

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, and the *Competition Tribunal Rules*, SOR/2008-141;

AND IN THE MATTER OF the proposed acquisition by WM Québec Inc., or a subsidiary thereof, of the solid waste businesses and related assets of RCI Environnement Inc. and certain of its affiliates;

AND IN THE MATTER OF the filing and registration of a consent agreement pursuant to section 105 of the *Competition Act*.

B E T W E E N :

THE COMMISSIONER OF COMPETITION

Applicant

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE FILED / PRODUIT March 19, 2014 CT-2013-001 <small>Jos LaRose for / pour REGISTRAR / REGISTRAIRE</small>	
OTTAWA, ONT	# 5

- and -

WM QUÉBEC INC.

Respondent

CONSENT AGREEMENT

RECITALS:

A. Respondent proposes to acquire the solid waste businesses and related assets of RCI Environnement Inc. and certain of its affiliates (the “Transaction”);

B. The Commissioner has concluded that the Transaction is likely to result in a substantial lessening and/or prevention of competition in the supply of permanent solid non-hazardous waste disposal services in the Designated Areas, and that the implementation of this Agreement is necessary to ensure that any substantial lessening and/or prevention of competition will not result from the Transaction;

C. Respondent does not admit but will not for the purposes of this Agreement, including execution, registration, enforcement, variation or rescission, contest the Commissioner’s present conclusions that (i) the Transaction is likely to result in a substantial lessening and/or prevention of competition in the supply of permanent solid

non-hazardous waste disposal services in the Designated Areas; and (ii) the implementation of this Agreement is necessary to ensure that any substantial lessening and/or prevention of competition will not result from the Transaction.

THEREFORE Respondent and the Commissioner agree as follows:

I. DEFINITIONS

[1] Whenever used in this Agreement, the following words and terms have the meanings set out below:

- (a) **“Acceptable Waste”** means, except as excluded in this Paragraph, any and all putrescible and non-putrescible solid and semi-solid waste, including garbage, refuse or rubbish resulting from industrial, commercial, residential or community activities, including, without limitation, food and beverage containers, paper, rubbish, vehicle parts, discarded home and industrial appliances, yard waste (including grass clippings), and vegetable wastes. Without limiting the generality of the foregoing, Acceptable Waste shall also include residue as defined or as stated to be acceptable in the Environment Quality Act (Quebec) (as amended from time to time) and/or in any regulations respecting residual materials that are enacted from time to time pursuant thereto. Acceptable Waste shall exclude (i) soils; and (ii) waste that is prohibited from receipt at the Lachute Landfill or that constitutes or contains Hazardous Waste;
- (b) **“Act”** means the *Competition Act*, R.S.C., 1985, c. C-34, as amended;
- (c) **“Affiliate”** means an affiliated corporation, partnership or sole proprietorship within the meaning of section 2(2) of the Act;
- (d) **“Agreement”** means this Consent Agreement, including the schedules hereto, and references to a “Part”, “Section”, “Paragraph” or “Schedule” are, unless otherwise indicated, references to a part, paragraph, section or schedule of or to this Agreement;
- (e) **“Business Day”** means a day other than a Saturday, Sunday or statutory holiday in the Province of Quebec;
- (f) **“Closing”** means the completion of the Transaction under the Transaction Agreement;
- (g) **“Closing Date”** means the date on which Closing occurs;
- (h) **“Commissioner”** means the Commissioner of Competition appointed under the *Competition Act*;
- (i) **“Confidential Information”** means competitively sensitive, proprietary and all other information that is not in the public domain, and that is

owned by or pertains to a Person or a Person's business, and includes, but is not limited to, manufacturing, operations and financial information, customer lists, price lists, contracts, cost and revenue information, marketing methods, patents, technologies, processes, or other trade secrets;

- (j) **“Designated Areas”** means Ville de Gatineau and the following regional county municipalities in the province of Quebec: MRC d'Argenteuil, MRC de La Rivière-du-Nord, MRC de La Vallée-de-la-Gatineau, MRC des Collines-de-l'Outaouais, MRC des Laurentides, MRC des Pays-d'en-Haut, MRC de Papineau, and MRC Pontiac;
- (k) **“Final Date”** means the earlier of:
 - (i) the date on which the entire Landfill Rights Volume has been used by the Purchaser or Purchasers, as the case may be;
 - (ii) twenty years from the date of the Landfill Rights Allocation; or
 - (iii) the date on which the Respondent no longer has any right to dispose of waste at the Lachute Landfill;
- (l) **“First Reference Date”** shall have the meaning set out in Paragraph 4(c) of this Agreement;
- (m) **“Force Majeure Event”** shall have the meaning set out in Section 53 of this Agreement;
- (n) **“Gatineau Volume”** means
 - (i) 50,000 tonnes:
 - a. in the calendar years 2013 and 2014,
 - b. in the calendar years 2015 and 2016, subject to Part VII of this Agreement and provided the contract between WM Québec Inc. and the city of Gatineau in response to tender 2012 SP 217 - Transport et disposition des déchets and awarded pursuant to a letter dated September 14, 2012 remains in effect throughout such calendar year,
 - c. subject to Part VII of this Agreement, in any calendar year after a calendar year in which at least 50,000 tonnes of municipal solid waste generated in the City of Gatineau is diverted from the Respondent's Landfills to a City of Gatineau alternative-to-landfill disposal facility, provided that such waste continues to be disposed of at such alternative-to-landfill facility, and

