

**ADDENDUM TO AGREEMENT BETWEEN THE CITY OF CORAL SPRINGS AND
WASTE MANAGEMENT INC. OF FLORIDA FOR RECYCLING SERVICES**

THIS IS AN ADDENDUM, dated this ____ day of _____, 2018, by and between:

CITY OF CORAL SPRINGS, FLORIDA
a municipal corporation
9500 W. Sample Road
Coral Springs, Florida 33065
(hereinafter referred to as "CUSTOMER")

and

WASTE MANAGEMENT INC. OF FLORIDA
a Florida corporation
2700 Wiles Road
Pompano Beach, Florida 33073
(hereinafter referred to as "COMPANY")

WHEREAS, the CUSTOMER and COMPANY entered into a contract on the ____ day of _____, 2018 (hereinafter "Agreement"); and

WHEREAS, it is necessary to include additional provisions;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

Section 1. The foregoing recitals are true and correct and are hereby incorporated into this Agreement.

Section 2. The following terms and conditions are hereby incorporated into the aforementioned Agreement between the CUSTOMER and COMPANY:

A. TERMINATION FOR CONVENIENCE

COMPANY or CUSTOMER upon one hundred twenty (120) calendar days written notice delivered by certified mail, return receipt requested, to the other party, may, without cause and without prejudice to any other right or remedy, terminate the Agreement for convenience whenever the COMPANY or CUSTOMER determines that such termination is in its best interest. Where the Agreement is terminated for convenience the notice of termination must state that the Agreement is being terminated for the convenience of the terminating party under the termination clause. Termination for convenience shall be on an all or none basis; there shall be no partial termination for convenience. Upon receipt or delivery, as the case may be, of the Notice of Termination for convenience, the COMPANY shall promptly discontinue all work at

the time and to the extent indicated on the Notice of Termination, terminate all outstanding subcontractors and purchase orders to the extent that they relate to the terminated portion of the Agreement and refrain from placing further orders and subcontracts except as they may be necessary, to complete any continued portions of the work.

B. TERMINATION AT WILL IN THE EVENT SUN-BERGERON SOLID WASTE SERVICES, JV AGREEMENT FOR RECYCLING PROCESSING SERVICES IS RENEWED OR REVIVED BY ANY BROWARD COUNTY MUNICIPALITY

COMPANY acknowledges and understands that CUSTOMER entered into a five-year recycling processing services agreement with Sun-Bergeron Solid Waste Services, JV beginning on July 1, 2013 and expiring on June 30, 2018 ("JV Agreement"). COMPANY acknowledges and understands that the JV Agreement contained an option to renew the contract for two (2) additional five (5) year terms; however, CUSTOMER cannot take advantage of such renewal periods unless and until the City of Deerfield Beach, Florida and Sun-Bergeron Solid Waste Services, JV consent and agree to such extension. COMPANY also acknowledges and understands that several other municipalities in Broward County have a similar arrangement with Sun-Bergeron Solid Waste Services, JV. COMPANY agrees that in the event that the JV Agreement is extended, renewed, or renegotiated with more favorable pricing and/or material terms than this Agreement, or in the event that Sun-Bergeron Solid Waste Services, JV extends, renews, or renegotiates a recycling processing services agreement with any other municipality in Broward County, which contract contains more favorable pricing and/or material terms than this Agreement, and Sun-Bergeron Solid Waste Services, JV, agrees to offer such services at the same or similar prices and/or material terms to the CUSTOMER, in the CUSTOMER'S sole discretion, CUSTOMER, upon providing written notice to COMPANY, may, without cause and without prejudice to any other right or remedy, terminate this Agreement immediately ("Termination at Will"). Upon receipt of the Notice of Termination at Will, the COMPANY shall promptly discontinue all work at the time and to the extent indicated on the Notice of Termination at Will, terminate all outstanding subcontractors and purchase orders to the extent that they relate to the terminated portion of the Agreement and refrain from placing further orders and subcontracts except as they may be necessary, to complete any continued portions of the work.

C. MOST FAVORED PRICING AND MATERIAL TERMS

In the event that COMPANY subsequently enters into an agreement for the processing and/or recycling of another governmental entity's Recyclable Materials (or a private entity that provides the recycling for all or substantially all of the Recyclables generated within a governmental entity's jurisdiction) generated anywhere within Broward County (an "Eligible Agreement"), COMPANY shall provide the CUSTOMER with a copy of the Eligible Agreement within thirty (30) days of execution thereof. If the CUSTOMER, in its sole discretion, determines that the Eligible Agreement includes pricing and/or material terms more favorable to the applicable governmental entity or private entity than the CUSTOMER'S, the CUSTOMER may provide written notice to COMPANY of CUSTOMER'S determination and, if the CUSTOMER does so, the CUSTOMER'S Agreement shall be amended to provide for the more favorable pricing

and/or material terms set forth in the Eligible Agreement, and such change shall be effective retroactive to the effective date of the Eligible Agreement.

