

**AMENDMENT No. 3
TO**

**The Contract Between the City of Seattle and
Waste Management of Washington, Inc. (f/k/a
Washington Waste Systems, Inc.) for the
Transportation and Disposal of Waste**

This Amendment is entered into by and between THE CITY OF SEATTLE, a municipal corporation of the State of Washington ("City") and WASTE MANAGEMENT OF WASHINGTON, INC., f/k/a Washington Waste Systems, Inc. ("Contractor"). The obligations of Contractor under this Amendment and the underlying Contract are covered by and included in the Guarantee of Waste Management, Inc., dated August 31, 1990.

RECITALS

WHEREAS the City and Contractor entered into that certain Contract Between the City of Seattle and Washington Waste Systems, Inc. for the Transportation and Disposal of Waste, dated as of September 11, 1990 (the "Original Contract"), and subsequently entered into Amendment No.1 dated as of October 31, 1996 ("Amendment No. 1") and Amendment No. 2 dated as of February 5, 2001 ("Amendment No. 2") (the Original Contract, Amendment No. 1 and Amendment No. 2 collectively shall be referred to as the "Contract");

WHEREAS Waste Management of Washington, Inc., by merger and internal corporate reorganization, has succeeded to the rights and obligations of Washington Waste Systems, Inc. under the Contract; and

WHEREAS the City and Contractor now desire to further amend the terms and conditions of the Contract, as set forth herein.

NOW THEREFORE, in consideration of the mutual promises contained herein, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

AMENDMENT

1. Section 10 of the Contract, which was last amended by Amendment No.2, is hereby amended and replaced in its entirety with the following:

Section 10. Length of Contract. This Contract shall enter into force and effect upon its execution and remain in effect until midnight, March 31, 2028; provided, however, that the City may terminate this Contract at its

option without cause on March 31, 2019 (the "Opt Out Date"), by providing the Contractor with written notice at least six months prior to the Opt Out Date. Notwithstanding the foregoing, in the event the City elects to exercise its option to extend that certain Solid Waste Collection and Transfer Contract Between the City of Seattle and Waste Management of Washington dated as of April 7, 2008 (the "Solid Waste Collection Contract"), from March 31, 2019 to March 31, 2021, then the Opt Out Date set forth above shall automatically be changed to March 31, 2021, without any further action required by the parties under the Contract.

2. Subsection 500(a) of the Contract, which was last amended by Amendment No. 2, is hereby amended by amending and replacing paragraph (ix) in its entirety, and by adding new paragraphs (x) and (xi), as follows:

- (ix) As of April 1, 2008, the base amount per ton is \$43.912 (2008 dollars) (which reflects the annual adjustment in Section 520 made on April 1, 2008).
- (x) On April 1, 2009, the base amount per ton will be calculated by first using the annual adjustment in Section 520, and second by subtracting \$5.50 per ton;
- (xi) Commencing April 1, 2010, and continuing through the duration of the Contract, the base amount per ton will be calculated using the annual adjustment in Section 520.

3. Section 510 of the Contract, which was last amended by Amendment No. 1, is hereby amended and replaced in its entirety with the following:

Section 510. Partnership Incentive.

(a) For the purpose of conferring benefits to both the City and the Contractor, either the City or the Contractor may undertake contract negotiations with a Partner to provide for the transport and disposal of its waste ("Partner Waste") by the Contractor under this Contract, subject to the terms and conditions set forth in this Section. Any agreement entered into under this Section that would cause the aggregate annual amount of Partner Waste to exceed 200,000 tons per year shall require the consent of both the City and the Contractor. For agreements with Partners that would not cause the aggregate annual amount of Partner Waste to exceed 200,000 tons per year, the contracting party (either the City or Contractor) will provide the other party with a minimum of thirty (30) days' advance written notice of the proposed terms of such Partner agreement, and the

other party shall have an opportunity to submit comments, which shall be reasonably considered by the contracting party prior to entering into such contracts.