- (ii) in any other year, zero tonnes;
- (o) **“Hazardous Waste”** means waste that is required to be accompanied by a written manifest or shipping document describing the waste as “hazardous waste” or “dangerous waste” pursuant to any law or regulation and waste containing any substance or material defined, regulated or listed (directly or by reference) as “hazardous substances”, “hazardous materials”, “hazardous wastes”, “toxic waste”, or “toxic substances” or similarly identified as hazardous to human health or the environment, in or pursuant to any law or regulation;
- (p) **“Initial Sale Period”** means the period that commences at Closing and ends at the time set out in Confidential Schedule “A” to this Agreement;
- (q) **“Lachute Landfill”** means the Lachute landfill located at 6985, Boul. Des Sources, Lachute, QC, J8H 2C5;
- (r) **“Landfill Rights Agreement”** means a binding and definitive agreement between Respondent and a Purchaser to effect the Landfill Rights Allocation pursuant to this Agreement and subject to the prior approval of the Commissioner;
- (s) **“Landfill Rights Allocation”** means the sale, conveyance, transfer, assignment or other disposal of the Landfill Rights Assets to a Purchaser or not more than two Purchasers pursuant to this Agreement and with the prior approval of the Commissioner, such that Respondent will have no direct or indirect interest in the Landfill Rights Assets;
- (t) **“Landfill Rights Assets”** means the right to dispose of the Landfill Rights Volume of Acceptable Waste from the Designated Areas at the Lachute Landfill, in accordance with this Agreement;
- (u) **“Landfill Rights Process Agreement”** means the agreement described in Section 9 of this Agreement;
- (v) **“Landfill Rights Trustee”** means the Person appointed pursuant to Part IV of this Agreement (or any substitute appointed thereto) and any employees, agents or other Persons acting for or on behalf of the Landfill Rights Trustee;
- (w) **“Landfill Rights Trustee Sale”** means the Landfill Rights Allocation to be conducted by the Landfill Rights Trustee pursuant to Part IV of this Agreement;
- (x) **“Landfill Rights Trustee Sale Period”** means the 6 month period commencing upon expiry of the Initial Sale Period;
- (y) **“Landfill Rights Volume”** means 1,875,000 tonnes;

- (z) **“Monitor”** means the Person appointed pursuant to Part VI of this Agreement (or any substitute appointed thereto), and any employees, agents or other Persons acting for or on behalf of the Monitor;
- (aa) **“Monitor Agreement”** means the agreement described in Section 27 of this Agreement;
- (bb) **“Parties”** means the Commissioner and Respondent collectively, and **“Party”** means any one of them;
- (cc) **“Person”** means any individual, sole proprietorship, partnership, joint venture, firm, corporation, unincorporated organization, trust, or other business or government entity, and any subsidiaries, divisions, groups or Affiliates thereof;
- (dd) **“Purchaser”** means a Person that acquires Landfill Rights Assets pursuant to this Agreement and a Landfill Rights Agreement;
- (ee) **“Records”** means records within the meaning of section 2(1) of the Act;
- (ff) **“Respondent”** means WM Québec Inc., its directors, officers, employees, agents, representatives, successors and assigns; and all joint ventures, subsidiaries, divisions, groups and Affiliates of WM Québec Inc., and the respective directors, officers, employees, agents, representatives, successors and assigns of each;
- (gg) **“Respondent’s Landfills”** means the Lachute Landfill and the Ste Sophie Landfill;
- (hh) **“Second Reference Date”** shall have the meaning set out in Paragraph 4(d) of this Agreement;
- (ii) **“Ste Sophie Landfill”** means the Ste Sophie landfill located at 2535 Premiere rue, Ste-Sophie, QC, J5J 2R7;
- (jj) **“Transaction”** means the transaction described in the first recital to this Agreement;
- (kk) **“Transaction Agreement”** means the Asset Purchase Agreement by and among WM Québec Inc., Waste Management, Inc., Fiducie Remdev, RCI Environnement Inc., Location P.S.M. Inc. and Gestion Environnementale Nord-Sud Inc. dated July 26, 2012, as amended or replaced; and
- (ll) **“Tribunal”** means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c.19 (2nd Supp.).

II. COMMISSIONER APPROVAL OF LANDFILL RIGHTS ALLOCATION

- [2] The Landfill Rights Allocation may proceed only with the prior approval of the Commissioner in accordance with this Part.
- [3] The Landfill Rights Agreement shall include the following terms:
- (a) in any calendar year, Purchaser or Purchasers, as the case may be, shall not dispose at the Lachute Landfill of more than a total of 150,000 tonnes of Acceptable Waste less the Gatineau Volume pursuant to the Landfill Rights Agreement;
 - (b) Purchaser or Purchasers, as the case may be, shall not dispose of more than a total of 800 tonnes of Acceptable Waste per day pursuant to the Landfill Rights Agreement;
 - (c) Purchaser shall be responsible for all taxes payable in connection with the disposal of waste pursuant to the Landfill Rights Agreement, including without limiting the generality of the foregoing, charges payable to the Quebec government for the disposal of residual materials (redevance exigible par le gouvernement du Québec pour l'enfouissement des matières résiduelles), and any amounts payable to the owner of the Lachute Landfill by way of compensation for management costs and contribution to post-closure costs in connection with the disposal of waste pursuant to the Landfill Rights Agreement; and
 - (d) Purchaser is prohibited from disposing of Hazardous Waste at the Lachute Landfill and will indemnify the Respondent for any and all costs, damages and fines incurred as a result of the Purchaser's delivery of Hazardous Waste pursuant to the Landfill Rights Agreement.
- [4] Respondent (during the Initial Sale Period) or the Landfill Rights Trustee (during the Landfill Rights Trustee Sale Period), as the case may be, shall comply with the following process for seeking and obtaining a decision of the Commissioner regarding his approval of a proposed Landfill Rights Allocation:
- (a) Respondent or the Landfill Rights Trustee, as the case may be, shall promptly:
 - (i) inform the Commissioner of any negotiations with a prospective Purchaser that may lead to a Landfill Rights Allocation; and
 - (ii) forward to the Commissioner copies of any agreement that is signed with a prospective Purchaser, including non-binding expressions of interest.

