

MEMORANDUM OF UNDERSTANDING
TO SOLID WASTE AND RECYCLING AGREEMENT BETWEEN
CITY OF GAINESVILLE, FLORIDA
AND
WASTE MANAGEMENT OF CENTRAL FLORIDA, INC.
JULY 12, 1994

WHEREAS, on February 15, 1994 the City of Gainesville and Alachua County issued Invitation to Bid Number 941030-CEPR-MT; and

WHEREAS, Waste Management of Central Florida, Inc. was the lowest responsible bidder for City of Gainesville residential solid waste and curbside recyclables collection services, Assuming City and County Jointly, City of Gainesville bid form; and

WHEREAS, on June 7, 1994, the City Commission of the City of Gainesville, Florida voted to award Bid Number 941030-CEPR-MT for residential solid waste and curbside recyclable collection services and municipal collection services to Waste Management of Central Florida, Inc.; and

WHEREAS, the parties desire to clarify and amend certain provisions of the Solid Waste and Recycling Collection Agreement (hereinafter "Agreement") between City of Gainesville (hereinafter "City") and Waste Management of Central Florida, Inc. (hereinafter "Contractor");

NOW THEREFORE, in consideration of the premises and mutual covenants and promises made herein, the parties hereby agree to the following clarifications and changes:

1. The Contract is for City Residential Solid Waste Collection Services, Option 2A Variable Rate Once Per Week, Municipal Collection Services, and for City Curbside Recycling Collection Program, based upon "Assuming City and County Jointly, City of Gainesville" bid form. The services under this Agreement do not include a Residential Yard Trash Collection Program. To the extent the contract documents refer to the Contractor's obligations or responsibilities to provide any other residential solid waste collections service option or residential yard trash collections services, they shall be deemed amended to delete all such references, and such references shall not be applicable to Contractor.

2. Section 3 of the General and Technical Specifications for Solid Waste, Recycling and Yard Trash Collections within the City of Gainesville and County of Alachua (hereinafter "Specifications") is amended to read:

3. **TERM**

3.1 The initial term of this contract shall be for a period beginning October 1, 1994 and terminating September 30, 1999.

3.2 The initial term of this contract may be extended for successive periods of up to five years, commencing with the expiration of the initial term, based upon successful negotiation of the terms of any extension between the City and the Contractor. Negotiations shall commence at least fifteen months before the expiration of the initial term and shall be concluded at least twelve months before the expiration of the initial term, at which time the City shall notify the Contractor in writing of the intent to renew the contract, if such intent exists. Any such written notice shall be served by certified or registered mail, return receipt requested. Negotiations for subsequent extensions shall proceed in the same manner in each succeeding term of the contract, provided, however, that any deadlines for commencing or concluding negotiations may be adjusted on a pro rata basis with the term of the extension by mutual agreement of the parties. This section may be modified upon mutual agreement of the parties at any time prior to the expiration of the current term.

3. Section 4.8 of the Specifications is amended as follows:

4.8 Clean Debris - Shall mean any solid waste which is virtually inert and which is not a pollution threat to groundwater and surface waters and is not a fire hazard, and which is likely to retain its physical and chemical structure under expected conditions of disposal or use. The term includes contaminated concrete, including embedded pipe or steel, brick, glass, ceramics and other wastes designated by the Florida Department of Environmental Protection.

4. Section 5.6 of the Specifications is amended as follows to clarify that the Contractor is not responsible for the payment of disposal costs:

5.6 Solid Waste Management Facility - All Solid Waste shall be hauled to those sites or facilities as directed in writing by the Manager. The use of any site or facility other than the Southwest Landfill must be approved by the Contractor, the City, and the County.

5. A new section 6.3.6 is added to the Specifications as follows:

6.3.6 Recordkeeping - In order to allow the County to accurately bill the City for residential solid waste disposal fees, the Contractor, the County and the City shall mutually agree upon a method by which the Contractor will maintain and report information adequate to determine the monthly residential solid waste tonnage disposed by City residents and the monthly residential Solid Waste tonnage disposed by County residents, in both mandatory and non-mandatory areas. The agreed method of recordkeeping shall be evidenced by a written

memorandum signed by Authorized Representatives of the City, the County and the Contractor. The memorandum may be modified in writing from time to time by the parties.

