

**FRANCHISE AGREEMENT FOR COMMERCIAL AND RESIDENTIAL ROLL-OFF
SERVICES WITHIN THE CITY OF LAKE WORTH BEACH**

THIS FRANCHISE AGREEMENT (“Contract”) is made and entered into as of this day of _____, 202___, by and between the **CITY OF LAKE WORTH BEACH**, a municipal corporation of the State of Florida (“City”), whose address is 7 North Dixie Highway, Lake Worth Beach, Florida 33460, and **WASTE MANAGEMENT INC. OF FLORIDA**, a Florida corporation (“Contractor”) with its principal place of business at 651 Industrial Way, Boynton Beach, Florida 33426. The City and Contractor are also identified as a “party” or the “parties” in this Contract.

WITNESSETH:

WHEREAS, on November 1, 2020, the City advertised a Request for Proposals for Commercial and Residential Roll-Off Services (RFP No. 21-200) (“RFP”);

WHEREAS, the City received a number of responsive proposals, which it reviewed, and desires to accept the responsive proposal of the Contractor;

WHEREAS, the City finds accepting the Contractor’s responsive proposal and awarding this Contract to the Contractor serves a valid public purpose.

NOW THEREFORE, in consideration of the mutual benefits contained herein, the sufficiency of which is recognized by each party, the parties hereto agree as follows:

**ARTICLE I
GENERAL**

1.1 Recitals: The Recitals set forth above are incorporated into this Contract as true and correct statements.

1.2 Liaison between City and Contractor: All of the Contractor’s dealings, contracts, notices and payments with the City shall be directed to the Contract Administrator. On or before February 1, 2021, the Contractor shall assign one Point of Contact as the representative of the Contractor for all issues and provide that Point of Contact information to the Contract Administrator.

1.3 Commencement of Services: Contractor agrees to provide the services as set forth herein and as set forth in the RFP, which is incorporated herein by reference, and shall commence performing such services on February 1, 2021.

1.4 Term: Unless earlier terminated as stated herein, the term of this Contract is for thirty-six (36) months, commencing February 1, 2021 and expiring February 1, 2024, with the option of renewal for two (2) additional twelve (12) month periods upon mutual consent of the parties. At least three (3) months prior to the conclusion of the initial thirty-six (36) month term and annually thereafter, the Contractor has the right to request a rate adjustment based on the WST CPI: Water, Sewer, and Trash CPI, Not Seasonally Adjusted, All Areas, Series ID CUSROOOOSEHG. The

rate adjustment shall be based on a rolling annual average calculated from the preceding October to September period. The request may be granted by the City upon submission of documentation justifying the adjusted rate and, if granted, the new rate shall be set forth in an amendment to this Contract, which may be approved by the City's City Manager.

1.5 Definition of Terms: To the extent the definitions contained herein conflict with similar definitions contained in any federal, state or local law, the definition herein shall prevail. However, nothing contained herein shall be interpreted to require the Contractor to undertake any conduct which is contrary to federal, state or local law.

- a. *City* shall mean the City of Lake Worth Beach.
- b. *Collection* shall mean the process whereby materials collected by the Contractor are removed and transported to Designated Facility.
- c. *Compactor* shall mean any container which has compaction mechanism(s), whether stationary or mobile, all inclusive.
- d. *Container* shall mean the roll-off and compactor containers that are 10 yards in capacity or greater.
- e. *Containerized Residential Solid Waste Collection Service* shall mean solid waste collection service of all Dwelling Units whose Garbage, Trash, Bulk Trash or Vegetative Waste is collected by means of a central or shared Container and not by means of a Garbage Can. Vegetative Waste shall not be commingled with Garbage, Trash, or Bulk Trash.
- f. *Construction and Demolition Debris (C&D)* shall mean materials generally considered to be not water soluble and nonhazardous in nature, including, but not limited to steel, glass, brick, concrete, roofing material, pipe, gypsum wallboard, and lumber from the construction or destruction of a structure as part of a construction or demolition project. Mixing of a de minimis amount of waste other than C&D from the construction site will not automatically cause it to be classified as other than C&D.
- g. *Contract* shall mean this Franchise Agreement.
- h. *Contractor* shall mean that person or entity set out initially above that has entered into a Contract to provide the services described herein for the Service Area.
- i. *Contract Administrator* shall mean the City's Public Services Director or designee who shall act as the City's representative during the term of this Contract.
- j. *County* shall mean Palm Beach County.
- k. *Designated Facility* shall mean a Solid Waste Authority owned or permitted disposal, processing, recovery, recycling or transfer facility which receives such material.
- l. *Garbage* shall mean all putrescible waste which generally includes but is not limited to kitchen and table food waste, animal, vegetative, food or any organic waste that is attendant with or results from the storage, preparation, cooking or handling of food materials whether attributed to residential or commercial activities. Vegetative Waste shall not be commingled with garbage in the same collection. Garbage shall not include any material that falls within the definition of Special Waste.