- (b) Respondent or the Landfill Rights Trustee, as the case may be, shall immediately notify the Commissioner that it intends to enter a Landfill Rights Agreement with one or more prospective Purchasers, or has entered into an agreement that, if approved by the Commissioner, will be a Landfill Rights Agreement within the meaning of this Agreement. Such notice shall be in writing and shall include: the identity of the proposed Purchaser(s); the details of the proposed Landfill Rights Agreement and any related agreements; and information concerning whether and how the proposed Purchaser(s) would, in the view of Respondent or the Landfill Rights Trustee, as the case may be, likely satisfy the terms of this Agreement.

- (c) Within 7 days following receipt of the notice described in Paragraph 4(b), the Commissioner may request additional information concerning the proposed Landfill Rights Allocation from any or all of the Respondent or the Landfill Rights Trustee, as the case may be, the Monitor and the prospective Purchaser(s). If requested to provide additional information, these Persons shall each provide such additional information in accordance with the following procedures:
 - (i) the Landfill Rights Trustee shall provide written confirmation to the Commissioner that the Landfill Rights Trustee has provided to the Commissioner all additional information requested from the Landfill Rights Trustee;
 - (ii) the Monitor shall within 3 Business Days after receiving a request for additional information provide written confirmation to the Commissioner that the Monitor has provided to the Commissioner all additional information requested from the Monitor;
 - (iii) an officer or other duly authorized representative of Respondent shall certify that he or she has examined any additional information provided by Respondent to the Commissioner and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects; and
 - (iv) an officer or other duly authorized representative of the prospective Purchaser shall certify that he or she has examined any additional information provided by the prospective Purchaser to the Commissioner and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects.

The date on which the last of the Landfill Rights Trustee or Respondent, as the case may be, the Monitor and the prospective Purchaser provides to the Commissioner a confirmation or certification required under this Paragraph is the “**First Reference Date**”.

- (d) Within 4 Business Days after the First Reference Date, the Commissioner may request further additional information concerning the proposed Landfill Rights Allocation from any or all of Respondent or the Landfill Rights Trustee, as the case may be, the Monitor and the prospective Purchaser. If requested to provide further additional information, these Persons shall each provide such information in accordance with the procedures outlined in Paragraph 4(c)(i)-(iv). The date on which the last of the Landfill Rights Trustee or Respondent, as the case may be, the Monitor and the prospective Purchaser provides to the Commissioner a confirmation or certification required under this Paragraph is the “**Second Reference Date**”.
 - (e) The Commissioner shall notify Respondent or the Landfill Rights Trustee, as the case may be, of the approval of, or the objection to, the proposed Landfill Rights Allocation as soon as possible, and in any event within 7 days after the date on which the Commissioner receives that notice described in Paragraph 4(b) or, if he requests any additional information under Paragraph 4(c) or further additional information under Paragraph 4(d), within 7 days after the later of:
 - (i) the First Reference Date; and
 - (ii) the Second Reference Date, if any.
 - (f) The Commissioner’s determination as to whether to approve a proposed Landfill Rights Allocation shall be in writing.
- [5] The Commissioner has sole discretion to determine whether to approve a proposed Landfill Rights Allocation. In exercising such discretion, the Commissioner shall take into account the likely impact of the Landfill Rights Allocation on competition, and may consider any other factor he considers relevant. Prior to granting his approval, the Commissioner must also be satisfied that:
- (a) the proposed Purchaser is fully independent of and operates at arm’s length from Respondent;
 - (b) Respondent will have no direct or indirect interest in the Landfill Rights Assets following the Landfill Rights Allocation, subject to Section 46 below;
 - (c) the proposed Purchaser is committed to supplying solid non-hazardous waste disposal services for Acceptable Waste originating from the Designated Areas;
 - (d) the proposed Purchaser has the managerial, operational and financial capability to compete effectively in the supply of permanent solid non-

hazardous waste disposal services for Acceptable Waste originating from the Designated Areas; and

- (e) the proposed Purchaser will (i) if the Commissioner grants his approval during the Initial Sale Period, complete the Landfill Rights Allocation prior to the expiry of the Initial Sale Period; or (ii) if the Commissioner grants his approval during the Landfill Rights Trustee Sale Period, complete the Landfill Rights Allocation during the Landfill Rights Trustee Sale Period.

III. INITIAL SALE PERIOD

- [6] Respondent shall use commercially reasonable efforts to complete the Landfill Rights Allocation during the Initial Sale Period in accordance with the provisions of this Part and Confidential Schedule "A".
- [7] Respondent shall provide to the Commissioner and to the Monitor every 30 days a written report describing the progress of its efforts to effect the Landfill Rights Allocation. The report shall include a description of contacts, negotiations, due diligence and offers regarding the Landfill Rights Assets, the name, address and phone number of all parties contacted and of prospective Purchasers who have come forward. Respondent shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding the status of Respondent's efforts to complete the Landfill Rights Allocation. An officer or other duly authorized representative of Respondent shall certify that he or she has examined the information provided in any such response and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects.

IV. LANDFILL RIGHTS TRUSTEE SALE PROCESS

- [8] In the event that Respondent fails to complete the Landfill Rights Allocation during the Initial Sale Period, the Commissioner shall appoint a Landfill Rights Trustee to complete the Landfill Rights Allocation in accordance with this Agreement. Such appointment may be made 10 days prior to the expiry of the Initial Sale Period or on such later date as the Commissioner determines.
- [9] Within 5 Business Days after the appointment of the Landfill Rights Trustee, Respondent shall submit to the Commissioner for approval the terms of a proposed Landfill Rights Process Agreement with the Landfill Rights Trustee and the Commissioner that transfers to the Landfill Rights Trustee all rights and powers necessary to permit the Landfill Rights Trustee to effect the Landfill Rights Allocation.
- [10] Within 5 Business Days after receipt of the proposed Landfill Rights Process Agreement referred to in Section 9, the Commissioner shall advise Respondent whether or not he approves the terms of the proposed Landfill Rights Process Agreement. The Respondent, Landfill Rights Trustee and Commissioner shall

execute the Landfill Rights Process Agreement within 5 Business Days of the Commissioner's approval.

