

FIRST AMENDMENT TO AGREEMENT FOR THE TRANSPORTATION AND  
DISPOSAL OF SOLID WASTE

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, retroactive to October 1, 2010, by and between the City of Key West (the "City"), a municipal corporation organized and existing under the laws of the State of Florida, and Waste Management Inc. of Florida (the "Contractor"), a Florida corporation.

WITNESSETH:

WHEREAS, the City and Contractor entered into that certain Agreement for the Transportation and Disposal of Solid Waste dated March 30, 2004, (the "Agreement"); and

WHEREAS, the parties desire to modify the methodology for calculating Service Fee adjustments; and

WHEREAS, the City and Contractor have negotiated the terms of this Amendment, which constitutes the entire agreement of the parties.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the Contractor and the City agree that they shall comply with and be bound by all of the terms of this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. The recitations set forth above are true and accurate and are incorporated herein.
2. All capitalized terms shall have the meanings set forth in the Agreement unless the context requires otherwise.
3. The definition of "Base Rate", contained in Article I, Paragraph 4 of the Agreement, is deleted and replaced with the following:  
Base Rate shall mean the component of the Service Fee that compensates the Contractor for all of its basic services under this Agreement, including but not limited to the transport and disposal of the City's Acceptable Waste. It is composed of two elements:
  - (i) "Non-fuel Base Rate" which means those components that are related to managing, handling, transporting and disposing of the City's Acceptable Waste; and
  - (ii) "Fuel Base Rate" which means that component of the Service fee that relates to the cost of fuel to perform the activities hereunder.
4. The definitions of the terms listed below contained in Article I of the Agreement are deleted and replaced with the following definitions:
  9. "Class I Landfill" shall be as defined in Rule 62-701.340(2)(a), FAC.
  26. "Leachate" shall be as defined by Rule 62-701.200(59), FAC.
  30. "Objectionable Odor" shall be as defined by Rule 62-701.200(77), FAC.
  31. "On-site" means on the land herein defined as the "Site."
  42. "Recovered Materials" shall be as defined by Rule 62-701.200(95), FAC.

43. "Recyclable Material" shall be as defined by Rule 62-701.200(98), FAC.

44. "Recycling" shall be as defined by Rule 62-701.200(99), FAC.

46. "Site" means the City of Key West Transfer Station Site located on City-owned real property that is a parcel of land in part of Government Lots 5 & 6, Section 21, Township 67 South Range 26 East on Rockland Key, Monroe County, Florida and being more particularly described as follows:

Commence at the intersection of the Centerline of U.S. Highway No. One (State Road No. 5) and the West abutment of the Rockland Key Viaduct; thence S 63\_09'20" W along the original Centerline of U.S. Highway No. One for a distance of 2110.00 feet; thence North for a distance of 970.73 feet; thence West for a distance of 499.89 feet; thence N 19\_13'40"E for a distance of 411.15 feet; thence N 00\_05'25" W for a distance of 643.94 feet; thence N 61\_38'12" W for a distance of 93.64 feet to the Point of Beginning; thence N 28\_21'48" E for a distance of 0.83 feet; thence N 15\_30'05" W along a chain link fence for a distance of 81.40 feet; thence West for a distance of 214.74 feet; thence along a chain link fence and projections thereof S 05\_42'23" E for a distance of 111.51 feet; thence N 86\_18'06" E and along said chain link fence for a distance of 215.81 feet; thence N 28\_21'48" E for a distance of 20.30 feet back to the Point of Beginning. Said parcel containing 23040 square feet more or less.

47. "Solid Waste" shall be as defined by Rule 62-701.200(107), FAC.

48. "Special Waste" shall be as defined by Rule 62-701.200(113), FAC.

54. "Transfer Station" means the City's Solid Waste transfer, processing and transportation facility located at the Site.

56. "Waste Tire" shall be as defined by Rule 62-701.200(126), FAC.

57. "White Goods" shall be as defined by Rule 62-701.200(133), FAC.

58. "Yard Trash" shall be as defined by Rule 62-701.200(135), FAC.

5. Section 5.6, The Disposal Facility, is modified by adding the following paragraph after the third paragraph of the Section:

Notwithstanding the provisions of the preceding paragraphs, the Contractor shall not divert the City's Acceptable Waste from the two waste-to-energy facilities to the Contractor's three landfills for a period greater than fourteen days without giving Notice to the City and without the City's written approval.

6. Section 6.14, Solid Waste Flow Control, is modified by deleting the last sentence of the second paragraph and replacing it with the following:

After the City's Solid Waste is processed in this fashion, the City shall deliver or have delivered all remaining Acceptable Waste to the Transfer Station, if the City determines such delivery is economically viable. Solid Waste that is not processed for the purpose of Recycling, removing Recovered Materials, removing organic materials, composting or otherwise using or processing the Solid Waste shall be delivered to the Transfer Station.

7. Section 7.5.1, Consumer Price Index Adjustment, is deleted and replaced with the following:

#### **7.5.1 Fuel and Consumer Price Index Adjustment**

Commencing October 1, 2010, the Service Fee shall be \$67.70 per ton comprised of a Non-fuel Base Rate of \$59.67 and a Fuel Base Rate of \$8.03.

