

CCO C - 21-003

**SETTLEMENT AGREEMENT AND RELEASE BY AND BETWEEN
WASTE RESOURCES TECHNOLOGIES AND CITY OF CARSON AS
TO RATE INCREASE PROCESSING AND PROCEDURES**

This SETTLEMENT AGREEMENT AND RELEASE BY AND BETWEEN WASTE RESOURCES TECHNOLOGIES AND CITY OF CARSON AS TO RATE INCREASE PROCESSING AND PROCEDURES ("**Agreement**") is effective as of the date on which all parties have finally and fully executed this Agreement ("**Effective Date**"), and is entered by and between **CITY OF CARSON**, a charter municipal corporation, and **WASTE RESOURCES LOS ANGELES, INC.**, a California corporation ("**WRLA**"), **WASTE RESOURCES, INC.**, a California corporation, ("**WRI**") and **WASTE RESOURCE TECHNOLOGIES, INC.**, a Delaware corporation ("**WRT**", and collectively with WRLA and WRI the "**WRT Parties**"). City and WRT Parties may be referred to, individually or collectively, as "Party" or "Parties."

RECITALS

A. On July 15, 2003, City granted to USA Waste of California, Inc., a Delaware corporation ("**USA Waste**"), a ten (10) year non-exclusive franchise for the collection, transportation and processing of solid waste from certain commercial and industrial premises in the City. USA Waste also held an exclusive franchise for the collection, transportation and processing of solid waste from residential premises in the City.

B. As the USA Waste franchises referenced above approached expiration in 2018, the City Council of the City ("**City Council**") determined to issue a request for proposals to explore whether solid waste service vendors other than USA Waste might propose better economic/rate options and enhanced refuse services to City ratepayers. To this end, on or about July 18, 2017, the City posted a notice that the City would be receiving proposals in response to the City's request for proposals (RFP P171-19) from qualified solid waste companies to provide solid waste collection, transportation, recycling, and disposal services with the intent to enter into an exclusive franchise agreement for residential and commercial solid waste management services. RFP P171-19 was published on or about July 20, 2017 (the "**RFP**").

C. WRI, submitted a proposal to provide solid waste collection, transportation, recycling, and disposal services to City in response to the RFP ("**WRI's RFP Proposal**").

D. On or about December 5, 2017, the City Council found the WRI's RFP Proposal to be the most economic and advantageous proposal to the City and its residents, with proportional rate distribution among ratepayer categories and enhanced service, collection, environmental and community education programs. Thus, the City Council authorized the City Manager to enter into negotiations with WRI to enter into an exclusive franchise agreement for residential and commercial solid waste handling services ("**Contract Award**").

E. On March 15, 2018, City and WRT entered into that certain "Exclusive Franchise Agreement for Provision of Solid Waste Handling Services" ("**WRT Franchise Agreement**").

F. On March 15, 2018, USA Waste filed a Verified Petition for Writ of Mandate or Other Extraordinary Relief and Complaint for Declaratory Relief against City and

WRLA, captioned *USA WASTE OF CALIFORNIA, INC., dba Waste Management L.A. Metro Hauling, a Delaware corporation v. CITY OF CARSON, a municipal corporation; City council of the City of Carson and Does 1 through 100, inclusive and named Waste Resources of Los Angeles, Inc., a California corporation as an Real Party in interest*, Los Angeles Superior Court Case No. BS172744.

G. On or about May 15, 2018, USA Waste filed a second action against City, captioned *USA WASTE OF CALIFORNIA, INC., dba Waste Management L.A. Metro Hauling, a Delaware corporation v. CITY OF CARSON*, Los Angeles Superior Court Case No. BS173569.

H. On or about May 22, 2018 USA Waste filed yet another Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive relief against the City and WRT Parties, captioned *USA WASTE OF CALIFORNIA, INC., dba Waste Management L.A. Metro Hauling, a Delaware corporation v. CITY OF CARSON*, naming WRT and WRI as Real Parties in Interest, Los Angeles Superior Court Case No. BS173645. The USA Waste litigation matters referenced in Recitals F through H hereof are collectively referred to as the **"USA Waste Litigation"**.

