

## AGENDA ITEM SUMMARY

<b>Meeting Date:</b>	SEPTEMBER 4, 2019
<b>Agenda Category:</b>	CONSENT BUSINESS
<b>Agenda Item Number:</b>	10 C
<b>Subject:</b>	RENEWAL OF RECYCLING SERVICES AGREEMENT WITH WASTE MANAGEMENT INC. OF FLORIDA (PUBLIC WORKS DEPARTMENT)
<b>Attachments:</b>	Memo; agreement
<b>Staff Contact:</b>	Public Works Director Poole
<b>Background:</b>	The Public Works Department is requesting a renewal of the Recycling Services Agreement with Waste Management Inc. of Florida. The agreement will become effective on October 1, 2019, with a term of three years with two one-year renewal options.
<b>Reference:</b>	Recycling Services Agreement
<b>Suggested Action:</b>	Approve renewal of the Recycling Services Agreement with Waste Management Inc. of Florida

# MEMO

*approved to  
go to Council.  
Dr. Fettrow  
8/21/2019*

**To** Dr. Brenda Fettrow, City Manager

**From:** C. Kenneth Poole, Public Works Director

*CKP*

**RE:** Recycling Services Agreement Single Stream Blended Value

**Date:** August 20, 2019

Attached is the Recycling Services Agreement with Waste Management, Inc. of Florida. The agreement is for a period of three years with two one year renewals.

The location of WM Recycling Brevard located at 650 Townsend Road in Cocoa, FL is in close proximity to the sanitation service area for the City of Rockledge.

I recommend the City enter into the agreement with Waste management Inc. of Florida.

**RECYCLING SERVICES AGREEMENT  
SINGLE STREAM BLENDED VALUE**

THIS RECYCLING SERVICES AGREEMENT ("Agreement") is made as of August \_\_\_\_, 2019, by and between WASTE MANAGEMENT INC. OF FLORIDA ("Company"), a Florida corporation with an office located at 2700 Wiles Road, Pompano Beach, FL 33073 and City of ROCKLEDGE, FLORIDA ("Customer"), with a location at 1600 Huntington Lane, Rockledge, FL 32955.

**1. TERM:**

The term of the Agreement shall be for a period of three (3) years, commencing October 1, 2019. The Agreement may be renewed for two (2) one-year terms by written mutual agreement. Customer shall have the right to terminate this Agreement for convenience on 90 days' advanced written notice; Company may terminate for convenience on 180 days' advanced written notice.

**2. QUANTITY AND QUALITY:**

During the term of the Agreement, Company shall take and Customer agrees to provide one hundred percent (100%) of Customer's single stream recyclables ("Recyclables"). Customer will provide in accordance with Exhibit A ("Specifications"). In the event that the Recyclables do not meet Specifications, the load may be rejected and/or Customer shall have the sole responsibility for any resulting settlement or adjustments, including, but not limited to: price reductions, transportation, and disposal costs. Recyclables specifically exclude, and Customer agrees not to deposit or permit the deposit for collection of, 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, or chemical or other properties that are deleterious or capable of causing material damage to any part of Company's property, its personnel or the public or materially impair the strength or the durability of the Company's structures or equipment, or any materials containing information (in hard copy or electronic format, or otherwise) which information is protected or regulated under any local, state or federal privacy or data security laws, including, but not limited to the Health Insurance Portability and Accountability Act of 1996, as amended, or other regulations or ordinances or other waste not approved in writing by Company (collectively, "Excluded Materials"). Title to and liability for Excluded Materials shall remain with Customer at all times. Title to Recyclables provided by Customer to Company is transferred to Company upon Company's receipt or collection unless otherwise provided in this Agreement or applicable law. Company reserves the right at its sole discretion upon notice to Customer to discontinue acceptance of any category of Recyclables as a result of market conditions related to such materials and makes no representations as to the recyclability of the materials which are subject to this Agreement.

**3. RECYCLABLE VALUE:**

The value of the Recyclables meeting the Specifications shall be as set forth on Exhibit B. It shall be conclusively presumed that the composition of the Recyclables delivered to the Company shall be identical to the composition of all single stream recyclables processed by Company at the processing facility used, as established from time to time by Company. Notwithstanding the foregoing, Company may perform a composition study of the Recyclables to determine the percentage of each commodity in Customer's Recyclables and may revise the amount payable or chargeable to Customer to reflect the actual composition of Customer's Recyclables. Customer acknowledges that the value of the Recyclables may be negative.