- m. *Hazardous Waste* shall mean solid waste as defined by the State of Florida Department of Environmental Regulation as a hazardous waste in the State of Florida Administrative Code Chapter, or by any future legislative action.
- n. *City Manager* shall mean the City Manager of the City of Lake Worth Beach, Florida, or a designee appointed by the City Manager.
- o. *Mixed Paper* shall be defined as a mixture of paper products including magazines, cereal boxes, soda and beer can boxes, chipboard, file folders, envelopes, letter paper, notebook paper and other paper products.
- p. *Recovered Materials*, as defined in Florida Statute 403.703(24), means metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but the term does not include materials destined for any use that constitutes disposal. Recovered materials as described in this subsection are not solid waste.
- q. *Roll-off and Compactor Collection Service* shall mean the Collection of roll-off and compactor containers that contain garbage, trash, vegetation and C&D. The Roll-off Collection Service shall not include any other type of waste, including but not limited to Hazardous Bio-Medical and Recovered Materials.
- r. *Service Area* shall mean the municipal boundaries and any annexed areas within the City of Lake Worth Beach.
- s. *Solid Waste Authority Disposal Facility* shall mean place or places specifically managed, operated, or permitted by the Solid Waste Authority of Palm Beach County, Florida.
- t. *Trash/Bulk Trash* shall mean all types of refuse, including vegetative waste as defined in this section; but not including garbage, hazardous wastes, infectious wastes or septic tank wastes.
- u. *Uncontrollable Forces* shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Contract (excluding the payment of amounts due) and which is beyond the reasonable control of the non-performing party. It includes, but is not limited to force majeure, fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.
- v. *Vegetative Waste* shall mean grass, leaves, tree or shrubbery cuttings incidental to the care of lawns and gardens and capable of being containerized, including tree branches, palm fronds and stumps.
- w. *White Goods* shall mean waste discarded appliances including but not limited to stoves, refrigerators, washing machines and dryers; discarded furniture including but not limited to sofas, chairs, mattresses and box springs.

ARTICLE II

CITY'S RESPONSIBILITIES

2.1 Exclusivity: The Contractor shall have the exclusive right to provide all Roll-off and Compactor Collection Services within the Service Area, except in those instances, related to City projects, where the City decides, in its sole discretion, to provide its own roll-off collection service.

2.2 Enforcement of Exclusivity: City shall utilize its reasonable best efforts as permitted by applicable law to enforce the exclusivity granted Contractor pursuant to the terms of this Contract. The City will use the same, or substantially the same, procedure as shown below, to notify all potential users in the City of Lake Worth Bach as to how to order the roll-off services:

The City will annotate the name, contact information and pricing schedule of the Contractor on the required building permit application and the issued permit indicating that the Contractor is the exclusive contractor for the City. All Building permits, issued by the City, shall include a condition that roll off services will be provided by the Contractor and that use of any other hauler may result in a stop-work order, fine, and/or penalty.

2.3 Customer List: As the incumbent service provider, the Contractor has the complete Customer List. The Contractor shall ensure that the Contract Administer promptly receives any changes in the Customer List.

ARTICLE III **CHARGES, RATES AND LEVEL OF SERVICES**

3.1 Conditions and Frequency of Service: The size and frequency of the Container designated for garbage, trash, or C&D for Roll-off and Compactor Collection Services shall be determined between the customer and the Contractor. However, size and frequency shall be sufficient to provide that no trash need be placed outside the Container. Storage capacity shall be suitable for the amount of waste generated by the customer. Roll-off container frequency of collection shall be sufficient to contain the waste without spillage. Customers may own their roll-off container or compactor provided that the customer is completely responsible for its proper maintenance. Such roll-off containers shall be of a type that can be serviced by the Contractor's equipment. All trash shall be placed in the roll-off container. All roll-off containers shall be kept in a safe, accessible location agreed upon between the Contractor and the customer. Any roll-off container damaged by the Contractor shall be repaired or replaced by the Contractor within seven (7) days.