I. In the course of the USA Waste Litigation, the City and WRT Parties entered into a series of reimbursement agreements, culminating in a "Second Amended Reimbursement Agreement" dated December 13, 2018 (**"Reimbursement Arrangement"**), with Section 3.4 memorializing a right of cost recovery to WRT Parties via rate adjustment procedures as follows:

3.4 WRT's Recovery of Litigation Costs and Expenses. At the conclusion of the Waste Management Litigation, but in no case earlier than July 1, 2021, WRT may request an increase to the Maximum Rate Schedule of the Franchise Agreement to recover the costs that it incurred and paid during the course of the Waste Management Litigation ("Total Defense Costs"). Total Defense costs shall include all reasonable costs and attorneys' fees spent by WRT on its behalf related to the Waste Management Litigation, the City Litigation Costs, and interest on these amounts at the rate set forth in California Civil Code § 3289. Any request by WRT for an increase to the Maximum Rate Schedule of the Franchise Agreement pursuant to this Paragraph 3.4 shall be made as provided in Section 7.3.1 through 7.3.3 of the Franchise Agreement as well as applicable state law including, but not limited to, Proposition 218.

J. In September 2019, USA Waste, WRT Parties and the City entered into a settlement agreement to consummate a global settlement of the USA Waste Litigation (**"USA Waste Settlement Arrangement"**), which required WRT to make a \$1.5M payment to USA Waste as part of the consideration to USA Waste for settlement of the USA Waste Litigation.

K. From the date the USA Waste Litigation was initiated, and for some time following finalization of the Settlement Arrangement, USA Waste did not transition City-wide commercial refuse accounts previously-served by USA Waste to WRT, which transitional delay lasted for more than a year, causing WRT actual monetary losses that were later verified by independent auditors. Additionally, WRT Parties incurred litigation costs, both for their direct defense against USA Waste and those legal costs reimbursable to the City under the terms of the Reimbursement Arrangement.

L. Exacerbating the monetary shortfalls already suffered by WRT as a result of USA Waste's actions, in December of 2019 an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19) was first identified in Wuhan City, Hubei Province, China. Since then, COVID-19 has and continues to spread globally. On March 3, 2020, Governor Newsom declared the existence of a state of emergency for the State of California; and on March 11, 2020, the Director-General for the World Health Organization declared that COVID-19 can be characterized as a "pandemic." On March 13, 2020, the President of the United States declared that the outbreak of COVID-19 in the United States constitutes a national emergency. The COVID-19 pandemic has caused significant operational and monetary disruptions to the solid waste industry, including those of WRT Parties, including without limitation:

- i. Recycling of plastic and other products has slowed substantially. While the immediate driver for the slowdown is the perceived risk of COVID-19 transmission, other key factors include supply chain disruptions and reductions of manufacturing and commercial activity. There is a risk that the economic recession combined with low commodity prices may increase reliance on cheaper virgin raw material instead of recycled feedstock;
- ii. Disposal at landfills has increased, in part because COVID-19 has prevented traditional channels of diverting recyclables from landfills. Most collected waste is transported to landfills or accumulates at temporary dumps;
- iii. The use of single-use plastics ("SUP") is increasing. The previously declining dependence on SUP has seen a resurgence, largely driven by increased use of plastic-based personal protective equipment ("PPE"), such as gloves, masks, and disinfectant bottles, as well as packaging material;
- iv. Increased healthcare and social protection costs required of solid waste companies in re COVID-19 have strained budgets at a time when revenues are also substantially impacted. Containment measures to slow the spread of the virus have resulted in disruptions, resulting in job losses and financial deterioration across the public and private sectors.

M. Based upon all the above-cited cost factors, in November 2019 and in following months, WRT claimed to be operating at a loss and requested that the City initiate a City-wide solid waste service rate review process to consider WRT's recoupment of their actual legal, operational and interest-based monetary losses that had accrued

since the Contract Award. WRT's request in this regard was based upon both (i) the above-quoted provision of the Reimbursement Agreement in Recital I, and (ii) Section 7.2.3 of the WRT Franchise Agreement, which states, "Subject to adoption in accordance with Proposition 218 and this Agreement, the Maximum Rate Schedule. . . shall be adjusted to account for Franchisee's increased costs during the Term such that cost increases shall be "passed-through" to Franchisee's customers in the form of service rate adjustments ("Pass-Through Adjustments"). Such costs that shall be passed-through include, without limitation. . . Increased actual costs due to changes in law or legal requirements imposed upon Franchisee."