**4. PAYMENTS; CHARGES; ADJUSTMENTS:**

Upon receipt of an invoice, Customer shall pay for the services and/or containers (including repair and maintenance) furnished by Company in accordance with this Agreement, as such charges may be adjusted over the term of this Agreement as noted herein (the "Charges"). State and local taxes, if applicable, will also be added. Where the value is positive for the Recyclables, Company shall pay Customer on or about the last day of each month for Recyclables purchased during the preceding month, after deduction of any Charges owed to Company by Customer for services performed hereunder. Any Customer invoice balance not paid within forty-five (45) days of the date of invoice is subject to a late fee, and any Customer check returned for insufficient funds is subject to a NSF fee, both to the maximum extent allowed by applicable law. In the event that payment is not made when due, Company retains the right to suspend service until the past due balance is paid in full. In the event that service is suspended in excess of fifteen (15) days, Company may terminate this Agreement for such default and recover any equipment and containers.

**5. SERVICE:**

Customer shall deliver Recyclables, at Customer's expense, to WM Recycling Brevard, 650 Townsend Road, Cocoa, FL 32926 or to such other location within Brevard County as Company may direct from time to time ("Facility") during the Facilities operating hours, Monday through Saturday, excluding holidays specified by the Facility. All Recyclables must be delivered in self-dumping trucks and will be weighed in and out by Company at the Facility.

**6. DEFAULT:**

Notwithstanding the term of this Agreement set forth in paragraph one (1) above, in the event of default by a party, which default is not cured within thirty (30) days after written notice from the non-defaulting party, the non-defaulting party, at its option, may terminate this Agreement, upon written notice.

**7. INDEMNIFICATION/LIMIT OF LIABILITY:**

Company agrees to indemnify, defend and save Customer, its parent, subsidiaries, and corporate affiliates, harmless from and against any and all liability which Customer may be responsible for or pay out as a result of bodily injuries (including death), property damage, or any violation or alleged violation of law, to the extent caused by any negligent act or omission or willful misconduct of the Company or its employees, which occurs as a result of the disposal of Customer's Recyclables in a facility owned by the Company or a Waste Management company, provided that the Company's indemnification obligations will not apply to occurrences involving Excluded Materials. Neither party shall be liable to the other for consequential, incidental or punitive damages arising out of the performance or breach of this Agreement.

**8. REMEDIES AND WAIVER:**

A party's remedies hereunder are not exclusive and are in addition to any other remedies at law or in equity. A party shall not be deemed to waive any remedy available to it or any right under this Agreement, at law or in equity, by virtue of any act or forbearance in enforcing such rights or remedies.

**9. RESERVED:**

**10. FEES, COSTS AND TAXES:**

Unless otherwise exempt, Customer shall pay all license fees, assessments and sales, use and other taxes imposed as a result of this Agreement, excepting only taxes imposed on or measured by income of the Company.

**11. RIGHT OF FIRST REFUSAL:**

Customer grants to Company a right of first refusal to match any offer relating to services similar to those provided hereunder which Customer receives (or intends to make) upon termination of this Agreement for any reason and Customer shall give Company prompt written notice of any such offer and a reasonable opportunity to respond to it.

**12. NOTICES:**

Any notice to be given hereunder shall be sent certified mail or by a recognized National overnight carrier service to the address set forth above and in the case of Company a copy shall be sent to 2700 Wiles Road, Pompano Beach, FL 33073 Attention: Legal Department.

**13. MISCELLANEOUS:**

(a) Except for the obligation to make payments hereunder, neither party shall be in default for its failure to perform or delay in performance caused by events or significant threats of events beyond its reasonable control, whether or not foreseeable, including, but not limited to, strikes, labor trouble, riots, imposition of laws or governmental orders, fires, acts of war or terrorism, acts of God, and the inability to obtain equipment ("Uncontrollable Circumstances"), and the affected party shall be excused from performance during the occurrence of such events; (b) This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns; (c) This Agreement represents the entire agreement between the parties and supersedes any and all other recycling services agreements for the Recyclables, whether written or oral, that may exist between the parties or its affiliates; (d) This Agreement shall be construed in accordance with the law of the state in which the services are provided; (e) If any provision of this Agreement is declared invalid or unenforceable, then such provision shall be severed from and shall not affect the remainder of this Agreement; however, the parties shall amend this Agreement to give effect, to the maximum extent allowed, to the intent and meaning of the severed provision; and (f) In the event either party successfully enforces its rights against the other party hereunder, each party shall bear its own costs.

BY SIGNING BELOW, EACH SIGNATOR WARRANTS THAT HE OR SHE IS AUTHORIZED TO ENTER INTO A BINDING AGREEMENT ON BEHALF OF THE PARTY SET FORTH.

Dated as of the date first above written.

WASTE MANAGEMENT INC. OF FLORIDA

CITY OF ROCKLEDGE, FL

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_