3.2 Collection: Roll-off and Compactor Collection Service shall be conducted between the hours of 7:00 a.m. and 6:00 p.m., six (6) days per week, excluding Sunday. In the event the City adopts an ordinance regulating the hours of collection for roll-off containers and compactors, Contractor agrees that the hours in the Code, if different from the hours listed, shall prevail. Container delivery and Collection Services will be provided within twenty four (24) hours of request.

3.3 Method of Payment: The Contractor shall be responsible for billing, collection, hauling, and disposal charges as shown in **Exhibit "A"**, which is attached hereto and incorporated herein. Compactor lease charges shall be negotiated between the Contractor and customer and are excluded from Franchise Fees.

3.4 Cost Statements: A confidential statement of gross revenue and fees for the services provided under this Contract shall be prepared by the Contractor in accordance with generally accepted accounting principles for each month during the term of this Contract. The cost statements shall be submitted forty-five (45) days after the reported month. The City shall assign the Contractor the appropriate disposal credits issued to the City by Solid Waste Authority. The City shall utilize its best efforts to maintain the confidentiality of these reports.

3.5 Customer Billing: The Contractor will bill the customer directly and billing will be subject to the rates, as shown on **Exhibit "A"** and City's Franchise Fees.

3.6 Delinquency: All customer bills thirty (30) days past due will be subject to a late payment charge as shown on **Exhibit "A"**.

3.7 Inactivity Charge: The Contractor may charge an inactivity fee, as shown on **Exhibit "A"**, for sites that have not required a haul within thirty (30) days.

3.8 Franchise Fee: To compensate the City for the cost of administration, supervision and inspection rendered for the effective performance of this Contract, the Contractor shall pay to the City a Franchise Fee of twenty percent (20%) fixed percentage of gross receipts, Inactivity Charges, Restart Charges, and late fees collected by Contractor for the service month revenue total prior to applying the 20% for calculation of the Franchise Fee due to the City. Franchise Fees shall be payable monthly by the 15th of each month for the prior month's franchise fee. A late charge of 1.5% of the monies due for the Franchise Fees shall be calculated monthly until payment is received. Revenue from the lease of Compactors is excluded from the Franchise Fee paid to the City.

3.9 Restart Charge: After thirty (30) days of inactivity a restart charge, as shown on **Exhibit "A"**, will be required to renew services.

3.10 Roll-off Collection Rates: For all Collection services, the charges shall be based on the rates set forth in **Exhibit "A"** unless revisions to the rates are approved by the City as set forth herein.

3.11 Solid Waste Disposal Costs: The Contractor will pay a Solid Waste Authority Disposal Facility for all solid waste disposal costs incurred for disposing of solid waste.

3.12 Trip Charge: If City or customer fails to provide safe and unobstructed access to the equipment on the scheduled collection day, Contractor will charge City or customer a trip charge as indicated on **Exhibit "A"**.

ARTICLE IV **QUALITY OF PERFORMANCE OF CONTRACTOR**

4.1 Contractor's Responsibilities: The Contractor shall maintain a local phone number within Palm Beach County where customers may place an order, make an inquiry, seek information or register a complaint. It shall be manned during collection hours and shall be open during normal

business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday. The Contractor shall provide an answering machine during non-office hours for customer requests and questions to be responded to during all non-office hours.

4.2 Reports: The Contractor shall provide the City with the following:

- a. Cost statements, as described in section 3.4 of this Contract, every forty-five (45) days.
- b. Compliance Report, as described in section 4.3 of this Contract, quarterly.
- c. An equipment list, as described in section 4.11 of this Contract, annually.
- d. Ensure and certify all required documents, as described in section 5.2 of this Contract, annually.
- e. Written safety program, which is submitted to the City annually.

