

CITY OF DELRAY BEACH
AMENDMENT NO. 5 TO
SOLID WASTE AND RECYCLING COLLECTION FRANCHISE AGREEMENT

THIS AMENDMENT NO. 5 to the Solid Waste and Recycling Collection Franchise Agreement dated March 9, 2015, by and between the City of Delray Beach, Florida, a municipal corporation organized and existing under the laws of the State of Florida (the "City") and Waste Management Inc. of Florida, a Florida Corporation authorized to do business in the State of Florida ("Waste Management" and/or "Contractor") (collectively, the "Parties"), is made and entered into this 19th day of July, 2022 ("Amendment Date"). All the Parties have legal capacity to enter into this Amendment and intend to be legally bound.

RECITALS

WHEREAS, the Franchise Agreement dated March 9, 2015, was initially issued to Southern Waste Systems, LLC, and later assigned to Waste Management on December 14, 2015 (collectively, "Agreement");

WHEREAS, on August 9, 2021, pursuant to Section 3.2 of the Agreement, Waste Management sent its Notice of Nonrenewal to the City via electronic correspondence ("Notice of Nonrenewal"). The City maintains the Notice of Nonrenewal was ineffective because it did not conform with the Notice provision set forth in Article 74 of the Agreement;

WHEREAS, on March 24, 2022, pursuant to Section 3.2 of the Agreement, the City elected to exercise a one-year renewal of the Agreement by providing written notice to Waste Management in compliance with Article 74 of the Agreement ("Notice of Renewal"), to take effect October 1, 2022 through September 30, 2023. Waste Management contends the City's Notice of Renewal is ineffective because of the Notice of Nonrenewal previously sent to the City on August 9, 2021;

WHEREAS, despite the dispute between the Parties as to the Notice of Renewal and Notice of Nonrenewal, in an abundance of caution, and in advance of the April 1, 2022 and July 1, 2022 deadlines, on March 31, 2022, Waste Management provided the City its request for adjustments to the Rate under Article 38 of the Agreement for any renewal period to take effect on October 1, 2022. Specifically, Waste Management requested the following rate adjustments: i) a 4% Consumer Price Index ("CPI") Adjustment pursuant to Section 38.3 of the Agreement; and ii) a 16.48% Extraordinary Rate Adjustment pursuant to Section 38.7 of the Agreement;

WHEREAS, on May 4, 2022, Waste Management initiated the Dispute Resolution Process pursuant to Article 49 of the Agreement as to the Parties disagreement as to the validity and enforceability of: i) Waste Management's Notice of Nonrenewal; and ii) the City's Notice of Renewal (collectively, "Dispute");

WHEREAS, on June 23, 2022, the Parties attended mediation in an effort to resolve the Dispute, pursuant to the Dispute Resolution Process set forth in Article 49 of the Agreement;

WHEREAS, although there is no admission as to the validity of the Notice of Renewal and/or Notice of Nonrenewal by any of the Parties, the Parties have determined it is in their best interests to resolve all disagreements relative to the Dispute;

WHEREAS, the Parties desire to amend the Agreement to resolve the Dispute and to amend the Notice provision set forth in Article 74 of the Agreement to update the individuals designated and manners of acceptable delivery under the Agreement; and

WHEREAS, the City Commission finds that amending the Agreement is in the best interest of the City of Delray Beach.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to avoid protracted litigation, it is hereby agreed among the Parties as follows:

AMENDMENT NO. 5

1. The recitals set forth above are incorporated herein.
2. Article 50, CONTRACTOR'S OBLIGATIONS PRIOR TO TERMINATION OF THIS AGREEMENT, Section 50.1, CONTINUATION OF CONTRACTOR'S SERVICE, is replaced in its entirety as follows:

Upon expiration of the Initial Term of this Agreement on September 30, 2022, Contractor shall provide its Collection Services in compliance with this Agreement for a seven (7) month period, to commence on October 1, 2022, and to expire on April 30, 2023 ("Extension Period"). The Extension Period shall be subject to the same terms, conditions, and limitations of the Agreement and its Amendments, unless the City and the Contractor agree otherwise in writing.

