

**FIRST AMENDMENT TO AGREEMENT  
FOR SOLID WASTE MANAGEMENT SERVICES**

This "First Amendment to Agreement for Solid Waste Management Services" ("First Amendment") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between Martin County, Florida ("County"), a political subdivision of the State of Florida, and Okeechobee Landfill Inc. ("Contractor"), a Florida corporation.

**WITNESSETH**

WHEREAS, the County is responsible for the disposal of the Solid Waste generated in the County, pursuant to Section 403.706(1), Florida Statutes; and

WHEREAS, on August 23, 2002, the County and Contractor entered into the "Agreement for Solid Waste Management Services" ("Agreement"), which requires the Contractor to transport and dispose of the County's Solid Waste; and

WHEREAS, the initial term of the Agreement will expire on November 16, 2019, unless the Agreement is extended or renegotiated pursuant to Section 8 of the Agreement; and

WHEREAS, the County wishes to continue to use the Contractor's services, and the Contractor wishes to continue to provide the Contractor's services to the County, subject to the conditions and limitations in the Agreement, as revised by this First Amendment; and

WHEREAS, the Contractor's parent corporation (Waste Management Inc. of Florida or "WMIF") will waive certain rights that WMIF has under WMIF's contracts with the County, and thus WMIF will provide an additional inducement to the County, if the County will enter into this First Amendment with the Contractor; and

WHEREAS, the Board finds that entering into this First Amendment with the Contractor is in the public interest and will protect the public health, safety, and welfare.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the Contractor and the County agree that they are bound by and shall comply with the following provisions of this First Amendment.

**AGREEMENT**

**SECTION 1. Recitals.** The County and the Contractor agree that the recitals set forth above are true, correct, and accurate.

**SECTION 2. Defined Terms.** The capitalized words and phrases in this First Amendment shall be defined in the manner described in the Agreement.

**SECTION 3. WMIF's Waiver of Rights.** Exhibit 1 is a "Waiver of WMIF's Rights" ("Waiver"), which already has been executed by WMIF. Exhibit 1 describes the rights and remedies that WMIF will waive to induce the County to execute this First Amendment. WMIF's Waiver will be enforceable on and after the date this First Amendment is executed by the County. The provisions of Exhibit 1 are adopted by reference and incorporated herein.

**SECTION 4. Term of the Agreement.** The initial Term of the Agreement began on November 17, 2004 (the Commencement Date) and will expire on November 16, 2019. The first renewal Term of the Agreement shall begin on November 17, 2019 and shall expire on September 30, 2027, unless the Agreement is terminated earlier, as provided in Section 9 of the Agreement.

**SECTION 5. Diversion of Acceptable Waste to St. Lucie County.** In addition to the other rights provided under the Agreement, the County shall have the right to divert part or all of the County's Acceptable Waste to St. Lucie County for processing in a facility that uses a commercially demonstrated technology (e.g., waste-to-energy; plasma arc gasification; pyrolysis) to reduce the amount of Solid Waste disposed of in landfills. If the County wishes to exercise this right, the County shall provide written notice to the Contractor at least one year before the County begins to divert its Acceptable Waste pursuant to this Section 5 of the First Amendment. Further, the County shall not begin to divert Acceptable Waste pursuant to this Section 5 before October 1, 2025.

**SECTION 6. Reduction in Service Fees.** Notwithstanding anything to the contrary in the Agreement, the Contractor shall reduce the Service Fees it currently charges the County. Beginning on October 1, 2019, the Service Fees shall be reduced to the following levels:

(a) The Service Fee for the disposal of Acceptable Waste (e.g., garbage and rubbish) shall be reduced to \$36.81 per Ton. This Service Fee includes \$3.42 for Okeechobee County's Host Fee and \$1.82 for Okeechobee County's Community Solid Waste Trust Fund.

(b) The Service Fee for the disposal of Construction and Demolition Debris shall be reduced to \$28.50 per Ton. This Service Fee includes \$0.77 for Okeechobee County's Host Fee and \$1.82 for Okeechobee County's Community Solid Waste Trust Fund.

**SECTION 7. CPI Adjustments to Service Fee.** Notwithstanding anything to the contrary in the Agreement, the Service Fees for Acceptable Waste will not be subject to any CPI adjustments pursuant to Section 7.5.1 of the Agreement during the period commencing on October 1, 2019 and ending on September 30, 2021. However, the Service Fees may be adjusted during this period for a Change in Law pursuant to Section 7.5.2, or changes in transportation and disposal costs pursuant to Section 7.5.3, or changes in Host Fees pursuant to Section 7.5.4. Further, the Service Fees shall be adjusted during this period to

account for changes in the cost of diesel fuel, as provided in Section 8 of this First Amendment.