N. Upon review, analysis and negotiation, the Parties have agreed to process a proposed 7.95% increase in the Maximum Rate Schedule as compensation for the increased costs to WRT identified in Recitals I through M ("**Cost Recovery Issues**"). To this end, the City agrees to present to the City's citizenry (commercial and residential) a 45-day notice of proposed rate increases consistent with that rate structure shown in **Exhibit "A"** ("**Proposed Maximum Rate Schedule**") and a "majority protest" hearing process in accordance with Proposition 218, Cal. Const., Art. XIID ("**Prop 218**"). In exchange for the City's good faith cooperation in processing of the Proposed Maximum Rate Schedule through Prop 218 protocols, City and WRT Parties, and each of them, desire to resolve and release from each other any claims, damages, or causes of action that any Party may have against any other Party as of the Effective Date of this Agreement arising out of, connected to, or in any way related to the Cost Recovery Issues; and further acknowledge and agree that this Agreement is entered into after arms-length negotiations and is substantively and procedurally fair.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

TERMS

1. **RECITALS.** The foregoing recitals are true and correct, and are incorporated herein by reference.

2. **EFFECTIVE DATE.** This Agreement shall take effect upon the date of full execution hereof by the Parties ("**Effective Date**").

3. **CONDITIONS PRECEDENT.** The effectiveness of all obligations under this Agreement (excepting those obligations arising prior to January 1, 2021) is strictly conditioned upon the following:

- 3.1. The Carson City Council's approval of the Proposed Maximum Rate Schedule, as set forth in Section 4.1, below.
- 3.2. The City's execution the Second Amendment to Franchise Agreement, as set forth in Section 4.2, below.
- 3.3. The Carson City Council's approval of the Second Amendment to Franchise Agreement, as set forth in Section 4.2, below.

In the event all of the above conditions are not satisfied on or before March 2, 2021, this Agreement is and shall be null and void and of no further effect *ab initio*.

4. PROPOSED MAXIMUM RATE SCHEDULE INCREASE.

4.1. Proposition 218. No later than January 1, 2021, City shall issue a 45-day "majority protest" notice(s) pursuant to Prop 218 (Cal. Const. Article XIII D, section 6), notifying commercial and residential solid waste ratepayers of a hearing on the Proposed Maximum Rate Schedule to be heard at the earliest available regularly-scheduled City legislative body meeting, subject to any legal requirements, including but not limited to the Ralph M. Brown Act, Government Code Sections 54950-54963. The City will fairly hear the Proposed Maximum Rate Schedule and hold a Prop 218 majority protest process in good faith and in accord with Article 7 of the WRT Franchise Agreement.

4.2. Amendment to WRT Franchise Agreement. In the event the Proposed Maximum Rate Schedule is approved following all appropriate Prop 218 procedures set forth in Section 4.1, above, and the WRT Franchise Agreement, City and WRT shall execute a Second Amendment to Exclusive Franchise Agreement Between City of Carson and Waste Resource Technologies, Inc. for Integrated Solid Waste Management Services ("**Second Amendment To Franchise Agreement**"), an unsigned copy of which is attached to this Agreement as **Exhibit "B."** WRT and City shall approve and execute the Second Amendment to Franchise Agreement concurrent with, or no later than seven (7) business days after, the City Council's approval of the Proposed Maximum Rate Schedule set forth in Section 4.1 above.

5. RELEASES.

5.1. Releases By WRT Parties to City. Upon timely satisfaction of the conditions precedent set forth in Section 3.0, above, and excepting only the obligations or limitations imposed by this Agreement and other contractual obligations imposed through the USA Waste Settlement Arrangement, WRT parties, and each of them, on behalf of themselves and their directors, officers, agents, subsidiaries, affiliates, successors, shareholders, partners, investors, attorneys and assigns and all persons acting by, through, under, or in concert with such Parties, do hereby fully and forever release and discharge City and its elected and appointed public officials, officers, employees, boards, departments, and agents, including, but not limited to, each and all of them and (as the case may be) and each of their respective associates, predecessors, successors, heirs, assignees, agents, directors, officers, employees, representatives, lawyers, and all persons acting by, through, under or in concert with them (collectively "**City Releasees**"), and each of them, from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, obligations, promises, liabilities, claims, demands, assessments, damages, losses, costs or expenses (including attorneys' fees and consultant fees), of any nature whatsoever, known or unknown, fixed or contingent, and which WRT Parties now owns or holds or has at any time heretofore owned or held as against the City Releasees, and each of them, arising out of, relating to, or resulting, either directly or indirectly from the Cost Recovery Issues or the Proposed Maximum Rate Schedule.