4.3 Complaints: The Contractor shall respond to all complaints promptly. The Contractor shall maintain a record of all complaints as a Compliance Report and indicate the disposition of each in said record. Such records shall be provided by the Contractor to the City on a quarterly basis (unless requested more frequently by the Contract Administrator). Such records shall indicate the day and the hour on which the complaint was received, and the day and the hour on which it was resolved. In the event of a dispute between the Contractor and customer, the Contract Administrator shall render the final decision as to resolution of a customer complaint.

4.4 Compliance with State, Federal and Municipal Law: The Contractor shall comply with all applicable City, State and Federal laws including, without limitation, the City's code requirements with respect to roll-off placement, maintenance, and servicing.

4.5 Contractor's Officer(s): The Contractor shall assign a qualified person or persons to be in charge of the operations within the Service Area. Supervisory personnel must be present on the routes to direct operations in a satisfactory manner. Said supervisor(s) must be available for consultation with the Contract Administrator.

4.6 Drivers License: Each vehicle operator shall at all times carry valid Florida CDL license for the type of vehicle that is being driven.

4.7 Employee Uniform Regulations: The Contractor's roll-off collection employees shall wear a uniform or shirt bearing the Contractor's name.

4.8 Equal Employment: The Contractor agrees that it will not discriminate against any employee or applicant for employment for work under this Contract because of race, color, religion, sex, age, national origin, or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships.

4.9 Fair Labor Standards Act: The Contractor is required and hereby agrees by execution of this Contract to pay all employees not less than the Federal minimum wage and to abide by other requirements as established by the Congress of the United States in the Fair Labor Standards Act, as amended from time to time.

4.10 Operating and Safety Training: The Contractor shall provide operating and safety training for all personnel.

4.11 Collection Equipment: The Contractor shall have on hand at all times and in good working order such equipment as shall permit the Contractor to adequately and efficiently perform the contractual duties specified in this Contract. Upon execution of this Contract and annually thereafter, the Contractor shall provide a format specified by the Contract Administrator a list of the equipment to be used by the Contractor to provide services relating to this Contract. All Equipment shall be kept in good repair, appearance and in a sanitary, clean condition at all times. The Contractor shall have available reserve equipment which can be put into service within two (2) hours of any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment used by the Contractor to perform the contractual duties.

4.12 Holidays: The following days shall be authorized holidays: Thanksgiving Day, Christmas Day and New Year's Day. The Contractor has the option to provide or not provide service or maintain office hours on these designated holidays. Service not provided on authorized holidays shall be collected on the next scheduled customer's collection day.

4.13 Manner of Collection: The Contractor shall collect waste with as little disturbance as possible and shall leave any receptacle at the same point it was collected.

4.14 Recycling Goal and Designated Facilities: All garbage and trash collected under this Contract shall be delivered to a Solid Waste Authority facility. All construction and demolition debris collected under this Contract shall be delivered to a facility permitted or operated by the Solid Waste Authority.

4.15 Spillage: The Contractor shall not litter or cause any spillage to occur upon the premises or the right-of-way wherein the collection shall occur. During hauling, all waste and material shall be contained, tied, or enclosed so that leaking, spilling and blowing is prevented. In the event of any spillage or leakage, the Contractor shall promptly clean up all spillage and leakage and repair any damage caused by such spillage or leakage at no cost to the City.

4.16 Solid Waste Disposal Facility or Designated Facility: All waste shall be hauled to a facility owned or permitted by the Solid Waste Authority of Palm Beach County.

4.17 Hazardous Waste, Biohazardous or Biomedical Waste and Sludge: The Contractor shall not be required to collect and dispose of Hazardous Waste, Bio hazardous or Biomedical Waste, or Sludge, but may offer such service in the Service Area. All such collection and disposal for those types of waste in this Section are not regulated or exclusive under this Contract, but if provided by the Contractor shall be in strict compliance with all federal, state and local laws and regulations.

ARTICLE V
CONTRACT PERFORMANCE/PENALTIES/DEFAULT

5.1 Contract Performance: It is the intent of this Contract to ensure that the Contractor provides a quality level of Roll-off Collection Services to all commercial and residential customers within the City of Lake Worth Beach. The City shall levy \$100.00 per incident administrative charges for those actions related to service as listed within this Contract including, but not limited to:

- a. Failure to clean spillage caused by Contractor at time of occurrence
- b. Failure to provide clean, safe, sanitary equipment
- c. Failure to maintain office hours as required
- d. Operator not licensed
- e. Failure to provide documents and reports in a timely and accurate manner
- f. Failure to cover materials on collection vehicle(s)
- g. Collection employees out of uniform
- h. Name and phone number not displayed on equipment or containers
- i. Using improper truck to service commercial or residential customer
- j. Failure to respond to customer calls in a timely and appropriate manner.