Section 7.5.1 of the Agreement currently provides that: (a) CPI adjustments shall occur each year on January 1<sup>st</sup>; (b) CPI adjustments shall be equal to eighty percent (80%) of the change in the CPI during the twelve (12) month period extending from October 1 through September 30 of the prior year; and (c) a CPI adjustment shall not exceed five percent (5%) in any one year. Notwithstanding these provisions or anything else in the Agreement, all future CPI adjustments shall be subject to the following requirements: (x) CPI adjustments shall occur each year on October 1, beginning on October 1, 2021 and continuing annually thereafter; (y) CPI adjustments shall be equal to one hundred percent (100%) of the change in the CPI during the most recent calendar year (January 1 through December 31); and (z) a CPI adjustment shall not exceed four percent (4%) in any one year.

**SECTION 8. Diesel Fuel Adjustment to Service Fees.** On October 1, 2020 and October 1, 2021, the Service Fee shall be adjusted, up or down, to reflect the change in the average annual cost of diesel fuel that occurred during the prior calendar year. More specifically, this adjustment (i.e., the "Diesel Fuel Adjustment") to the Service Fee shall reflect the increase or decrease in the "Fuel Cost Per Ton" (as described below) during the prior calendar year.

The Service Fee (\$36.81 per Ton) for Class I Waste includes a Fuel Cost Per Ton. For the purposes of this First Amendment only, the Fuel Cost Per Ton on October 1, 2019 shall be deemed to be \$1.52. This value (\$1.52) for the Fuel Cost Per Ton was established by using the following assumptions and calculations:

Round Trip Miles (Transfer Station to Okeechobee Landfill)	= <u>70</u>
Miles per Gallon (Contractor's vehicles)	+ <u>5</u>
Gallons Per Load	= <u>14</u>
Current Fuel Price	x <u>\$2.946</u>
Fuel Cost Per Load	= <u>\$41.24</u>
Tons Per Load	+ <u>27</u>
Fuel Cost Per Ton	= <u>\$1.52</u>

In 2020 a new Fuel Cost Per Ton shall be calculated by using the methods described below.

The "Current Fuel Price" shall be determined by referring to the website of the Energy Information Administration of the U.S. Department of Energy ("EIA/DOE"), which reports the average price of diesel fuel for the "Lower Atlantic" United States on a weekly basis. The link is as follows: <http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp>.

Using the weekly data from the EIA/DOE website, the Parties shall calculate the average annual price of diesel fuel for the prior year (e.g., January 1 through December 31, 2019). The average price of diesel fuel for each week during the prior calendar year (as shown on the EIA/DOE website) shall be added together and then the sum total shall be divided by the number of weekly values reported on the EIA/DOE website. The resulting number (i.e., the quotient) shall be the average annual price of diesel fuel.

The average annual price of diesel fuel for the prior calendar year shall be substituted for the Current Fuel Price in the formula above and then used to determine the new Fuel Cost Per Ton. For example, if we assume hypothetically that the average annual price of diesel fuel in calendar year 2019 is \$3.020 per gallon, the Fuel Cost per Ton would be calculated as follows:

Round Trip Miles	=	<u>70</u>
Miles Per Gallon	+	<u>5</u>
Gallons Per Load	=	<u>14</u>
Current Fuel Price	x	<u>3.020</u>
Fuel Cost Per Load	=	<u>\$42.28</u>
Tons Per Load	+	<u>27</u>
Fuel Cost Per Ton	=	<u>\$1.56</u>

In this hypothetical example, the Fuel Cost Per Ton would be increased by \$0.04 – i.e., the Fuel Cost Per Ton would be increased from \$1.52 to \$1.56. In turn, the Service Fee for Acceptable Waste (\$36.81 per Ton) would be increased on October 1, 2020 by \$0.04. Similarly, if the Current Fuel Price for 2019 is assumed hypothetically to be \$2.901 per gallon, the Fuel Cost Per Ton would be reduced on October 1, 2020 to \$1.50 and the Service Fee would be reduced accordingly.

Adjustments to the Fuel Cost Per Ton shall be made only if and only to the extent that the Contractor's vehicles burn diesel fuel when transporting the County's Solid Waste to the Contractor's Okeechobee Landfill pursuant to this Agreement. For example, there shall be no fuel cost adjustment if all of the Contractor's vehicles burn compressed natural gas ("CNG").

