently charged by the Township to its Residents.

4.2 *Profit Share.* During the term of this Agreement, the Township shall be entitled to receive from CMC ten percent (10%), and CMC shall be entitled to retain ninety percent (90%), of Net Revenue actually received by CMC from the sale to Processors by CMC of Recyclable Materials collected from Residents by CMC.

4.3 *Definition.* "Net Revenue" means gross sales minus (a) any payments made by CMC to any independent contractors in connection with the storage of Recyclable Materials collected from Residents, (b) all costs and expenses incurred by CMC in connection with palletizing the Recyclable Materials collected from Residents, and (c) the cost to CMC to transport Recyclable Materials collected from Residents to Processors..

4.4 *Retention by Township of Cost Savings.* As between CMC and the Township, the Township shall be entitled to retain one hundred percent (100%) of (a) the landfill disposal avoidance created as a result of the diversion of Recyclable Materials under the Pilot Program, (b) any cost savings from having to dedicate fewer resources to, and/or run fewer, Township e-waste drop off events, and (c) any

increased grant funding to the Township as a result of increased diversion of Recyclable Materials from landfill disposal as a result of the Pilot Program.

4.5 *Exclusivity.* During the term of this Agreement, the Township shall not contract with any other person or entity for the collection of any Recyclable Materials. CMC shall have the right to contract with any other person, entity, or municipality to provide collection services.

4.6 *Term; Obligations upon end of Term.* The term of this Agreement shall commence on the Effective Date and shall continue for twelve (12) months from the Effective Date. Upon the end of this Agreement's term, the Township and all Licensees shall delete, destroy or return to CMC all copies (whether digital, hard or otherwise) of any software or data obtained (including without limitation all PII) from or related to the Platform and shall confirm to CMC that such deletion, destruction or return has occurred.

4.7 *Evaluation of Pilot Program.* The Parties shall mutually review and evaluate the Project Pilot nine (9) months into the term of this Agreement for the mutual consideration of whether to enter into a new agreement to continue the Parties' relationship beyond the end of the Pilot Program.

4.8 *Representations and Warranties.* Each Party hereby represents and warrants to the other Party that:

4.9 it is duly authorized and empowered to enter into, execute, deliver, and perform its obligations under this Agreement;

4.10 the execution, delivery, and performance by such Party of this Agreement has been duly authorized by all necessary action and do not and will not (i) require any consent or approval that has not been (or will not have been timely) obtained; (ii) contravene such Party's organizational, charter or governing documents; (iii) violate, or cause such Party (or the entity of which such Party is a division) to be in default under, any applicable law; or (iv) result in a breach of or constitute a default under any material agreement or instrument to which such Party (or the entity of which such Party is a division) is a party or by which it or its properties may be bound or affected; and

4.11 this Agreement is a legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its respective terms, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of rights of creditors generally and except to the extent that enforcement of rights and remedies set forth therein may be limited by equitable principles (regardless of whether enforcement is considered in a court of law or a proceeding in equity).

5. *No Warranty and Disclaimer.* CMC PROVIDES THE PLATFORM ON AN "AS IS" AND "WITH ALL FAULTS" BASIS, WITHOUT ANY WARRANTY WHATSOEVER, AND HEREBY EXPRESSLY DISCLAIMS WITH RESPECT TO THE PLATFORM AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: (A) ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT; AND (B) ALL LIABILITY FOR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, COVER, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST DATA OR LOST PROFITS, HOWEVER ARISING, WHETHER BASED IN CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, EVEN WHERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. General Provisions.

6.1 *Relationship.* Nothing in this Agreement shall create a joint venture, partnership, employment or agency relationship between the Parties or between either Party and the employees or contractors of the other Party. Neither Party is authorized by this Agreement to represent, bind, obligate, or contract on behalf of the other Party.

6.2 *Entire Agreement.* With respect to its subject matter, this Agreement (with its exhibit, which is incorporated herein by reference) represents the Parties' entire agreement and supersedes all prior agreements, understandings and representations, written or oral, between the Parties.

6.3 *Amendments; Waivers.* This Agreement may be executed and delivered in counterparts and by facsimile or electronic transmission (including without limitation via email in "portable document format"). This Agreement may not be amended except by a writing signed by each of the Parties hereto. The waiver by either Party of a breach of or a default under any provision of this Agreement shall not be effective unless in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either Party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any such right or remedy.

6.4 *Severability.* Any provision of this Agreement that is held to be invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective only to the extent of such invalidity or unenforceability and without rendering invalid or unenforceable the remainder of this Agreement or affecting the validity or enforceability of any of the provisions of this Agreement in any other jurisdiction, and the court or tribunal so holding shall be empowered to substitute, to the extent enforceable, provisions similar to said provision, or other provisions, so as to provide to the Parties the benefits intended by said provision to the fullest extent permitted by applicable law.

6.5 *Assignment.* No Party may assign or transfer any rights or obligations under this Agreement without the written consent of the other Party, except that CMC may assign or transfer this Agreement and its rights and obligations hereunder, without the Township's consent, to any third party who succeeds to substantially all its business or assets, whether by sale of assets, merger or otherwise. Any assignment or transfer, or attempted assignment or transfer, in violation of this Agreement is void *ab initio*.

6.6 *Force Majeure.* Neither Party shall be liable for any delay or failure in performance of any part of this Agreement to the extent such delay or failure has been occasioned by any act of God, fire, strike, union activity, market failure, inevitable accident, terrorism, insurrection, government restriction or prohibition, war or any cause outside of a Party's reasonable control.

6.7 *Governing Law; Jurisdiction.* This Agreement is to be governed by, construed and enforced in accordance with, the internal laws of the Commonwealth of Pennsylvania without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of Pennsylvania to the rights and duties of the Parties.

6.8 *Counterparts.* This Agreement may be executed and delivered in counterparts and by facsimile or electronic transmission (including without limitation via email in "portable document format").

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IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

CURB MY CLUTTER LLC

THE TOWNSHIP OF RADNOR

By: 
Name:
Title:

By: 
Name:
Title:

Exhibit A
Fees

Standard television and CRT monitor - \$35.00 per unit.

Rear projection television, extra-large CRT television and wood cabinet television - \$100.00 per unit