5.2. Releases By City to WRT Parties. Upon timely satisfaction of the conditions precedent set forth in Section 3.0, above, and excepting only the obligations or limitations imposed by this Agreement and other contractual obligations imposed through the USA Waste Settlement Arrangement, City, on behalf of itself and their elected and/or appointed public officials, officers, employees, boards, departments, agents, representatives, lawyers, and all person acting by, through, under or in under, or in concert with them, do hereby fully and forever release and discharge the WRT Parties its directors, officers, employees, agents, subsidiaries, parent company(s), affiliates, successors, predecessors, shareholders, partners, investigators, representatives, attorneys and assigns, both past and (collectively "**WRT Releasees**"), and each of them, from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, obligations, promises, liabilities, claims, demands, assessments, damages, losses, costs or expenses (including attorneys' fees and consultant fees), of any nature whatsoever, known or unknown, fixed or contingent, and which City now owns or holds or has at any time heretofore owned or held as against the WRT Releasees, and each of them, arising out of, relating to, or resulting, either directly or indirectly from the Cost Recovery Issues or the Proposed Maximum Rate Schedule.

6. CIVIL CODE SECTION 1542. Exclusively in furtherance of the release set forth in Section 3 of this Agreement, the Parties expressly waive any and all rights and benefits conferred upon them by the provisions of Section 1542 of California Civil Code or similar provisions of applicable law which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

The Parties acknowledge that the foregoing waiver of the provisions of Section 1542 of the California Civil Code was bargained for separately. The Parties also expressly (i) waive their rights to rescind any of the foregoing releases and (ii) acknowledge that each of the foregoing releases and waivers is an independent covenant, the consideration for which is the giving of the other releases and waivers. The Parties expressly consent that the releases and waivers provided for in this Agreement shall be given full force and effect in accordance with each and all of the express terms and provisions hereof.

7. GENERAL PROVISIONS

7.1. Time. Time is of the essence in the performance of this Settlement Agreement.

7.2. No Admission, Denial of Liability. The Parties enter into this Agreement to resolve the disputes between them and therefore acknowledge that the obligations assumed under this Agreement are not intended to be, and shall not be construed as an admission of liability by any Party as related to the Proposed Maximum

Rate Schedule and/or Cost Recovery Issues. No provision in this Agreement, nor any acceptance of the benefits hereof by or on behalf of any of the Parties hereto shall be construed or deemed to be evidence of an admission of fact, matter, thing or liability of any kind to any other Party with respect to any dispute that any of them may now or in the future have with each other or with any other person or entity related to the Cost Recovery Issues or Proposed Maximum Rate Schedule. Each of the Parties denies any liability of any kind to any other Party for any purpose, and these compacts are made solely and entirely as a compromise and for the purpose of fully and finally resolving all of the disputed matters that have accrued as of or before the Effective Date hereof and are thus released herein. No terms of this Agreement shall be offered or received as evidence in any proceeding in any forum as an admission of any liability or wrongdoing on the part of any of the Parties to these agreements.

7.3. Representations and Warranties. The Parties, and each of them, warrant that they have fully read and understand this Agreement and the attachments hereto, and that they have received independent legal advice from each of their respective attorney(s) as to the effect and import of its provisions. The Parties, and each of them, warrant that they understand and fully agree to the provisions of this Agreement, and that no promise or inducement has been offered except as set forth in this Agreement. The Parties, and each of them, warrant that the designated representative executing this Agreement have full legal authority to enter into this Agreement, and to perform all other obligations as specified herein. The Parties, and each of them, acknowledge that this Agreement will have a final and binding effect and that by executing this Agreement, they may be giving up legal rights.

7.4. Beneficiaries, Successors and Assigns. This Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. The Parties, for themselves and their respective successors, permitted assigns and legatees, shall join in or execute any instruments and to do any other act or thing reasonably necessary or proper to carry out the intent of this Agreement.

7.5. Entire Agreement. This Agreement and the exhibits hereto contain the entire and exclusive agreements between the Parties pertaining to terms of the Cost Recovery Issues and Proposed Maximum Rate Schedule. The terms of this Agreement are contractual and not a mere recital. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation, promise, agreement or warranty that is not expressly set forth in this Agreement.

7.6. Amendments. No terms or conditions of this Agreement can be varied or modified by any prior or subsequent statement, conduct or act of either Party, except that the Parties may supplement, amend, or modify this Agreement by a subsequent written agreement executed by the Parties through their authorized representatives.

7.7. Severability. If any portion, word, clause, phrase, sentence or paragraph of this Agreement is declared void or unenforceable, then such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.