All assessed administrative charges shall be paid by Contractor to the City on the next regular Franchise Fee payment to the City. The Contractor may appeal the assessed administrative charge(s) to the City Manager in writing within ten (10) days of notification from the City. Failure to submit a timely written appeal will waive the Contractor's right to appeal the administrative charge(s).

5.2 Records of Performance: The Contractor shall file and keep current with the City all documents and reports required by this Contract. By September 1st of each year, this Contract is in effect, the Contractor shall ensure and certify to the City that all required documents such as, but not limited to, certificates of insurance, audits, performance bond or letter of credit, route schedule and maps, driver's license certifications, and list of collection equipment vehicles, are current and on file with the City. Failure to file any document or report within thirty (30) working days of the required filing date, except where granted an extension by the Contract Administrator, may result in the levy of an administrative fine as provided in 5.1.

5.3 Default and Disputes: It shall be the duty of the Contract Administrator to observe closely the Contractor's services pursuant to the Contract. Each of the following events or conditions shall constitute an "Event of Default" by the Contractor.

- a. The Contractor takes the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors or file a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its reorganization, under the bankruptcy laws, or under any other law or statute of the United States, or any state thereof, or consent to the

- appointment of a receiver, trustee, or liquidator of all or substantially all of its assets; or,
- b. By order or decree of a court, the Contractor shall be adjudged bankrupt, or any order shall be made approving a petition filed by any of its creditors or by any of the Stockholders of the Contractor seeking its reorganization or the readjustment of its indebtedness under federal bankruptcy laws or under any law or statute of the United States or of any state thereof; provided that, if any such judgment or order is stayed or vacated within sixty (60) days after the null, void, and of not effect; or,
 - c. The Contractor has abandoned, failed, or refused to perform; or,
 - d. The Contractor has failed to comply with the provisions of Article VI of this Contract; or,
 - e. After initial notice from the City, the Contractor has failed to make timely payments to the City of any amounts due under this Contract.

Such events or conditions shall be considered a material breach of the Contract and the Contract Administrator or City Manager shall notify the Contractor in writing of the breach. A copy of such written notice is to be mailed to the surety on the performance bond. If within a period of seven (7) days, the Contractor has not eliminated the conditions considered to be a breach, the Contract Administrator shall notify the City Manager and a meeting shall be set for a date within fifteen (15) days of such notice. The City shall, not less than five (5) days prior to the date of such meeting, notify the Contractor and the surety of the date and place of the meeting at which the Contractor shall be required to show cause why the Contractor has not breached the terms of the Contract. Should the Contractor fail to appear at the meeting or fail to show cause why it has not breached the terms of the Contract, to the reasonable satisfaction of the City, the City shall declare the Contractor in default of the Contract and notify the Contractor and the surety of the declaration of default, or take such other action as may be required. The City's City Manager may issue the declaration of default.

Upon such a declaration of default, the City in its sole discretion may terminate this Contract and the termination shall take effect as of the date specified by the City. Upon such termination, the City may cure the Contractor's default at the expense of the Contractor and assume all contractual services of the Contractor at the Contractor's expense. The City may also call on the Contractor's surety to promptly cure the Contractor's default, pay all damages and expenses (including reasonable attorney's fees) incurred by the City for the Contractor's default, and promptly assume all services and obligations of the Contractor under the Contract. If the Contractor and/or its surety fail to satisfy the foregoing obligations, the City may then pursue any and all legal remedies against the Contractor and/or its surety for all damages and expenses, including all reasonable attorney's fees, incurred by the City in curing the Contractor's default and/or assuming all contractual services under this Contract.

ARTICLE VI

GENERAL, FINANCIAL, INSURANCE AND INDEMNIFICATION REQUIREMENTS

6.1 Assignment and Subcontracting: The Contractor may assign a portion of this Contract to a subcontractor upon receiving written consent of the Contract Administrator. In no event shall the Contractor assign the entire Contract to a subcontractor or otherwise assign the Contract to another

entity without the written consent of the City, which consent shall be formalized in a written amendment to this Contract. In the event that the Contractor assigns a portion of the Contract to a subcontractor, the assignment shall be subject to the terms and conditions of this Contract, the subcontractor providing proof of insurance (as required herein) and any bonding requirements that the City may require depending on the extent of the subcontracted portion of this Contract.