- [11] Respondent consents to the following terms and conditions regarding the Landfill Rights Trustee's rights, powers, duties, authority and responsibilities, and shall include such terms in the Landfill Rights Process Agreement:
- (a) The Landfill Rights Trustee shall complete the Landfill Rights Allocation as expeditiously as possible, and in any event prior to expiry of the Landfill Rights Trustee Sale Period.
 - (b) The Landfill Rights Trustee shall use reasonable efforts to negotiate terms and conditions for the Landfill Rights Allocation that are as favourable to Respondent as are reasonably available at that time; however, the Landfill Rights Allocation shall not be subject to any minimum price. The Landfill Rights Trustee's opinion of what constitutes favourable terms and conditions and what constitutes reasonably available terms and conditions, is subject to review and approval by the Commissioner.
 - (c) Subject to oversight and approval by the Commissioner, the Landfill Rights Trustee shall have full and exclusive authority during the Landfill Rights Trustee Sale Period:
 - (i) to complete the Landfill Rights Allocation in accordance with the provisions of this Part;
 - (ii) to solicit interest in a possible Landfill Rights Allocation by whatever process or procedure the Landfill Rights Trustee believes is suitable to allow a fair opportunity for one or more prospective good faith Purchasers to offer to acquire the Landfill Rights Assets;
 - (iii) to enter into a Landfill Rights Agreement with a Purchaser that will be legally binding on Respondent;
 - (iv) to negotiate reasonable commercial covenants, representations, warranties and indemnities to be included in a Landfill Rights Agreement; and
 - (v) to employ, at the expense of Respondent, such consultants, accountants, legal counsel, investment bankers, business brokers, appraisers, and other representatives and assistants as the Landfill Rights Trustee believes are necessary to carry out the Landfill Rights Trustee's duties and responsibilities.
 - (d) Where any prospective good faith Purchaser makes an inquiry respecting a possible purchase of Landfill Rights Assets, the Landfill Rights Trustee shall notify such Person that the Landfill Rights Allocation is being made

pursuant to this Agreement and shall provide to such Person a copy of this Agreement, with the exception of the provisions hereof that are confidential pursuant to Section 60 of this Agreement.

- (e) Where, in the opinion of the Landfill Rights Trustee, a Person has a good faith interest in purchasing Landfill Rights Assets and has executed a confidentiality agreement, in a form satisfactory to the Commissioner only, with the Landfill Rights Trustee protecting any Confidential Information that such Person may receive in the course of its due diligence review of the Landfill Rights Assets, the Landfill Rights Trustee shall:
 - (i) promptly provide to such Person all information respecting the Landfill Rights Assets that is determined by the Landfill Rights Trustee to be relevant and appropriate;
 - (ii) permit such Person to make reasonable inspection of the Landfill Rights Assets and of all financial, operational or other non-privileged Records and information, including Confidential Information, that may be relevant to the Landfill Rights Allocation; and
 - (iii) give such Person as full and complete access as is reasonable in the circumstances to the personnel involved in managing the Landfill Rights Assets.
- (f) The Landfill Rights Trustee shall have no obligation or authority to operate or maintain the Landfill Rights Assets. The Respondent or such other Person as may be selected by the owner of the Lachute Landfill shall be solely responsible for the management and operation of the Lachute Landfill.
- (g) The Landfill Rights Trustee shall provide to the Commissioner and to the Monitor, within 14 days after the Landfill Rights Trustee's appointment and thereafter every 30 days, a written report describing the progress of the Landfill Rights Trustee's efforts to complete the Landfill Rights Allocation. The report shall include a description of contacts, negotiations, due diligence and offers regarding the Landfill Rights Assets, the name, address and phone number of all parties contacted and of prospective Purchasers who have come forward. The Landfill Rights Trustee shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding the status of the Landfill Rights Trustee's efforts to complete the Landfill Rights Allocation.
- (h) The Landfill Rights Trustee shall notify Respondent and the Commissioner immediately upon the signing of any letter of intent or agreement in principle relating to the Landfill Rights Assets, and shall provide to Respondent a copy of any executed Landfill Rights Agreement

upon receipt of Commissioner approval of the Landfill Rights Allocation contemplated in such Landfill Rights Agreement.

- [12] Respondent shall not be involved in the Landfill Rights Allocation process during the Landfill Rights Trustee Sale Period or in any negotiations with prospective Purchasers undertaken by the Landfill Rights Trustee.
- [13] Subject to any legally recognized privilege, Respondent shall provide to the Landfill Rights Trustee full and complete access to all personnel, Records, information (including Confidential Information) and facilities relating to the Landfill Rights Assets, to enable the Landfill Rights Trustee to conduct its own investigation of the Landfill Rights Assets and to provide access and information to prospective Purchasers.
- [14] Respondent shall take no action that interferes with or impedes, directly or indirectly, the Landfill Rights Trustee's efforts to complete the Landfill Rights Allocation.
- [15] Respondent shall fully and promptly respond to all requests from the Landfill Rights Trustee and shall provide all information the Landfill Rights Trustee may request. Respondent shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Landfill Rights Trustee on behalf of Respondent.
- [16] Respondent will do all such acts and execute all such documents, and will cause the doing of all such acts and the execution of all such documents as are within its power to cause the doing or execution of, as may be reasonably necessary to ensure that the Landfill Rights Assets are allocated in the Landfill Rights Trustee Sale Period and that agreements entered into by the Landfill Rights Trustee are binding upon and enforceable against Respondent.
- [17] Respondent shall be responsible for all reasonable fees and expenses properly charged or incurred by the Landfill Rights Trustee in the course of carrying out the Landfill Rights Trustee's duties and responsibilities under this Agreement. The Landfill Rights Trustee shall serve without bond or security, and shall account for all fees and expenses incurred. In the event of any dispute: (i) such account shall be subject to the approval of the Commissioner only; and (ii) Respondent shall promptly pay any account for reasonable fees and expenses approved by the Commissioner.
- [18] Respondent shall pay all reasonable invoices submitted by the Landfill Rights Trustee within 30 days after receipt. Any outstanding monies owed to the Landfill Rights Trustee by Respondent shall be paid out of the proceeds of the Landfill Rights Allocation.
- [19] Respondent shall indemnify the Landfill Rights Trustee and hold the Landfill Rights Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Landfill