7.8. Headings. Headings at the beginning of each numbered section of this Agreement are solely for the convenience of the Parties and are not a substantive part of this Agreement.

7.9. Construction of this Agreement. The terms and language of this Agreement were the result of negotiations between the Parties and, as a result, there shall be no presumption that ambiguities, if any, in this Agreement shall be resolved against any Party. Any controversy over the construction of this Agreement shall be decided mutually and without regard to events of authorship or negotiations.

7.10. Waiver. Failure to insist on compliance with any term, covenant or condition contained in this Agreement shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

7.11. Counterparts. This Agreement may be executed in counterparts. Each counterpart shall be deemed to be an original. All counterparts shall constitute but a single Agreement. Facsimile signatures and signatures submitted via electronic mail shall be deemed original signatures and shall be binding on the Parties.

7.12. Venue. Any legal action, suit or proceeding arising out of or relating to this Agreement may only be brought in the Superior Court for the State of California, County of Los Angeles, or the United States District Courts for the Central District of California, and each Party submits to the jurisdiction of any such court in any such action, suit or proceeding. The Parties irrevocably and unconditionally waive, to the fullest extent permitted by applicable law, any objection that they may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement in the courts set forth above, and the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

7.13. Choice of law. This Agreement shall be construed and enforced in accordance with the laws of the State of California without regard to its conflict of law provisions.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the Effective Date set forth above.

ATTEST:

CITY OF CARSON, a California charter municipal corporation

Donesia Gause,
CMC, City Clerk

By: _____
_____, Mayor of Carson

DATE: _____


DATE: _____

APPROVED AS TO FORM:

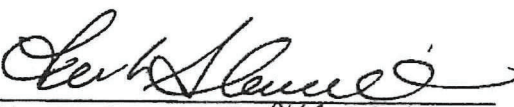
By:  _____ Lona Laymon
for Sunny K. Soltani, City Attorney

DATE: January 11, 2021

WASTE RESOURCE TECHNOLOGIES, INC.,
a Delaware corporation

By:  _____
Name: KOST SHIRVANIAN
Title: PRESIDENT, CEO

DATE: December 11, 2020

By:  _____
Name: LINDA SHIRVANIAN
Title: EXECUTIVE VP TREASURER

DATE: 12-11-2020

WASTE RESOURCES, INC., a California corporation

By:  _____
Name: KOST SHIRVANIAN
Title: _____

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the Effective Date set forth above.


ATTEST:


Donesia Gause,
CMC, City Clerk

DATE: 1/7/2021



CITY OF CARSON, a California charter municipal corporation


By: Albert Robles, Mayor of Carson


DATE: January 7, 2021

APPROVED AS TO FORM:


By: _____
Sunny K. Soltani, City Attorney

DATE: _____

WASTE RESOURCE TECHNOLOGIES, INC.,
a Delaware corporation

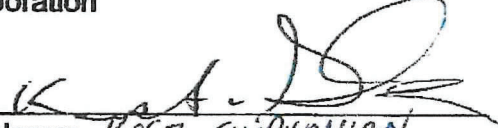
By: 
Name: KOSTI SHIRVANIAN
Title: PRESIDENT, CEO

DATE: December 11, 2020

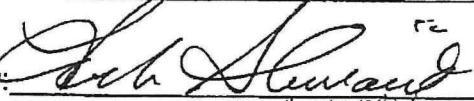
By: 
Name: LINDA SHIRVANIAN
Title: EXECUTIVE VP TREASURER

DATE: 12-11-2020

WASTE RESOURCES, INC., a California corporation

By: 
Name: KOSTI SHIRVANIAN
Title: _____

DATE: 12.11.2020

By: 

Name: LINDA SHIRVANIAN
Title:

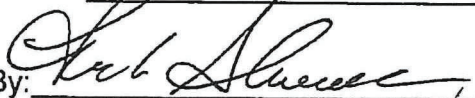
DATE: 12.11.2020

WASTE RESOURCES LOS ANGELES, INC.,
a California corporation

By: 

Name: KOSI SHIRVANIAN
Title:

DATE: 12.11.2020

By: 

Name: LINDA SHIRVANIAN
Title:

DATE: 12.11.2020

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Orange }

On December 11, 2020
Date

before me, Angelia Christine Morales, Notary Public
Here Insert Name and Title of the Officer

personally appeared KOSTI SHIRVANI AND LINDA SHIRVANI
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp Above

Signature

Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____