In the event commingling of City and County residential solid waste is necessary to maintain routing efficiency, the Managers may approve commingling. The Contractor shall maintain and report information adequate to determine the monthly residential solid waste tonnage disposed by City residents and the monthly residential solid waste tonnage disposed by County residents in commingled areas, if such is approved. The approved method of recordkeeping shall be evidenced by a memorandum signed by Authorized Representatives of the City, the County, and the Contractor.

6. A new Section 6.3.7 is added to the Specifications as follows:

6.3.7 **Cart Distribution** - The City and the County shall be responsible for advising the Contractor of the number of carts required for each size category and the size cart to be delivered to every residential street address in the City and every residential address in the mandatory area of the County. For initial start-up under this Contract, such information shall be provided so as to allow the Contractor sufficient time to obtain the necessary number of carts in each size category, to assemble the carts, and to distribute the carts prior to October 1, 1994. Thereafter, the City and the County shall be responsible for advising Contractor of all new service and change in service requests. The method for the exchange of such information in a timely fashion shall be developed and mutually agreed upon by the parties to this Contract, and may be modified from time to time.

7. Section 7.1 of the Specifications is amended as follows:

7.1 The Contractor shall provide Residential or Commercial Collection Service, as appropriate, to all property owned, leased, rented or controlled by the City of Gainesville, including but not limited to those designated by the City Manager if acquired during the Contract term. These services shall be provided at no charge to the City, except that the Contractor shall not be required to provide Residential or Commercial Collection Services to public housing developments at no charge.

8. A new section 7.4 is added to the Specifications as follows:

7.4 **Recordkeeping** - The Contractor and the Manager for the City shall mutually agree upon a method by which the Contractor will maintain and report information adequate to determine the monthly Municipal Collection Service tonnage disposed by the Contractor. The agreed method of recordkeeping

shall be evidenced by a written memorandum signed by Authorized Representatives of the City and the Contractor.

9. Section 11.5 of the Specifications is amended as follows:

11.5 **Receptacles** - The Contractor shall pick up all Recyclables which have been properly prepared for collection and placed in approved Recycling containers or paper or plastic bags and set at curbside.

The Contractor shall supply and distribute Recycling containers to each residence within the service area that does not have a container and shall replace all cracked, damaged, lost or stolen Recycling containers in the service area. Except as provided below, the cost of these containers will be borne by the Contractor. The Recycling containers shall be blue, a minimum of 18 gallons in size and of a type approved by the City. Recycling containers may be imprinted with a logo and/or Recycling theme as approved by the City.

The Contractor shall maintain an adequate supply of containers to distribute as described above. Replacement of containers will be made free of charge to the Customer. The Contractor may bill the City for twenty-five percent (25%) of the cost of all replacement containers provided each year. The method of recordkeeping and reporting shall be approved by the Manager.

All Recycling containers provided by the Contractor shall be identical in type, size and color, and shall be delivered by the Contractor.

10. Section 11.10 of the Specifications is amended as follows:

11.10 **Revenues Generated from Recycling** - The Contractor shall account for all revenues generated through Recycling and report all such revenues to the County and City on a monthly basis. The revenue amounts are to be verified by the accompanying receipts from the purchaser of the recycled materials.

If the Contractor processes the recyclables, a percentage of the revenues generated from the sale of the recyclables, after deducting the cost of processing, shall be returned to the City and County. The percentage to the City and County for particular Recyclables shall be in accordance with Exhibit "C" of the bid document. The parties may amend Exhibit "C" to reflect changes in recyclable commodity markets.

If the Contractor does not process the Recyclables, all revenues received by the Contractor from the sale of Recyclables shall be returned to the County and City.

Any exceptions or modifications to this section must be approved by the Manager.

11. Section 14.2 of the Specifications is amended as follows:

14.2 **Billing Procedures - City** - The flow of information between the City and the Contractor shall be as stated in Exhibit "1" to the Memorandum of Understanding, entitled Billing Procedures Agreement, which is attached hereto and by reference becomes a part of this Agreement. It is understood by both the City and the Contractor that this Exhibit may be changed from time to time with the mutual consent of both parties to accommodate desirable changes in the billing and collections process.

