

## ***FIRST AMENDMENT***

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**THIS IS A FIRST AMENDMENT TO THE AGREEMENT** dated

\_\_\_\_\_, between:

**CITY OF POMPANO BEACH**, a municipal corporation of the State of Florida, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060, hereinafter referred to as "CITY",

and

**WASTE MANAGEMENT INC. OF FLORIDA, DBA REUTER RECYCLING OF FLORIDA** a Florida corporation, having its office and place of business at 1001 Fannin Street, Houston, TX 77002, hereinafter referred to as "REUTER."

**WHEREAS**, the parties entered into an agreement for disposal of acceptable waste from the City on April 22, 2003, ("Original Agreement"), and approved by City Ordinance No. 2003-43; and

**WHEREAS**, Reuter Recycling of Florida, Inc. was purchased by Waste Management Inc. of Florida in 2007, and merged into Waste Management Inc. of Florida on or about June 27, 2007; and

**WHEREAS**, the parties have mutually agreed to modify the current terms and conditions of the Original Agreement commencing November 1, 2020 and to extend the term of the Original Agreement an additional five (5) year period such that the term will end, unless additional renewals are mutually agreed upon, on September 30, 2027.

## **WITNESSETH:**

**IN CONSIDERATION** of the mutual terms, conditions, promises, covenants and payments herein set forth CITY and REUTER agree as follows:

1. Each "WHEREAS" clause set forth above is true and correct and herein incorporated by this reference.

2. The original Agreement effective April 22, 2003, a copy of which is attached hereto and made a part hereof as Exhibit "A", shall remain in full force and effect except as specifically amended hereinbelow.

3. That Section 2., "Definitions," of the Original Agreement is hereby amended to read as follows:

### **2. Definitions.**

...

a) "Acceptable Waste" means Curbside Recyclables and non-hazardous Solid Waste (Class I and Class III) and Construction & Demolition Debris (C&D) that does not require the Facilities to incur any handling costs in excess of those attributable to Class I Solid Waste and each which shall be expressly authorized pursuant to any and all laws, regulations, authorizations, permits, contracts, registrations and notices of intent (and any related applications), registrations, notices of intent and any administrative orders or agreements ("Authorizations"), at the Facilities hereunder. Acceptable Waste shall not contain any regulated quantity of (i) infectious waste; (ii) Hazardous Waste, (iii) or other waste which is required by governmental authority or by its general nature to be handled or disposed of other than in accordance with the Facilities' normal operating procedures; or (iv) waste that does not strictly conform to the descriptions of waste materials that the Facilities are authorized to accept under their respective Authorizations. The Facilities, in their sole but reasonable discretion, shall have the right to reject or any material or any load containing material that does not conform to the definition of Acceptable Waste set forth herein.

...

g) "Curbside Recyclables" means those materials, which are capable of being recycled and which, would otherwise be processed or disposed of as residential or commercial Solid Waste and which are collected by the City's Designated

Hauler at curbside. These materials will be as defined by the City from time-to-time. Curbside Recyclables shall include, unless otherwise agreed by the parties, newsprint, clear, green, and brown glass containers, steel cans, aluminum beverage containers, ~~#1 PET, PVC#3, and #2 HDPE plastic containers~~ #1 PETE, PVC#3 and #2 DPE plastic containers. Curbside Recyclables that contain Solid Waste, Hazardous Waste, biomedical waste, similar regulated materials as set forth in the definition of Acceptable Waste above or contain quantities of non-Curbside Recyclables may be rejected.

...

m) Construction & Demolition Debris (C&D) – as defined in Chapter 403, Florida Statutes, as many be amended from time to time, shall mean discarded materials generally considered to be non water-soluble and non-hazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from new site development, the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, and including rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land development operations for a construction project, including such debris from construction or structures at a site remote from the construction or demolition project site

4. That Section 3., “Delivery Obligations,” of the Original Agreement is hereby amended to read as follows:

3. City’s Delivery Obligations - City shall direct its Designated Hauler to deliver to the Facility Monarch Hill facility on Wiles Road, Pompano Beach, Florida, unless otherwise agreed by the City and Reuter all Acceptable Waste generated within the City limits ~~as follows: all Solid Waste to Central; all Curbside Recyclables to RA-Pompano.~~ In case of a Force Majeure event, other emergency or the closure of one or more of the Facilities or suspension of acceptance of Acceptable Waste at one or more of the facilities, Reuter may require Acceptable Waste to be delivered to the Reuter Facility within a 10 mile radius of Pompano Beach City Hall. Waste delivered to ~~Central~~ a Facility may be transferred for management and or disposal at another landfill or solid waste management facility at no additional charge or cost to City. During the term of this Agreement Reuter guarantees disposal capacity within the Waste Management family of companies for the City's waste. City represents that it will take reasonable steps to enforce the delivery obligations set forth herein.