At its cost, the County may inspect the Contractor's records to verify that the

Contractor used diesel-fueled vehicles to transport the County's Solid Waste, and to verify the accuracy of the assumed values used in this formula. If the County determines that the assumptions used herein (e.g., Miles Per Gallon, Tons Per Load) are inappropriate, the Diesel Fuel Adjustment shall be revised accordingly.

**SECTION 9. Adjustments to Host Fees.** The first paragraph of Section 7.5.4 (Host Fees) of the Agreement is hereby amended to read as follows:

Subject to the limitations set forth herein, the Service Fee paid to the Contractor shall include funds sufficient to reimburse the Contractor for certain Host Fees paid by the Contractor to Okeechobee County for the disposal of the County's Solid Waste. The Host Fee component of the Service Fee shall be adjusted, upward or downward, on the Commencement Date and on October 1, January 1 of each calendar year after the Commencement Date.

**SECTION 10. Excess Liability Insurance.** The first sentence in Section 12.4.5 (Umbrella Liability Insurance) of the Agreement is hereby amended to read as follows:

Umbrella Liability "Form Following" Insurance shall be maintained by the Contractor with a limit of not less than Ten Five Million Dollars (\$10,000,000 5,000,000).

**SECTION 11. Waiver of Jury Trial.** A new Section 12.29 (Waiver of Jury Trials) is hereby added to the Agreement and it shall read as follows:

**12.29 Waiver of Jury Trial**

**THE PARTIES AGREE THAT ANY CLAIM FILED IN STATE OR FEDERAL COURT CONCERNING THE INTERPRETATION, APPLICATION, OR ENFORCEMENT OF THIS AMENDED AGREEMENT SHALL BE HEARD BY A JUDGE, SITTING WITHOUT A JURY. THE COUNTY AND THE CONTRACTOR HEREBY KNOWINGLY, VOLUNTARILY, PERMANENTLY, AND IRREVOCABLY WAIVE THEIR RIGHT TO A JURY TRIAL CONCERNING ANY SUCH CLAIM.**

**If a Party requests a jury trial in any case in which the right to a jury trial has been waived pursuant to this Section 12.29, that Party shall be liable for the reasonable attorneys' fees and costs incurred by the other Party in opposing the request for a jury trial, provided: (a) the Party opposing the request notified the other Party in writing that the right to a jury trial had been waived by this Section 12.29; (b) the Party requesting the jury trial failed to withdraw its request within thirty (30) days after receiving such notice; and (c) the court ruled that the request for a jury trial had been waived pursuant to this Section 12.29. In such cases, the court shall award reasonable attorneys' fees and costs to the Party opposing the jury trial.**

**SECTION 12. Public Records.** A new Section 12.30 (Public Records) is hereby added to the Agreement and it shall read as follows:

### 12.30 Public Records

The Contractor shall comply with all applicable requirements contained in the Florida Public Records Law (Chapter 119, Florida Statutes), including but not limited to any applicable provisions in Section 119.0701, Florida Statutes. To the extent that the Contractor's work under the Agreement is subject to the requirements in Section 119.0701, Florida Statutes, the Contractor shall:

- (a) Keep and maintain public records required by the County to perform the services provided hereunder.
- (b) Upon request from the County's custodian of public records, provide the County 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.
- (c) 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 Term of the Agreement and following completion of the Agreement if the Contractor does not transfer the records to the County.
- (d) Upon completion of the Agreement, transfer, at no cost, to the County all public records in the possession of the Contractor or keep and maintain public records required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of the Agreement, 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 Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

If the Contractor fails to comply with the requirements in this Section 12.30, the County may enforce these provisions in accordance with the terms of the Agreement. If the Contractor fails to provide the public records to the County within a reasonable time, it may be subject to penalties under Section 119.10, Florida Statutes.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, THE CONTRACTOR SHOULD CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS: THE COUNTY CLERK, BY TELEPHONE (772/228-5576), E-MAIL (CLERK@MARTINCLERK.COM), OR MAIL (MARTIN COUNTY, OFFICE OF THE COUNTY CLERK, MARTIN COUNTY COURTHOUSE, 100 SE OCEAN BOULEVARD, STUART, FLORIDA 34994).**

**SECTION 13.** In this First Amendment, additions to the Agreement are underlined and deletions are shown with stricken text (e.g., ~~strike-throughs~~).

**SECTION 14.** The preceding sections of this First Amendment identify the only changes that are being made to the Agreement. The Agreement shall remain in full force and effect, except as otherwise explicitly shown or described in this First Amendment.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, the County and the Contractor have made and executed this First Amendment to the Agreement for Solid Waste Management Services, as attested to by the signature of their duly authorized officers or representatives, on the date first written above.