The City shall have one (1) option to extend the Extension Period by an additional five (5) months, that would commence on May 1, 2023 and run through September 30, 2023 ("Final Extension Period"). The City shall give written notice to the Contractor at least ninety (90) calendar days prior to end of the Extension Period, if the City wishes to extend the Agreement for the Final Extension Period.

The Agreement shall automatically terminate on April 30, 2023, and neither Party is required to provide written notice in advance of such termination, or on September 30, 2023, if the City timely exercises its one (1) option to extend the Agreement for the Final Extension Period.

3. Article 3, TERM OF THIS AGREEMENT, Section 3.2, CITY'S OPTION TO RENEW THE AGREEMENT, is stricken.

4. The City Commission finds that Waste Management's March 31, 2022, written request for a 4% CPI Adjustment under Section 38.3 of the Agreement was timely and shall increase the Rate for the Collection component of the Rates set forth in Exhibits 3A, 3B, and 3C of the Agreement, by 4% for the Extension Period, commencing on October 1, 2022, and expiring on April 30, 2023 ("Extension Period").

5. The City Commission finds that Waste Management's March 31, 2022, written request for a 16.48% Extraordinary Rate Adjustment under Section 38.7 of the Agreement was timely and shall increase the Rate for the Collection component of the Rates set forth in Exhibits 3A, 3B and 3C of the Agreement, by 16.48% for the Extension Period. The City finds the detailed justification provided by Waste Management in support of its written request for an Extraordinary Rate Adjustment under Section 38.7 of the Agreement for the Extension Period is sufficient to grant Waste Management's request in whole.

6. The Parties agree and affirm that both the 4% CPI Adjustment and 16.48% Extraordinary Rate Adjustment shall take effect for the Extension Period commencing on October 1, 2022, running through April 30, 2023, shall not be compounded, and shall be those Rates as set forth in Composite Exhibit "A."

7. The Parties agree and affirm that if the City timely exercises its one (1) option to extend the Extension Period—by an additional five (5) months—the Rates for the services provided under the Agreement, that would commence on May 1, 2023, and run through September 30, 2023 ("Final Extension Period"), would include an increase in rates for the monthly service residential total fees from \$13.39 to \$19.45, and provide a corresponding rate increase for all other services, pursuant to the Agreement.

8. Article 50, CONTRACTOR'S OBLIGATIONS PRIOR TO TERMINATION OF THIS AGREEMENT, Section 50.4, CITY'S RIGHT TO PROCURE NEW SERVICES, is replaced in its entirety as follows:

50.4 CITY'S RIGHT TO PROCURE NEW SERVICES

At any time, the City may initiate the solicitation process, including but not limited to, issue a request for proposals, commence negotiations, and enter into a contract with a Person other than the Contractor, or take any other step

deemed necessary by the City to obtain the services of a Person who will collect Solid Waste for the City, both during the Extension Period, Final Extension Period, and/or after this Agreement expires or is terminated. The Parties further acknowledge and affirm that the City is permitted to enter into a contract with a Person who will collect Solid Waste for the City, other than the Contractor, for services that may commence during the Extension Period, Final Extension Period, and/or prior to the expiration or termination of this Agreement in an effort to minimize any disruptions in the service provided to the public.