12. Section 14.5 of the Specifications is amended as follows:

14.5 **Level and Type of Service for Collection of Other Wastes** - Where the Contractor agrees to collect Special Wastes, Infectious Waste, Hazardous Waste, Biomedical Waste, Biological Waste or Sludge, a written agreement between the Contractor and the customer shall be entered into upon the terms and conditions mutually agreed upon by the Contractor and the customer. All collection and disposal for those types of waste, when performed by the Contractor, shall be in strict compliance with all federal, state, and local laws and regulations.

13. A new Section 14.6 is added to the Specifications as follows:

14.6 **Sales, Service and Other Taxes** - In the event the Contractor is required, by a change in law, ordinance or resolution, to assess sales, service, or some other tax or surcharge for services provided under this Contract, the amount of such tax or surcharge shall be paid by the County or City, as appropriate, or added to the compensation due to Contractor, as of the date such tax or surcharge is due.

14. Section 17.5 of the Specifications is amended as follows:

17.5 **Disputes About Collection of Certain Items** - It is recognized that disputes may arise between the City and the County and the Contractor with regard to the collection of certain items. The Manager may from time to time notify the Contractor by telephone to remove all such Refuse. Should the Contractor fail to remove such Refuse within twenty-four (24) hours from time of notification, the County or City will do so and all costs incurred by the County or City, plus a twenty percent (20%) surcharge, shall be deducted from the compensation due the Contractor. If the Manager determines that disputed

Refuse did not conform to contract specifications, the Contractor shall be entitled to reimbursement for the amount deducted.

15. The last paragraph of Section 18.6 of the Specifications is amended, and a new paragraph is added to the end of Section 18.6 of the Specifications as follows:

18.6 The Contractor shall be excused from performance in cases of war, insurrection, riot, or other causes beyond the Contractor's control. If the Contractor is unable to resume full or substantial performance within thirty (30) calendar days, the City and County may terminate this Contract by giving the Contractor five (5) days written notice. The parties hereto shall thereafter have no further obligations or liabilities under this Agreement except those which arose prior to the date performance was interrupted or suspended. For the purpose of this section, a strike shall be considered within the control of the Contractor.

In the event of a breach by Contractor or excuse of performance under this paragraph such that Contractor is not providing full or substantial performance in the opinion of the City, the City shall be able to immediately begin negotiation, execute a contract, and provide service on a temporary basis with another provider during the period that procedures and waiting periods are ongoing without such deemed a breach of this contract.

16. A new paragraph is added to the end of Section 11.9 of the Specifications as follows:

Change(s) in site location, ownership of facility, permits, and marketing of materials may occur provided the Contractor has received prior approval from the Manager, such approval to be later evidenced by a written memorandum confirming the change(s).

17. A new Section 14.7 is added to the Specifications as follows:

14.7 **Pilot Programs** - The Contractor and the City, upon mutual agreement, may develop and implement pilot programs in selected service areas in order to test innovative and potentially more efficient methods for the collection and disposal of solid waste and recyclables and for municipal collection services.

18. A new Section 37 is added to the Specifications as follows:

37. **Construction** - The parties recognize that although bid prices were based upon the award utilizing the "assuming City and County jointly" bid form, separate awards were made by the City and the County and separate contracts will be entered into between the City and the Contractor and the County and the Contractor. Therefore, unless the context of the general or technical

specifications and addenda thereto, or the Memorandum of Understanding clearly indicates otherwise, reference in those documents to the City and County when referring to the rights and duties of the City and County will be construed to refer, in the case of the City's contract, to a right or duty of the City, and in the case of the County's contract, to a right or duty of the County.

In the event the County terminates its Agreement with the Contractor prior to the end of the Contract term for any reason, the Agreement between the City and the Contractor will continue on for the same terms and conditions.

19. A new Section 38 is added to the Specifications as follows:

38. **Weighing Standards** - In any case where the Contractor is responsible for maintaining information and records adequate to determine the weight of the contracted for solid waste, recyclables, or yard trash, the weighing device utilized by the Contractor shall be considered adequate if the Contractor uses the weighing devices at the Alachua County Landfill or any other weighing device approved by the City.