(b) In order for Partner Waste to be included under this Contract, all of the following conditions must be met, unless the City and the Contractor agree otherwise:

(i) The Partner must execute an agreement ("Partner Agreement") obligating the Partner to deliver its Partner Waste to the Contractor for transport and disposal for a minimum term of six years, or the remaining term of this Contract, whichever is less. Any Partner Agreement shall terminate upon the expiration or termination of this Contract; provided that in the event the term of this Contract is extended, then the Partner Agreement may be extended to match such extended term.

(ii) The Partner must commit to deliver to Contractor at the Receiving Facility no less than 50,000 tons per year of Partner Waste.

(iii) The Partner Agreement must include or otherwise be subject to the same or substantially similar terms and conditions as are contained in this Contract, with the exception that the base rate per ton payable by the Partner under the Partner Agreement may differ from the base rate per ton established in this Contract, provided that the base rate per ton payable by the Partner under the Partner Agreement in any period shall not be less than the Adjusted Base Rate for that period, as defined and calculated pursuant to subsection (d) below. In addition, the Partner Agreement must allow the Contractor to avail itself of that certain Subcontract Between Waste Management of Washington, Inc. (f/k/a Washington Waste Systems, Inc.) and Union Pacific Railroad Company for the Transportation of Waste, dated as of February 21, 1991, as amended (the "UP Subcontract").

(c) For each ton of Partner Waste delivered to the Contractor under this Section, where the base rate per ton payable by the Partner is equal to or exceeds the Adjusted Base Rate, as defined and calculated pursuant to subsection (d) below, the City shall be entitled to receive the greater of: (i) 50 percent of the amount by which the then existing base rate per ton payable by the Partner under the Partner Agreement exceeds the Adjusted Base Rate or (ii) 50 cents per ton of Partner Waste, as an offset transportation credit. This rate will be applied to tons of Partner Waste, and the resulting amount will be the City's Partner Waste revenue

share ("City Revenue Share"). Contractor shall bill and collect all revenues from the Partner and shall remit to the City (or provide the City with an offset transportation credit for) the City Revenue Share within thirty (30) days of the actual receipt of such Partner revenue, along with an accounting of the Partner revenue and a calculation of the City Revenue Share.

(d) For purposes of calculating the Adjusted Base Rate and determining the amount of the City Revenue Share payable to the City, as provided in subsection (c), the parties shall use the following methodology to adjust for differing average container weights and other factors relevant and specific to the Partner Waste, which are not similarly applicable to the City under this Contract:

(i) The Adjusted Base Rate is the adjusted per ton rate for long-haul and disposal that will be compared to the actual Partner Agreement rate to determine compliance with the requirements of paragraph (b)(iii) above and used to calculate the City Revenue Share payable to the City as provided in subsection (c) above.

The Adjusted Base Rate for each period will incorporate adjustments to the then existing base rate per ton established in this Contract, payable by the City ("City Contract Rate"), for the following factors: 1) the average annual tons per rail container ("payload") for Partner Waste compared to the corresponding payload for the City and 2) documented drayage costs paid by Contractor for transport of the Partner Waste to the Receiving Facility.

The Adjusted Base Rate and the associated City Revenue Share will be calculated as follows:

1. Calculate the ratio of the City average payload divided by the Partner average payload. Take the average of that ratio and 100 percent.
2. For these calculations the City average payload will be 26.0 tons. The Partner average payload will be based on actual data for Partner container loads in the most recent calendar quarter, unless the parties subsequently agree on a fixed tonnage figure to represent the Partner average payload.
3. Multiply the average ratio from step 1 by the City Contract Rate. Then add any documented drayage cost per ton paid by the Contractor under the terms of the Partner Agreement, to derive

the Adjusted Base Rate. The Adjusted Base Rate is deemed to be the rate for the Partner's long haul and disposal that would be equivalent to the Seattle disposal rate per ton, after adjusting for payload and any drayage costs that are included in the Partner Agreement rate. It will define the minimum rate stipulated in Section (b)(iii) above.

4. Subtract the Adjusted Base Rate from the then existing base rate per ton payable by the Partner under the Partner Agreement. Multiply the greater of i) 50 percent of that difference or ii) 50 cents by the tons of Partner Waste for the period. The resulting value is the City Revenue Share for the period.

(ii) In the event that Contractor believes that additional factors, other than payload and short-haul drayage costs, require an adjustment in calculating the Adjusted Base Rate, then the Contractor may request an adjustment by providing the City with an explanation of such additional factors and a calculation of their impacts upon the Adjusted Base Rate. Such additional factors may include, but are not limited to, differences in container specifications and differences in performance requirements. The City will review all such requests in good faith and shall not unreasonably withhold its consent to any such requested adjustment in the calculation of the Adjusted Base Rate. In the event the City and Contractor cannot reach agreement regarding the resolution of a requested adjustment under this paragraph, then the matter shall be decided by binding arbitration in accordance with the procedure set forth in Section 930.

(e) The City and the Contractor may consider other agreements with Partners to provide for the transport and disposal of their waste by delivery to the Contractor at a location other than the Receiving Facility. Any such agreement shall require the prior approval of both the City and the Contractor.

4. A new Section 980 is hereby added to the Contract as follows:

Section 980. Green Energy Commitment. The City and Contractor acknowledge that Contractor's affiliate, WM Renewable Energy, LLC ("WMRE"), is currently developing and permitting certain landfill gas (LFG)-to-electricity engines at the Primary Landfill. Contractor represents and warrants that it has all necessary rights and authority required to offer and commit to the City the following regarding capacity, electrical energy,

and all associated environmental attributes at the Primary Landfill developed by WMRE, or any other affiliate of Contractor.

Contractor hereby agrees that, during the term of this Contract, it shall offer to the City (or its designated electric utility, Seattle City Light) (1) the right to purchase all of the capacity, electrical energy, and all associated environmental attributes associated with the initially planned 6.4 MW LFG engines at the Primary Landfill (net of any parasitic load, tap losses and tie line losses, the "Net Electrical Output") and transmitted offsite by the Primary Landfill; and (2) an exclusive ninety (90) day negotiating period to purchase any additional generation capacity, electrical energy, and associated environmental attributes transmitted offsite from the Primary Landfill by WMRE or any other affiliate of Contractor; both as more specifically set forth in the Letter of Intent between the City and WMRE, dated July 25, 2008 (the "LOI").

Any purchase by the City (or its designated electric utility, Seattle City Light) of capacity, electrical energy, and associated environmental attributes shall be memorialized in a mutually acceptable power purchase and sale agreement authorized by the Seattle City Council.

The parties acknowledge that some LFG and/or some electricity produced by the LFG engines at the Primary Landfill may be retained for internal use by the Primary Landfill or its affiliated operations, at its sole discretion, subject to the terms of the LOI and any definitive power purchase and sale agreement between Contractor (or WMRE) and the City (or Seattle City Light).

5. A new Section 985 is hereby added to the Contract as follows:

Section 985. Transfer Capacity Commitment at Eastmont Facility.

The parties acknowledge that pursuant to the Solid Waste Collection Contract, Contractor is obligated to transfer up to 100,000 tons per year of Garbage and 25,000 tons of Compostables (as those terms are defined under the Solid Waste Collection Contract) during the term of the Solid Waste Collection Contract. The parties also acknowledge that the City will face an additional shortage of Garbage and Compostables transfer capacity due to facility renovations at the City's South End and North End Transfer Stations. In order to ease these constraints, Contractor hereby agrees that beginning on April 1, 2009 and continuing for the period until the City's renovation of its North End Transfer Station has been completed, or April 1, 2014, whichever comes first, the Contractor shall commit sufficient capacity to allow the City to direct the transfer of up to a total of 150,000 tons per year of Garbage and a total of 50,000 tons per

year of Compostables at Contractor's Eastmont Facility. The pricing for Garbage and Compostables transfer shall be as set forth in the Solid Waste Collection Contract.

Except as set forth herein, all other terms and conditions of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment by having their representatives affix their signatures below.

"CONTRACTOR"

"CITY"

**WASTE MANAGEMENT OF
WASHINGTON, INC.**

THE CITY OF SEATTLE

By: _____
Dean Kattler
Area Vice President

By: _____
Ray Hoffman
Acting Director, Seattle Public Utilities

Dated: _____

Dated: _____

Authorized by Ordinance No: _____