Rights Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence or bad faith by the Landfill Rights Trustee.

- [20] Respondent shall indemnify the Commissioner and hold the Commissioner harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Landfill Rights Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability.
- [21] If the Commissioner determines that the Landfill Rights Trustee has ceased to act or has failed to act diligently, the Commissioner may remove the Landfill Rights Trustee and appoint a substitute Landfill Rights Trustee. The provisions of this Agreement respecting the Landfill Rights Trustee shall apply in the same manner to any substitute Landfill Rights Trustee.
- [22] Respondent may require the Landfill Rights Trustee and each of the Landfill Rights Trustee's consultants, accountants, legal counsel, investment bankers, business brokers, appraisers, and other representatives and assistants to sign an appropriate confidentiality agreement in a form satisfactory to the Commissioner only; provided, however, that such agreement shall not restrict the Landfill Rights Trustee from providing any information to the Commissioner.
- [23] The Commissioner may require the Landfill Rights Trustee and each of the Landfill Rights Trustee's consultants, accountants, legal counsel, investment bankers, business brokers, appraisers, and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information the Landfill Rights Trustee may receive from the Commissioner in connection with the performance of the Landfill Rights Trustee's duties.
- [24] Notwithstanding any term of this Agreement, the obligations and powers of the Landfill Rights Trustee under this Agreement shall not expire until the Landfill Rights Allocation is completed.

V. FAILURE OF LANDFILL RIGHTS TRUSTEE SALE

- [25] If, by the end of the Landfill Rights Trustee Sale Period, the Landfill Rights Allocation has not been completed, or if the Commissioner is of the opinion that the Landfill Rights Allocation likely will not be completed prior to the end of the Landfill Rights Trustee Sale Period, the Commissioner may apply to the Tribunal, at his election, for either (i) such order as is necessary to complete the Landfill Rights Allocation; or (ii) such order as is necessary to ensure that the Transaction is not likely to prevent or lessen competition substantially.

VI. MONITOR

- [26] The Commissioner may appoint a Monitor, responsible for monitoring compliance by Respondent with this Agreement. Such appointment may occur at any time following registration of this Agreement. A reference in this Agreement to specific monitoring functions or tasks that are to be undertaken by the Monitor shall in no way detract from the Monitor's general power and duty to monitor all aspects of Respondent's compliance with this Agreement.
- [27] Within 5 Business Days after the appointment of the Monitor, Respondent shall submit to the Commissioner for approval the terms of a proposed Monitor Agreement with the Monitor and the Commissioner that transfers to the Monitor all rights and powers necessary to permit the Monitor to monitor compliance by Respondent with this Agreement.
- [28] Within 5 Business Days after receipt of the proposed Monitor Agreement referred to in Section 27, the Commissioner shall advise Respondent whether or not he approves the terms of the proposed Monitor Agreement. If the Commissioner does not approve the terms of the proposed Monitor Agreement, he shall concurrently identify alternative terms for the Monitor Agreement that Respondent shall incorporate into a final Monitor Agreement with the Monitor and the Commissioner. The Respondent, Monitor and Commissioner shall execute the Monitor Agreement within 5 Business Days of the Commissioner's approval or requirement of alternative terms as referenced above.
- [29] Respondent consents to the following terms and conditions regarding the Monitor's rights, powers, duties, authority and responsibilities, and shall include such terms in the Monitor Agreement:
- (a) The Monitor shall have the power and authority to monitor Respondent's compliance with this Agreement, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of this Agreement and in consultation with the Commissioner.
 - (b) The Monitor shall have the authority to employ, at the expense of Respondent, such consultants, accountants, legal counsel and other representatives and assistants as the Monitor believes are necessary to carry out the Monitor's duties and responsibilities.
 - (c) The Monitor shall have no obligation or authority to operate or maintain the Landfill Rights Assets.
 - (d) The Monitor shall act for the sole benefit of the Commissioner, maintain all confidences and avoid any conflict of interest.