Each of the Fuel Base Rate and Non-fuel Base Rate shall be adjusted as follows:

**Non-fuel Base Rate:** The Non-fuel Base Rate shall be adjusted each subsequent October 1 during the Term of this Agreement to account for the change in the CPI during the prior twelve (12) months. The Non-fuel Base Rate component of the Service Fee shall be adjusted upward or downward in an amount equal to seventy-five percent (75%) of the change in the CPI during the relevant time period.

When calculating the CPI adjustment for an Operating Year, the new Non-fuel Base Rate shall be determined by using the following formula:

$$\text{New Non-fuel Base Rate} = [((\text{CPI2} - \text{CPI1})/\text{CPI1}) \times 0.75 + 1] \times \text{Current Non-fuel Base Rate}$$

"CPI" = the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, not seasonally adjusted (Series Id: CUUR0000SA0) published by the United States Department of Labor, Bureau of Labor Statistics.

"CPI1" = the published CPI for July in the preceding year.

"CPI2" = the published CPI for July in the year in which the Non-fuel Base Rate is being adjusted.

Adjustments to the Non-fuel Base Rate made in accordance with this section are intended to reflect changes in the purchasing power of a given amount of money expressed in dollars. If the method of establishing the CPI is revised to more accurately reflect inflation or deflation, with the City's approval, the revised CPI shall be used thereafter when calculating the adjustments to the Service Fee. If CPI1 and CPI2 are not expressed in relation to the same base period, the City shall make an appropriate statistical adjustment or conversion. If the CPI is discontinued, the City shall select another index, which must be representative of the inflationary or deflationary trends affecting the parties' performance under this Agreement, and which is published by the United States government or by a reputable publisher of financial and economic indices.

**Fuel Base Rate:** The Fuel Base Rate shall be adjusted quarterly on each subsequent January 1, April 1, July 1, and October 1 during the Term of the Agreement. The average monthly price of diesel fuel for the Lower Atlantic No. 2 Diesel Retail Sales by All Sellers (Lower Atlantic PADD 1C) as reported by the U.S. Energy Information Administration will be used to adjust the Fuel Base Rate. The initial Fuel Base Rate of \$8.03 per ton is determined by the following mutually agreed upon factors and using the September 2010 fuel price:

round trip miles to the Disposal Facility: 366  
miles per gallon: 6  
22 ton load

$$\text{Initial Fuel Base Rate} = 366 \text{ miles/load} \times 1 \text{ gal/6 miles} \times \$2.895/\text{gal} \times 1 \text{ load}/22 \text{ tons} = \$8.03/\text{ton}$$

Should the Contractor utilize more fuel efficient equipment in the future, the Fuel Base Rate will be recalculated based on the miles per gallon achieved by such new equipment and the fuel price at that time.

When calculating the fuel adjustment for each Operating Year quarter, the new Fuel Base Rate shall be determined by using the following formula:

$$\text{New Fuel Base Rate} = [((\text{FP2} - \text{FP1})/\text{FP1}) + 1] \times \text{Current Fuel Base Rate}$$

"FP" = average monthly price of diesel fuel for the Lower Atlantic No. 2 Diesel Retail Sales by All Sellers (Lower Atlantic PADD 1C) as reported by the U.S. Energy Information Administration.

"FP1" = For the first fuel adjustment, FP1 shall be the fuel price as of September 2010 (\$2.895). For all future fuel adjustments, FP1 shall be the published monthly fuel price utilized as FP2 in the previous fuel adjustment.

"FP2" = the published fuel price for the month preceding that in which the Fuel Base Rate adjustment is being made.

The new Service Rate shall be the adjusted Non-Fuel Base Rate and Fuel Base Rate added together.

Total combined adjustments to the Fuel Base Rate and Non-fuel Base Rate shall not exceed five percent (5 %) in any twelve (12) month period. In the event an adjustment would exceed five percent (5 %), the exceedance (i.e., the amount that exceeds five percent) shall be carried forward and applied the next time adjustments are made, provided the total adjustment for combined Fuel and Non-Fuel Base Rates never exceeds five percent (5 %) in any twelve (12) month period. If this Agreement is terminated by either party for any reason, the City shall have no obligation to pay damages or otherwise compensate the Contractor for any previously unpaid CPI or fuel adjustment.

8. Section 7.5.3, Adjustments to Transportation and Disposal Costs, is modified by adding the following sentence to the end of the provision:

If the Contractor's cost of transportation is reduced at a rate of 10% or more on a term of six months or greater through the use of transfer trailers returning to the Transfer Station to haul soil or other materials to the Lower Keys pursuant to Section 5.2, the City reserves the right to negotiate a reduction in the Service Fee.

9. Section 7.5.5, Extraordinary Rate Adjustment, is modified by adding the following sentence to the end of the provision:

Adjustments pursuant to this Section 7.5.5 shall not include adjustments for changes in the cost of fuel since they are addressed in Section 7.5.1.

10. Section 12.4.9, Notice of Claims, is modified by deleting the last sentence and replacing it with the following:

All Notices required under this Section 12.4.9 shall be provided promptly.

11. Exhibit A is deleted. Exhibit E is deleted and replaced with the amended Chapter 62-701 FAC (attached to this amendment).

12. Except as modified herein, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this First Amendment to the Agreement on the date first written above.

CITY OF KEY WEST, FLORIDA

By: \_\_\_\_\_  
Jim Scholl, City Manager

ATTEST:

\_\_\_\_\_  
Cheryl Smith, City Clerk

WASTE MANAGEMENT INC. OF  
FLORIDA

By: \_\_\_\_\_  
Tim Hawkins, Vice President

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness