

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is executed as of the day of _____, 2021, by Waste Management of Texas, Inc. (WM), and the City of Fort Worth, Texas (the "City"). The term sheet attached hereto as Exhibit "A" (the "Term Sheet") is hereby incorporated herein and made a part of this Memorandum of Understanding for all purposes. The purpose of this Memorandum of Understanding is to set forth the agreement in principle between the City and WM with respect to the second renewal and amendment to the City Secretary Contract No. 28358-E1 entitled "Extension and Restatement of the Contract for the Collection of Residential Garbage, Refuse and Bulky Waste, Recyclables, Certain Commercial Solid Waste, Yard Waste, C&D, and Large Brush" (the "Contract") as defined in the Term Sheet. Upon execution of this Memorandum of Understanding, the parties will proceed to negotiate in good faith the definitive agreements which will include mutually acceptable provisions relative to the amendment to the Contract and all matters related thereto including the terms and conditions set forth in the Term Sheet.

IN WITNESS WHEREOF, this Term Sheet has been executed on the date signed by the City Secretary.

CITY OF FORT WORTH

WASTE MANAGEMENT OF TEXAS, INC.

Valerie Washington
Assistant City Manager

Donald J. Smith
President

RECOMMENDED BY:

WITNESS:

Brandon Bennett
Director of Code Compliance

By: _____
Its: _____

ATTEST:

Ronald Gonzales
Acting City Secretary
Date Signed: _____

APPROVED AS TO FORM AND LEGALITY:

Christa R. Lopez-Reynolds
Senior Assistant City Attorney

CONTRACT COMPLIANCE MANAGER

By signing, I acknowledge that I am the person responsible for the monitoring and administration of this contract, including ensuring all performance and reporting requirements.

Christian Harper
Code Contract Services Administrator

EXHIBIT "A"

TERM SHEET

I. The City of Fort Worth (City) and Waste Management of Texas, Inc. (WM) propose to enter into the second renewal to City Secretary Contract No 28358 E-1, as amended, for the Extension and Restatement of the Contract for Collection of Residential Garbage, Refuse and Bulky Waste, Recyclables, Certain Commercial Solid Waste, Yard Waste, C&D and Large Brush (the "Contract"). Both parties wish to make amendments to the Contract to allow for a one time waiver of the Cost Adjustment to the Service Unit rate (as adjusted each Contract year) and to allow for the second renewal period to begin on or before November 30, 2021 and expire on April 1, 2033. Other contractual matters affecting the performance of this Contract shall also be addressed. The following are the general terms of the proposed amendment, which will be incorporated into a binding agreement between the parties.

II. **Waiver of the Assessment of the Cost Adjustment for Fiscal Year 2022 Method.**

WM agrees that the Cost Adjustment for Fiscal Year 2022 (i.e., the October 1, 2021 through September 30, 2022 period) shall not be made to the unit prices in Attachment A to the Contract and that the City will retain the current Service Unit rate of \$13.28 until the amended Cost Adjustment Date for Fiscal Year 2023 as described in Section IV herein.

III. **Change to the Cost Adjustment Indices.**

Effective with the Fiscal Year 2023 (i.e., the October 1, 2022 through September 30, 2023 period) Cost Adjustment, the parties agree to change the current Cost Adjustment indices, their measurement, and their allocation as reflected in Attachment B of the Contract as follows:

- The parties agree to change the Employment Cost Index adjustment to 90% of Unit Fees and the parties will use the CPI-U (Series ID: CUUR0000SEHG02) Garbage and Trash Collection – currently located at the following link: <https://beta.bls.gov/dataViewer/view/timeseries/CUUR0000SEHG02>. to determine the percentage adjustment. The CPI-U adjustment shall be based on the average monthly percentage change in the CPI-U over the 12-month measurement period; and
- The parties agree to change the Fuel Index adjustment to 10% of Unit Fees and the parties will use the EIA Natural Gas Texas Commercial (N3020TX3.M) index – currently located at <https://www.eia.gov/dnav/ng/hist/n3020tx3m.htm> to determine the percentage adjustment. The CPI-U

adjustment shall be based on the average monthly percentage change in the CPI-U over the 12-month measurement period.

IV. Amendment to the Cost Adjustment Method.

The parties agree to further amend the Cost Adjustment Method (Attachment B to the Contract) to change the twelve-month index measurement period in determining the annual Cost Adjustment to be April 1 to March 31. However, the effective date of the annual Cost Adjustment calculation shall remain October 1 (“Cost Adjustment Date”). This change of the Cost Adjustment Method shall apply to the public education program payment, however, the CPI index for such payment shall remain the same as stated in the Contract.

V. Implementation of a Performance Criteria for Certain Services.

The parties agree to implement a service performance standard for Priority One Collections and Collection Day route Completion. The parties agree to work together in good faith to implement a verification system such as a performance score card, to document WM’s collection and recovery of all reported missed pickups associated with all four (4) solid waste services: Garbage, Recyclables, Yard Waste and Bulky Waste Pile. The performance standard shall be as follows:

Monthly Priority One Collections: WM agrees to improve the recovery of all reported missed pickups by recovering the missed collection within the established recovery time frame for each solid waste service: Garbage Cart collection and Recycling Cart collection within twenty-four (24) hours from the time the miss was entered into the City’s software, and Yard Waste collection and Bulky Waste Pile collection within thirty-six (36) hours from the time the miss was entered into the City’s software. Failure to recover and collect the verified missed collection within the established time will convert that missed collection into a Priority One Collection. A Priority One Collection means a verified missed collection that WM failed to recover within the established recovery time frame for the type of collection at issue. In addition, WM agrees to strive towards having less than the individual quarterly goals for all four (4) solid waste services that will be identified within the performance score card, and to target a one-time 20% reduction of Priority One Collections for Garbage and Recycling Cart collection services and a one-time 10% reduction of Priority One Collections for Yard Waste and Bulky Waste Pile collection services (hereafter “Quarterly Reduction Goals”). These Quarterly Reduction Goals have been based on the average monthly actuals during the past four (4) fiscal years (2016 through 2019), excluding fiscal year 2020

due to the Covid pandemic, which resulted in atypical circumstances, which will be further described in the amendment to the Contract. If WM reduces the total number of Priority One Collections (tracked by month) within each individual service line below the established Quarterly Reduction Goals, the City agrees not to assess the associated Priority One liquidated damage fee of \$60.00 per collection for all the individual Priority One Collections occurring within that individual service line for that quarter. However, if WM fails to reduce the total number of Priority One Collections (tracked by month) within each individual service line below the established Quarterly Reduction Goals, the City has the right to assess and WM shall pay the associated Priority One liquidated damage fee of \$60.00 per collection for all the individual Priority One Collections occurring within that individual service line for that quarter.

Collection Day Route Completion: If WM fails to complete more than three (3) Collection Day routes in one calendar month and such failures are verified, in accordance with the terms of the Contract, then the City has the right to assess WM a liquidated damage of \$300.00 per incomplete route collection. For purposes of determining liquidated damages under this subsection, “fails to complete” means WM does not complete the truck’s Collection Day route by 10 p.m. of the date of collection.

VI. Liquidated Damages.

In consideration of the incorporation of a service performance standard into the Contract as stated in V above, the parties agree to revise the liquidated damages language in Section 19 of the Contract to reflect the increased administrative cost to the City related to determining the verified missed collections and failure to timely recover the same. The parties agree that the liquidated damages shall continue to be subject to the annual Cost Adjustment as amended herein. The parties further agree to update the specific liquidated damages language in the Contract consistent with the provisions in section V above.

VII. Revision to the Storm Event Calculation for Reimbursement to WM.

The parties agree to amend the definition of Storm Event and Section 2.B.5 entitled “Storm Events” of the Contract to allow WM to recover its costs for the collection of Storm Event debris when the Storm Event generates twelve percent (12%) or more greater tonnage than the five (5) year average for the same three (3) consecutive month period of normal collection of Yard Waste and Brush and Bulky Items that are collected and delivered for disposal per Service Unit. This reimbursement will cover a period of three (3) consecutive months following the month the Storm

Event occurred. Such reimbursement to WM shall be made at the actual invoiced cost for the weighted average of Storm Debris collected per hour of collection. The parties agree that in addition to the costs charged to the City for the Storm Event clean up, the City will pay WM a 10% administrative fee and amend Section 2.B.5 of the Contract to reflect such agreement.

VIII. Second Renewal and Amendment Effective Date and Term.

The parties agree that the amendment incorporating the terms and conditions in this term sheet, if approved by the Fort Worth City Council, shall be executed by the parties no later than November 30, 2021 and shall take effect upon full execution and expire April 1, 2033.

IX. Additional Matters to be Addressed in the Amendment.

- WM shall reimburse the City for the cost of repairing or replacing a Garbage or Recyclables Storage Cart due to damage caused by WM. The City agrees to provide digital photos and addresses of the Service Units for the Cart(s) damaged. WM has no obligation to pay for normal wear and tear to the Carts.
- WM agrees to upgrade all Automated Side Load (ASL) residential Garbage and Recycling collection vehicles, including Knight Waste Services residential ASL collection vehicles by installing vehicle cameras and image recognition software, known as the SmartTruck™ system technology, as presented to the City on July 2, 2021, to help verify that WM's performance of service adheres to the terms of the Contract and to assist the City in its enforcement of its Solid Waste ordinances. WM is committed to installing the SmartTruck™ system technology in all ASL trucks and training those personnel who will use the SmartTruck™ system technology by May 1, 2022; however, WM will not be considered in breach or default if, due to uncontrollable circumstances, it does not meet the May 1, 2022 date. WM will provide the City with digital photos and video for a Service Unit's set out of Garbage and Recyclables, not in compliance with the terms of the Contract. WM agrees to pick up additional Bags and overloaded Carts set out at a Service Unit and shall charge the City for the additional Bags and overloaded Carts in accordance with Attachment A to the Contract. WM agrees to collect a Resident's Garbage Cart contents and up to a maximum of five (5) Bags placed next to the Cart on the Resident's Collection Day. WM will provide the City with digital photos indicating the Resident Service Units where WM collected Bags placed next to the Cart and

overloaded Garbage and Recyclables Carts. WM will charge and the City agrees to pay for the additional Bags that WM collects and for collecting the contents of overloaded Carts. Once the SmartTruck™ system technology is installed and personnel have received training on the system, the City agrees to update the Authorized Bag Collection service described in Section 2.B.3. of the Contract and the definition of an Authorized Bag to be consistent with the five (5) Bag limit and the SmartTruck™ program.

Further, WM and the City recognize that upgrading and installing the SmartTruck™ system technology to its Rear-End Loader and Boom/Grapple truck collection fleet is still under development by WM across the country. At a point in time when WM determines that it is possible and practical to install SmartTruck™ system technology to additional residential collection vehicles used to service the City, to include Rear-End Loaders and Knuckle Boom/Grapple trucks used to collect Yard Waste, Brush and Bulky Items, WM will do so with the cooperation and mutual agreement of the City.

X. Transition Period.

In the event that: 1) the Fort Worth City Council does not approve this term sheet on or before November 30, 2021; and/or 2) the City exercises its right to enter into procurement for Solid Waste services provided by the Contract, this term sheet shall become null and void and shall have no further effect.