- (e) The Monitor shall have no duties of good faith, of a fiduciary nature, or otherwise, to Respondent.
 - (f) The Monitor shall provide to the Commissioner every 30 days after the date of the Monitor's appointment until completion of the Landfill Rights Allocation and annually thereafter, a written report concerning performance by Respondent of its obligations under this Agreement. The Monitor shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding Respondent's compliance.
- [30] Subject to any legally recognized privilege, Respondent shall provide to the Monitor full and complete access to all personnel, Records, information (including Confidential Information) and facilities relevant to monitoring Respondent's compliance with this Agreement.
- [31] Respondent shall take no action that interferes with or impedes, directly or indirectly, the Monitor's efforts to monitor Respondent's compliance with this Agreement.
- [32] Respondent shall fully and promptly respond to all requests from the Monitor and shall provide all information the Monitor may request. Respondent shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Monitor on behalf of Respondent.
- [33] Respondent may require the Monitor and each of the Monitor's consultants, accountants, legal counsel and other representatives and assistants to sign an appropriate confidentiality agreement in a form satisfactory to the Commissioner only; provided, however, that such agreement shall not restrict the Monitor from providing any information to the Commissioner.
- [34] The Commissioner may require the Monitor and each of the Monitor's consultants, accountants, legal counsel and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information the Monitor may receive from the Commissioner in connection with the performance of the Monitor's duties.
- [35] Respondent shall be responsible for all reasonable fees and expenses properly charged or incurred by the Monitor in the course of carrying out the Monitor's duties under this Agreement. The Monitor shall serve without bond or security, and shall account for all fees and expenses incurred. In the event of any dispute: (i) such account shall be subject to the approval of the Commissioner only; and (ii) Respondent shall promptly pay any account for reasonable fees and expenses approved by the Commissioner.
- [36] Respondent shall pay all reasonable invoices submitted by the Monitor within 30 days after receipt. Any outstanding monies owed to the Monitor by Respondent shall be paid out of the proceeds of the Landfill Rights Allocation.

- [37] Respondent shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence or bad faith by the Monitor.
- [38] Respondent shall indemnify the Commissioner and hold the Commissioner harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability.
- [39] If the Commissioner determines that the Monitor has ceased to act or has failed to act diligently, the Commissioner may remove the Monitor and appoint a substitute Monitor. The provisions of this Agreement respecting the Monitor shall apply in the same manner to any substitute Monitor.
- [40] The Monitor shall serve for three years after the Landfill Rights Allocation.

VII. COMMISSIONER VERIFICATION OF CHANGES TO GATINEAU VOLUME

- [41] An increase in the Gatineau Volume from zero tonnes to 50,000 tonnes for any year after 2014 in accordance with clause (b) or (c) of the definition of "Gatineau Volume" is subject to verification by the Commissioner that this condition has been established. Respondent shall comply with the following process for obtaining a written verification from the Commissioner regarding an increase in the Gatineau Volume:
- (a) Respondent shall provide the Commissioner with written notice of circumstances that may lead to an increase in the Gatineau Volume and shall supply supporting information to establish how the circumstances justify an increase in the Gatineau Volume in accordance with the terms of this Agreement.
 - (b) Within 14 days following receipt of the notice described in Paragraph 41(a), the Commissioner may request additional information concerning the proposed increase in the Gatineau Volume from Respondent. Respondent shall provide any additional information requested. When Respondent has provided a complete response to the Commissioner's request, an officer or other duly authorized representative of Respondent shall certify that he or she has examined any additional information provided by Respondent to the Commissioner and that such information

is, to the best of his or her knowledge and belief, correct and complete in all material respects.

- (c) The Commissioner shall determine whether the conditions providing for an increase in the Gatineau Volume have been met and such determination shall be in writing.

[42] Where the Commissioner has determined to increase the Gatineau Volume and Respondent becomes aware of a material change to any circumstance supporting an application by Respondent for an increase in the Gatineau Volume, Respondent shall promptly notify the Commissioner in writing of such change.

[43] If the Commissioner determines that the volume of municipal solid waste generated in the City of Gatineau and diverted from the Respondent's Landfills to a City of Gatineau alternative-to-landfill disposal facility has dropped below 50,000 tonnes in a calendar year, the Commissioner shall notify the Respondent in writing and the Gatineau Volume shall be reduced to zero tonnes per year beginning in the following calendar year until further adjusted in accordance with this Part.

VIII. COMPLIANCE

[44] Within 5 Business Days after the Closing Date, Respondent shall provide written confirmation to the Commissioner of the date on which the Transaction was completed.

[45] Respondent shall provide a copy of this Agreement to each of its own and its Affiliates' directors, officers, employees and agents having managerial responsibility for any obligations under this Agreement, within 3 Business Days after the date of registration of this Agreement. Respondent shall ensure that its directors, officers, employees and agents with responsibility for any obligations under this Agreement receive sufficient training respecting Respondent's responsibilities and duties under this Agreement, and the steps that such individuals must take in order to comply with this Agreement.

[46] Respondent shall not directly or indirectly acquire any interest in the Landfill Rights Assets without the prior written approval of the Commissioner.

[47] For a period of 2 years after the date when the Landfill Rights Allocation is completed, Respondent shall not, without providing advance written notification to the Commissioner in the manner described in this Section, directly or indirectly:

- (a) acquire any assets or shares of, or any other interest in, any permanent solid non-hazardous waste disposal services business serving any Designated Area; or

- (b) consummate any merger or other combination relating to the permanent solid non-hazardous waste disposal services business serving any Designated Area;

If a transaction described in (a) or (b) within the two-year period specified above is one for which notice is not required under section 114 of the Act, Respondent shall supply to the Commissioner the information described in section 16 of the *Notifiable Transactions Regulations* at least 30 days before completing such transaction. Respondent shall certify such information in the same manner as would be required if section 118 of the Act applied. The Commissioner may, within 30 days after receiving the information described in section 16 of the *Notifiable Transactions Regulations*, request that Respondent supply additional information that is relevant to the Commissioner's assessment of the transaction. In the event that the Commissioner issues such a request for additional information, Respondent shall supply information to the Commissioner in the form specified by the Commissioner and shall not complete such transaction until at least 30 days after Respondent has supplied all such requested information in the form specified by the Commissioner.