20. The third paragraph of Section 6.3.4 of the Specifications is amended as follows:

The Contractor will be responsible for delivery and pick up of all carts. The City will pay the Contractor \$5.00 for each cart that is exchanged for a cart of a different size. The customer's ability to exchange carts shall be as prescribed by the Manager. The carts shall be placed at Curbside / Roadside or at such other single collection point as may be agreed upon by the Contractor and the customer.

In witness whereof the parties hereto have executed this Memorandum of Understanding in three (3) counterparts, each of which, without proof or accounting for the other counterparts, shall be deemed as original.

Witness:

[Handwritten Signature]
[Handwritten Signature]

CONTRACTOR:

Waste Management of Central Florida, Inc.

By: *[Handwritten Signature]*
James E. O'Connor

Title: President

Witness:

[Handwritten Signature]
Sr. Exec Asst.

CITY OF GAINESVILLE, FLORIDA

By: *[Handwritten Signature]*

Title: Sr. Deputy City Mgr

APPROVED AS TO FORM AND LEGALITY

By: *[Handwritten Signature]*
Patricia H. Miller, Asst. City Atty.
City of Gainesville, Florida

EXHIBIT 1
BILLING PROCEDURES AGREEMENT
 (Reference Article VI, Section 14.2)

The service charges for residential customers shall be billed and collected by the City of Gainesville, and payment by the City of Gainesville to the Contractor shall be accomplished in accordance with the procedures outlined below.

The accounts shall be classified as follows:

SINGLE-FAMILY CURBSIDE	35, 64 OR 96 GALLON CART SERVICE
MULTI-FAMILY CURBSIDE	35, 64 OR 96 GALLON CART SERVICE
BACKDOOR	35, 64 OR 96 GALLON CART SERVICE
DISABLED	35, 64 OR 96 GALLON CART SERVICE

1. The City shall assess each residential unit a monthly refuse fee which shall include the cost of solid waste and curbside recycling collection.
2. The refuse fee shall be assessed during all periods where utility metered services are provided at the residential unit. Exception: Residential unit(s) under construction or unoccupied up to ninety (90) days after issuance of Certificate of Occupancy.
3. The refuse fee will be pro-rated if the utility billing is active between 5 and 25 days of the month. There will be no refuse charge if the number of utility billing days is less than 5 days and a full monthly charge if the number of service days is greater than 25 days.
4. The Contractor shall be paid for services rendered based on the City's monthly billing of the number of residential units serviced by the type of collection service and size of cart provided. All invoices for cart exchanges shall be submitted monthly by the Contractor. All invoices for recycling container replacement shall be submitted annually within thirty (30) days after the end of the contract year. All payments shall be made based on the records of the City.
5. The City shall maintain the official record of all residential accounts by type of service and the Contractor shall be paid for services according to this list.
6. In addition, the Contractor will provide a method using bags where residential customers may dispose of solid waste in excess of the 35, 64, or 96 gallon container assigned each unit. The method utilized must be approved by the Managers.

**Billing Procedures Agreement
Page Two**

7. The bags utilized in the method may be sold by the Contractor, the City or by private organizations as approved by the City. The rate for the bags shall be set to recover the costs of collection, disposal and administration of the excess solid waste. These rates must be approved by the Managers and the Contractor. Compensation will be based on the number of bags sold during the previous month.
8. **Curbside Recycling:** Charges to each residential unit and payment to the Contractor for the collection of residential recyclables shall be included in monthly charges to the resident for collection of residential solid waste.
9. **Municipal Collection Services:** The City shall provide the Contractor with a listing of each facility and/or property to be serviced, to include the type and size of container to be provided, at no charge to the City, by the Contractor. The Municipal Services List shall be maintained and updated by the City throughout the contract period. A list of City owned properties and/or facilities and litter containers to be serviced by the Contractor, with type of service and frequency of service to be provided, is included in the General and Technical Specifications for Solid Waste, Recycling and Yard Trash as Exhibit B.