6.2 Performance and Payment Bond: Contractor shall furnish to the City, prior to the commencement of services, a Performance and Payment Bond, executed by a surety company authorized to do business in the State of Florida, in the amount of **\$5,000,000.00**. The bond shall be conditioned upon the successful completion of all work, labor, services, and materials to be provided and furnished under this Contract and the payment of all subcontractors, materials and laborers. Said bonds shall be subject to the approval by the City.

6.3 Insurance Requirements: During the life of the Contract, the Contractor shall procure, pay for, and maintain insurance of the types and to the limits specified below, and provide the City with certificates of insurance as evidence thereof. Except for Workers Compensation and Employer's Liability policies, the City shall be an "additional insured" on the required insurance policies on a primary, non-contributing bases. Cancellation or modification of said insurance shall not be effected without thirty (30) days prior written notice to the City. The Contractor shall require until completion of that subcontractor's services, insurance of the types and to the limits specified below, unless the subcontractor's work is covered by the protection afforded by the Contractor's insurance. It shall be the responsibility of the Contractor to ensure that all subcontractors comply with all of the insurance requirements contained herein relating to such subcontractors. Except as otherwise stated, the amounts and types of insurance shall conform to the following minimum requirements:

- a. Worker's Compensation: Worker's Compensation coverage must be maintained by the Contractor in accordance with statutory requirements as well as Employer's Liability Coverage in an amount not less than \$100,000.00 per each accident.
- b. Comprehensive General Liability: The Contractor shall provide and maintain Comprehensive General Liability Insurance. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy filed by the Insurance Services Offices in the minimum amount of \$1,000,000 per occurrence combined single limit (\$2,000,000 aggregate) and must include:
 1. Bodily injury liability and property damage liability.
 2. Premises and/or operations.
 3. Independent Contractors.
 4. Products and/or completed operations.
 5. The contractual coverage must specify that it covers the indemnification provision at section 6.4 of this Contract.
- c. Comprehensive Automobile Liability: The Contractor shall provide and maintain Comprehensive Automobile Liability Insurance. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Auto Policy filed by

the Insurance Services Office with minimum limits of \$1,000,000 combined single limit (\$2,000,000 aggregate) and must include:

1. Bodily injury liability and property damage liability.
2. Owned vehicles.
3. Hired and non-owned vehicles.
4. Employer's non-ownership.
5. The Contractual coverage must specify that it covers the indemnification provision at section 6.4 of this Contract.

- d. Umbrella Liability: The Contractor may provide umbrella liability to satisfy the Comprehensive General Liability and Comprehensive Automobile Liability limits specified above. The minimum limits of \$5,000,000 are the total limits required.
- e. Certificate of Insurance: Certificate of all insurance required from the Contractor shall be filed with the City and shall be subject to this approval for adequacy and protection. Certificates from the insurance carrier stating the types of coverage provided, limits of liability, and expiration dates, shall be filed in triplicate with the City before operations are commenced. The required certificates of insurance shall not only name the types of policies provided, but shall also refer specifically to this Contract and section and the above paragraphs, in accordance with which such insurance is being furnished, and shall state that such insurance is as required by such paragraphs of the Contract. If the initial insurance expires prior to the completion of the work, renewal certificates shall be furnished, in thirty (30) days prior to expiration, and shall state that such insurance is as required by such paragraphs of this Contract.

6.4 Indemnification: The Contractor agrees to assume liability for and indemnify, hold harmless, and defend the City, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor, its agents, officers, contractors, subcontractors, employees, or anyone else utilized by the Contractor in the performance of this Contract. The Contractor's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision at all trial and appellate levels. This includes claims made by the employees of the Contractor against the City and the Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Contract and shall not be limited by the amount of any insurance required to be obtained or maintained under this Contract.