[48] Six months after the date of registration of this Agreement and annually thereafter until the Final Date, on February 15 with respect to the preceding calendar year, and at such other times as the Commissioner may require, Respondent shall file an affidavit or certificate, substantially in the form of Schedule B to this Agreement, certifying its compliance with Part VIII of this Agreement and setting out the following information in detail:

- (a) the steps taken to ensure compliance;
- (b) the controls in place to verify compliance;
- (c) the names and titles of employees who have oversight of compliance; and
- (d) the volume of Acceptable Waste disposed of at the Respondent's Landfills by Purchaser during the preceding calendar year pursuant to this Agreement and the Landfill Rights Agreement.

[49] Where Respondent becomes aware that the City of Gatineau has commenced operation of an alternative-to-landfill disposal facility to which Respondent expects that all or substantially all municipal solid waste generated by the City of Gatineau will be diverted and Respondent intends to obtain a determination from the Commissioner regarding an increase in the Gatineau Volume, Respondent shall provide the Commissioner with written notice within 30 days after the Respondent becomes aware of the commencement of such operations.

[50] If any of Respondent, the Landfill Rights Trustee or the Monitor becomes aware that there has been a breach or possible breach of any of the terms of this Agreement, such Person shall, within 5 Business Days after becoming aware of the breach or possible breach, notify the Commissioner thereof, and shall provide

details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach. Respondent shall provide confirmation of its compliance with this provision in all affidavits and certificates of compliance filed with the Commissioner pursuant to Section 48 of this Agreement.

- [51] Respondent shall notify the Commissioner at least 30 days prior to:
- (a) any proposed dissolution of Respondent;
 - (b) any other change in Respondent including, but not limited to, a reorganization, material acquisition, disposition or transfer of assets, or any fundamental change for purposes of Respondent's incorporating statute, if such change may affect compliance obligations arising out of this Agreement.
- [52] For the period commencing when this Agreement is registered and ending on the Final Date, for purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, Respondent shall, upon written request given at least 2 Business Days in advance to Respondent, permit any authorized representative(s) of the Commissioner, without restraint or interference:
- (a) to access, during regular office hours of Respondent on any Business Day(s), all facilities and to inspect and copy all Records in the possession or control of Respondent related to compliance with this Agreement, which copying services shall be provided by Respondent at its expense; and
 - (b) to interview such officers, directors or employees of Respondent as the Commissioner requests regarding such matters.
- [53] The Respondent shall not be deemed to be in default under this Agreement if such default is caused by or is attributable to any occurrence which is beyond the reasonable control of the Respondent and which by the exercise of reasonable foresight and due diligence the Respondent is unable to prevent or overcome (a "Force Majeure Event"); provided that:
- (a) notice of the Force Majeure Event is promptly provided to the Commissioner and the Purchaser;
 - (b) a work-around strategy is promptly developed, including, if commercially reasonable, disposal at the Ste Sophie Landfill for a period not longer than 7 days; and
 - (c) all commercially reasonable efforts are used to implement the work-around strategy and to otherwise resume performance of this Agreement given the circumstances.

IX. DURATION

[54] This Agreement shall become effective on the date when it is registered, and shall remain in effect until the Final Date, except that Parts II, III, IV and V of this Agreement shall be effective only until the Landfill Rights Allocation is complete.

X. NOTICES

[55] For a notice, report, consent, approval, written confirmation or other communication required or permitted to be given under this Agreement to be valid,

- (a) it must be in writing and the sending party must use one of the following methods of delivery: (1) personal delivery; (2) registered mail; (3) courier service; (4) facsimile; or (5) electronic mail; and
- (b) it must be addressed to the receiving party at the address(es) listed below, or to any other address designated by the receiving party in accordance with this Section.

if to the Commissioner:

Commissioner of Competition
Competition Bureau Canada
Place du Portage, 21st Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9

Attention: Commissioner of Competition
Fax: (819) 953-5013
Email address: MergerNotification@cb-bc.gc.ca

with copies to:

Steve Sansom, Counsel
Competition Bureau Legal Services
Department of Justice
Place du Portage, 22nd Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9
Fax: (819) 953-9267
Email address: steve.sansom@cb-bc.gc.ca

if to Respondent:

General Counsel
117 Wentworth Crt.

Brampton, Ontario
L6T 5L4
Fax: (866) 374-0955
Email: dwright@wm.com

with a copy to:

Eastern Canada VP
219 Labrador Drive
Waterloo, Ontario
N2K 4M8
Fax: (519) 886-3559

and to:

Adam Fanaki
Davies Ward Phillips & Vineberg LLP
41st Floor, 155 Wellington Street West
Toronto, ON
M5V 3J7
Fax: (416) 863-0871
Email address: afanaki@dwpv.com

[56] A notice, consent or approval under this Agreement is effective on the day that it is received by the receiving Party. A notice, consent or approval is deemed to have been received as follows:

- (a) if it is delivered in person, by registered mail or by courier, upon receipt as indicated by the date on the signed receipt;
- (b) if it is delivered by facsimile, upon receipt as indicated by the time and date on the facsimile confirmation slip;
- (c) if it is delivered by electronic mail, when the recipient, by an email sent to the email address for the sender stated in this Section or by a notice delivered by another method in accordance with this Section, acknowledges having received that email, with an automatic “read receipt” not constituting acknowledgment of an email for purposes of this Section.

If a notice is received after 5:00 p.m. local time, or on a day that is not a Business Day, then the notice shall be deemed to have been received on the next Business Day.

[57] Notwithstanding Sections 55 and 56, a notice, report, consent, approval, written confirmation or other communication that is not communicated in accordance with Sections 55 and 56 is valid if a representative of the Party to this Agreement that is

the recipient of such communication confirms the receipt and sufficiency of such communication.

XI. GENERAL

[58] In this Agreement:

- (a) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- (b) **Time Periods** – Computation of time periods shall be in accordance with the *Interpretation Act*, R.S.C. 1985, c. I-21, and the definition of “holiday” in the *Interpretation Act* shall include Saturday.