D. RECORDS AND AUDIT

CUSTOMER reserves the right to audit the records of COMPANY relating to this project at any time during the performance and term of the Agreement and for a period of three (3) years after completion and acceptance by CUSTOMER. If required by CUSTOMER, COMPANY shall agree to submit to an audit by an independent certified public accountant selected by CUSTOMER. COMPANY shall allow CUSTOMER to inspect, examine and review the records of COMPANY relating directly and only to this Agreement, upon reasonable notice given, at any and all times during normal business hours during the term of this Agreement.

IF THE COMPANY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE COMPANY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE CITY OF CORAL SPRINGS, DEBRA THOMAS, CMC, CUSTOMER CLERK, 9500 WEST SAMPLE ROAD, CORAL SPRINGS, FLORIDA 33065, DTHOMAS@CORALSPRINGS.ORG, TELEPHONE NUMBER (954) 344-1067.

COMPANY understands, acknowledges and agrees that the COMPANY shall, pursuant to Section 119.0701, Florida Statutes, as amended from time to time, do the following:

- (1) Keep and maintain public records required by the CUSTOMER to perform the service.
- (2) Upon request from the CUSTOMER'S custodian of public records, provide the CUSTOMER with a copy of the 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 or CUSTOMER policy.
- (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 COMPANY does not transfer the records to the CUSTOMER.
- (4) Upon completion of the contract, transfer, at no cost, to the CUSTOMER all public records in possession of COMPANY or keep and maintain public records required by the CUSTOMER to perform the service. If the COMPANY transfers all public records to the CUSTOMER upon completion of the contract, the COMPANY shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the COMPANY keeps and maintains public records upon completion of the contract, the COMPANY shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CUSTOMER, upon request from the

CUSTOMER'S custodian of public records, in a format that is compatible with the information technology systems of the CUSTOMER.

REQUEST FOR NONCOMPLIANCE

- (a) A request to inspect or copy public records relating to a CUSTOMER'S contract for services must be made directly to the CUSTOMER. If the CUSTOMER does not possess the requested records, the CUSTOMER shall immediately notify the COMPANY of the request, and the COMPANY must provide the records to the CUSTOMER or allow the records to be inspected or copied within a reasonable amount of time.
- (b) If a COMPANY does not comply with the CUSTOMER'S request for records, the CUSTOMER shall enforce the contract provisions in accordance with the contract.
- (c) A COMPANY who fails to provide the public records to the CUSTOMER within a reasonable time may be subject to penalties under Section 119.10.

CIVIL ACTION

- (a) If a civil action is filed against a COMPANY to compel production of public records relating to a CUSTOMER'S contract for services, the court shall assess an award against the COMPANY the reasonable costs of enforcement, including reasonable attorney fees, if:
 - (1) The court determines that the COMPANY unlawfully refused to comply with the public records request within a reasonable time; and
 - (2) At least eight (8) business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the COMPANY has not complied with the request, to the CUSTOMER and to the COMPANY.
- (b) A notice complies with subparagraph (a)2. if it is sent to the CUSTOMER'S custodian of public records and to the COMPANY at the COMPANY'S address listed on its contract with the CUSTOMER or to the COMPANY'S registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.
- (c) A COMPANY who complies with a public records request within eight (8) business days after the notice is sent is not liable for the reasonable costs of enforcement.

E. GOVERNING LAW; VENUE

The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida.

Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida and the prevailing party to any resultant judgment shall be entitled to an award of all reasonable attorney's fees, interest and court costs incurred by such prevailing party against the losing party including reasonable appellate attorney's fees, interest and taxable costs.

F. INSURANCE

The COMPANY shall secure and maintain, at its own expense, and keep in effect during the full term of this Agreement, a policy or policies of insurance, which must include the following coverages and minimum limits of liability:

(1) Worker's Compensation Insurance for statutory obligations imposed by Worker's Compensation or Occupational Disease Laws, including, where applicable, the United States Longshoremen's and Harbor Worker's Act, the Federal Employers' Liability Act and the Jones Act. Employer's Liability Insurance shall be provided with a minimum of two hundred thousand and xx/100 dollars (\$200,000.00) per accident. The COMPANY agrees to be responsible for the employment, conduct and control of its employees and for any injury sustained by such employees in the course of their employment.