Subject to the limitations set forth in this Section, Contractor shall assume control of the defense of any claim asserted by a third party against the City and, in connection with such defense, shall appoint lead counsel, in each case at the Contractor's expense. The City shall have the right, at its option, to participate in the defense of any third party claim, without relieving Contractor of any of its obligations hereunder. If the Contractor assumes control of the defense of any third party

claim in accordance with this paragraph, the Contractor shall obtain the prior written consent of the City before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Section, the Contractor shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by the City and all expenses, including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of the City, be detrimental in any material respect to the City's reputation; (ii) the third party claim seeks an injunction or equitable relief against the City; or (iii) the Contractor has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

Nothing contained in the foregoing indemnification shall be construed as a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes. Nothing in this Contract shall be construed as the City's consent to be sued by a third party.

ARTICLE VII MISCELLANEOUS PROVISIONS

7.1 Governing Law, Venue, and Remedies: The Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County and the Agreement will be interpreted according to the laws of Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

7.2 Compliance with the Laws: The Contractor shall conduct operations under this Agreement in compliance with all applicable laws.

7.3 Palm Beach County IG: In accordance with Palm Beach County ordinance number 2011-009, the Contractor acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The Contractor has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

7.4 Public Records: The Contractor shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- a. Keep and maintain public records required by the City to perform the service.
- b. Upon request from the City's custodian of public records or designee, provide the City 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 this Contract and following completion of this Contract if the Contractor does not transfer the records to the City.
- d. Upon completion of this Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential or exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT THE CITY OF LAKE WORTH BEACH, ATTN: DEBBIE ANDREA, AT (561) 586-1662, DANDREA@LAKEWORTHBEACHFL.GOV, 7 N. DIXIE HIGHWAY, LAKE WORTH BEACH, FL 33460.

7.5 E-VERIFY: Pursuant to Section 448.095(2), Florida Statutes, beginning on January 1, 2021, the Contractor shall:

- a. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Contract) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;
- b. Secure an affidavit from all subcontractors (providing services or receiving funding under this Contract) stating that the subcontractor does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;
- c. Maintain copies of all subcontractor affidavits for the duration of this Contract and provide the same to the City upon request;
- d. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
- e. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Contract; and,
- f. Be aware that if the City terminates this Contract under Section 448.095(2)(c), Florida Statutes, the Contractor may not be awarded a contract for at least 1 year after the date on which the Contract is terminated and will be liable for any additional costs incurred by the City as a result of the termination of the Contract.

7.6 SCRUTINIZED COMPANIES: The Contractor certifies that:

- a. The Contractor and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the City may immediately terminate this Contract at its sole option if the Contractor or any of its subcontractors are found to have submitted a false certification; or if the Contractor or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Contract.
- b. If this Contract is for one million dollars or more, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the City may immediately terminate this Contract at its sole option if the Contractor, or any of its subcontractors are found to have submitted a false certification; or if the Contractor or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Contract.
- c. The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Contract.
- d. The Contractor agrees that the certifications in this section shall be effective and relied upon by the City for the term of this Contract, including any and all renewals.
- e. The Contractor agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the Contractor shall immediately notify the City of the same.
- f. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

7.7 Entire Agreement: This Contract supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Contract which is not contained herein shall be valid or binding.

7.8 Severability: The invalidity, illegality, or unenforceability of any provision of this Contract, or the occurrence of any event rendering any portion of provision of this Contract void, shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Contract from being void should a provision which is of the essence of this Contract be determined to be void.

7.9 Modification: This Contract constitutes the entire agreement and understanding between the parties hereto, and it shall not be considered modified, altered, changed, or amended in any respect unless in writing and signed by the parties hereto. Such modification shall be in the form of a written amendment executed by both parties.

7.10 Independence of Parties: It is understood and agreed that nothing herein contained is intended or should be construed as in any way establishing the relationship of co-partners between the parties hereto, or as constituting the Contractor as the Agent, Representative or Employee of the City for any purpose whatsoever. The Contractor is to be and shall remain an independent contractor with respect to all services performed under this Contract.

7.11 Waiver of Trial by Jury: TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

7.12 Contract Time and Uncontrollable Forces: Time is of the essence in the completion of all services as specified herein. In the event of Uncontrollable Forces, the Contract Administrator may grant the Contractor a variance from regular routes and schedules. The Contractor shall contact the Contract Administrator promptly upon the occurrence of an Uncontrollable Force, which will impact regular routes and schedules. As soon as practicable after the commencement of such Uncontrollable Force (but not later than three (3) business days from the commencement), the Contractor shall notify the Contract Administrator when it is anticipated that normal routes and schedules will be resumed. The Contractor and Contract Administrator shall make an effort through the local news media, website(s) or other forms of communication to inform the public when regular services may be resumed.

