

FIRST AMENDMENT TO CONTRACT

This First Amendment to Contract (“First Amendment”) is entered into as of January 1, 2024 (the “First Amendment Date”), by and between Waste Management of Colorado, Inc., a Colorado corporation (“Waste Management”) and the City of Fruita, a municipal corporation in the State of Colorado (“City”). Waste Management and City are referred to herein, individually, as a “Party” and jointly as the “Parties”.

RECITALS

A. On January 1, 2020, the Parties entered into that certain Contract under which Waste Management performs certain solid waste services (the “Contract”).

B. The Parties have recently had discussions regarding adjustment of the terms and conditions of the Contract to better meet the needs and desires of each Party.

C. Having agreed on certain adjustments to the terms and conditions of the Contract, the Parties now desire to formally memorialize such adjustments through this First Amendment.

D. Capitalized terms used but not defined herein shall have the meanings set forth in the Contract.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree to amend the Processing Agreement as follows:

1. Changes to Term. Effective as of the First Amendment Date, paragraph D of the Contract is hereby deleted in its entirety and replaced with the following:

Subject to paragraph G, the parties agree that this Contract shall become effective as of January 1, 2020 and shall continue until December 31, 2027. The parties may, upon written agreement, extend the Contract, under the original terms and conditions, for up to two separate two-year extensions for a total extension period of four years.

2. Changes to Containers. Effective as of the First Amendment Date, paragraph I.6 of the Contract is hereby deleted in its entirety and replaced with the following:

During January 2024, Waste Management will deliver to each residential unit one 96 gallon container for solid waste and one 96 gallon container for recyclables (if the resident has chosen to participate in such services). Such containers will continue to be owned by Waste Management. Additional containers will be provided and serviced for an additional fee, as set forth in paragraph K.1. Residences will be required to place all solid waste and recyclables in the WM-provided containers.

3. Changes to Process for Overage. Effective as of the First Amendment Date, paragraph I.7 of the Contract is hereby deleted in its entirety and replaced with the following:

Contamination; Overage:

For purposes of this Contract:

- “Contamination” refers to materials placed in a recyclables container other than recyclables.
- “Overage” is defined as (a) solid waste or recyclables exceeding its container’s intended capacity such that the lid is lifted (or would be lifted if lowered) or (b) solid waste or recyclables placed on top of or in the immediate vicinity of the container, in bags or otherwise.
- “Unacceptable Waste” means any waste tires, radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, bio-hazardous, regulated medical or hazardous waste, toxic substance or material, as defined by, characterized, or listed under applicable federal, state, or local laws or regulations, any materials containing information protected by federal, state or local privacy and security laws or regulations.

Roll-Out Period – Education and Outreach. For purposes of this paragraph I.7, the “Commencement Date” is the date on which Waste Management implements its WM Smart TruckSM technology on collection vehicles for this Contract. During the period beginning on the Commencement Date and ending on 60 days later (the “Roll-Out Period”), Waste Management shall provide an education program designed to minimize instances of Contamination and Overage. During the Roll-Out Period, where Waste Management documents that a particular residence has Contamination or Overage, Waste Management shall collect the offending container (where it can be done safely and excluding material laying on ground) and provide an electronic notice to the residence (if such contact information is provided by customer) with the following information (a “Violation Notice”):

1. Date of the offense;
2. Description of the offense;
3. If available, a photograph or video (or link to photograph or video);
4. A description of the materials that are appropriate for collection in said container and a link to view online with educational materials; and
5. A website to obtain additional information and/or receive responses to questions the customer may have.

During the Roll-Out Period, Waste Management shall not impose a Contamination or Overage charge.

Post Roll-Out Period. The following shall apply after the Roll-Out Period:

1. Contamination.
 - i. First and Second Occurrences. Waste Management shall service containers with Contamination except where there is visible Unacceptable Waste. Waste Management shall provide a Violation Notice, where such contact information has been provided.

ii. Third and Subsequent Occurrences. Waste Management may opt to not collect recyclables containers with Contamination; in such event, the customer may request the container be collected as solid waste, and an additional fee will apply. Alternatively, Waste Management may collect a container with Contamination and invoice the City a Contamination charge in the amount set forth in paragraph K.1. In either case, the Waste Management shall provide a Violation Notice where such electronic contact information has been provided.

2. Overage. Waste Management may opt to not collect Overage, unless caused by spillage of non-overloaded containers during collection; in such event, the resident may correct the Overage and request that Waste Management return to service the container (an additional fee will apply). Alternatively, Waste Management may collect the container with Overage and invoice the City an Overage Charge in the amount set forth in paragraph K.1. In either case, Waste Management shall provide a Violation Notice where such electronic contact information has been provided. If there have been more than three instances of Overage in any 12-month period for a particular service (i.e., solid waste or recyclables), Waste Management may increase the customer's service level (i.e., additional containers) to mitigate the Overage, and may increase the charges according to the increased service level.

4. Changes to Curbside Recycling Program. Effective as of the First Amendment Date, paragraph I.12 of the Contract is hereby deleted in its entirety and replaced with the following:

Curbside recycling services will be made available to those residents who choose to participate in the program at no additional fee (one (1) 96 gallon container). Accepted recyclable materials are set forth in Exhibit F. Waste Management is responsible for providing containers and collecting any accepted recyclable materials. The City reserves the right to require additional recyclable items to be collected should Waste Management provide this service for any other municipal customer within Mesa County. Recycling services will be provided every other week. Waste Management reserves the right to discontinue recycling services to residents which repeatedly place more than the permitted amount of non-recyclables pursuant to Waste Management's standards.