9. Article 74, NOTICES TO PARTIES, is replaced in its entirety as follows:

74 NOTICES TO PARTIES

All notices, requests, authorizations, approvals, protests, and petitions provided for herein shall be in writing. Such documents shall be addressed as shown below and either (a) hand delivered, (b) mailed by registered or certified mail (postage prepaid), return receipt requested, or (c) sent by telecopy. The documents shall be deemed to have been duly delivered when personally delivered, or when transmitted by telecopier and receipt is confirmed by telephone, or when delivered by U.S. Mail or courier service, as shown by the return receipt. For the present, the Contractor and the City designate the following as the appropriate people and places for delivering notices and other documents:

As to City:	City Manager City of Delray Beach 100 N.W. 1st Avenue Delray Beach, Florida 33444 Telephone: (561) 243-7010 Facsimile: (561) 243-7199
Copy to:	City Attorney City of Delray Beach 100 N.W. 1st Avenue Delray Beach, Florida 33444 Telephone: (561) 243-7010 Facsimile: (561) 243-7199
As to Contractor:	David M. Myham President Waste Management Inc. of Florida

1800 Military Trail, Suite 201
Boca Raton, Florida 33431
Telephone: (954) 984-2017
Facsimile: (954) 984-2057
E-mail:

Copy to: Luigi Pace
Area Manager, Public Sector Solutions
Waste Management Inc. of Florida
1800 Military Trail, Suite 201
Boca Raton, Florida 33431
Telephone: (954) 984-2017
Facsimile: (954) 984-2057

Both parties reserve the right to designate a different representative or representatives in the future, or to change the address(es) for notice, by providing written notice to the other party of such change.

10. Except as provided herein, all other terms and conditions of the Agreement remain in full force and effect and are hereby confirmed. The Agreement, the Assignment of the Exclusive Franchise Agreement dated December 14, 2015, Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4 and this Amendment No. 5 represent the entire understanding between the Parties on the issues contained herein, either written or oral, and may only be amended by written instrument signed by both Parties.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the City and Contractor hereto have executed this Amendment as of the day and year first above written.

ATTEST:

Katerri Johnson
Katerri Johnson, City Clerk

Shelly Petrolia
CITY OF DELRAY BEACH
BY: Shelly Petrolia, Mayor

Approved as to form for legal sufficiency:

Lynn Gelin
Lynn Gelin, Esq., City Attorney

WASTE MANAGEMENT INC. OF
FLORIDA

BY: David M. Myhrum
DAVID M. MYHRUM
Printed Name

PRESIDENT
Title

STATE OF FLORIDA)
COUNTY OF Palm Beach)

The foregoing instrument was acknowledged before me this 15th August 2022 day of August 2022, by means of ☒ physical presence or ☐ online notarization, _____

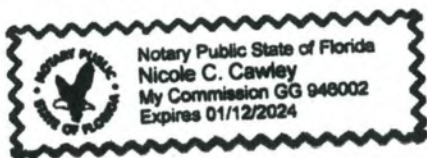
as President of Waste Management Inc. of Florida, a Florida corporation, _____
(Title of Person)

on behalf of the Waste Management Inc. of Florida. David M. Myhrum
(Name of Person)

is ☒ personally known to me ☐ or produced _____ as identification.
(Type of identification)

SEAL

Nicole C. Cawley
Notary Public – State of Florida



Name: Nicole C. Cawley
Date Commission Expires: 1/12/2024



CITY OF DELRAY BEACH
CITY ATTORNEY'S OFFICE
200 NW 1ST Avenue, Delray Beach, FL 33444
561-243-7090



LEGAL REVIEW FORM

This form is to be used solely for the legal review of documents not including procurement agreements. Procurement Agreements are reviewed under a separate cover. This form shall only be completed by a member of the City Attorney's Office.

Date of Review: 7-19-22

Document Name: *Amend No. 5 to Exclusive Franchise Agreement*

Document Type: Amendment

Submitted by: Lynn Gelin

☒ This document is approved as to form and legal sufficiency.

☐ These documents are approved as to form and legal sufficiency; however, the undersigned made the following change(s):

☐ This document is not approved as to form and legal sufficiency for the following reason(s):

s//Lynn Gelin, Esq.
City Attorney

Copy to:

____ City Attorney's Office (with a copy of the approved document)