(2) Commercial Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by the COMPANY in the performance of the obligations of this Agreement with the following minimum limits of liability with no restrictive endorsements:

\$1,000,000.00 Combined Single Limit, per occurrence, Bodily Injury & Property Damage

(3) Comprehensive General Liability (occurrence form) with the following minimum limits of liability with no restrictive endorsements:

\$1,000,000.00 Combined Single Limit, per occurrence, Bodily Injury & Property Damage. Coverage shall specifically include the following with minimum limits not less than those required for Bodily Injury Liability and Property Damage Liability:

- (a) Premises and Operations.
- (b) Independent Companys.
- (c) Product and Completed Operations Liability.
- (d) Broad Form Property Damage.
- (e) Broad Form Contractual Coverage applicable to the Agreement and specifically insuring the indemnification and hold harmless agreement contained in section 8 (check when final) of the Agreement.
- (f) Owner's or Company's Protective Liability.

UPON CONTRACT EXECUTION, THE COMPANY SHALL SUBMIT TO CUSTOMER COPIES OF ITS CERTIFICATE(S) OF INSURANCE EVIDENCING THE REQUIRED COVERAGES AND SPECIFICALLY PROVIDING THAT THE CITY OF CORAL SPRINGS IS AN ADDITIONAL NAMED INSURED OR ADDITIONAL INSURED

WITH RESPECT TO THE REQUIRED COVERAGES AND THE OPERATIONS OF COMPANYS UNDER THE AGREEMENT. Insurance companies selected must be acceptable to CUSTOMER. All of the policies of insurance so required to be purchased and maintained shall contain a provision or endorsement that the coverage afforded shall not be canceled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to the CUSTOMER by certified mail.

These insurance requirements shall not relieve or limit the liability of the COMPANY. The CUSTOMER does not in any way represent that the types and amounts of insurance required hereunder are sufficient or adequate to protect the COMPANY's interests or liabilities but are merely minimum requirements established by the CUSTOMER's Risk Management Coordinator. The CUSTOMER reserves the right to require any other insurance coverages that the CUSTOMER deems necessary depending upon the risk of loss and exposure to liability.

The required insurance coverage shall be issued by an insurance company authorized and licensed to do business in the State of Florida, with the minimum rating of B+ to A+, in accordance with the latest edition of A.M. Best's Insurance Guide.

The COMPANY shall require each of its sub-COMPANYs of any tier to maintain the insurance required herein (except as respects limits of coverage for employers and public liability insurance which may not be less than One Million (\$1,000,000) Dollars for each category), and the COMPANY shall provide verification thereof to the CUSTOMER upon request of the CUSTOMER.

All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against the CUSTOMER with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above described insurance.

The COMPANY shall ensure that any company issuing insurance to cover the requirements contained in this Agreement agrees that they shall have no recourse against the CUSTOMER for payment or assessments in any form on any policy of insurance.

The clauses "Other Insurance Provisions" and "Insured Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which the CUSTOMER is named as an additional named insured shall not apply to the CUSTOMER. The CUSTOMER shall provide written notice of occurrence within fifteen (15) working days of the CUSTOMER's actual notice of such an event.

The COMPANY shall not commence performance of its obligations under this Agreement until after it has obtained all of the minimum insurance herein described and the same has been approved.

Violation of the terms of this Section and its subparts shall constitute a breach of the Agreement and the CUSTOMER, at its sole discretion, may cancel the Agreement and all rights, title and interest of the COMPANY shall thereupon cease and terminate.

Section 3. SEVERABILITY

Should any part, term or provision of this Amendment be by the courts decided to be illegal or in conflict with any law of the State, the validity of the remaining portions or provisions shall not be affected thereby.

Section 4. All other conditions and terms of the original Agreement, as amended, not specifically amended herein remain in full force and effect.

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IN WITNESS OF THE FOREGOING, the CITY OF CORAL SPRINGS AND WASTE MANAGEMENT INC. OF FLORIDA have hereunto set their hands and seals on the dates written below.

ATTEST:

CITY OF CORAL SPRINGS, FLORIDA

Debra Thomas, CMC, City Clerk

Walter G. Campbell, Jr., Mayor

APPROVED AS TO FORM:

City Attorney's Office

DRAFT

WASTE MANAGEMENT INC. OF FLORIDA

By: _____

Print Name: _____

Title: _____

State of _____
County of _____

On this, the ____ day of _____, 2018, before me, the undersigned Notary Public of the State of _____, the foregoing instrument was acknowledged by _____ (name of corporate officer), _____ (title), of _____ (name of corporation), a _____ (state of corporation) corporation, on behalf of the corporation.

WITNESS my hand
and official seal

Notary Public, State of _____

Printed, typed or stamped name of Notary Public
exactly as commissioned

- ☐ Personally known to me, or
☐ Produced identification:

(type of identification produced)