7.13 Notices: All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date when personally delivered to the address indicated below; or on the third (3rd) business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. postal mailbox or at any U.S. Post Office; or when sent via nationally recognized overnight courier to the address indicated below. Should the City or Contractor have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests from the parties shall be provided to the addresses provided above for each party. For all Contractor notices, demands or requests, hand-delivery to the Contract Administrator with a courtesy copy provided to the City Manager is sufficient.

7.14 Counterparts: This Contract may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same document. The parties may electronically sign this Contract.

7.15 Preparation: This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

7.16 Survivability: Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

7.17 Waiver of Breach: The waiver by either party of any breach of any provision of this Contract shall not operate or be construed as a waiver of any subsequent breach of that same or any other provision.

7.18 Audit by City: The Contractor shall permit the City, or any authorized representatives of the City, at all reasonable times, access to and the right to examine all records, books, papers or documents related to the Contractor's performance of any time and services under this Contract including, but not limited to, expenses for subcontractors, agents or assistants, direct and indirect charges for services performed and detailed documentation for all such services performed or to be performed under this Contract. The City shall be responsible for the cost of such audit.

7.19 No Third Party Beneficiaries: There are no third party beneficiaries under this Contract.

7.20 Enforcement Costs: Except as may be required of Contractor under the indemnification provision provided in section 6.4 of this Contract, all parties shall be responsible for their own attorneys' fees, court costs and expenses if any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the execution, validity, the obligations provided therein, or performance of this Contract, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract.

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[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have made and executed this Franchise Agreement for Commercial and Residential Roll-Off Services on the day and year first above written.

CITY OF LAKE WORTH BEACH

By: _____
Pam Triolo, Mayor

ATTEST:

By: _____
Deborah M. Andrea, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Bruce T. Miller, Financial Services Director

CONTRACTOR: **WASTE MANAGEMENT INC. OF FLORIDA**

By: David M. Myhan

[Corporate Seal]

Print Name: David M. Myhan

Title: President

STATE OF Florida)
COUNTY OF Broward)

THE FOREGOING instrument was acknowledged before me by means of X physical presence or online notarization on this 13 day of January 2020, by David M. Myhan, as the President [title] of **WASTE MANAGEMENT INC. OF FLORIDA**, a Florida Corporation, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Coleen T. Houlihan
Notary Public Signature
Notary Seal:

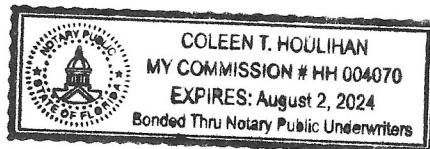


Exhibit "A"
City of Lake Worth Beach Roll-Off Services for Commercial and Residential
Effective: February 1, 2021

Commercial and Residential Roll-Off:

	Haul Price	Franchise Fee	Total Price
Delivery Charge	\$ 112.00	\$ 22.40	\$ 134.40
In-activity Charge	\$ 206.00	\$ 41.20	\$ 247.20
Trip Charge	\$ 206.00	\$ 41.20	\$ 247.20

Construction and Demolition (C&D)*	Haul Price	Franchise Fee	Total Price
10 yard Open Top	\$ 324.00	\$ 64.80	\$ 388.80
20 Yard Open Top	\$ 442.00	\$ 88.40	\$ 530.40
30 yard Open Top	\$ 559.00	\$ 111.80	\$ 670.80
40 yard Open Top	\$ 677.00	\$ 135.40	\$ 812.40

*Haul Price Includes Disposal

Compactors	Haul Price	Franchise Fee	Total Price
All Sizes, Haul Only	\$ 236.00	\$ 47.20	\$ 283.20

Disposal for Compactors is based on actual tons and SWA Rate	Disposal per Ton	Franchise Fee	Total per Ton
Current Disposal Rate	\$ 42.00	\$ 8.40	\$ 50.40

Restart Charge	\$ 59.00	\$ 11.80	\$ 70.80
Late Payment	1.50%		