5. That Section 4. “Schedules and Processing,” of the Original Agreement is hereby amended to read as follows:

4. Schedules and Processing - Except as otherwise provided herein, Reuter shall accept and ~~process~~ manage all Acceptable Waste delivered or caused to be delivered by City. Reuter shall determine in its reasonable

discretion the means and manner of managing Acceptable Waste provided that such actions shall be in compliance with all applicable law, ordinances, permits and licenses. All deliveries shall be made by self-powered mechanical unloading vehicles. Vehicles may be weighed at the Facility. Vehicles may be reweighed after unloading to validate the true weight of the vehicles. At Reuter's option and in its sole discretion, it may utilize the listed capacity of the vehicle to determine quantity of materials delivered. The conversion from cubic yards to tons shall be determined by the average of the loads delivered to Reuter by City for the prior seven working days in which loads were delivered hereunder. City and City's Designated Hauler shall comply with all applicable federal, state and local safety and administrative rules and regulations as well as those promulgated by Reuter.

6. That Section 6. "Rate," of the Original Agreement is hereby amended to read as follows:

6. Rate - City or its Designated Hauler, as the case may be, shall pay Reuter Seventy-Two and 00/100 Dollars (\$72.00) ~~Sixty-Six and 82/100 Dollars (\$66.82)~~ per ton of Acceptable Waste delivered to the Facilities. Notwithstanding the above, Curbside Recyclables generated within the City and delivered to RA Pompano shall be accepted and processed at no charge.

Such rates are exclusive of all Fees, transportation and royalties, which shall be borne by City. "Fees" means all federal, state, local or other similar charges related to the handling or disposal of Solid Waste, recyclable materials or other materials governed by this Agreement which are imposed by law, ordinance, regulation or other agreement.

7. That Section 7. "Schedules and Processing," of the Original Agreement is hereby amended to read as follows:

7. Adjustment to Rate.

a) The rate set forth in Section 6 shall be adjusted November 1, 2020 and thereafter automatically as of October 1 of each Fiscal Year of the term of this Disposal Agreement (the "Adjustment Date") by adding to the then current Fiscal Year's rate the amount obtained by multiplying such current rate by the average change, expressed as a percentage, of the following two indices as determined as follows:

On October 1 of each year, Reuter shall be entitled an annual CPI adjustment on all those costs and rates associated with disposal. Reuter shall provide the CPI adjustment calculation to the CITY on or before July 1. The adjustment to the rate shall be calculated as the percentage change in the average Consumer Price Index series CUUR0000SEHG CPI-U Water and Sewer and Trash Collection Services, US City Average, not seasonally adjusted ("CPI"), as published by the Bureau of Labor Statistics by comparing the average of the

percentage changes June through May 12 months of the current year of the adjustment, with the same June through May 12-months in the preceding year. The maximum adjustment in any year shall be 5%. The rate shall not be adjusted for negative CPI changes.

(1) — ~~From the latest Producer (Wholesale) Price Index for Durable Goods for the region including Broward County, as determined and recorded by the United States Department of Labor, Bureau of Labor Statistics, as available 180 days prior to the expiration of the Fiscal Year immediately preceding the Adjustment Date, subtract the amount of such index for the same date in the next preceding Fiscal year. The difference shall be expressed as a percentage.~~

(2) — ~~The change, expressed as a percentage, for said period in the Consumer Price Index—All Urban Consumers (CPI-U) for the region including Broward County, as determined and recorded by said Bureau of Labor Statistics, shall be similarly calculated.~~

~~The percentage change of each of the foregoing indices so determined shall be added together. The sum of those numbers shall then be divided by two to determine the average change, expressed as a percentage, of the two indices (the "Average Change"). The rate shall be adjusted by seventy-five percent (75%) of the Average Change for each Fiscal Year during the term of this Disposal Agreement. Notwithstanding the foregoing, if the Average Change is a negative number, the Average Change shall first be reduced by twenty-five percent (25%) to exclude labor costs from the calculation before applying the foregoing percentages. For example, if the Average Change for the Fiscal Year ending September 30, 2003 is a negative 4%, the Average Change shall first be reduced by 1% (i.e. 25% of 4%) before calculating the adjustment to the rate described above. Under that example, the then current rate would be multiplied by the product of 75% and 3%, and the rate would be reduced by the resulting amount.~~

~~In the event that either or both of said indices shall no longer be available during the term of this Disposal Agreement, the parties hereto shall mutually select a replacement index or indices as required, provided that any such replacement shall, in the best judgment of the parties, be as nearly the same as the replaced index or indices.~~

~~The rate provided for in this section shall be calculated and established by Reuter at least 150 days preceding the beginning of each Fiscal Year and shall be effective for the next ensuing Fiscal Year. The first such adjustment shall be effective October 1, 2004, based on the Average Change for the period January 1, 2003 through September 30, 2003.~~

8. That Section 8. "Force Majeure," of the Original Agreement is hereby amended to read as follows:

8. Force Majeure - The performance of this Agreement may be suspended and the obligations of either party excused in the event of and during the period that such performance is prevented or delayed by a Force Majeure occurrence. "Force Majeure" shall mean:

- (a) An act of God, including hurricanes, tornadoes, landslides, lightning, earthquakes, epidemics, quarantine, fire, flood, explosion, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot, or civil disturbance;

...