[59] The Commissioner shall file this Agreement with the Tribunal for registration in accordance with section 105 of the Act. Respondent hereby consents to such registration.

[60] Information in Confidential Schedule “A” shall be made public upon the expiry of the Initial Sale Period.

[61] The Commissioner may, after informing Respondent, extend any of the time periods contemplated by this Agreement other than the Final Date. If any time period is extended, the Commissioner shall promptly notify Respondent of the revised time period.

[62] Nothing in this Agreement precludes Respondent or the Commissioner from bringing an application under section 106 of the Act. Respondent will not, for the purposes of this Agreement, including execution, registration, enforcement, variation or rescission, contest the Commissioner’s present conclusions that: (i) the Transaction is likely to result in a substantial lessening and/or prevention of competition in the supply of permanent solid non-hazardous waste disposal services in the Designated Areas; and (ii) the implementation of this Agreement is necessary to ensure that any substantial lessening and/or prevention of competition will not result from the Transaction.

[63] Respondent attorns to the jurisdiction of the Tribunal for the purposes of this Agreement and any proceeding initiated by the Commissioner relating to this Agreement.

[64] This Agreement, constitutes the entire agreement between the Commissioner and Respondent, and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral, with respect to the subject matter hereof.

- [65] This Agreement shall be governed by and interpreted in accordance with the laws of Ontario and the laws of Canada applicable therein, without applying any otherwise applicable conflict of law rules.
- [66] In the event of a dispute regarding the interpretation, implementation or application of this Agreement, the Commissioner or Respondent may apply to the Tribunal for directions or an order. In the event of any discrepancy between the English language version of this Agreement and the French language version of this Agreement, the English language version of this Agreement shall prevail. In no event shall any dispute suspend the Initial Sale Period or the Landfill Rights Trustee Sale Period.
- [67] This Agreement may be executed in two or more counterparts, each of which shall be an original instrument, but all of which shall constitute one and the same Agreement.

The undersigned hereby agree to the filing of this Agreement with the Tribunal for registration.

DATED this 6th day of February, 2013

COMMISSIONER OF COMPETITION

Original signed by John Pecman

Name: John Pecman

Title: Interim Commissioner of Competition

WM QUÉBEC INC.

Original signed by Brad Muter, President

I/We have authority to bind the corporation

Name: Brad Muter

Title: President

SCHEDULE A

INITIAL SALE PERIOD

The Initial Sale Period shall commence at Closing and shall expire on the last day of the fourth calendar month after the Closing Date.

SCHEDULE B

FORM OF COMPLIANCE CERTIFICATION/AFFIDAVIT

I, **[name]**, of **[place]**, hereby certify¹ in accordance with the terms of the Registered Consent Agreement dated • between WM Québec Inc. (“Respondent”) and the Commissioner of Competition, that:

1. I am the **[title]** of **[Respondent]**, and have personal knowledge of the matters deposed to herein, unless they are stated to be on information and belief, in which cases I state the source of such information and believe it to be true.
2. On **[date]**, Respondent entered into a Consent Agreement (the “Consent Agreement”) with the Commissioner of Competition (the “Commissioner”) in connection with Respondent’s acquisition of the solid waste businesses and related assets of RCI Environnement Inc. and certain of its affiliates (the “Transaction”).
3. The Transaction closed on **[date]** (the “Closing Date”).
4. The Landfill Rights Allocation (as defined in the Consent Agreement) to **[Purchaser]** was completed on **[date]**.
5. Pursuant to Section 48 of the Consent Agreement, Respondent is required to file reports annually and when requested by the Commissioner certifying its compliance with Part VIII of the Consent Agreement.

Oversight of Compliance

6. **[Names/titles]** have primary responsibility for overseeing compliance with this Agreement.

Closing Date

7. Pursuant to Section 48 of the Consent Agreement, Respondent is required to provide written confirmation to the Commissioner of the date on which the Transaction was completed. Such notice was provided on **[date]**.

Circulation of Consent Agreement

8. Pursuant to Section 45 of the Consent Agreement, Respondent is required to provide a copy of the Consent Agreement to each of its own and its Affiliates’ directors, officers, employees and agents having managerial responsibility for any

¹ If this is drafted as an affidavit, the words “hereby certify” should be removed and should be replaced with “make oath and say”. An affidavit should be sworn under oath. A certificate should be certified by a Commissioner for taking affidavits.

obligations under the Consent Agreement, within 3 Business Days after the date of registration of the Consent Agreement. The Consent Agreement was circulated by [whom] to [provide list] on [dates].

9. Pursuant to Section 45 of the Consent Agreement, Respondent is required to ensure that its directors, officers, employees and agents with responsibility for any obligations under the Consent Agreement receive sufficient training respecting Respondent's responsibilities and duties under the Consent Agreement. The following training has been provided: [provide list of who was trained and by whom as well as a general statement of the content of the training]

Landfill Rights Volume

10. Attached as Appendix A is a table showing, separately for each municipality, the information provided by Purchaser setting out the volume of Acceptable Waste disposed of at the Respondent's Landfills by Purchaser during the preceding calendar year.

Gatineau Volume

11. The amount of the Gatineau Volume for the preceding calendar year was [0 or 50,000 tonnes].

No Reacquisition/Acquisition

12. Pursuant to Section 46 of the Consent Agreement, Respondent shall not reacquire the Landfill Rights Assets without the prior written approval of the Commissioner, and pursuant to Section 47 of the Consent Agreement, Respondent shall not complete certain transactions without prior notice to the Commissioner. No such transactions have occurred / notice was given...

Notification of Breach

13. Based on my personal knowledge and my inquiries of [provide names], I am not aware of any breach or possible breach of any of the terms of the Consent Agreement as described in Section 50 of the Consent Agreement.

DATED ●.

Commissioner of Oaths

Name and Title of Certifying Officer