MARTIN COUNTY

Attest:

\_\_\_\_\_  
Carolyn Timmann, Clerk of the  
Circuit Court and Comptroller

By: \_\_\_\_\_  
Edward Ciampi, Chair  
Board of County Commissioners

\_\_\_\_\_ day of \_\_\_\_\_, 2019

Approved as to form and legal sufficiency

\_\_\_\_\_  
Sarah W. Woods  
County Attorney

WITNESS:

OKEECHOBEE LANDFILL, INC.

\_\_\_\_\_  
Signature  
RONALD M. KAPLAN, ASST. SEC. 10/1/19  
Printed Name and Date

By: David Myhan - PRESIDENT  
Signature and Title  
DAVID MYHAN - 10/01/19  
Printed Name and Date

WITNESS:

\_\_\_\_\_  
Signature  
Denise Logue 10/1/19  
Printed Name and Date



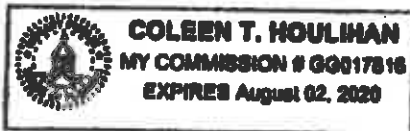
STATE OF FLORIDA

COUNTY OF Broward

)  
) SS:  
)

BEFORE ME, an officer duly authorized by law to administer oaths and take  
acknowledgments, personally appeared DAVID M. MYHAN, PRES. [insert name] as  
the President [insert title] of Okeechobee Landfill, Inc., and he/she  
executed the foregoing First Amendment to Agreement for Solid Waste Management  
Services, and he/she confirmed that the instrument is the act and deed of that corporation.  
He/she is personally known to me or has produced \_\_\_\_\_ as identification.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal in the state and county  
aforesaid on this 1 day of October, 2019.



Coleen T. Houlihan  
NOTARY PUBLIC

My Commission Expires:

### WAIVER OF WMIF'S RIGHTS

1. Waste Management Inc. of Florida ("WMIF") collects certain types of Solid Waste in Martin County ("County") pursuant to a Solid Waste Franchise Agreement for Martin County's Eastern Service Area ("Collection Contract") dated September 25, 2007. The Collection Contract contains the definitions of the capitalized words and phrases used herein.

2. Pursuant to Section 76 of the Collection Contract, the County requested WMIF to process certain Recyclable Materials for the County. Section 76.5 of the Collection Contract requires the County to give notice to WMIF at least one hundred eighty (180) Days before the County terminates WMIF's processing services. Section 76.6 of the Collection Contract provides that, if the County terminates WMIF's processing services, WMIF may increase its Rates for certain Collection Services by an amount up to one percent (1%).

3. Okeechobee Landfill, Inc. ("OLI"), is a subsidiary of WMIF. OLI disposes of Martin County's Solid Waste pursuant to an Agreement for Solid Waste Management Services ("Disposal Agreement") dated August 23, 2002. The Disposal Agreement will expire on November 16, 2019 unless the County and WMIF agree to extend it.

4. WMIF and OLI want the County to extend the Disposal Agreement. The County wants to terminate WMIF's processing services for Recyclable Materials, but the County does not want to pay an increased Rate for WMIF's Collection Services under the Collection Contract.

5. To induce the County to extend the Disposal Agreement, WMIF hereby waives its rights under Section 76 of the Collection Contract with regard to the County's termination of WMIF's processing services for Recyclable Materials. More specifically, WMIF waives its right to one hundred eighty (180) Days advance notice of the County's termination of WMIF's processing services, and WMIF waives its right to increase its Rates for Collection Services by an amount up to one percent (1%).

6. This waiver of WMIF's rights is based on WMIF's expectation that the County will extend the Disposal Agreement. This waiver of WMIF's right shall not be enforceable against WMIF until the County signs an agreement with OLI that extends the term of the Disposal Agreement.

7. The undersigned individual is duly authorized to execute this waiver on behalf of WMIF. This waiver is binding upon WMIF without any further action by WMIF, its officers, or representatives.

WASTE MANAGEMENT INC. OF FLORIDA

By: *David Myhan - PRESIDENT*  
Signature and Title

*DAVID MYHAN - 10/10/19*  
Printed Name and Date

Witness

  
\_\_\_\_\_  
Signature

RONALD M. KAPLAN, ASST. SEC. 10/11/19

\_\_\_\_\_  
Printed Name and Date

Witness

  
\_\_\_\_\_  
Signature

Colleen Houlihan 10/11/19  
\_\_\_\_\_  
Printed Name and Date