9. That Section 23. "Title/Acceptance of Solid Waste," of the Original Agreement is hereby amended to read as follows:

23. Title/Acceptance of Solid Waste.

...

(b) City or its Designated Hauler shall tender Curbside Recyclables and Solid Waste to Reuter and Reuter shall accept Curbside Recyclables and Solid Waste ~~pursuant~~ conforming to the requirements and terms of this Agreement. Curbside Recyclables and Solid Waste shall be considered accepted at the time the material is removed from City's or its Designated Hauler's vehicle at the receiving Facility. Acceptance of Curbside Recyclables and Solid Waste shall not impair, or operate as a waiver of any remedy available to Reuter, including revocation of acceptance in the event that the Curbside Recyclables and Solid Waste is later discovered to be nonconforming. Reuter may inspect, sample, analyze and test any Solid Waste; however, exercise or a failure to exercise such right shall not relieve the City or its Designated Hauler, as the case may be, of its indemnity or other obligations under this Agreement to deliver only Acceptable Waste.

...

10. That Section 25. "Payment by Reuter," of the Original Agreement is hereby deleted and replaced with the following language:

25. Payment by Reuter. Reuter will rebate and pay the City \$16.65 per ton for Class I Solid Waste, \$4.00 per ton for Construction and Demolition Debris (C&D) delivered to the Facility. Payment by Reuter to the City shall be based on material volumes delivered in a full month and paid to the City one month in arrears by the 20<sup>th</sup> day of the following month. As an example, City shall be paid its rebate by September 20<sup>th</sup> for material volumes that were delivered in August. These rates will be adjusted annually as described in Section 7.

11. The Original Agreement is amended by adding additional language as follows:

26. Public records. Contractor shall comply with all provisions of Florida Statutes Chapter 119. Specifically Contractor shall: 1. Keep and maintain public records required by the City in order to perform the service; 2. Upon request from the City's custodian of public records, provide the City with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City; and 4. Upon completion of the contract, transfer, at no cost to the City, all public records in possession of the Contractor, or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

Failure to comply with said statutory requirements may subject Contractor to penalties under 119.10, Florida Statutes, as amended.

**PUBLIC RECORDS CUSTODIAN**  
**IF THE CONTRACTOR HAS QUESTIONS**  
**REGARDING THE APPLICATION OF CHAPTER**  
**119, FLORIDA STATUTES, TO THE**  
**CONTRACTOR'S DUTY TO PROVIDE PUBLIC**  
**RECORDS RELATING TO THIS CONTRACT,**  
**CONTACT THE CUSTODIAN OF PUBLIC**  
**RECORDS AT:**

**CITY CLERK**  
**100 W. Atlantic Blvd., Suite 253**  
**Pompano Beach, Florida 33060**  
**(954) 786-4611**  
**[RecordsCustodian@copbfl.com](mailto:RecordsCustodian@copbfl.com)**

12. This First Amendment shall become effective November 1, 2020. The parties hereto agree to extend the Original Agreement as amended for one (1) additional five (5) year period, ending September 30, 2027. The parties agree that additional extension terms of six (6) years may be made upon mutual agreement.

13. This Agreement shall bind the parties and their respective executors, administrators, successors and assign and shall be fully effective as though the extension and amendment had been originally included in the Agreement.

**THE REMAINDER OF THE PAGE IS INTENTIONALLY LEFT BLANK**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

Attest:

**CITY OF POMPANO BEACH**

\_\_\_\_\_  
ASCELETA HAMMOND, CITY CLERK

By: \_\_\_\_\_  
REX HARDIN, MAYOR

(SEAL)

By: \_\_\_\_\_  
GREGORY P. HARRISON, CITY MANAGER

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK E. BERMAN, CITY ATTORNEY

**"CONTRACTOR":**

Witnesses:

Waste Management Inc. of Florida

Roseanne Valenzuela  
Print Name

CRAG A. ASH  
Print Name

By: David M. Myhan  
David M. Myhan, President

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or ☐ online notarization 15 day of October, 2020 by David M. Myhan as President of Waste Management Inc. of Florida, a Florida corporation, on behalf of the corporation. He is personally known to me or who has produced \_\_\_\_\_  
\_\_\_\_\_ (type of identification) as identification.

NOTARY'S SEAL:

Coleen T. Houlihan  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