5. Leaf Drop Off Services. Effective as of the First Amendment Date, the following is hereby added to the Contract as paragraph I.15:

Waste Management will provide curbside service for City residents to place bagged leaves during three weeks in November each year, on dates to be agreed to by WM and the City. Leaves are the only acceptable material that will be collected. All other materials will be not be collected. Collection may not happen on regular service dates.

6. Waste Management Fees. Effective as of the First Amendment Date, paragraph K.1 of the Contract is hereby deleted in its entirety and replaced with the following:

The fees for compensation to Waste Management for collection of solid waste and recyclable materials for services beginning January 1, 2024 shall be as follows:

| | |
|---|---------------------------|
| Weekly curbside collection: | \$17.37 per month |
| Weekly curbside collection – senior rate: | \$16.21 per month |
| Extra pickup: | \$8.19 per pickup |
| Additional cart (solid waste or recyclables): | \$4.19 per cart per month |
| Bulky item: | \$51.49 per item |
| Contamination: | \$5.00 |
| Overage: | \$5.00 |

Waste Management will invoice the City monthly regarding services provided in the previous month. Payment shall be due within 30 days of the invoice date.

7. Extraordinary Adjustments to Rates. Effective as of the First Amendment Date, paragraph K.3 of the Contract is hereby deleted in its entirety and replaced with the following:

In addition to the Annual CPI Adjustment provided above, the Waste Management fees shall, upon written request of Waste Management, be further adjusted to fully capture increased expenses and lost revenue associated with performance of the services hereunder due to any one or more of the following causes:

- a. Force majeure;
- b. Changes in applicable law, regulation or permit that is effective after the First Amendment Date of this Contract;
- c. Increase in surcharges, fees, assessments or taxes levied by federal, state or local regulatory authorities or other governmental entities related to the Waste Management's services;
- d. Changes in baseline assumptions, such as changes in volumes collected and changes in the amount of container contamination;
- e. Increase in the cost of transportation, including fuel and third-party transportation costs, as determined by reference to the Energy Information Administration of the U.S. Department of Energy's ("EIA/DOE") Weekly Retail on Highway Diesel Prices for the U.S.
- f. Changes in the cost of labor as determined by the U.S. Bureau of Labor Standards, Employment Cost Index CIU20100005200000I, Total compensation, Private industry, Transportation and material moving, Collective Bargaining Agreement or Actual Labor and Benefits Increases (or an equivalent).

- g. Changes in the cost of equipment as determined by the U.S. Bureau of Labor Standards, Producer Price Index, PCU336120336120, Heavy duty truck manufacturing and costs arising from supply chain impacts (or an equivalent).
- h. Any other extraordinary circumstances or causes or reasons that are not within the reasonable control of Waste Management.

If Waste Management requests an adjustment pursuant to this paragraph K.3, it shall prepare a fee adjustment request setting forth its calculations of the increased costs/lost revenue and accompanying adjustment to the fees necessary to offset such increased costs/lost revenue. The City may request documentation and data reasonably necessary to evaluate such request by Waste Management, and may retain, at its own expense, an independent third party to audit and review such documentation and request. If such third party is retained, the City shall take reasonable steps, consistent with applicable law, to protect the confidential or proprietary nature of any data or information supplied by Waste Management. The City shall approve all properly calculated fee adjustments within ninety (90) days of Waste Management's request, and the adjusted fees shall be deemed to take effect as of the date of Waste Management's request. In addition, if the request is based upon any new or increased third party fees, taxes, assessments or charges, the City shall approve the fees adjustment within such time period as necessary to ensure that such fees, taxes, assessments or charges are passed on to the City by the date the same are effective.

8. Changes to Exhibit A. Effective as of the First Amendment Date, Exhibit A, paragraph C.2 of the Contract is hereby deleted in its entirety and replaced with the following

There shall be no limit to the number of containers to be collected at one residence, provided the resident utilizes a WM provided container and pays the applicable Extra Cart Rate per additional container. All solid waste and recyclables must be in a WM provided container to be collected.

9. Conflict/Order of Precedence. The Contract and this First Amendment are intended to be complementary such that what is set forth in one document is as binding as if set forth in each document. However, in the event of a conflict, discrepancy, error, or inconsistency that cannot be reconciled this First Amendment shall prevail.

10. Entire Agreement. This First Amendment, together with the Contract, constitutes the entire agreement between the City and Waste Management regarding the subject matter contained herein and supersedes an and all prior and/or contemporaneous oral or written negotiations, agreements or understandings.

11. Headings. The paragraph headings used herein are inserted for convenience only and shall not affect in any way the meaning or interpretation of this First Amendment.

12. Ratification; Effect. Except as specifically amended hereby, all of the terms and conditions of the Contract are and shall remain in full force and effect and are hereby ratified and confirmed.

13. Amendments. No amendment, modification, termination or waiver of any provision of this First Amendment shall be binding or effective unless in writing and duly executed by both the City and Waste Management.

14. Successors and Assigns. This First Amendment shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and assigns.

15. Governing Law. This First Amendment shall be governed by and construed in accordance with the internal laws of the State of Colorado without giving effect to any choice or conflict of law provision or rule (whether of the State of Colorado or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Colorado.

16. Counterparts. This First Amendment may be executed in counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto execute this First Amendment as of the date first set forth above. Each individual executing this First Amendment in a representative capacity for a party warrants the authority to do so and to bind principals.

Waste Management of Colorado, Inc., a Colorado corporation

By: _____
Print Name: _____
Its: _____

City of Fruita, Colorado

By: _____
Print Name: _____
Its: _____